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DATE: June 25, 2014  
TO: Honorable Mayor and City Councilmembers  
FROM: Neighborhood Services Department  
SUBJECT: **APPROVAL OF PHASE A LOAN AGREEMENTS FOR THE MISSION COVE AFFORDABLE HOUSING PROJECT**

### **SYNOPSIS**

Staff recommends that the City Council approve Phase A Loan Agreements with Mission Cove Family I Housing, LP, Mission Cove Family II Housing, LP, and Mission Cove Seniors Housing Associates, LP for the Mission Cove Affordable Housing Project located along the 3200 block of Mission Avenue; and authorize the City Manager to execute the Agreements.

### **BACKGROUND**

In December 2010 the City Council selected National Community Renaissance (National CORE) and Community Housingworks (CHW) as the Development Team for the Mission Cove Affordable Housing Project (Project). National CORE is the master developer for the overall site work, retail commercial space, and the design, construction, and ownership of the 150 units of family affordable housing. CHW is the developer for the design, construction, and ownership of the 138 units of affordable senior/special needs housing component of the Project.

### **ANALYSIS**

A Disposition and Development Agreement (DDA) for the Project was approved by the Council in August 2012. The DDA established that the Project will be developed in the following four phases:

- Phase A – Infrastructure (onsite/offsite improvements)
- Phase B – Multifamily (90 units)
- Phase C – Senior/Special Needs (138 units)
- Phase D – Multifamily (60 units)

Development Entitlements were approved in March 2014. A grading permit will be obtained in July 2014 which will be followed by a formal groundbreaking in early August 2014.

The Loan documents for all Phases were included as exhibits to the DDA. Execution of these documents for each Phase are required to disburse funds for development.

**FISCAL IMPACT**

The total development costs for the Project are estimated to be \$82 million. Of this, the Development Team is tasked with obtaining approximately \$65 million in private equity and debt financing for the Project. Per the approved DDA, construction of all Project phases will also require a local housing fund subsidy of approximately \$17 million. As of June 30, 2014, the City will have appropriated \$10,463,463 in housing fund subsidies to the Project.

YEAR FUND	FUNDING SOURCE	ACCOUNT	AMOUNT
FY 10/11	HOME - 277	923119900277	1,527,170
FY 13/14	INCLUSIONARY - 278	823131900277	4,707,691
FY 13/14	HOME - 277	823131900277	1,797,287
FY 14/15	HOME GRANT - 277	823131900277	598,285
FY 14/15	HOME GRANT - 277	823131900277	388,853
FY 14/15	HOME PRGM INC - 277	823131900277	254,517
FY 14/15	INCLUSIONARY - 278	823131900277	539,660
FY 14/15	LAGUNA VISTA SALE	823131900277	650,000
		Total Funds	10,463,463

The total Phase A loan amount is \$8,330,821, and is prorated to each development phase in the following amounts:

- Phase B - \$4,476,983
- Phase C - \$1,955,244
- Phase D - \$1,898,594

Approval of the Loan Agreement and associated documents for Phase A allows these funds to be disbursed. There is no additional appropriation of housing funds as a result of this action.

**INSURANCE REQUIREMENTS**

Does not apply.

**COMMISSION OR COMMITTEE REPORT**

The Housing Commission is provided with a Project updates at its regularly scheduled meetings.

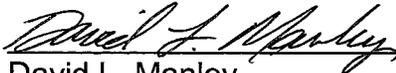
**CITY ATTORNEY'S ANALYSIS**

The attached documents have been reviewed by the City Attorney's Office and approved as to form.

**RECOMMENDATION**

Staff recommends that the City Council approve Phase A Loan Agreements with Mission Cove Family I Housing, LP, Mission Cove Family II Housing, LP, and Mission Cove Seniors Housing Associates, LP for the Mission Cove Affordable Housing Project located along the 3200 block of Mission Avenue; and authorize the City Manager to execute the Agreements.

PREPARED BY:

  
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David L. Manley  
Neighborhood Services Division Manager

SUBMITTED BY:

  
\_\_\_\_\_

Steven R. Jepsen  
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager  
Margery M. Pierce, Neighborhood Services Director  
James R. Riley, Financial Services Director

  
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Attachments:        Phase A Loan Agreements

## LOAN AGREEMENT

(Phase A Loan for Infrastructure Improvements on Phase B)

**THIS LOAN AGREEMENT** (the "Agreement") is entered into as of \_\_\_\_\_, 20\_\_\_, by and between the **CITY OF OCEANSIDE**, a municipal corporation, ("City"), and **Mission Cove Family I Housing, LP**, a California limited partnership (the "Borrower").

### RECITALS

The following recitals are a substantive part of this Agreement:

**A.** The City is a California municipal corporation which has received funds for the purposes of strengthening public-private partnerships to provide decent, safe, sanitary, and affordable housing, with primary attention to rental housing, for very low income and lower income households in the City.

**B.** The City has adopted a Housing Element to its General Plan pursuant to Government Code Section 65580, et seq., which sets forth the City's policies, goals and objectives to provide housing to all economic segments of the community.

**C.** The City is the fee owner of certain real property, located in the City of Oceanside, Mission Cove Project Site (the "Site").

**D.** The City and the Borrower have entered into a Disposition and Development Agreement, dated August 15, 2012 (the "DDA"). Pursuant to the DDA, (i) the City has agreed to ground lease the Site to the Borrower; (ii) the City has agreed to provide certain financial assistance to the Borrower (the "Phase B Loan"), (iii) the Borrower has agreed to construct and operate a multifamily rental apartment development on the Site (the "Development"), and (iv) the Borrower has agreed to rent those apartment units to very low and low income households at an affordable rent.

**E.** The City has agreed to provide a loan of Four million, four-hundred seventy-six thousand, nine-hundred and eighty-three Dollars (\$4,476,983) to the Borrower (the "Loan") to be used in connection with the installation of certain infrastructure improvements described on Exhibit "D" attached hereto (the "Infrastructure Improvements") which are required as a condition to the development of the Development.

**F.** The City has or will enter into disposition and development agreements for the ground lease and development of real property adjacent to the Site ("Phase B"). It is anticipated that each of those proposed developments will receive a separate loan from the City for the installation of Infrastructure Improvements applicable to the development.

**G.** The provision of financial assistance to the Borrower and the development of the Development pursuant to the terms and conditions of this Agreement are in the vital and best interest of the City.

**NOW, THEREFORE,** the City and the Borrower hereby agree as follows:

**1. Loan.** Subject to Borrower's performance of all of the terms, covenants and conditions which are set forth herein, the City hereby agrees to loan to the Borrower, and the Borrower agrees to borrow from the City, the sum of Four million, four-hundred seventy-six thousand, nine-hundred and eighty-three Dollars (\$4,476,983) (the "Loan"). The Loan shall be evidenced by the Promissory Note attached hereto as Exhibit "A" (the "Note").

**2. Repayment of Loan.**

**2.1** The term of this Agreement ("Term") shall commence upon the date first written above and shall expire on the earliest of: (a) expiration or termination of the DDA, as the term of the DDA may be extended pursuant to its terms; or (b) upon City delivering to Borrower written notice that this Agreement is terminated due to a Default by Borrower ; or (c) the combination or forgiveness of the Loan under Section 2.3 or 2.4.

**2.2** Subject to Sections 2.3 and 2.4, the outstanding principal balance of the Loan shall be due and payable in one lump sum upon the expiration of the Term.

**2.3** If the City makes the Phase B Loan to the Borrower, as described in the DDA, then (a) the Loan Documents will terminate, (b) the Loan will be combined with the Phase B Loan for purposes of repayment, (c) the Note will be cancelled and replaced by the promissory note for the Phase B Loan, and (d) thereafter the Loan will be repaid in accordance with the terms of and as a part of the Phase B Loan.

**2.4** If the "Closing" for Phase B, as described in the DDA, does not occur prior to expiration of the Term for any reason other than a default by the Borrower under the DDA, then this Agreement and the Note will be cancelled and the City shall forgive the Borrower's obligation to repay the Loan, provided that the Borrower has taken all actions necessary to implement the Assignment of Documents.

**3. Security for Loan.** The Note shall be secured by the "Assignment of Documents" attached hereto as Exhibit "B."

**4. Disbursement of Loan.** The proceeds of the Loan shall be disbursed only to pay for actual and reasonable hard and soft costs of the Infrastructure Improvements, including without limitation costs of architectural, engineering, planning, legal and related professional services, and the costs of permits and fees required for the Infrastructure Improvements. City's obligation to commence disbursement of the Loan proceeds is subject to the fulfillment or waiver by City of each and all of the conditions precedent described in this Section 4, which are solely for the benefit of City, any of which may be waived by the City Manager or designee in his or her sole and absolute discretion:

**4.1 Execution of Documents.** Borrower shall have executed and delivered to the City this Agreement, the Note, the Assignment of Documents, and any other documents required hereunder (collectively, the "Loan Documents").

**4.2 Permits and Approvals.** Borrower shall have obtained each and all of the grading and/or building permits and approvals necessary for the installation of the Infrastructure Improvements.

**4.3 Construction Contract.** Borrower shall have provided to the City a signed copy of the Construction Contract between the Borrower and one or more duly licensed general contractors for the installation of the Infrastructure Improvements, certified by the Borrower to be true and correct copies thereof.

**4.4 Proof of Insurance.** Borrower shall have provided to the City a certificate of insurance that satisfies the requirements of Section 4.10.2 of the DDA

**4.5 No Default, Representations and Warranties.** Borrower shall not be in default in any of its obligations under the terms of this Agreement or the DDA. All representations and warranties of Borrower contained herein and in the DDA shall be true and correct in all material respects on and as of the date of the disbursement of the Loan as though made at that time, and all covenants of Borrower which are required to be performed prior to the disbursement of the Loan shall have been performed by such date.

**5. Conditions for Each Loan Disbursement.** The City's obligation to disburse each individual disbursement of the Loan proceeds is subject to the fulfillment or waiver by City of each and all of the following conditions described below:

**5.1 Application for Payment.** The Borrower shall have submitted a request for payment to the City in the form of the "Application for Disbursement" which is attached hereto as Exhibit "C" and incorporated herein, at least ten (10) business days prior to the requested disbursement. The Application for Disbursement shall be completed and certified to be accurate by the Borrower. The Application for Disbursement shall specifically identify the nature of each expense, by reference to items in the Construction Contract budget (which may include deposits into a capitalized reserve account to fund the costs incurred by the Borrower's general contractor to perform erosion control and maintenance of the Site until the Closing), and shall identify the status of completion of such construction. Each Application for Disbursement shall be accompanied by invoices from contractors and any other requested information and documents, and lien releases from such contractors and applicable subcontractors reasonably acceptable to the City.

**5.2 Inspection of Work.** The City may retain a construction administrator to monitor the installation of the Infrastructure Improvements (the "Construction Administrator"). If retained, the Construction Administrator shall have approved the Application for Disbursement and accompanying documents, and shall have inspected the work for which the Application for Disbursement is being requested and shall have certified to the City that (i) such work has been completed substantially in accordance with the Construction Contract, (ii) the amount requested corresponds with the percentage of work completed, (iii) there are adequate funds remaining from the Loan proceeds and other approved funding to complete the installation of the Infrastructure Improvements, (iv) the work for which payment is being requested has been completed in a good and workmanlike manner in accordance with the standards of the construction industry, and (v) the expenses are reasonable and in accordance with the Construction Contract budget.

**5.3 Lien Waivers.** If requested by City or the Construction Administrator, City shall have received appropriate conditional (conditioned solely on payment) waivers of mechanics' and materialmen's lien rights and stop notice rights executed by all contractors and other persons rendering services or delivering materials covered by requests made in the Request for Disbursement. Loan proceeds used for hard construction costs may, at the City's

discretion, be subject to a retention of ten percent (10%), with retained proceeds to be released thirty-five (35) days after lien-free completion of such items of construction.

**5.4 Frequency.** City shall not be obligated to make disbursements more frequently than twice per month.

**5.5 Payee.** At the Borrower's request, disbursements may be made by joint check payable to the Borrower and its general contractor, or directly to the Borrower or its general contractor.

**5.6 Use of Disbursements.** Borrower shall use or apply all Loan disbursements solely for the purposes described in the Application for Disbursement pursuant to which the disbursement was made.

**5.7 Single Disbursement.** At the Borrower's request, the City agrees to disburse the proceeds of the Loan into one funds control account established with a depository acceptable to the City and the Borrower, or by such other mutually acceptable means as will permit the Borrower's general contractor, subject to the Borrower's prior written approval, to draw on such funds for the direct payment of the costs described in this Agreement, rather than accessing the proceeds of the Loan on a cost-reimbursement basis.

**6. Excess Proceeds.** The City agrees that any portion of the Loan which is not required to fund eligible costs under this Agreement shall be reserved and applied by the City in the following order of priority

**6.1** First, to fund any cost overruns for the installation of Infrastructure Improvements on Phase C or Phase D, as required and in that order of priority, in which case the repayment of such excess Loan proceeds shall become the obligation of the applicable borrower of such loan(s); and

**6.2** Next, to fund the loans for the development of Phase B, Phase C and Phase D, as required and in that order of priority, in which case the repayment of such excess Loan proceeds shall become the obligation of the applicable borrower of such loan(s).

