

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
VETERANS HOUSING AND HOMELESSNESS PREVENTION PROGRAM

[LIMITED] RECOURSE PROMISSORY NOTE SECURED BY DEED OF TRUST

(NOFA December 2016)

LOAN NUMBER __-VHHP-__

U.S. \$ _____

Dated: _____, 201__

Borrower:

FOR VALUE RECEIVED, the undersigned, ("**Borrower**") hereby promises to pay to the order of the Department of Housing and Community Development ("**Department**") a public agency of the State of California, which has its principal office at 2020 West El Camino Avenue, Sacramento, California 95833 (mailing address: P.O. Box 952052, Sacramento, CA 94252-20542, the principal amount of _____ Dollars (\$ _____), or so much thereof as may be advanced by the Department to or on behalf of the Borrower pursuant to that certain Standard Agreement dated _____, by and between the Borrower and the Department (the "**Standard Agreement**"), together with interest thereon as specified herein (the "**Loan**"). The obligation of the Borrower in respect of all such advances is subject to the terms of: (a) that certain Regulatory Agreement by and between the Borrower and the Department of even date hereof (the "**Regulatory Agreement**"), (b) this Note, (c) the Deed of Trust (as defined in Section 4 below) and (d) the Standard Agreement, which together with this Note, the Deed of Trust, the Regulatory Agreement and all other loan related documents and instruments required by the Department, are collectively referred to as the "**Loan Documents**". Capitalized terms not otherwise defined herein shall have the meanings set forth in the Regulatory Agreement.

1. Purpose of Loan. This Note evidences the obligation of the Borrower to the Department for the repayment of funds loaned to the Borrower by the Department from the Veterans Housing and Homelessness Prevention Program authorized by the Veterans Housing and Homelessness Prevention Act set forth in Military and Veteran's Code Division 4, Chapter 6, Article 3.2, commencing with Section 987.001 (the "**Program**") for the purpose of assisting in the acquisition, construction, rehabilitation and/or preservation by Borrower of that certain *affordable multifamily supportive housing*,

affordable transitional housing, affordable rental housing] and/or related facilities for veterans and their families (the “**Development**”) on the that certain real property located in _____ County, California, more fully described in the Deed of Trust and the Regulatory Agreement (the “**Property**”).

2. Payment.

a. Interest Rate / Initial Partial Interest Payments. Interest on the unpaid principal balance advanced under this Note shall accrue from the date of such advance until the Maturity Date (or until such principal is sooner repaid) at the simple interest rate of three percent (3%) per annum.

Partial interest payments in the amount of forty-two hundredths of one percent (0.42%) per annum on the unpaid principal balance of this Note shall be due and payable to the Department commencing on the last day of the Initial Operating Year (the “**Interest Payment Date**”) and on each anniversary thereof up to and including the twenty-ninth (29th) anniversary of the Interest Payment Date. The payment of the balance of the accrued interest for this period shall, so long as no Event of Default has occurred and subject to the other terms of this Note, be deferred to and paid on the Maturity Date.

Commencing on the thirtieth (30th) anniversary of the Interest Payment Date and continuing on each anniversary thereof up to and including the Maturity Date, the Borrower shall pay to the Department annual interest payments on the outstanding principal advanced under this Note at an interest rate equal to the lesser of:

(1) the full three percent (3%) per annum rate referenced above; or

(2) the rate determined annually by the Department, in its sole and absolute discretion, to be necessary to cover its costs to continue to monitor the Development for compliance with the requirements of the Program for the immediately following twelve month period; provided, however, in no event or circumstance shall such rate be less than the interest rate in effect during the immediately preceding twelve month period. To the extent such rate is less than 3% per annum, the payment of the balance of the accrued interest for each such 12-month period shall, so long as no Event of Default has occurred and subject to the other terms of this Note, be deferred to and paid on the Maturity Date

b. Maturity Date / Deferred Interest and Principal. The entire unpaid principal amount advanced under this Note, together with all accrued but unpaid interest thereon (including without limitation, all interest which accrued but was deferred under Section 2.a immediately preceding), shall be due and payable on the fifty-fifth (55th) anniversary of the date of recordation of the Regulatory Agreement or such later date as may be approved in writing by the Department, in its sole and absolute discretion, (the “**Maturity Date**”).

c. Additional Mandatory Payments. Notwithstanding the foregoing, in addition to all other payments referenced herein, Borrower shall make such additional mandatory payments and/or prepayments from Net Cash Flow (as defined in the Regulatory Agreement) to the Department as and when required under the terms of the Regulatory Agreement, including, without limitation Section 20(b)(8) thereof, which amounts shall be applied and retained by the Department: first, toward repayment of the Loan, and second, after such repayment, as excess cash for use by the Department as contemplated by Section 22 of the Regulatory Agreement.

d. No Offset. Each payment of principal, interest or any other amount payable by Borrower hereunder shall be made as and when due without any deduction, offset or counterclaim whatsoever, whether arising prior to or after the date hereof and whether arising in connection with or outside of the obligation evidenced by this Note or the other Loan Documents.

e. Late Payment. If any payment due hereunder is not paid within ten (10) calendar days of its due date, then in addition to all other rights of the Department, Borrower shall pay to the Department an amount equal to **five percent (5%)** of such overdue amount (the "**Late Charge**"). The parties acknowledge that the Late Charge represents a reasonable sum considering all of the circumstances existing on the date of this Note and represents a fair and reasonable estimate of the costs that the Department will incur by reason of late payment. The parties further agree that proof of actual damages would be costly or inconvenient. Such Late Charge shall be in addition to any and all other rights and remedies available to the Department on account of such failure at law, in equity, or under this Note, the Deed of Trust or the other Loan Documents, and the same shall not constitute an extension of time for any payments due hereunder.

f. Default Interest. In the event any payment is not paid in full as and when due hereunder, whether at stated maturity, on acceleration or otherwise, such delinquent amount shall bear interest at the lesser of (i) ten percent (10%) per annum, compounded annually, or (ii) the maximum rate permitted by law, from the date the same was due until paid in full.

g. Place/Manner of Payment. All payments of principal, interest and any other amounts due and payable under this Note and the other Loan Documents shall be payable at the principal office of the Department set forth above, or at such other place or places as the Department may designate to the Borrower in writing from time to time, in lawful money of the United States of America, which on the respective date of payment thereof shall be legal tender for the payment of public and private debts. If the stated date for payment of any interest, principal or other payment due hereunder falls on a day which is not a Business Day, all amounts otherwise due on said date shall be payable on the first Business Day occurring after such date, and such extension of time shall be included in computing any interest in respect of such payment. The term "Business Day" means a day other than a Saturday, Sunday or other day recognized as a holiday by the State of California.

[add either of the following, as appropriate]

h. Recourse: The Department shall have full personal recourse to and against Borrower and Borrower's general partners with respect to the Loan, including the obligations evidenced by this Note or otherwise secured by the Deed of Trust, or for any deficiency remaining after the foreclosure or other execution on or realization upon the collateral encumbered by the Deed of Trust.

[or alternatively, where the Department determines that the loan must be limited recourse to be consistent with the requirement of tax credit or other public financing]

h. Limited Recourse. Subject to the reminder of this Subsection 2.h., the obligations under this Note shall be without recourse against the Borrower and any partners, general or limited, of the Borrower. Notwithstanding the foregoing or any other provision of this Note to the contrary, Borrower, and any and all general partners of Borrower, shall be personally liable for each and all of the following:

(i) any and all fraud, intentional misrepresentation or omission, or any other cause of action, that is independent of liability under the Loan Documents;

(ii) any and all waste or intentional destruction of the Development, the Property or of any collateral securing this Note or encumbered by the Deed of Trust;

(iii) any and all insurance proceeds, condemnation awards, warranties, reserve amounts, or other sums, funds or payments attributable to the Development, the Property or any collateral securing this Note not used or applied in accordance with the terms of the Loan Documents, except to the extent that such sums were not used or applied in accordance with the Loan Documents solely because Borrower did not have the legal right to so apply such sums because of a bankruptcy, receivership, or similar judicial proceeding;