**7. Infrastructure Requirements.**

**7.1 License.** The City will grant a license and right of entry, on terms mutually acceptable to the City and the Borrower, to the Borrower and its contractors, subcontractors, agents and employees (the "Borrower Parties") to allow the Borrower Parties to enter the Site and install the Infrastructure Improvements.

**7.2 Indemnification and Hold Harmless.** Borrower shall, subject to Section 16 of the Note, indemnify, hold harmless and defend, with attorney(s) reasonably acceptable to the City, the City and its officers, elected and appointed boards and officials, employees, representatives and agents, from and against any and all liability, damages, costs, losses, claims and expenses, suits, actions, proceedings and judgments, including attorney's fees, however caused, resulting directly or indirectly from or connected with the installation of the Infrastructure Improvements, the Site and/or the performance of this Agreement by Borrower or its contractors, subcontractors, agents, employees or other persons acting on its behalf, except to the extent caused by the negligence or willful misconduct of the City or its officers, boards, officials, employees, representatives or agents.

**7.3 Nondiscrimination.** Borrower for itself and its successors and assigns, agrees 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, familial status, handicap, national origin, or ancestry in the leasing, subleasing, rental, transferring, use, occupancy, tenure, or enjoyment of the Site nor shall the Borrower or any person claiming under or through the Borrower establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, leases, sublessees, subtenants, contractors or vendees in the Site.

**7.4 Condition of the Site.**

**a. Borrower Precautions.** Borrower shall take all necessary precautions to prevent the release into the environment of any Hazardous Materials (defined in Section 7.4(c)) that may be located in, on or under the Site. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Borrower shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially reasonable standards as respects the disclosure, storage, use, removal and disposal of Hazardous Materials.

**b. Environmental Indemnity.** Borrower shall indemnify, defend and hold City harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon (i) the release from the Site, use on the Site, generation on the Site, discharge from the Site, storage on the Site, disposal on or from the Site, or transportation to or from the Site, by any of the Borrower Parties of any Hazardous Materials during the Term of this Agreement, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Site by any of the Borrower Parties during the Term of this Agreement. This indemnity shall include, without limitation, any damage, liability, fine, penalty, cost or expense arising from or out of any claim, action, suit or proceeding, including injunctive, mandamus, equity or action at law, for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment; provided, however, under no circumstances shall these indemnity obligations of Borrower include any obligation for payment of damages of any kind assessed against the City or its officers, employees, agents or representatives.

**c. Definitions.** For purposes of this Agreement, "Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, San Diego County, the State of California, regional governmental authority, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law)), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory),

(iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated byphenyls, (viii) methyl tertiary butyl ether, (ix) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Code of Regulations, Division 4, Chapter 20, (x) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (xi) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.* (42 U.S.C. §6903) or (xii) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, *et seq.* Notwithstanding the foregoing, "Hazardous Materials" shall not include such products in quantities as are customarily used in the construction, maintenance, rehabilitation or management of residential developments or associated buildings and grounds, or typically used in residential activities in a manner typical of other comparable residential developments, or substances commonly ingested by a significant population living within the Development, including without limitation alcohol, aspirin, tobacco and saccharine.

**7.5 Liens and Stop Notices.** Borrower shall use its best efforts to prevent any lien or stop notice from being placed on the Site or the Development or any part thereof. If a claim of a lien or stop notice is given or recorded affecting the Site the Borrower shall within thirty (30) days of such recording or service:

- a. pay and discharge the same; or
- b. effect the release thereof by recording and delivering to City a surety bond in sufficient form and amount, or other security reasonably acceptable to the City.

**8. Borrower's Representations and Warranties.** Borrower represents and warrants to City as follows:

**8.1 Authority.** Borrower has full right, power and lawful authority to undertake all obligations as provided herein, and the execution, performance and delivery of this Agreement by Borrower has been fully authorized by all requisite actions on the part of the Borrower. The parties who have executed this Agreement on behalf of Borrower are authorized to bind Borrower by their signatures hereto.

**8.2 Litigation.** To the best of Borrower's knowledge, there are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the Borrower or any parties affiliated with Borrower, at law or in equity before any court or governmental agency, domestic or foreign, which if adversely determined, would materially impair the right or ability of Borrower to execute or perform its obligations under this Agreement or any documents required hereby to be executed by Borrower, or which would materially adversely affect the financial condition of Borrower or any parties affiliated with Borrower.

**8.3 No Conflict.** To the best of Borrower's knowledge, Borrower's execution, delivery, and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Borrower or any parties affiliated with Borrower is a party or by which it is bound.

**8.4 No Bankruptcy.** No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, receivership or other

proceedings have been filed or are pending or threatened against the Borrower or any parties affiliated with Borrower, nor are any of such proceedings contemplated by Borrower or any parties affiliated with Borrower.

**8.5 Notice of Changed Conditions.** Until the final disbursement of the Loan, Borrower shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 8 not to be true in any material respect, immediately give written notice of such fact or condition to City. Such exception(s) to a representation shall not be deemed a breach by Borrower hereunder, but shall constitute an exception which City shall have a right to approve or disapprove if such exception would have a material adverse effect on the installation of the Infrastructure Improvements. If City elects to disburse the proceeds of the Loan to the Borrower following disclosure of such information, Borrower's representations and warranties contained herein shall be deemed to have been made as of the date of the disbursement of such Loan Proceeds, subject to such exception(s). If following the disclosure of such information the Borrower fails to cure such matter within the time set forth in Section 9 hereof for the cure of defaults, City may elect in its sole and exclusive discretion to terminate this Agreement by written notice to the Borrower.

**9. Remedies for Default.** A failure by either party to perform any action or covenant required by this Agreement or the Note within the time periods provided herein following notice and failure to cure as described hereafter constitutes a "Default" under this Agreement. A party claiming a Default shall give written notice of Default to the other party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other party, and the other party shall not be in Default if such party cures such default within ten (10) days of such notice if the claimed Default is a failure to pay amounts due pursuant to the Note, or thirty (30) days from receipt of such notice for all other claimed Defaults hereunder. However, in the event that such Default is other than a failure to pay money and is of such a nature that it cannot reasonably be cured within thirty (30) days from receipt of such notice, the claimant shall not institute any proceeding against the other party, and the other party shall not be in Default if such party immediately upon receipt of such notice, with due diligence, commences to cure, correct or remedy such failure or delay and completes such cure, correction or remedy with diligence as soon as reasonably possible thereafter.

**9.1 Institution of Legal Actions.** In addition to any other rights or remedies for a Default hereunder, and subject to the restrictions otherwise set forth in this Agreement, either party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or 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. The City may also cause all indebtedness of the Borrower under this Agreement and the Note to become immediately due and payable. Any legal actions must be instituted in the Superior Court of the County of San Diego, State of California, in an appropriate municipal court in that county, or in the United States District Court for the Southern District of California.

**9.2 Acceptance of Service of Process.** In the event that any legal action is commenced by the Borrower against City, service of process on City shall be made by personal service upon the City Manager or in such other manner as may be provided by law. In the event that any legal action is commenced by City against the Borrower, service of process shall be made in such manner as may be provided by law and shall be effective whether served inside or outside of California.

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

**9.4 Inaction Not a Waiver of Default.** Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

**9.5 Applicable Law.** The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

**9.6 Attorneys' Fees.** In any action between the parties to interpret, enforce, reform, modify, rescind, or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action shall be entitled, in addition to any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs and reasonable attorneys' fees.

**10. Assumption.** This Agreement and the Note shall not be assumable by successors and assigns of Borrower without the prior written consent of the City.

**11. General Provisions.**

**11.1 Notices, Demands and Communications Between the Parties.** Any approval, disapproval, demand, document or other notice ("Notice") which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (iii) mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below, or (iv) by electronic mail, provided that any notice sent by electronic mail must be confirmed by written notice mailed or delivered within two (2) business days of such electronic mail notice in accordance with subsection (i), (ii) or (iii) , and addressed as follows, or at any other address as that party may later designate by Notice:

**To City:** City of Oceanside  
300 North Coast Highway  
Oceanside, CA 92054  
Attention: Neighborhood Services  
Email: [dmanley@ci.oceanside.ca.us](mailto:dmanley@ci.oceanside.ca.us)

**With a copy to:** City of Oceanside  
City Attorney  
300 North Coast Highway  
Oceanside, CA 92054  
Email: [bhamilton@ci.oceanside.ca.us](mailto:bhamilton@ci.oceanside.ca.us)

**To Borrower:** Mission Cove Family I Housing, L.P.  
Southern California Housing Development Corporation of Orange  
Attn: Chief Financial Officer  
9421 Haven Avenue  
Rancho Cucamonga, CA 91730  
Email: tthomas@nationalcore.org

**With a copy to:** Edward A. Hopson, Esq.  
655A North Mountain Avenue  
Upland, CA 91786  
Email: ehopson@uia.net

Any written notice, demand or communication shall be deemed received immediately upon receipt; provided, however, that refusal to accept delivery after reasonable attempts thereto shall constitute receipt. Any notices attempted to be delivered to an address from which the receiving party has moved without notice shall be effective on the third day from the date of the attempted delivery or deposit in the United States mail.

**11.2 No Personal Liability.** No member, partner, official, officer, agent or employee of Borrower or the City shall be personally liable to the other party, or any successor in interest, in the event of any Default or breach under this Agreement or for any amount which may become due to the other party or its successors, or on any obligations under the terms of this Agreement.

**11.3 Counterparts.** This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement.

**11.4 Integration.** This Agreement, together with the attached Exhibits, contains the entire understanding between the parties relating to the transaction contemplated by this Agreement. All 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 and the attached Exhibits constitute 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.

**11.5 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.

**11.6 Modifications.** The parties agree to enter into any modifications to the Loan Documents as reasonably required by a proposed lender or investor in order to secure funding for the Development as described in the approved Financing Plan. Any alteration, change, or modification of or to the Loan Documents, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

**11.7 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.

**11.8 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.

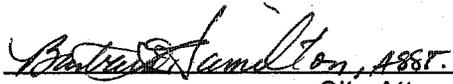
**11.9 Time of Essence.** Time is expressly made of the essence with respect to the performance by the parties of each and every obligation and condition of this Agreement.

**11.10 Cooperation.** Each party shall cooperate with the other in this transaction and, in that regard, 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.

**11.11 Definitions.** Any terms used in this Agreement but not separately defined herein shall have the meaning given to such terms in the DDA.

**IN WITNESS WHEREOF,** City and the Borrower have executed this Agreement as of the date first set forth above.

APPROVED AS TO FORM:

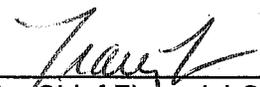
  
\_\_\_\_\_  
City Attorney

**CITY:**  
**CITY OF OCEANSIDE**, a municipal corporation

By: \_\_\_\_\_  
City Manager

**BORROWER:**  
**Mission Cove Family I Housing, LP**,  
a California limited partnership

By: Southern California Housing Development Corporation of Orange, a California nonprofit public benefit corporation, its General Partner

By:   
\_\_\_\_\_  
Its: Chief Financial Officer

Mission Cove Family I Housing Phase A Loan

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**  
**CIVIL CODE § 1189**

State of California

County of San Bernardino }

On 6/17/2014 before me, Gabriela M. Hoffman, Notary Public  
 Date Here Insert Name and Title of the Officer

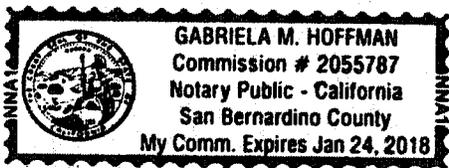
personally appeared Tracy Leu Thomas  
 Name(s) of Signer(s)

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: [Signature]  
 Signature of Notary Public



Place Notary Seal Above

**OPTIONAL**

*Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_ Signer's Name: \_\_\_\_\_

- |  |  |
|--|--|
| <input type="checkbox"/> Corporate Officer — Title(s): _____   | <input type="checkbox"/> Corporate Officer — Title(s): _____   |
| <input type="checkbox"/> Partner — <input type="checkbox"/> Limited <input type="checkbox"/> General | <input type="checkbox"/> Partner — <input type="checkbox"/> Limited <input type="checkbox"/> General |
| <input type="checkbox"/> Individual <input type="checkbox"/> Attorney in Fact                        | <input type="checkbox"/> Individual <input type="checkbox"/> Attorney in Fact                        |
| <input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator                    | <input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator                    |
| <input type="checkbox"/> Other: _____  | <input type="checkbox"/> Other: _____  |

Signer Is Representing: \_\_\_\_\_ Signer Is Representing: \_\_\_\_\_

**EXHIBIT "A" TO LOAN AGREEMENT**

**Promissory Note**

**PROMISSORY NOTE  
(Unsecured)**

(Phase A Loan for Infrastructure Improvements on Phase B)

\$4,476,983.00

\_\_\_\_\_, 20\_\_\_\_  
Oceanside, California

**FOR VALUE RECEIVED, Mission Cove Family I Housing, L.P.**, a California limited partnership (the "Borrower"), promises to pay to the **CITY OF OCEANSIDE**, a municipal corporation (the "City"), or order, at the City's office at 300 North Coast Highway, Oceanside, California, or such other place as the City may designate in writing, the sum of Four million, four-hundred seventy-six thousand, nine-hundred and eighty-three Dollars (\$4,476,983) (the "Note Amount"), in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

**1. Agreement.** This Promissory Note (the "Note") is given in accordance with that certain Loan Agreement executed by the City and Borrower, dated as of \_\_\_\_\_, 20\_\_\_\_ (the "Agreement"). The rights and obligations of the Borrower and the City under this Note shall be governed by the Agreement and by the additional terms set forth in this Note. In the event of any inconsistencies between the terms of this Note and the terms of the Agreement or any other document related to the Note Amount, the terms of this Note shall prevail.