(iv) any and all rents, lease payments, profits, security deposits, utility deposits, credits, reimbursements, sales and other transfer proceeds, issues and other income from the Development, the Property or other collateral securing this Note received by or on behalf of the Borrower not used or applied in accordance with the terms of the Loan Documents, except to the extent that such sums were not used or applied in accordance with the Loan Documents solely because Borrower did not have the legal right to so apply such sums because of bankruptcy, receivership, or similar judicial proceeding;

(v) any and all liability arising under or pursuant to any indemnity, hold harmless, restoration, reimbursement or attorneys' fees obligations contained in the Loan Documents; and

(vi) any and all costs and expenses of complying with all agreements, laws, rules, entitlements, consents, regulations, guidelines now or hereafter applicable to the ownership, leasing, improvement, use, operation, maintenance or repair of the Development or the Property.

i. **Application of Payments.** All payments on this Note shall be applied first to any costs, fees, expenses or charges advanced or incurred by the Department in connection with the indebtedness evidenced by the Loan Documents, including costs of collection and enforcement thereof, together with interest thereon at the lesser of (i) ten percent (10%) per annum, compounded annually, or (ii) the maximum rate permitted by law, from the date the same are incurred until repaid in full; second, to the payment of accrued interest; and third, to the reduction of the principal balance.

j. **Continuance of Regulatory Agreement / Deed of Trust.** Borrower expressly acknowledges and agrees as follows: (1) that the Deed of Trust secures, among other things, both this Note and the Regulatory Agreement, (2) that the terms of the Regulatory Agreement, and the Department's rights and Borrower's obligations thereunder, are separate and independent from the rights and obligations of the Department and Borrower under this Note, and (3) that notwithstanding the payment or other satisfaction of this Note, the Regulatory shall continue in full force and effect in accordance with its express terms and the Deed of Trust shall continue to secure Borrower's obligations thereunder.

k. **Usury Savings.** Notwithstanding any other term or provision contained in this Note or the other Loan Documents to the contrary, it is not intended by any provision of this Note or the other Loan Documents for the Department to charge interest or premiums at a rate in excess of the maximum rate of interest permitted to be charged under applicable law on a cumulative basis. This Note and any other Loan Documents to are expressly limited, so that in no event or contingency, whether because of the advancement of the proceeds of this Note, the acceleration of maturity of the unpaid principal balance, or otherwise, shall the amount paid or agreed to be paid to the Department for the use, forbearance or retention of the money loaned under this Note exceed the highest lawful rate permissible under applicable usury laws. If, under any circumstances, fulfillment of any provision of this Note or any other Loan Document, after timely performance of such provision is due, shall involve exceeding the maximum interest rate prescribed by law that a court of competent jurisdiction deems applicable, then, the obligations to be fulfilled shall automatically be deemed to be reduced to the maximum rate permitted by law. If, under any circumstances, the Department shall ever receive as interest an amount that exceeds the highest lawful rate, the amount that would be excessive interest shall be applied to reduce the unpaid principal balance under this Note and not to pay interest, or, if such excessive interest exceeds the unpaid principal balance under this Note, such excess shall be refunded to Borrower.

3. Voluntary Prepayment. Upon the prior written consent of the Department, Borrower shall be entitled to pay the indebtedness evidenced by this Note, or any part thereof, prior to or in advance of the Maturity Date, without penalty or fee. No such approved prepayment shall relieve Borrower or any other person from its obligations under the Regulatory Agreement, and the Deed of Trust shall continue to secure such obligations under the Regulatory Agreement after any and all prepayments of this Note.

4. Deed of Trust Security. The indebtedness evidenced by this Note is secured by that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (Permanent Financing) Loan Number [redacted]-VHHP-[redacted] between Borrower, as trustor, and the Department, as beneficiary, of even date herewith (the “**Deed of Trust**”) granting for the benefit of the Department a valid and perfected [redacted] ([redacted]) priority lien and encumbrance on all of Borrower’s

[add either of the following, as appropriate]

[fee right, title and interest in and to the Property and the Development] OR

*[fee right, title and interest in and to title in the improvements constituting the Development and the leasehold right, title and interest in and to the Property under that certain Ground Lease dated _____, 201_ between _____, as ground lessor, and Borrower, as ground lessee, a memorandum of which was recorded in the Official Records of _____ County, California on _____, 201_ as Instrument No. _____, as amended by the Department’s Lease Rider dated of even date herewith executed by and among the ground lessor, Borrower and the Department, which Lease Rider shall be recorded in the Official Records of _____ County, California immediately prior to the recordation of the Deed of Trust, (collectively, the “**Ground Lease**”).]*

Concurrently with the execution of this Note the Deed of Trust is being executed and recorded in the Official Records of _____, County, California as a lien and encumbrance on the Property, the Development and all other collateral described therein. All covenants, conditions and agreements contained in the Deed of Trust are hereby incorporated herein by reference and made a part of this Note.

5. Due on Transfer: As a material inducement for the Department making the Loan, Borrower agrees that except as may be expressly permitted in the Regulatory Agreement, Borrower shall not sell, convey, exchange, encumber, pledge, option or otherwise transfer or alienate of the Property, the Development or any other collateral encumbered by the Deed of Trust, or any portion thereof or interest therein, whether voluntarily or involuntarily, directly or indirectly, by operation of law or otherwise, without the Department’s express prior written consent, which may be withheld and/or conditioned in the Department’s sole and absolute discretion. Upon any violation of the foregoing, then the entire outstanding principal balance of this Note, all accrued but unpaid interest

(including deferred interest) and other amounts due or outstanding hereunder, together with all other amounts secured by the Deed of Trust, shall at the election and discretion of the Department be accelerated and become immediately due and payable.

6. Acceleration. Upon any violation of Section 5 above or the occurrence of any Event of Default as contemplated herein, then the entire principal, accrued but unpaid interest (including deferred interest), and all other charges and amounts due or outstanding hereunder, together with any and all other amounts secured by the Deed of Trust, regardless of their stated maturity date, shall at the option of the Department be accelerated and become immediately all due and payable, without necessity for presentment, demand, or notice of protest, demand, dishonor or nonpayment of this Note, all of which are hereby expressly waived by Borrower. Failure to exercise any such acceleration right at any time shall not constitute a waiver of the right of the Department to exercise the same in the event of any subsequent default or acceleration event. The Department may exercise this acceleration right regardless of any prior delay or forbearance. All amounts due after acceleration shall bear interest at the rate set forth in Section 2.f above.

7. Waiver. Borrower hereby expressly waives, to the fullest extent permitted by law, all demands for payment, notice of intention to accelerate maturity, notice of acceleration, any other notices (except as expressly provided in Section 8 below), diligence, presentment, protests and demand, notice of protest, dishonor and nonpayment of this Note, and waives any right to be released by reason of any extension of time or change in terms of payment or any change, alteration, substitution or release of any security or guaranties given for the payment hereof. Borrower further waives, to the fullest extent permitted by law, the right to plead any and all statutes of limitation as a defense to any demand or action on this Note, under the Deed of Trust or the other Loan Documents.

8. Events of Default. Borrower shall be in default under this Note upon the occurrence and during the continuance of any of the following (each an “**Event of Default**”):

(i) Any failure by Borrower to pay any amount due under this Note as and when due, whether at stated maturity or otherwise in strict accordance with the terms hereof, where such failure is not cured within fifteen (15) calendar days after written notice thereof is delivered to Borrower;

(ii) Any failure by Borrower to observe or perform any term, covenant or agreement contained in this Note other than as specified in Subsection 8(i) immediately preceding as and when due where such failure is not cured within fifteen (15) calendar days after written notice thereof is delivered to Borrower;

(iii) Any default or failure by Borrower to comply with the terms of the Deed of Trust, the Regulatory Agreement or any of the other Loan Documents as and when due where such failure has not been cured within any applicable stated cure

periods set forth therein, or if none, within fifteen (15) calendar days after written notice thereof is delivered to Borrower;