**2. Interest.** The outstanding principal balance of the Note Amount shall not bear any interest.

**3. Repayment of Note Amount.** The entire outstanding principal balance of this Note shall be due and payable in accordance with Section 2 of the Agreement.

**4. Security.** This Note is secured by the Assignment of Documents.

**5. Waivers**

**a.** Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time at the City's sole discretion and that the City may accept security in consideration for any such extension or release any security for this Note at its sole discretion, all without in any way affecting the liability of Borrower.

**b.** No extension of time for payment of this Note made by agreement by the City with any person now or hereafter liable for the payment of this Note shall operate to release, discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part.

c. Subject to the Provisions of Section 16 of this Note, the obligations of Borrower under this Note shall be absolute and Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reasons whatsoever.

d. Borrower waives presentment, demand, notice of protest and nonpayment, notice of default or delinquency, notice of acceleration, notice of costs, expenses or leases or interest thereon, notice of dishonor, diligence in collection or in proceeding against any of the rights of interests in or to properties securing of this Note, and the benefit of any exemption under any homestead exemption laws, if applicable.

e. No previous waiver and no failure or delay by City in acting with respect to the terms of this Note shall constitute a waiver of any breach, default, or failure or condition under this Note. A waiver of any term of this Note must be made in writing and shall be limited to the express written terms of such waiver.

**6. Attorneys' Fees and Costs.** Borrower agrees that if any amounts due under this Note are not paid when due, to pay in addition, all costs and expenses of collection and reasonable attorneys' fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed.

**7. Joint and Several Obligation.** This Note is the joint and several obligation of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their heirs, successors and assigns.

**8. Amendments and Modifications.** This Note may not be changed orally, but only by an amendment in writing signed by Borrower and by the City.

**9. City May Assign.** City may, at its option, assign its right to receive payment under this Note without necessity of obtaining the consent of the Borrower.

**10. Borrower Assignment Prohibited.** In no event shall Borrower assign or transfer any portion of this Note without the prior express written consent of the City, which consent shall not unreasonably be withheld, except pursuant to a transfer which is permitted or approved under the Agreement or the DDA.

**11. Terms.** Any terms not separately defined herein shall have the same meanings as set forth in the Agreement.

**12. Acceleration and Other Remedies.** Upon the occurrence of a Default, as defined in the Agreement, City may, at City's option, declare the outstanding principal amount of this Note, together with any other charges due hereunder, to be due and payable immediately, and upon such declaration, such principal and other sums shall immediately become and be due and payable without demand or notice. All costs of collection may be added to the principal hereunder, and shall accrue interest as provided herein. The acceptance of payment of any sum payable hereunder, or part thereof, after the due date of such payment shall not be a waiver of City's right to either require prompt payment when due of all other sums payable hereunder or to declare a Default for failure to make prompt or complete payment.

**13. Consents.** Borrower hereby consents to any renewal, extension or modification (whether one or more) of the terms of the Agreement or the terms or time of payment under this Note, which may be made without notice to Borrower or to any endorser, guarantor or surety hereof, and without affecting the liability of said parties hereunder.

**14. Successors and Assigns.** Whenever "City" is referred to in this Note, such reference shall be deemed to include the City of Oceanside and its successors and assigns, including, without limitation, any subsequent assignee or holder of this Note. All covenants, provisions and agreements by or on behalf of Borrower, and on behalf of any makers, endorsers, guarantors and sureties hereof which are contained herein shall inure to the benefit of the City and City's successors and assigns.

**15. Miscellaneous.** Time is of the essence hereof. This Note shall be governed by and construed under the laws of the State of California except to the extent Federal laws preempt the laws of the State of California. Borrower irrevocably and unconditionally submits to the jurisdiction of the Superior Court of the State of California for the County of San Diego or the United States District Court of the Southern District of California, as City hereof may deem appropriate, or, if required, the Municipal Court of the State of California for the County of San Diego, in connection with any legal action or proceeding arising out of or relating to this Note. Borrower also waives any objection regarding personal or in rem jurisdiction or venue.

**16. No Personal Liability.** This Note is a nonrecourse obligation of the Borrower. In the event of any default under the terms of this Note, neither Borrower nor any of its partners, officers, agents or employees shall have any personal liability for the payment of any amounts due under this Note or the Agreement; provided, however, that the foregoing shall not in any way affect any rights the City may have hereunder or under the Agreement to recover directly from Borrower any funds, damages or costs (including without limitation reasonable attorneys' fees and costs) incurred by City as a result of fraud, misrepresentation or waste, and any costs and expenses incurred by the City in connection thereof (including without limitation reasonable attorneys' fees and costs).

**BORROWER:**

**Mission Cove Family I Housing, LP,**  
a California limited partnership

By: Southern California Housing Development  
Corporation of Orange, a California  
nonprofit public benefit corporation, its  
General Partner

By: \_\_\_\_\_  
Its Chief Financial Officer

**EXHIBIT "B" TO LOAN AGREEMENT  
ASSIGNMENT OF AGREEMENTS,  
PLANS AND SPECIFICATIONS, AND APPROVALS**

FOR VALUE RECEIVED, the undersigned, **Mission Cove Family I Housing, LP**, a California limited partnership ("Borrower") hereby assigns and transfers to the **CITY OF OCEANSIDE**, a municipal corporation, ("City") all of its right, title and interest in and to:

(1) All architectural, design, engineering, and construction contracts, and any and all amendments, modifications, supplements, addenda and general conditions thereto (collectively "Agreements"), heretofore or hereafter entered into by any Contractor (as defined below) with respect to the Infrastructure Improvements;

(2) All plans and specifications, shop drawings, working drawings, amendments, modifications, changes, supplements, general conditions and addenda thereto (collectively "Plans and Specifications") heretofore or hereafter prepared by any Contractor (as defined below) with respect to the Infrastructure Improvements; and

(3) All grading permits, building permits, and other governmental approvals of any nature obtained for the Infrastructure Improvements (collectively, the "Land Use Approvals").

This Assignment is made pursuant to the terms of the Loan Agreement, dated as of \_\_\_\_\_, 20\_\_, entered into between the Borrower and the City (the "Agreement"). Capitalized terms used but not defined in this Assignment shall have the meanings set forth in the Agreement.

For purposes of this Assignment, the term "Contractor" means any architect, construction contractor, engineer or other person or entity entering into Agreements with the Borrower and/or preparing Plans and Specifications for the Borrower with respect to the Infrastructure Improvements.

The Borrower hereby irrevocably appoints the City as its attorney in fact (which agency is coupled with an interest) to, upon the occurrence of default or an event which, with notice or the passage of time or both would constitute a default under the Agreement, or as otherwise provided in the Agreement, demand, receive, and enforce any and all of the Borrower's rights with respect to the Plans and Specifications, Agreements, Land Use Approvals, and perform any and all acts in the name of the Borrower or in the name of the City with the same force and effect as if performed by the Borrower in the absence of this Assignment.

The Borrower represents and warrants to the City that no previous assignment(s) of its rights or interest in or to the Plans and Specifications, Agreements and Land Use Approvals have been made. So long as the City holds or retains any security interest under the Agreement, the Borrower agrees not to assign, sell, pledge, transfer, mortgage, or hypothecate its rights or interest in the above-referenced documents to any entity except with the prior written approval of the City.

This Assignment is made to secure: (1) payment to the City of all sums now or hereafter owing under the Agreement and the Note dated as of the date hereof made by the Borrower to the order of the City, and any and all additional advances, modifications, extensions, renewals

and amendments thereof; and (2) performance by the Borrower of all its obligations under the Agreement.

This Assignment shall be governed by the laws of the State of California, except to the extent that federal laws preempt the laws the State of California, and the Borrower consents to the jurisdiction of any Federal or State Court within the State of California having proper venue for the filing and maintenance of any action arising hereunder and agrees that the prevailing party in any such action shall be entitled, in addition to any other recovery, to reasonable attorneys' fees and costs.

This Assignment shall be binding upon and inure to the benefit of the heirs, legal representatives, assigns, and successors in interest of the Borrower and the City; provided, however, this shall not be construed and is not intended to waive the restrictions on assignment contained in the Agreement.

**Mission Cove Family I Housing, LP.,**  
a California limited partnership

By: Southern California Housing Development  
Corporation Of Orange, a California  
nonprofit public benefit corporation, its  
General Partner

By: \_\_\_\_\_  
Its Chief Financial Officer

**EXHIBIT "C" TO LOAN AGREEMENT**  
**APPLICATION FOR DISBURSEMENT**  
**MISSION COVE FAMILY HOUSING I, LP**

TO: City of Oceanside ("City")

FROM: \_\_\_\_\_ ("Borrower")

REQUEST NO. \_\_\_\_\_

DATE: \_\_\_\_\_, 20\_\_

Pursuant to the Loan Agreement dated as of \_\_\_\_\_, 20\_\_ (the "Agreement") between Borrower and City, Borrower hereby requests that City disburse \$\_\_\_\_\_ of the Loan. This disbursement is requested to pay for various expenses incurred in connection with the installation of Infrastructure Improvements for the \_\_\_\_\_ Development (the "Development"), as summarized on the schedule attached hereto and detailed in the invoices submitted herewith. Borrower hereby certifies that the amounts shown on the attached schedule and the accompanying invoices represent costs of designing, developing, and constructing improvements for the Development which are eligible for reimbursement at this time in accordance with the provisions of the Agreement.

Borrower acknowledges that any increased costs of construction arising out of change orders, or otherwise, are not included in, or provided for, in the Construction Contract budget, and cannot be invoiced on this Application for Disbursement unless and until such change orders and/or increases in costs have been approved in writing by the City, except as otherwise provided in the Agreement.

Borrower certifies that there have been no change order or changes in the work of the installation of the Infrastructure Improvements except as previously expressly approved by City in writing, or as referenced below, with a copy of the appropriate documentation describing the change attached hereto (whether or not a disbursement is requested herein on account of such change). The following change orders, identified by number and date have been proposed and/or approved since the last Application for Disbursement: \_\_\_\_\_

**SUBMITTED BY:**

\_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

**REVIEWED AND APPROVED BY:**

\_\_\_\_\_

City Inspector

Date: \_\_\_\_\_, 20\_\_

**DISBURSEMENT SCHEDULE**

<u>Item of Cost</u>	<u>Budgeted Amount</u>	<u>Amount Previously Disbursed</u>	<u>Amount Requested this Disbursement</u>
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## **EXHIBIT "D" TO LOAN AGREEMENT**

### **DESCRIPTION OF INFRASTRUCTURE IMPROVEMENTS**

On-site improvements consist of site grading to create building pads, streets and parking areas. Along with drainage and water quality treatment improvements consisting of storm drain pipe, natural infiltration basins and water quality pavers. The project will construct an on-site public sewer main with service laterals to all buildings and off-site sewer improvements and upgrades as requested by the City engineer. The project will construct an on-site public water main, fire hydrants and service laterals to all buildings along with off-site reclaimed water in the project frontage along Mission Avenue. The project will construct frontage improvements along Mission Avenue consisting of curb, gutter and sidewalk.

# LOAN AGREEMENT

(Phase A Loan for Infrastructure Improvements on Phase C)

**THIS LOAN AGREEMENT** (the "Agreement") is entered into as of \_\_\_\_\_, 20\_\_\_, by and between the **CITY OF OCEANSIDE**, a municipal corporation, ("City"), and **Mission Cove Seniors Housing Associates, L.P.**, a California limited partnership (the "Borrower").

## **RECITALS**

The following recitals are a substantive part of this Agreement:

**A.** The City is a California municipal corporation which has received funds for the purposes of strengthening public-private partnerships to provide decent, safe, sanitary, and affordable housing, with primary attention to rental housing, for very low income and lower income households in the City.

**B.** The City has adopted a Housing Element to its General Plan pursuant to Government Code Section 65580, et seq., which sets forth the City's policies, goals and objectives to provide housing to all economic segments of the community.

**C.** The City is the fee owner of certain real property, located in the City of Oceanside, Mission Cove Project Site (the "Site").

**D.** The City and the Borrower have entered into a Disposition and Development Agreement, dated August 15, 2012 (the "DDA"). Pursuant to the DDA, (i) the City has agreed to ground lease the Site to the Borrower; (ii) the City has agreed to provide certain financial assistance to the Borrower (the "Phase C Loan"), (iii) the Borrower has agreed to construct and operate a multifamily rental apartment development on the Site (the "Development"), and (iv) the Borrower has agreed to rent those apartment units to very low and low income households at an affordable rent.

**E.** The City has agreed to provide a loan of One million, Eight hundred ninety-eight thousand, five-hundred and ninety-four Dollars (\$1,898,594) to the Borrower (the "Loan") to be used in connection with the installation of certain infrastructure improvements described on Exhibit "D" attached hereto (the "Infrastructure Improvements") which are required as a condition to the development of the Development.

**F.** The City has or will enter into disposition and development agreements for the ground lease and development of real property adjacent to the Site ("Phase C") . It is anticipated that each of those proposed developments will receive a separate loan from the City for the installation of Infrastructure Improvements applicable to the development.

**G.** The provision of financial assistance to the Borrower and the development of the Development pursuant to the terms and conditions of this Agreement are in the vital and best interest of the City.

**NOW, THEREFORE,** the City and the Borrower hereby agree as follows:

**1. Loan.** Subject to Borrower's performance of all of the terms, covenants and conditions which are set forth herein, the City hereby agrees to loan to the Borrower, and the Borrower agrees to borrow from the City, the sum of One million, Eight hundred ninety-eight thousand, five-hundred and ninety-four Dollars (\$1,898,594) the "Loan". The Loan shall be evidenced by the Promissory Note attached hereto as Exhibit "A" (the "Note").

**2. Repayment of Loan.**

**2.1** The term of this Agreement ("Term") shall commence upon the date first written above and shall expire on the earliest of: (a) expiration or termination of the DDA, as the term of the DDA may be extended pursuant to its terms; or (b) upon City delivering to Borrower written notice that this Agreement is terminated due to a Default by Borrower ; or (c) the combination or forgiveness of the Loan under Section 2.3 or 2.4.

**2.2** Subject to Sections 2.3 and 2.4, the outstanding principal balance of the Loan shall be due and payable in one lump sum upon the expiration of the Term.

**2.3** If the City makes the Phase C Loan to the Borrower, as described in the DDA, then (a) the Loan Documents will terminate, (b) the Loan will be combined with the Phase C Loan for purposes of repayment, (c) the Note will be cancelled and replaced by the promissory note for the Phase C Loan, and (d) thereafter the Loan will be repaid in accordance with the terms of and as a part of the Phase C Loan.

**2.4** If the "Closing" for Phase C, as described in the DDA, does not occur prior to expiration of the Term for any reason other than a default by the Borrower under the DDA, then this Agreement and the Note will be cancelled and the City shall forgive the Borrower's obligation to repay the Loan, provided that the Borrower has taken all actions necessary to implement the Assignment of Documents.

**3. Security for Loan.** The Note shall be secured by the "Assignment of Documents" attached hereto as Exhibit "B."

**4. Disbursement of Loan.** The proceeds of the Loan shall be disbursed only to pay for actual and reasonable hard and soft costs of the Infrastructure Improvements, including without limitation costs of architectural, engineering, planning, legal and related professional services, and the costs of permits and fees required for the Infrastructure Improvements. City's obligation to commence disbursement of the Loan proceeds is subject to the fulfillment or waiver by City of each and all of the conditions precedent described in this Section 4, which are solely for the benefit of City, any of which may be waived by the City Manager or designee in his or her sole and absolute discretion:

**4.1 Execution of Documents.** Borrower shall have executed and delivered to the City this Agreement, the Note, the Assignment of Documents, and any other documents required hereunder (collectively, the "Loan Documents").

**4.2 Permits and Approvals.** Borrower shall have obtained each and all of the grading and/or building permits and approvals necessary for the installation of the Infrastructure Improvements.

**4.3 Construction Contract.** Borrower shall have provided to the City a signed copy of the Construction Contract between the Borrower and one or more duly licensed general contractors for the installation of the Infrastructure Improvements, certified by the Borrower to be true and correct copies thereof.

**4.4 Proof of Insurance.** Borrower shall have provided to the City a certificate of insurance that satisfies the requirements of Section 4.10.2 of the DDA

**4.5 No Default, Representations and Warranties.** Borrower shall not be in default in any of its obligations under the terms of this Agreement or the DDA. All representations and warranties of Borrower contained herein and in the DDA shall be true and correct in all material respects on and as of the date of the disbursement of the Loan as though made at that time, and all covenants of Borrower which are required to be performed prior to the disbursement of the Loan shall have been performed by such date.

**5. Conditions for Each Loan Disbursement.** The City's obligation to disburse each individual disbursement of the Loan proceeds is subject to the fulfillment or waiver by City of each and all of the following conditions described below:

**5.1 Application for Payment.** The Borrower shall have submitted a request for payment to the City in the form of the "Application for Disbursement" which is attached hereto as Exhibit "C" and incorporated herein, at least ten (10) business days prior to the requested disbursement. The Application for Disbursement shall be completed and certified to be accurate by the Borrower. The Application for Disbursement shall specifically identify the nature of each expense, by reference to items in the Construction Contract budget (which may include deposits into a capitalized reserve account to fund the costs incurred by the Borrower's general contractor to perform erosion control and maintenance of the Site until the Closing), and shall identify the status of completion of such construction. Each Application for Disbursement shall be accompanied by invoices from contractors and any other requested information and documents, and lien releases from such contractors and applicable subcontractors reasonably acceptable to the City.

**5.2 Inspection of Work.** The City may retain a construction administrator to monitor the installation of the Infrastructure Improvements (the "Construction Administrator"). If retained, the Construction Administrator shall have approved the Application for Disbursement and accompanying documents, and shall have inspected the work for which the Application for Disbursement is being requested and shall have certified to the City that (i) such work has been completed substantially in accordance with the Construction Contract, (ii) the amount requested corresponds with the percentage of work completed, (iii) there are adequate funds remaining from the Loan proceeds and other approved funding to complete the installation of the Infrastructure Improvements, (iv) the work for which payment is being requested has been completed in a good and workmanlike manner in accordance with the standards of the construction industry, and (v) the expenses are reasonable and in accordance with the Construction Contract budget.

**5.3 Lien Waivers.** If requested by City or the Construction Administrator, City shall have received appropriate conditional (conditioned solely on payment) waivers of mechanics' and materialmen's lien rights and stop notice rights executed by all contractors and other persons rendering services or delivering materials covered by requests made in the Request for Disbursement. Loan proceeds used for hard construction costs may, at the City's

discretion, be subject to a retention of ten percent (10%), with retained proceeds to be released thirty-five (35) days after lien-free completion of such items of construction.

**5.4 Frequency.** City shall not be obligated to make disbursements more frequently than twice per month.

**5.5 Payee.** At the Borrower's request, disbursements may be made by joint check payable to the Borrower and its general contractor, or directly to the Borrower or its general contractor.

**5.6 Use of Disbursements.** Borrower shall use or apply all Loan disbursements solely for the purposes described in the Application for Disbursement pursuant to which the disbursement was made.

**5.7 Single Disbursement.** At the Borrower's request, the City agrees to disburse the proceeds of the Loan into one funds control account established with a depository acceptable to the City and the Borrower, or by such other mutually acceptable means as will permit the Borrower's general contractor, subject to the Borrower's prior written approval, to draw on such funds for the direct payment of the costs described in this Agreement, rather than accessing the proceeds of the Loan on a cost-reimbursement basis.

**6. Excess Proceeds.** The City agrees that any portion of the Loan which is not required to fund eligible costs under this Agreement shall be reserved and applied by the City in the following order of priority

**6.1** First, to fund any cost overruns for the installation of Infrastructure Improvements on Phase B or Phase D, as required and in that order of priority, in which case the repayment of such excess Loan proceeds shall become the obligation of the applicable borrower of such loan(s); and

**6.2** Next, to fund the loans for the development of Phase B, Phase C and Phase D, as required and in that order of priority, in which case the repayment of such excess Loan proceeds shall become the obligation of the applicable borrower of such loan(s).

**7. Infrastructure Requirements.**

**7.1 License.** The City will grant a license and right of entry, on terms mutually acceptable to the City and the Borrower, to the Borrower and its contractors, subcontractors, agents and employees (the "Borrower Parties") to allow the Borrower Parties to enter the Site and install the Infrastructure Improvements.

**7.2 Indemnification and Hold Harmless.** Borrower shall, subject to Section 16 of the Note, indemnify, hold harmless and defend, with attorney(s) reasonably acceptable to the City, the City and its officers, elected and appointed boards and officials, employees, representatives and agents, from and against any and all liability, damages, costs, losses, claims and expenses, suits, actions, proceedings and judgments, including attorney's fees, however caused, resulting directly or indirectly from or connected with the installation of the Infrastructure Improvements, the Site and/or the performance of this Agreement by Borrower or its contractors, subcontractors, agents, employees or other persons acting on its behalf, except to the extent caused by the negligence or willful misconduct of the City or its officers, boards, officials, employees, representatives or agents.

**7.3 Nondiscrimination.** Borrower for itself and its successors and assigns, agrees 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, familial status, handicap, national origin, or ancestry in the leasing, subleasing, rental, transferring, use, occupancy, tenure, or enjoyment of the Site nor shall the Borrower or any person claiming under or through the Borrower establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, leases, sublessees, subtenants, contractors or vendees in the Site.

**7.4 Condition of the Site.**

**a. Borrower Precautions.** Borrower shall take all necessary precautions to prevent the release into the environment of any Hazardous Materials (defined in Section 7.4(c)) that may be located in, on or under the Site. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Borrower shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially reasonable standards as respects the disclosure, storage, use, removal and disposal of Hazardous Materials.

**b. Environmental Indemnity.** Borrower shall indemnify, defend and hold City harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon (i) the release from the Site, use on the Site, generation on the Site, discharge from the Site, storage on the Site, disposal on or from the Site, or transportation to or from the Site, by any of the Borrower Parties of any Hazardous Materials during the Term of this Agreement, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Site by any of the Borrower Parties during the Term of this Agreement. This indemnity shall include, without limitation, any damage, liability, fine, penalty, cost or expense arising from or out of any claim, action, suit or proceeding, including injunctive, mandamus, equity or action at law, for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment; provided, however, under no circumstances shall these indemnity obligations of Borrower include any obligation for payment of damages of any kind assessed against the City or its officers, employees, agents or representatives.

**c. Definitions.** For purposes of this Agreement, "Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, San Diego County, the State of California, regional governmental authority, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law)), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory),

(iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated biphenyls, (viii) methyl tertiary butyl ether, (ix) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Code of Regulations, Division 4, Chapter 20, (x) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (xi) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.* (42 U.S.C. §6903) or (xii) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, *et seq.* Notwithstanding the foregoing, "Hazardous Materials" shall not include such products in quantities as are customarily used in the construction, maintenance, rehabilitation or management of residential developments or associated buildings and grounds, or typically used in residential activities in a manner typical of other comparable residential developments, or substances commonly ingested by a significant population living within the Development, including without limitation alcohol, aspirin, tobacco and saccharine.

**7.5 Liens and Stop Notices.** Borrower shall use its best efforts to prevent any lien or stop notice from being placed on the Site or the Development or any part thereof. If a claim of a lien or stop notice is given or recorded affecting the Site the Borrower shall within thirty (30) days of such recording or service:

- a. pay and discharge the same; or
- b. effect the release thereof by recording and delivering to City a surety bond in sufficient form and amount, or other security reasonably acceptable to the City.

**8. Borrower's Representations and Warranties.** Borrower represents and warrants to City as follows:

**8.1 Authority.** Borrower has full right, power and lawful authority to undertake all obligations as provided herein, and the execution, performance and delivery of this Agreement by Borrower has been fully authorized by all requisite actions on the part of the Borrower. The parties who have executed this Agreement on behalf of Borrower are authorized to bind Borrower by their signatures hereto.

**8.2 Litigation.** To the best of Borrower's knowledge, there are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the Borrower or any parties affiliated with Borrower, at law or in equity before any court or governmental agency, domestic or foreign, which if adversely determined, would materially impair the right or ability of Borrower to execute or perform its obligations under this Agreement or any documents required hereby to be executed by Borrower, or which would materially adversely affect the financial condition of Borrower or any parties affiliated with Borrower.

**8.3 No Conflict.** To the best of Borrower's knowledge, Borrower's execution, delivery, and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Borrower or any parties affiliated with Borrower is a party or by which it is bound.

**8.4 No Bankruptcy.** No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, receivership or other

proceedings have been filed or are pending or threatened against the Borrower or any parties affiliated with Borrower, nor are any of such proceedings contemplated by Borrower or any parties affiliated with Borrower.