(iv) any failure by Borrower to improve and operate the Property or the Development as provided for in the Loan Documents, or any abandonment of the Property or the Development, in all cases where such failure or event has not been cured within any applicable stated cure periods set forth therein, or if none, within fifteen (15) calendar days after written notice thereof is delivered to Borrower;

(v) the Borrower or _____ (“**Sponsor**”) becoming insolvent or bankrupt, being unable or admitting in writing its inability to pay its debts as they are due, or making a general assignment for the benefit of creditors;

(vi) initiation by or against the Borrower or Sponsor of proceedings for the appointment of a receiver, trustee, or liquidator of all or a substantial part of the assets of the Borrower or Sponsor, which proceedings are not dismissed within sixty (60) calendar days of commencement;

(vii) initiation by or against the Borrower or Sponsor of proceedings under any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction, which proceedings are not dismissed within sixty (60) calendar days of initiation;

(viii) the levy of a writ of attachment, writ of execution or involuntary lien on the assets of Borrower or Sponsor, including the Property or the Development, which is not fully discharged within thirty (30) calendar days;

(ix) the failure of any representation or warranty of made by Borrower or Sponsor in this Note or the other Loan Documents to be true, complete and correct and not materially misleading;

(x) the dissolution, termination, merger or conversion of the corporate, partnership, limited liability company or other structure of the Borrower or any general partner, manager or other control person of Borrower, or the death of the Borrower or such general partner, manager or control person to the extent they are an individual;

(xi) the dissolution, termination, merger or conversion of the corporate, partnership, limited liability company or other structure of Sponsor, or the death of Sponsor if Sponsor is an individual;

(xii) any direct or indirect change in control of Borrower;

(xiii) any default by Sponsor under the Sponsor Operating Guaranty related to this Loan where such failure has not been cured within any applicable stated cure

periods set forth therein, or if none, within fifteen (15) calendar days after written notice thereof is delivered to Borrower;

(xiv) any default by Borrower under any other liens or encumbrances encumbering or affecting the Development or the Property, whether prior and superior to or subject and subordinate to the lien of the Deed of Trust, and whether for the benefit of third parties or the Department, including, without limitation, any other deeds of trust, regulatory agreements, restrictive covenants, disbursement agreements and/or standard agreements held by or benefiting the Department which secure, evidence or otherwise relate to any other loans or grants provided by the Department with respect to the Development or the Property, or any infrastructure, transportation, program, predevelopment or other costs related thereto;

(xv) This Note, the Deed of Trust, the Regulatory Agreement or any other Loan Document, or any lien, security interest or material right granted therein, shall cease being, or shall be asserted as not being, the legal, valid and binding obligations of Borrower (or of any other signatory thereto) in accordance with their respective terms; *[or]*

(xvi) The lien of the Deed of Trust shall for any reason cease to be a valid and perfected ____ (__^{st/nd/rd}) priority deed of trust lien on the property encumbered thereby; or the lien of the Regulatory Agreement shall for any reason cease to be a valid and perfected priority lien on the property encumbered thereby, or the priority thereof shall change from that established upon its original recordation [. - ; *or]*

[add following if ground lease]

(xvii) [any default under the Ground Lease, or the occurrence of any other event or circumstance which gives either party thereto the right to terminate the same.]

Upon any Event of Default, the Department may, at its option, exercise any and all of its rights and remedies under or with respect to this Note, the Deed of Trust and/or in the other Loan Documents, all of which rights shall be in addition to and not in limitation of any and all other rights and remedies the Department may have under applicable law, in equity or otherwise, including without limitation accelerating and declaring the entire principal amount then outstanding hereunder and any and all accrued but unpaid interest thereon, together with all other charges or amounts due or outstanding under this Note, the Deed of Trust or the other Loan Documents, to be due and payable immediately and commencing foreclosure and/or other enforcement proceedings under the Deed of Trust. All such rights and remedies shall be cumulative and non-exclusive to the maximum extent permitted by law

9. Attorneys' Fees. Borrower agrees to pay, immediately upon demand of Department, all costs, expenses, witness fees and attorneys' fees paid or incurred by the

Department or adjudged by a court in connection with: (1) the performance, collection or enforcement of this Note or the Deed of Trust, whether or not suit is filed; (2) any action related to the validity, priority or perfection of the liens and security interests in the Property granted by the Deed of Trust or the Regulatory Agreement, or (3) any other litigation or controversy connected with this Note, the Deed of Trust, The Regulatory Agreement or the other documents executed or delivered in connection herewith, or the security therefor, including, but not limited to, actions for declaratory or injunctive relief, actions for relief based on recession, actions to cancel this Note or any of such other documents that the Department is required to prosecute or defend, and any actions relating to any bankruptcy proceedings affecting Borrower or Sponsor.