**8.5 Notice of Changed Conditions.** Until the final disbursement of the Loan, Borrower shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 8 not to be true in any material respect, immediately give written notice of such fact or condition to City. Such exception(s) to a representation shall not be deemed a breach by Borrower hereunder, but shall constitute an exception which City shall have a right to approve or disapprove if such exception would have a material adverse effect on the installation of the Infrastructure Improvements. If City elects to disburse the proceeds of the Loan to the Borrower following disclosure of such information, Borrower's representations and warranties contained herein shall be deemed to have been made as of the date of the disbursement of such Loan Proceeds, subject to such exception(s). If following the disclosure of such information the Borrower fails to cure such matter within the time set forth in Section 9 hereof for the cure of defaults, City may elect in its sole and exclusive discretion to terminate this Agreement by written notice to the Borrower.

**9. Remedies for Default.** A failure by either party to perform any action or covenant required by this Agreement or the Note within the time periods provided herein following notice and failure to cure as described hereafter constitutes a "Default" under this Agreement. A party claiming a Default shall give written notice of Default to the other party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other party, and the other party shall not be in Default if such party cures such default within ten (10) days of such notice if the claimed Default is a failure to pay amounts due pursuant to the Note, or thirty (30) days from receipt of such notice for all other claimed Defaults hereunder. However, in the event that such Default is other than a failure to pay money and is of such a nature that it cannot reasonably be cured within thirty (30) days from receipt of such notice, the claimant shall not institute any proceeding against the other party, and the other party shall not be in Default if such party immediately upon receipt of such notice, with due diligence, commences to cure, correct or remedy such failure or delay and completes such cure, correction or remedy with diligence as soon as reasonably possible thereafter.

**9.1 Institution of Legal Actions.** In addition to any other rights or remedies for a Default hereunder, and subject to the restrictions otherwise set forth in this Agreement, either party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or 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. The City may also cause all indebtedness of the Borrower under this Agreement and the Note to become immediately due and payable. Any legal actions must be instituted in the Superior Court of the County of San Diego, State of California, in an appropriate municipal court in that county, or in the United States District Court for the Southern District of California.

**9.2 Acceptance of Service of Process.** In the event that any legal action is commenced by the Borrower against City, service of process on City shall be made by personal service upon the City Manager or in such other manner as may be provided by law. In the event that any legal action is commenced by City against the Borrower, service of process shall be made in such manner as may be provided by law and shall be effective whether served inside or outside of California.

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

**9.4 Inaction Not a Waiver of Default.** Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

**9.5 Applicable Law.** The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

**9.6 Attorneys' Fees.** In any action between the parties to interpret, enforce, reform, modify, rescind, or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action shall be entitled, in addition to any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs and reasonable attorneys' fees.

**10. Assumption.** This Agreement and the Note shall not be assumable by successors and assigns of Borrower without the prior written consent of the City.

**11. General Provisions.**

**11.1 Notices, Demands and Communications Between the Parties.** Any approval, disapproval, demand, document or other notice ("Notice") which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (iii) mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below, or (iv) by electronic mail, provided that any notice sent by electronic mail must be confirmed by written notice mailed or delivered within two (2) business days of such electronic mail notice in accordance with subsection (i), (ii) or (iii) , and addressed as follows, or at any other address as that party may later designate by Notice:

**To City:** City of Oceanside  
300 North Coast Highway  
Oceanside, CA 92054  
Attention: Neighborhood Services  
Email: dmanley@ci.oceanside,ca.us

**With a copy to:** City of Oceanside  
City Attorney  
300 North Coast Highway  
Oceanside, CA 92054  
Email: bhamilton@ci.oceanside.ca.us

**To Borrower:**

Mission Cove Seniors Housing Associates, L.P.  
c/o Community HousingWorks  
2815 Camino del Rio South, Suite 350  
San Diego, CA 92108  
Attn: Anne Wilson  
Email: AWilson@chworks.org

**With a copy to:**

Natalie L. Gubb  
Gubb & Barshay LLP  
505 14<sup>th</sup> Street, Suite 1050  
Oakland, CA 94612  
Email: ngubb@gubbandbarshay.com

Any written notice, demand or communication shall be deemed received immediately upon receipt; provided, however, that refusal to accept delivery after reasonable attempts thereto shall constitute receipt. Any notices attempted to be delivered to an address from which the receiving party has moved without notice shall be effective on the third day from the date of the attempted delivery or deposit in the United States mail.

**11.2 No Personal Liability.** No member, partner, official, officer, agent or employee of Borrower or the City shall be personally liable to the other party, or any successor in interest, in the event of any Default or breach under this Agreement or for any amount which may become due to the other party or its successors, or on any obligations under the terms of this Agreement.

**11.3 Counterparts.** This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement.

**11.4 Integration.** This Agreement, together with the attached Exhibits, contains the entire understanding between the parties relating to the transaction contemplated by this Agreement. All 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 and the attached Exhibits constitute 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.

**11.5 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.

**11.6 Modifications.** The parties agree to enter into any modifications to the Loan Documents as reasonably required by a proposed lender or investor in order to secure funding for the Development as described in the approved Financing Plan. Any alteration, change, or modification of or to the Loan Documents, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

**11.7 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.

**11.8 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.

**11.9 Time of Essence.** Time is expressly made of the essence with respect to the performance by the parties of each and every obligation and condition of this Agreement.

**11.10 Cooperation.** Each party shall cooperate with the other in this transaction and, in that regard, 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.

**11.11 Definitions.** Any terms used in this Agreement but not separately defined herein shall have the meaning given to such terms in the DDA.

IN WITNESS WHEREOF, City and the Borrower have executed this Agreement as of the date first set forth above.

APPROVED AS TO FORM:

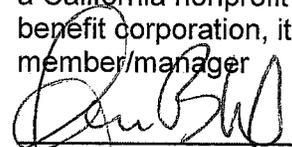
  
\_\_\_\_\_  
City Attorney

**CITY:**  
**CITY OF OCEANSIDE**, a municipal corporation

By: \_\_\_\_\_  
City Manager

**BORROWER:**  
**Mission Cove Seniors Housing Associates, L.P.**,  
a California limited partnership

By: Carolyn Compass Rose LLC,  
a California limited liability company,  
its general partner

By: Community HousingWorks,  
a California nonprofit public  
benefit corporation, its sole  
member/manager  
  
\_\_\_\_\_  
Anne B. Wilson  
Senior Vice President

**ACKNOWLEDGMENT**

State of California

County of SAN DIEGO

On 6/16/14 before me Kelly A. Swanson, a notary public,

personally appeared Anne B. Wilson

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~~ signatures(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 following paragraph is true and correct.**

WITNESS my hand and official seal.

Signature Kelly A. Swanson



(Seal)

EXHIBIT "A" TO LOAN AGREEMENT

Promissory Note

PROMISSORY NOTE  
(Unsecured)

(Phase A Loan for Infrastructure Improvements on Phase C)

\$1,898,594

\_\_\_\_\_, 20\_\_  
Oceanside, California

**FOR VALUE RECEIVED, Mission Cove Seniors Housing Associates, L.P.**, a California limited partnership (the "Borrower"), promises to pay to the **CITY OF OCEANSIDE**, a municipal corporation (the "City"), or order, at the City's office at 300 North Coast Highway, Oceanside, California, or such other place as the City may designate in writing, the sum of One million, Eight hundred ninety-eight thousand, five-hundred and ninety-four Dollars (\$1,898,594) (the "Note Amount"), in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

**1. Agreement.** This Promissory Note (the "Note") is given in accordance with that certain Loan Agreement executed by the City and Borrower, dated as of \_\_\_\_\_, 20\_\_ (the "Agreement"). The rights and obligations of the Borrower and the City under this Note shall be governed by the Agreement and by the additional terms set forth in this Note. In the event of any inconsistencies between the terms of this Note and the terms of the Agreement or any other document related to the Note Amount, the terms of this Note shall prevail.

**2. Interest.** The outstanding principal balance of the Note Amount shall not bear any interest.

**3. Repayment of Note Amount.** The entire outstanding principal balance of this Note shall be due and payable in accordance with Section 2 of the Agreement.

**4. Security.** This Note is secured by the Assignment of Documents.

**5. Waivers**

**a.** Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time at the City's sole discretion and that the City may accept security in consideration for any such extension or release any security for this Note at its sole discretion, all without in any way affecting the liability of Borrower.

**b.** No extension of time for payment of this Note made by agreement by the City with any person now or hereafter liable for the payment of this Note shall operate to release, discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part.

c. Subject to the Provisions of Section 16 of this Note, the obligations of Borrower under this Note shall be absolute and Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reasons whatsoever.

d. Borrower waives presentment, demand, notice of protest and nonpayment, notice of default or delinquency, notice of acceleration, notice of costs, expenses or leases or interest thereon, notice of dishonor, diligence in collection or in proceeding against any of the rights of interests in or to properties securing of this Note, and the benefit of any exemption under any homestead exemption laws, if applicable.

e. No previous waiver and no failure or delay by City in acting with respect to the terms of this Note shall constitute a waiver of any breach, default, or failure or condition under this Note. A waiver of any term of this Note must be made in writing and shall be limited to the express written terms of such waiver.

**6. Attorneys' Fees and Costs.** Borrower agrees that if any amounts due under this Note are not paid when due, to pay in addition, all costs and expenses of collection and reasonable attorneys' fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed.

**7. Joint and Several Obligation.** This Note is the joint and several obligation of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their heirs, successors and assigns.

**8. Amendments and Modifications.** This Note may not be changed orally, but only by an amendment in writing signed by Borrower and by the City.

**9. City May Assign.** City may, at its option, assign its right to receive payment under this Note without necessity of obtaining the consent of the Borrower.

**10. Borrower Assignment Prohibited.** In no event shall Borrower assign or transfer any portion of this Note without the prior express written consent of the City, which consent shall not unreasonably be withheld, except pursuant to a transfer which is permitted or approved under the Agreement or the DDA.

**11. Terms.** Any terms not separately defined herein shall have the same meanings as set forth in the Agreement.

**12. Acceleration and Other Remedies.** Upon the occurrence of a Default, as defined in the Agreement, City may, at City's option, declare the outstanding principal amount of this Note, together with any other charges due hereunder, to be due and payable immediately, and upon such declaration, such principal and other sums shall immediately become and be due and payable without demand or notice. All costs of collection may be added to the principal hereunder, and shall accrue interest as provided herein. The acceptance of payment of any sum payable hereunder, or part thereof, after the due date of such payment shall not be a waiver of City's right to either require prompt payment when due of all other sums payable hereunder or to declare a Default for failure to make prompt or complete payment.

**13. Consents.** Borrower hereby consents to any renewal, extension or modification (whether one or more) of the terms of the Agreement or the terms or time of payment under this

Note, which may be made without notice to Borrower or to any endorser, guarantor or surety hereof, and without affecting the liability of said parties hereunder.

**14. Successors and Assigns.** Whenever "City" is referred to in this Note, such reference shall be deemed to include the City of Oceanside and its successors and assigns, including, without limitation, any subsequent assignee or holder of this Note. All covenants, provisions and agreements by or on behalf of Borrower, and on behalf of any makers, endorsers, guarantors and sureties hereof which are contained herein shall inure to the benefit of the City and City's successors and assigns.

**15. Miscellaneous.** Time is of the essence hereof. This Note shall be governed by and construed under the laws of the State of California except to the extent Federal laws preempt the laws of the State of California. Borrower irrevocably and unconditionally submits to the jurisdiction of the Superior Court of the State of California for the County of San Diego or the United States District Court of the Southern District of California, as City hereof may deem appropriate, or, if required, the Municipal Court of the State of California for the County of San Diego, in connection with any legal action or proceeding arising out of or relating to this Note. Borrower also waives any objection regarding personal or in rem jurisdiction or venue.

**16. No Personal Liability.** This Note is a nonrecourse obligation of the Borrower. In the event of any default under the terms of this Note, neither Borrower nor any of its partners, officers, agents or employees shall have any personal liability for the payment of any amounts due under this Note or the Agreement; provided, however, that the foregoing shall not in any way affect any rights the City may have hereunder or under the Agreement to recover directly from Borrower any funds, damages or costs (including without limitation reasonable attorneys' fees and costs) incurred by City as a result of fraud, misrepresentation or waste, and any costs and expenses incurred by the City in connection thereof (including without limitation reasonable attorneys' fees and costs).

**BORROWER:**

**Mission Cove Seniors Housing Associates, L.P.,**  
a California limited partnership

By: Carolyn Compass Rose LLC,  
a California limited liability company,  
its general partner

By: Community HousingWorks,  
a California nonprofit public benefit  
corporation, its sole  
member/manager

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

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

**EXHIBIT "B" TO LOAN AGREEMENT  
ASSIGNMENT OF AGREEMENTS,  
PLANS AND SPECIFICATIONS, AND APPROVALS**

FOR VALUE RECEIVED, the undersigned, **Mission Cove Seniors Housing Associates, L.P.**, a California limited partnership ("Borrower") hereby assigns and transfers to the **CITY OF OCEANSIDE**, a municipal corporation, ("City") all of its right, title and interest in and to:

(1) All architectural, design, engineering, and construction contracts, and any and all amendments, modifications, supplements, addenda and general conditions thereto (collectively "Agreements"), heretofore or hereafter entered into by any Contractor (as defined below) with respect to the Infrastructure Improvements;

(2) All plans and specifications, shop drawings, working drawings, amendments, modifications, changes, supplements, general conditions and addenda thereto (collectively "Plans and Specifications") heretofore or hereafter prepared by any Contractor (as defined below) with respect to the Infrastructure Improvements; and

(3) All grading permits, building permits, and other governmental approvals of any nature obtained for the Infrastructure Improvements (collectively, the "Land Use Approvals").

This Assignment is made pursuant to the terms of the Loan Agreement, dated as of \_\_\_\_\_, 20\_\_, entered into between the Borrower and the City (the "Agreement"). Capitalized terms used but not defined in this Assignment shall have the meanings set forth in the Agreement.

For purposes of this Assignment, the term "Contractor" means any architect, construction contractor, engineer or other person or entity entering into Agreements with the Borrower and/or preparing Plans and Specifications for the Borrower with respect to the Infrastructure Improvements.

The Borrower hereby irrevocably appoints the City as its attorney in fact (which agency is coupled with an interest) to, upon the occurrence of default or an event which, with notice or the passage of time or both would constitute a default under the Agreement, or as otherwise provided in the Agreement, demand, receive, and enforce any and all of the Borrower's rights with respect to the Plans and Specifications, Agreements, Land Use Approvals, and perform any and all acts in the name of the Borrower or in the name of the City with the same force and effect as if performed by the Borrower in the absence of this Assignment.

The Borrower represents and warrants to the City that no previous assignment(s) of its rights or interest in or to the Plans and Specifications, Agreements and Land Use Approvals have been made. So long as the City holds or retains any security interest under the Agreement, the Borrower agrees not to assign, sell, pledge, transfer, mortgage, or hypothecate its rights or interest in the above-referenced documents to any entity except with the prior written approval of the City.

This Assignment is made to secure: (1) payment to the City of all sums now or hereafter owing under the Agreement and the Note dated as of the date hereof made by the Borrower to the order of the City, and any and all additional advances, modifications, extensions, renewals and amendments thereof; and (2) performance by the Borrower of all its obligations under the Agreement.

This Assignment shall be governed by the laws of the State of California, except to the extent that federal laws preempt the laws the State of California, and the Borrower consents to the jurisdiction of any Federal or State Court within the State of California having proper venue for the filing and maintenance of any action arising hereunder and agrees that the prevailing party in any such action shall be entitled, in addition to any other recovery, to reasonable attorneys' fees and costs.

This Assignment shall be binding upon and inure to the benefit of the heirs, legal representatives, assigns, and successors in interest of the Borrower and the City; provided, however, this shall not be construed and is not intended to waive the restrictions on assignment contained in the Agreement.

**Mission Cove Seniors Housing Associates, L.P.,**  
a California limited partnership

By: Carolyn Compass Rose LLC,  
a California limited liability company,  
its general partner

By: Community HousingWorks,  
a California nonprofit public benefit  
corporation, its sole  
member/manager

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

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

**EXHIBIT "C" TO LOAN AGREEMENT**  
**APPLICATION FOR DISBURSEMENT**  
**MISSION COVE SENIORS HOUSING ASSOCIATES, L.P.**

TO: City of Oceanside ("City")

FROM: \_\_\_\_\_ ("Borrower")

REQUEST NO. \_\_\_\_\_

DATE: \_\_\_\_\_, 20\_\_

Pursuant to the Loan Agreement dated as of \_\_\_\_\_, 20\_\_ (the "Agreement") between Borrower and City, Borrower hereby requests that City disburse \$\_\_\_\_\_ of the Loan. This disbursement is requested to pay for various expenses incurred in connection with the installation of Infrastructure Improvements for the \_\_\_\_\_ Development (the "Development"), as summarized on the schedule attached hereto and detailed in the invoices submitted herewith. Borrower hereby certifies that the amounts shown on the attached schedule and the accompanying invoices represent costs of designing, developing, and constructing improvements for the Development which are eligible for reimbursement at this time in accordance with the provisions of the Agreement.

Borrower acknowledges that any increased costs of construction arising out of change orders, or otherwise, are not included in, or provided for, in the Construction Contract budget, and cannot be invoiced on this Application for Disbursement unless and until such change orders and/or increases in costs have been approved in writing by the City, except as otherwise provided in the Agreement.

Borrower certifies that there have been no change order or changes in the work of the installation of the Infrastructure Improvements except as previously expressly approved by City in writing, or as referenced below, with a copy of the appropriate documentation describing the change attached hereto (whether or not a disbursement is requested herein on account of such change). The following change orders, identified by number and date have been proposed and/or approved since the last Application for Disbursement: \_\_\_\_\_

SUBMITTED BY:

\_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

REVIEWED AND APPROVED BY:

\_\_\_\_\_

City Inspector

Date: \_\_\_\_\_, 20\_\_

**DISBURSEMENT SCHEDULE**

<b><u>Item of Cost</u></b>	<b><u>Budgeted Amount</u></b>	<b><u>Amount Previously Disbursed</u></b>	<b><u>Amount Requested this Disbursement</u></b>
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## **EXHIBIT "D" TO LOAN AGREEMENT**

### **DESCRIPTION OF INFRASTRUCTURE IMPROVEMENTS**

On-site improvements consist of site grading to create building pads, streets and parking areas. Along with drainage and water quality treatment improvements consisting of storm drain pipe, natural infiltration basins and water quality pavers. The project will construct an on-site public sewer main with service laterals to all buildings and off-site sewer improvements and upgrades as requested by the City engineer. The project will construct an on-site public water main, fire hydrants and service laterals to all buildings along with off-site reclaimed water in the project frontage along Mission Avenue. The project will construct frontage improvements along Mission Avenue consisting of curb, gutter and sidewalk.

# LOAN AGREEMENT

(Phase A Loan for Infrastructure Improvements on Phase D)

**THIS LOAN AGREEMENT** (the "Agreement") is entered into as of \_\_\_\_\_, 20\_\_\_, by and between the **CITY OF OCEANSIDE**, a municipal corporation, ("City"), and **Mission Cove Family II Housing, LP**, a California limited partnership (the "Borrower").

## RECITALS

The following recitals are a substantive part of this Agreement:

**A.** The City is a California municipal corporation which has received funds for the purposes of strengthening public-private partnerships to provide decent, safe, sanitary, and affordable housing, with primary attention to rental housing, for very low income and lower income households in the City.

**B.** The City has adopted a Housing Element to its General Plan pursuant to Government Code Section 65580, et seq., which sets forth the City's policies, goals and objectives to provide housing to all economic segments of the community.

**C.** The City is the fee owner of certain real property, located in the City of Oceanside, Mission Cove Project Site (the "Site").

**D.** The City and the Borrower have entered into a Disposition and Development Agreement, dated August 15, 2012 (the "DDA"). Pursuant to the DDA, (i) the City has agreed to ground lease the Site to the Borrower; (ii) the City has agreed to provide certain financial assistance to the Borrower (the "Phase D Loan"), (iii) the Borrower has agreed to construct and operate a multifamily rental apartment development on the Site (the "Development"), and (iv) the Borrower has agreed to rent those apartment units to very low and low income households at an affordable rent.

**E.** The City has agreed to provide a loan of One million, nine-hundred, fifty-five thousand, two-hundred and forty-four Dollars (\$1,955,244) to the Borrower (the "Loan") to be used in connection with the installation of certain infrastructure improvements described on Exhibit "D" attached hereto (the "Infrastructure Improvements") which are required as a condition to the development of the Development.

**F.** The City has or will enter into disposition and development agreements for the ground lease and development of real property adjacent to the Site ("Phase D") . It is anticipated that each of those proposed developments will receive a separate loan from the City for the installation of Infrastructure Improvements applicable to the development.

**G.** The provision of financial assistance to the Borrower and the development of the Development pursuant to the terms and conditions of this Agreement are in the vital and best interest of the City.

**NOW, THEREFORE,** the City and the Borrower hereby agree as follows:

**1. Loan.** Subject to Borrower's performance of all of the terms, covenants and conditions which are set forth herein, the City hereby agrees to loan to the Borrower, and the Borrower agrees to borrow from the City, the sum of One million, nine-hundred, fifty-five thousand, two-hundred and forty-four Dollars (\$1,955,244) (the "Loan"). The Loan shall be evidenced by the Promissory Note attached hereto as Exhibit "A" (the "Note").

**2. Repayment of Loan.**

**2.1** The term of this Agreement ("Term") shall commence upon the date first written above and shall expire on the earliest of: (a) expiration or termination of the DDA, as the term of the DDA may be extended pursuant to its terms; or (b) upon City delivering to Borrower written notice that this Agreement is terminated due to a Default by Borrower ; or (c) the combination or forgiveness of the Loan under Section 2.3 or 2.4.

**2.2** Subject to Sections 2.3 and 2.4, the outstanding principal balance of the Loan shall be due and payable in one lump sum upon the expiration of the Term.

**2.3** If the City makes the Phase D Loan to the Borrower, as described in the DDA, then (a) the Loan Documents will terminate, (b) the Loan will be combined with the Phase D Loan for purposes of repayment, (c) the Note will be cancelled and replaced by the promissory note for the Phase D Loan, and (d) thereafter the Loan will be repaid in accordance with the terms of and as a part of the Phase D Loan.

**2.4** If the "Closing" for Phase D, as described in the DDA, does not occur prior to expiration of the Term for any reason other than a default by the Borrower under the DDA, then this Agreement and the Note will be cancelled and the City shall forgive the Borrower's obligation to repay the Loan, provided that the Borrower has taken all actions necessary to implement the Assignment of Documents.

**3. Security for Loan.** The Note shall be secured by the "Assignment of Documents" attached hereto as Exhibit "B."

**4. Disbursement of Loan.** The proceeds of the Loan shall be disbursed only to pay for actual and reasonable hard and soft costs of the Infrastructure Improvements, including without limitation costs of architectural, engineering, planning, legal and related professional services, and the costs of permits and fees required for the Infrastructure Improvements. City's obligation to commence disbursement of the Loan proceeds is subject to the fulfillment or waiver by City of each and all of the conditions precedent described in this Section 4, which are solely for the benefit of City, any of which may be waived by the City Manager or designee in his or her sole and absolute discretion:

**4.1 Execution of Documents.** Borrower shall have executed and delivered to the City this Agreement, the Note, the Assignment of Documents, and any other documents required hereunder (collectively, the "Loan Documents").

**4.2 Permits and Approvals.** Borrower shall have obtained each and all of the grading and/or building permits and approvals necessary for the installation of the Infrastructure Improvements.

**4.3 Construction Contract.** Borrower shall have provided to the City a signed copy of the Construction Contract between the Borrower and one or more duly licensed general contractors for the installation of the Infrastructure Improvements, certified by the Borrower to be true and correct copies thereof.

**4.4 Proof of Insurance.** Borrower shall have provided to the City a certificate of insurance that satisfies the requirements of Section 4.10.2 of the DDA

**4.5 No Default, Representations and Warranties.** Borrower shall not be in default in any of its obligations under the terms of this Agreement or the DDA. All representations and warranties of Borrower contained herein and in the DDA shall be true and correct in all material respects on and as of the date of the disbursement of the Loan as though made at that time, and all covenants of Borrower which are required to be performed prior to the disbursement of the Loan shall have been performed by such date.

**5. Conditions for Each Loan Disbursement.** The City's obligation to disburse each individual disbursement of the Loan proceeds is subject to the fulfillment or waiver by City of each and all of the following conditions described below:

**5.1 Application for Payment.** The Borrower shall have submitted a request for payment to the City in the form of the "Application for Disbursement" which is attached hereto as Exhibit "C" and incorporated herein, at least ten (10) business days prior to the requested disbursement. The Application for Disbursement shall be completed and certified to be accurate by the Borrower. The Application for Disbursement shall specifically identify the nature of each expense, by reference to items in the Construction Contract budget (which may include deposits into a capitalized reserve account to fund the costs incurred by the Borrower's general contractor to perform erosion control and maintenance of the Site until the Closing), and shall identify the status of completion of such construction. Each Application for Disbursement shall be accompanied by invoices from contractors and any other requested information and documents, and lien releases from such contractors and applicable subcontractors reasonably acceptable to the City.

**5.2 Inspection of Work.** The City may retain a construction administrator to monitor the installation of the Infrastructure Improvements (the "Construction Administrator"). If retained, the Construction Administrator shall have approved the Application for Disbursement and accompanying documents, and shall have inspected the work for which the Application for Disbursement is being requested and shall have certified to the City that (i) such work has been completed substantially in accordance with the Construction Contract, (ii) the amount requested corresponds with the percentage of work completed, (iii) there are adequate funds remaining from the Loan proceeds and other approved funding to complete the installation of the Infrastructure Improvements, (iv) the work for which payment is being requested has been completed in a good and workmanlike manner in accordance with the standards of the construction industry, and (v) the expenses are reasonable and in accordance with the Construction Contract budget.