Each maker, endorser, surety, and guarantor of this Note hereby jointly and severally waives demand, protest, presentment, notice of nonpayment, notice of protest, notice of dishonor, and diligence in bringing suit against any party and does hereby consent that time of payment of all or any part of said amount may be extended from time to time by the Department without notice.

10. No Waiver. No delay or failure of Department in the exercise of any right or remedy hereunder or under any other agreement which secures or is related hereto shall affect any such right or remedy, and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof, and no action taken or omitted by the Department shall be deemed a waiver of any such right or remedy. The acceptance by the Department of any sum less than the sum then due shall be deemed an acceptance on account only and shall not constitute a waiver of the obligation of Borrower to pay the entire sum then due, regardless of any notation or qualification accompanying such payment to the contrary. Borrower's failure to pay said entire sum due shall be and continue to be a default notwithstanding Department's acceptance of such lesser amount on account, and the Department shall be entitled at all times thereafter to exercise any and all rights and remedies it may have, notwithstanding the acceptance by the Department thereafter of future sums on account.

11. Notices. Except for any notice required under applicable law to be given in another manner, any notices, demands or communications between the parties hereto shall be sufficiently given if, and shall not be deemed given unless, sent by certified mail, postage prepaid, return receipt requested or delivered by express delivery service with delivery receipt, to the address of the respective party as indicated herein, or to such other address as the respective party may have designated by written notice given to the other party in the manner provided herein. Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered, the date on which delivery was refused, or the date on which delivery was attempted.

12. Governing Law/Venue. This Note shall be construed and enforced in accordance with and be governed by the internal laws of the State of California. Any legal

action or proceeding with respect to this Note may only be brought in the Superior Court of the County in which the Property is located.

13. Severability. If any provision of this Note shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby unless, in the sole and absolute discretion of the Department, the invalidity, illegality or unenforceability of the provision negates the Program purpose and/or threatens the security of the Department.

14. Certification. The Borrower hereby certifies to the Department that this is the Note described in and secured by the Deed of Trust covering the real and personal property therein described.

15. Construction / Legal Representation. The headings and arrangement of the paragraphs of this Note are intended solely for convenience of reference and are not intended to limit or define the provisions in the portions of this Note to which they pertain. Any rule of construction to the effect that ambiguities are to be construed against the drafting party (including, without limitation, California Civil Code Section 1654) shall not apply in interpreting this Note and are hereby waived by Borrower. Borrower acknowledges and agrees that it has been represented by its own independent legal counsel in connection with the negotiation, drafting, and execution of this Note, the Deed of Trust, the Regulatory Agreement and the other Loan Documents and has had the same explained to it by such counsel, and fully understands the same.

16. Time of the Essence. Time is of the essence of this Note and of the full and timely payment and performance of the terms and provisions herein and of the terms and provisions of the Deed of Trust.

17. Joint and Several Liability. To the extent Borrower is comprised of more than one person, all obligations of Borrower under this Note shall be the joint and several obligations of each person comprising Borrower. Among other things, this means that each person comprising Borrower shall be both jointly and severally (independently) liable for the full payment of all amounts and the full performance of all obligations of Borrower hereunder, and Lender may recover and enforce such full payment and performance from only one or any combination of one or more such persons, in any order or sequence, without the need to join or pursue all such persons, all in Lender's sole and absolute discretion.

[Signature of the Borrower follows on page 15 of this Promissory Note. The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the undersigned has executed this Note as of the date first set forth above at _____, California.

BORROWER:

BORROWER'S ADDRESS:

DRAFT