**5.3 Lien Waivers.** If requested by City or the Construction Administrator, City shall have received appropriate conditional (conditioned solely on payment) waivers of mechanics' and materialmen's lien rights and stop notice rights executed by all contractors and other persons rendering services or delivering materials covered by requests made in the Request for Disbursement. Loan proceeds used for hard construction costs may, at the City's

discretion, be subject to a retention of ten percent (10%), with retained proceeds to be released thirty-five (35) days after lien-free completion of such items of construction.

**5.4 Frequency.** City shall not be obligated to make disbursements more frequently than twice per month.

**5.5 Payee.** At the Borrower's request, disbursements may be made by joint check payable to the Borrower and its general contractor, or directly to the Borrower or its general contractor.

**5.6 Use of Disbursements.** Borrower shall use or apply all Loan disbursements solely for the purposes described in the Application for Disbursement pursuant to which the disbursement was made.

**5.7 Single Disbursement.** At the Borrower's request, the City agrees to disburse the proceeds of the Loan into one funds control account established with a depository acceptable to the City and the Borrower, or by such other mutually acceptable means as will permit the Borrower's general contractor, subject to the Borrower's prior written approval, to draw on such funds for the direct payment of the costs described in this Agreement, rather than accessing the proceeds of the Loan on a cost-reimbursement basis.

**6. Excess Proceeds.** The City agrees that any portion of the Loan which is not required to fund eligible costs under this Agreement shall be reserved and applied by the City in the following order of priority

**6.1** First, to fund any cost overruns for the installation of Infrastructure Improvements on Phase B or Phase C, as required and in that order of priority, in which case the repayment of such excess Loan proceeds shall become the obligation of the applicable borrower of such loan(s); and

**6.2** Next, to fund the loans for the development of Phase B, Phase C and Phase D, as required and in that order of priority, in which case the repayment of such excess Loan proceeds shall become the obligation of the applicable borrower of such loan(s).

**7. Infrastructure Requirements.**

**7.1 License.** The City will grant a license and right of entry, on terms mutually acceptable to the City and the Borrower, to the Borrower and its contractors, subcontractors, agents and employees (the "Borrower Parties") to allow the Borrower Parties to enter the Site and install the Infrastructure Improvements.

**7.2 Indemnification and Hold Harmless.** Borrower shall, subject to Section 16 of the Note, indemnify, hold harmless and defend, with attorney(s) reasonably acceptable to the City, the City and its officers, elected and appointed boards and officials, employees, representatives and agents, from and against any and all liability, damages, costs, losses, claims and expenses, suits, actions, proceedings and judgments, including attorney's fees, however caused, resulting directly or indirectly from or connected with the installation of the Infrastructure Improvements, the Site and/or the performance of this Agreement by Borrower or its contractors, subcontractors, agents, employees or other persons acting on its behalf, except

to the extent caused by the negligence or willful misconduct of the City or its officers, boards, officials, employees, representatives or agents.

**7.3 Nondiscrimination.** Borrower for itself and its successors and assigns, agrees 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, familial status, handicap, national origin, or ancestry in the leasing, subleasing, rental, transferring, use, occupancy, tenure, or enjoyment of the Site nor shall the Borrower or any person claiming under or through the Borrower establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, leases, sublessees, subtenants, contractors or vendees in the Site.

**7.4 Condition of the Site.**

**a. Borrower Precautions.** Borrower shall take all necessary precautions to prevent the release into the environment of any Hazardous Materials (defined in Section 7.4(c)) that may be located in, on or under the Site. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Borrower shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially reasonable standards as respects the disclosure, storage, use, removal and disposal of Hazardous Materials.

**b. Environmental Indemnity.** Borrower shall indemnify, defend and hold City harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon (i) the release from the Site, use on the Site, generation on the Site, discharge from the Site, storage on the Site, disposal on or from the Site, or transportation to or from the Site, by any of the Borrower Parties of any Hazardous Materials during the Term of this Agreement, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Site by any of the Borrower Parties during the Term of this Agreement. This indemnity shall include, without limitation, any damage, liability, fine, penalty, cost or expense arising from or out of any claim, action, suit or proceeding, including injunctive, mandamus, equity or action at law, for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment; provided, however, under no circumstances shall these indemnity obligations of Borrower include any obligation for payment of damages of any kind assessed against the City or its officers, employees, agents or representatives.

**c. Definitions.** For purposes of this Agreement, "Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, San Diego County, the State of California, regional governmental authority, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law)), (ii) defined as a "hazardous substance" under Section 25316 of the

California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated byphenyls, (viii) methyl tertiary butyl ether, (ix) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Code of Regulations, Division 4, Chapter 20, (x) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (xi) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.* (42 U.S.C. §6903) or (xii) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, *et seq.* Notwithstanding the foregoing, "Hazardous Materials" shall not include such products in quantities as are customarily used in the construction, maintenance, rehabilitation or management of residential developments or associated buildings and grounds, or typically used in residential activities in a manner typical of other comparable residential developments, or substances commonly ingested by a significant population living within the Development, including without limitation alcohol, aspirin, tobacco and saccharine.

**7.5 Liens and Stop Notices.** Borrower shall use its best efforts to prevent any lien or stop notice from being placed on the Site or the Development or any part thereof. If a claim of a lien or stop notice is given or recorded affecting the Site the Borrower shall within thirty (30) days of such recording or service:

- a. pay and discharge the same; or
- b. effect the release thereof by recording and delivering to City a surety bond in sufficient form and amount, or other security reasonably acceptable to the City.

**8. Borrower's Representations and Warranties.** Borrower represents and warrants to City as follows:

**8.1 Authority.** Borrower has full right, power and lawful authority to undertake all obligations as provided herein, and the execution, performance and delivery of this Agreement by Borrower has been fully authorized by all requisite actions on the part of the Borrower. The parties who have executed this Agreement on behalf of Borrower are authorized to bind Borrower by their signatures hereto.

**8.2 Litigation.** To the best of Borrower's knowledge, there are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the Borrower or any parties affiliated with Borrower, at law or in equity before any court or governmental agency, domestic or foreign, which if adversely determined, would materially impair the right or ability of Borrower to execute or perform its obligations under this Agreement or any documents required hereby to be executed by Borrower, or which would materially adversely affect the financial condition of Borrower or any parties affiliated with Borrower.

**8.3 No Conflict.** To the best of Borrower's knowledge, Borrower's execution, delivery, and performance of its obligations under this Agreement will not constitute a default or

a breach under any contract, agreement or order to which Borrower or any parties affiliated with Borrower is a party or by which it is bound.

**8.4 No Bankruptcy.** No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, receivership or other proceedings have been filed or are pending or threatened against the Borrower or any parties affiliated with Borrower, nor are any of such proceedings contemplated by Borrower or any parties affiliated with Borrower.

**8.5 Notice of Changed Conditions.** Until the final disbursement of the Loan, Borrower shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 8 not to be true in any material respect, immediately give written notice of such fact or condition to City. Such exception(s) to a representation shall not be deemed a breach by Borrower hereunder, but shall constitute an exception which City shall have a right to approve or disapprove if such exception would have a material adverse effect on the installation of the Infrastructure Improvements. If City elects to disburse the proceeds of the Loan to the Borrower following disclosure of such information, Borrower's representations and warranties contained herein shall be deemed to have been made as of the date of the disbursement of such Loan Proceeds, subject to such exception(s). If following the disclosure of such information the Borrower fails to cure such matter within the time set forth in Section 9 hereof for the cure of defaults, City may elect in its sole and exclusive discretion to terminate this Agreement by written notice to the Borrower.

**9. Remedies for Default.** A failure by either party to perform any action or covenant required by this Agreement or the Note within the time periods provided herein following notice and failure to cure as described hereafter constitutes a "Default" under this Agreement. A party claiming a Default shall give written notice of Default to the other party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other party, and the other party shall not be in Default if such party cures such default within ten (10) days of such notice if the claimed Default is a failure to pay amounts due pursuant to the Note, or thirty (30) days from receipt of such notice for all other claimed Defaults hereunder. However, in the event that such Default is other than a failure to pay money and is of such a nature that it cannot reasonably be cured within thirty (30) days from receipt of such notice, the claimant shall not institute any proceeding against the other party, and the other party shall not be in Default if such party immediately upon receipt of such notice, with due diligence, commences to cure, correct or remedy such failure or delay and completes such cure, correction or remedy with diligence as soon as reasonably possible thereafter.

**9.1 Institution of Legal Actions.** In addition to any other rights or remedies for a Default hereunder, and subject to the restrictions otherwise set forth in this Agreement, either party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or 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. The City may also cause all indebtedness of the Borrower under this Agreement and the Note to become immediately due and payable. Any legal actions must be instituted in the Superior Court of the County of San Diego, State of California, in an appropriate municipal court in that county, or in the United States District Court for the Southern District of California.

**9.2 Acceptance of Service of Process.** In the event that any legal action is commenced by the Borrower against City, service of process on City shall be made by personal service upon the City Manager or in such other manner as may be provided by law. In the event that any legal action is commenced by City against the Borrower, service of process shall be made in such manner as may be provided by law and shall be effective whether served inside or outside of California.

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

**9.4 Inaction Not a Waiver of Default.** Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

**9.5 Applicable Law.** The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

**9.6 Attorneys' Fees.** In any action between the parties to interpret, enforce, reform, modify, rescind, or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action shall be entitled, in addition to any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs and reasonable attorneys' fees.

**10. Assumption.** This Agreement and the Note shall not be assumable by successors and assigns of Borrower without the prior written consent of the City.

## **11. General Provisions.**

**11.1 Notices, Demands and Communications Between the Parties.** Any approval, disapproval, demand, document or other notice ("Notice") which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (iii) mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below, or (iv) by electronic mail, provided that any notice sent by electronic mail must be confirmed by written notice mailed or delivered within two (2) business days of such electronic mail notice in accordance with subsection (i), (ii) or (iii), and addressed as follows, or at any other address as that party may later designate by Notice:

**To City:** City of Oceanside  
300 North Coast Highway  
Oceanside, CA 92054  
Attention: Neighborhood Services  
Email: dmanley@ci.oceanside.ca.us

**With a copy to:** City of Oceanside  
City Attorney  
300 North Coast Highway  
Oceanside, CA 92054  
Email: [bhamilton@ci.oceanside.ca.us](mailto:bhamilton@ci.oceanside.ca.us)

**To Borrower:** Mission Cove Family II Housing, L.P.  
Southern California Housing Development Corporation of Orange  
Attn: Chief Financial Officer  
9421 Haven Avenue  
Rancho Cucamonga, CA 91730  
Email: [tthomas@nationalcore.org](mailto:tthomas@nationalcore.org)

**With a copy to:** Edward A. Hopson, Esq.  
655A North Mountain Avenue  
Upland, CA 91786  
Email: [ehopson@uia.net](mailto:ehopson@uia.net)

Any written notice, demand or communication shall be deemed received immediately upon receipt; provided, however, that refusal to accept delivery after reasonable attempts thereto shall constitute receipt. Any notices attempted to be delivered to an address from which the receiving party has moved without notice shall be effective on the third day from the date of the attempted delivery or deposit in the United States mail.

**11.2 No Personal Liability.** No member, partner, official, officer, agent or employee of Borrower or the City shall be personally liable to the other party, or any successor in interest, in the event of any Default or breach under this Agreement or for any amount which may become due to the other party or its successors, or on any obligations under the terms of this Agreement.

**11.3 Counterparts.** This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement.

**11.4 Integration.** This Agreement, together with the attached Exhibits, contains the entire understanding between the parties relating to the transaction contemplated by this Agreement. All 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 and the attached Exhibits constitute 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.

**11.5 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.

**11.6 Modifications.** The parties agree to enter into any modifications to the Loan Documents as reasonably required by a proposed lender or investor in order to secure funding for the Development as described in the approved Financing Plan. Any alteration, change, or modification of or to the Loan Documents, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

**11.7 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.

**11.8 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.

**11.9 Time of Essence.** Time is expressly made of the essence with respect to the performance by the parties of each and every obligation and condition of this Agreement.

**11.10 Cooperation.** Each party shall cooperate with the other in this transaction and, in that regard, 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.

**11.11 Definitions.** Any terms used in this Agreement but not separately defined herein shall have the meaning given to such terms in the DDA.

**IN WITNESS WHEREOF,** City and the Borrower have executed this Agreement as of the date first set forth above.

APPROVED AS TO FORM:

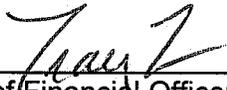
  
\_\_\_\_\_  
City Attorney

**CITY:**  
**CITY OF OCEANSIDE**, a municipal corporation

By: \_\_\_\_\_  
City Manager

**BORROWER:**  
**Mission Cove Family II Housing, LP,**  
a California limited partnership

By: Southern California Housing Development  
Corporation of Orange, a California nonprofit  
public benefit corporation, its General Partner

By:   
Its: Chief Financial Officer

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**  
**CIVIL CODE § 1189**

State of California

County of San Bernardino }

On 06/17/2014 before me, Gabriela M. Hoffman, Notary Public  
Date Here Insert Name and Title of the Officer

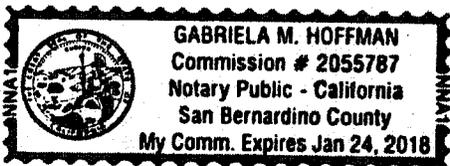
personally appeared Tracy Leu Thomas  
Name(s) of Signer(s)

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: *Gabriela M. Hoffman*  
Signature of Notary Public



*Place Notary Seal Above*

**OPTIONAL**

*Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Individual  Attorney in Fact
- Trustee  Guardian or Conservator
- Other: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Individual  Attorney in Fact
- Trustee  Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

EXHIBIT "A" TO LOAN AGREEMENT

Promissory Note

PROMISSORY NOTE  
(Unsecured)

(Phase A Loan for Infrastructure Improvements on Phase D)

\$1,955,244.00

\_\_\_\_\_, 20\_\_\_\_  
Oceanside, California

**FOR VALUE RECEIVED, Mission Cove Family II Housing, L.P.**, a California limited partnership (the "Borrower"), promises to pay to the **CITY OF OCEANSIDE**, a municipal corporation (the "City"), or order, at the City's office at 300 North Coast Highway, Oceanside, California, or such other place as the City may designate in writing, the sum of One million, nine-hundred, fifty-five thousand, two-hundred and forty-four Dollars (\$1,955,244) (the "Note Amount"), in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

**1. Agreement.** This Promissory Note (the "Note") is given in accordance with that certain Loan Agreement executed by the City and Borrower, dated as of \_\_\_\_\_, 20\_\_\_\_ (the "Agreement"). The rights and obligations of the Borrower and the City under this Note shall be governed by the Agreement and by the additional terms set forth in this Note. In the event of any inconsistencies between the terms of this Note and the terms of the Agreement or any other document related to the Note Amount, the terms of this Note shall prevail.

**2. Interest.** The outstanding principal balance of the Note Amount shall not bear any interest.

**3. Repayment of Note Amount.** The entire outstanding principal balance of this Note shall be due and payable in accordance with Section 2 of the Agreement.

**4. Security.** This Note is secured by the Assignment of Documents.

**5. Waivers**

**a.** Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time at the City's sole discretion and that the City may accept security in consideration for any such extension or release any security for this Note at its sole discretion, all without in any way affecting the liability of Borrower.

**b.** No extension of time for payment of this Note made by agreement by the City with any person now or hereafter liable for the payment of this Note shall operate to release, discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part.

c. Subject to the Provisions of Section 16 of this Note, the obligations of Borrower under this Note shall be absolute and Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reasons whatsoever.

d. Borrower waives presentment, demand, notice of protest and nonpayment, notice of default or delinquency, notice of acceleration, notice of costs, expenses or leases or interest thereon, notice of dishonor, diligence in collection or in proceeding against any of the rights of interests in or to properties securing of this Note, and the benefit of any exemption under any homestead exemption laws, if applicable.

e. No previous waiver and no failure or delay by City in acting with respect to the terms of this Note shall constitute a waiver of any breach, default, or failure or condition under this Note. A waiver of any term of this Note must be made in writing and shall be limited to the express written terms of such waiver.

**6. Attorneys' Fees and Costs.** Borrower agrees that if any amounts due under this Note are not paid when due, to pay in addition, all costs and expenses of collection and reasonable attorneys' fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed.

**7. Joint and Several Obligation.** This Note is the joint and several obligation of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their heirs, successors and assigns.

**8. Amendments and Modifications.** This Note may not be changed orally, but only by an amendment in writing signed by Borrower and by the City.

**9. City May Assign.** City may, at its option, assign its right to receive payment under this Note without necessity of obtaining the consent of the Borrower.

**10. Borrower Assignment Prohibited.** In no event shall Borrower assign or transfer any portion of this Note without the prior express written consent of the City, which consent shall not unreasonably be withheld, except pursuant to a transfer which is permitted or approved under the Agreement or the DDA.

**11. Terms.** Any terms not separately defined herein shall have the same meanings as set forth in the Agreement.

**12. Acceleration and Other Remedies.** Upon the occurrence of a Default, as defined in the Agreement, City may, at City's option, declare the outstanding principal amount of this Note, together with any other charges due hereunder, to be due and payable immediately, and upon such declaration, such principal and other sums shall immediately become and be due and payable without demand or notice. All costs of collection may be added to the principal hereunder, and shall accrue interest as provided herein. The acceptance of payment of any sum payable hereunder, or part thereof, after the due date of such payment shall not be a waiver of City's right to either require prompt payment when due of all other sums payable hereunder or to declare a Default for failure to make prompt or complete payment.

**13. Consents.** Borrower hereby consents to any renewal, extension or modification (whether one or more) of the terms of the Agreement or the terms or time of payment under this Note, which may be made without notice to Borrower or to any endorser, guarantor or surety hereof, and without affecting the liability of said parties hereunder.

**14. Successors and Assigns.** Whenever "City" is referred to in this Note, such reference shall be deemed to include the City of Oceanside and its successors and assigns, including, without limitation, any subsequent assignee or holder of this Note. All covenants, provisions and agreements by or on behalf of Borrower, and on behalf of any makers, endorsers, guarantors and sureties hereof which are contained herein shall inure to the benefit of the City and City's successors and assigns.

**15. Miscellaneous.** Time is of the essence hereof. This Note shall be governed by and construed under the laws of the State of California except to the extent Federal laws preempt the laws of the State of California. Borrower irrevocably and unconditionally submits to the jurisdiction of the Superior Court of the State of California for the County of San Diego or the United States District Court of the Southern District of California, as City hereof may deem appropriate, or, if required, the Municipal Court of the State of California for the County of San Diego, in connection with any legal action or proceeding arising out of or relating to this Note. Borrower also waives any objection regarding personal or in rem jurisdiction or venue.

**16. No Personal Liability.** This Note is a nonrecourse obligation of the Borrower. In the event of any default under the terms of this Note, neither Borrower nor any of its partners, officers, agents or employees shall have any personal liability for the payment of any amounts due under this Note or the Agreement; provided, however, that the foregoing shall not in any way affect any rights the City may have hereunder or under the Agreement to recover directly from Borrower any funds, damages or costs (including without limitation reasonable attorneys' fees and costs) incurred by City as a result of fraud, misrepresentation or waste, and any costs and expenses incurred by the City in connection thereof (including without limitation reasonable attorneys' fees and costs).

**BORROWER:**

**Mission Cove Family II Housing, LP,**  
a California limited partnership

By: Southern California Housing Development Corporation of Orange, a California nonprofit public benefit corporation, its General Partner

By: \_\_\_\_\_  
Its Chief Financial Officer

**EXHIBIT "B" TO LOAN AGREEMENT  
ASSIGNMENT OF AGREEMENTS,  
PLANS AND SPECIFICATIONS, AND APPROVALS**

FOR VALUE RECEIVED, the undersigned, **Mission Cove Family II Housing, LP**, a California limited partnership ("Borrower") hereby assigns and transfers to the **CITY OF OCEANSIDE**, a municipal corporation, ("City") all of its right, title and interest in and to:

(1) All architectural, design, engineering, and construction contracts, and any and all amendments, modifications, supplements, addenda and general conditions thereto (collectively "Agreements"), heretofore or hereafter entered into by any Contractor (as defined below) with respect to the Infrastructure Improvements;

(2) All plans and specifications, shop drawings, working drawings, amendments, modifications, changes, supplements, general conditions and addenda thereto (collectively "Plans and Specifications") heretofore or hereafter prepared by any Contractor (as defined below) with respect to the Infrastructure Improvements; and

(3) All grading permits, building permits, and other governmental approvals of any nature obtained for the Infrastructure Improvements (collectively, the "Land Use Approvals").

This Assignment is made pursuant to the terms of the Loan Agreement, dated as of \_\_\_\_\_, 20\_\_, entered into between the Borrower and the City (the "Agreement"). Capitalized terms used but not defined in this Assignment shall have the meanings set forth in the Agreement.

For purposes of this Assignment, the term "Contractor" means any architect, construction contractor, engineer or other person or entity entering into Agreements with the Borrower and/or preparing Plans and Specifications for the Borrower with respect to the Infrastructure Improvements.

The Borrower hereby irrevocably appoints the City as its attorney in fact (which agency is coupled with an interest) to, upon the occurrence of default or an event which, with notice or the passage of time or both would constitute a default under the Agreement, or as otherwise provided in the Agreement, demand, receive, and enforce any and all of the Borrower's rights with respect to the Plans and Specifications, Agreements, Land Use Approvals, and perform any and all acts in the name of the Borrower or in the name of the City with the same force and effect as if performed by the Borrower in the absence of this Assignment.

The Borrower represents and warrants to the City that no previous assignment(s) of its rights or interest in or to the Plans and Specifications, Agreements and Land Use Approvals have been made. So long as the City holds or retains any security interest under the Agreement, the Borrower agrees not to assign, sell, pledge, transfer, mortgage, or hypothecate its rights or interest in the above-referenced documents to any entity except with the prior written approval of the City.

This Assignment is made to secure: (1) payment to the City of all sums now or hereafter owing under the Agreement and the Note dated as of the date hereof made by the Borrower to the order of the City, and any and all additional advances, modifications, extensions, renewals

and amendments thereof; and (2) performance by the Borrower of all its obligations under the Agreement.

This Assignment shall be governed by the laws of the State of California, except to the extent that federal laws preempt the laws the State of California, and the Borrower consents to the jurisdiction of any Federal or State Court within the State of California having proper venue for the filing and maintenance of any action arising hereunder and agrees that the prevailing party in any such action shall be entitled, in addition to any other recovery, to reasonable attorneys' fees and costs.

This Assignment shall be binding upon and inure to the benefit of the heirs, legal representatives, assigns, and successors in interest of the Borrower and the City; provided, however, this shall not be construed and is not intended to waive the restrictions on assignment contained in the Agreement.

**Mission Cove Family II Housing , LP.,**  
a California limited partnership

By: Southern California Housing Development  
Corporation of Orange, a California  
nonprofit public benefit corporation, its  
General Partner

By: \_\_\_\_\_  
Its Chief Financial Officer

**EXHIBIT "C" TO LOAN AGREEMENT**  
**APPLICATION FOR DISBURSEMENT**  
**MISSION COVE FAMILY II HOUSING, LP**

TO: City of Oceanside ("City")

FROM: \_\_\_\_\_ ("Borrower")

REQUEST NO. \_\_\_\_\_

DATE: \_\_\_\_\_, 20\_\_

Pursuant to the Loan Agreement dated as of \_\_\_\_\_, 20\_\_ (the "Agreement") between Borrower and City, Borrower hereby requests that City disburse \$\_\_\_\_\_ of the Loan. This disbursement is requested to pay for various expenses incurred in connection with the installation of Infrastructure Improvements for the \_\_\_\_\_ Development (the "Development"), as summarized on the schedule attached hereto and detailed in the invoices submitted herewith. Borrower hereby certifies that the amounts shown on the attached schedule and the accompanying invoices represent costs of designing, developing, and constructing improvements for the Development which are eligible for reimbursement at this time in accordance with the provisions of the Agreement.

Borrower acknowledges that any increased costs of construction arising out of change orders, or otherwise, are not included in, or provided for, in the Construction Contract budget, and cannot be invoiced on this Application for Disbursement unless and until such change orders and/or increases in costs have been approved in writing by the City, except as otherwise provided in the Agreement.

Borrower certifies that there have been no change order or changes in the work of the installation of the Infrastructure Improvements except as previously expressly approved by City in writing, or as referenced below, with a copy of the appropriate documentation describing the change attached hereto (whether or not a disbursement is requested herein on account of such change). The following change orders, identified by number and date have been proposed and/or approved since the last Application for Disbursement: \_\_\_\_\_

SUBMITTED BY:

\_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

REVIEWED AND APPROVED BY:

\_\_\_\_\_

City Inspector

Date: \_\_\_\_\_, 20\_\_

**DISBURSEMENT SCHEDULE**

<b><u>Item of Cost</u></b>	<b><u>Budgeted Amount</u></b>	<b><u>Amount Previously Disbursed</u></b>	<b><u>Amount Requested this Disbursement</u></b>
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## **EXHIBIT "D" TO LOAN AGREEMENT**

### **DESCRIPTION OF INFRASTRUCTURE IMPROVEMENTS**

On-site improvements consist of site grading to create building pads, streets and parking areas. Along with drainage and water quality treatment improvements consisting of storm drain pipe, natural infiltration basins and water quality pavers. The project will construct an on-site public sewer main with service laterals to all buildings and off-site sewer improvements and upgrades as requested by the City engineer. The project will construct an on-site public water main, fire hydrants and service laterals to all buildings along with off-site reclaimed water in the project frontage along Mission Avenue. The project will construct frontage improvements along Mission Avenue consisting of curb, gutter and sidewalk.