

ATTACHMENT G
SAMPLE PERM COMMITMENT LETTER



DATE

Vice President

City, CA -----

RE: Organization Name, Permanent Loan Commitment
Organization address

Dear Mr./Ms. -----:

We are pleased to inform you that the Orange County Board of Supervisors approved the loan, as described below, for your project on -----, 20--.

LOAN COMMITMENT(s)

PERMANENT: A funding maximum of ----- in U.S. Department of Housing and Urban Development ("HUD") HOME Investment Partnerships Program funds, Orange County Housing Successor Agency funds and/or Mental Health Services Act (MHSA) funds for -----.

PROJECT DESCRIPTION:

The proposed development is a ----- apartment consisting of ----- bedroom units ("Project"). The purpose of the Project is to provide affordable permanent supportive housing for families in Orange County. ----- of the units will be restricted to homeless persons with disabilities earning at or below 30% of the Area Median Income ("AMI"). One two-bedroom unit will be used as an on-site manager's unit. Housing and Community Development (HCD) will record rent and occupancy restrictions on a total of ----- units in the project, ----- two-bedroom and ----- three-bedroom units. Occupancy of the HCD units will be restricted to households earning at or below 30% AMI for a period of fifty-five (55) years.

Project funding will be contingent on the following underwriting conditions: This commitment is valid only if the borrower applies for and receives a commitment of funds for: (1) no less than \$----- in tax credit equity, (2) no less than \$----- from the City of-----, and (3) no less than \$----- from ----- Bank. Material changes to the amount of financing and the total development cost of the Project, which affect the underwriting of the Project are subject to HCD review and approval.

Increases or decreases to the financing and the total development costs of the Project, which affect the underwriting of the project, are subject to the HCD review and approval. Any increases to the financing and total development costs of the Project which fall outside of HCD staff's delegated authority will be subject to consideration and approval by the Board of Supervisors.

HCD reserves the right to re-underwrite any project based on any material changes to the financing. Financial changes to the Project must be reported to HCD within thirty (30) days of their occurrence. This commitment expires 24 months from the date of this letter unless the Project receives the aforementioned financing, and the borrower executes the County's loan documents pursuant to the conditions set forth in

this commitment letter, or HCD has approved an extension of the terms and conditions. The borrower has the ability to obtain one (1) six (6) month extension, as approved by HCD; additional extensions may require Board of Supervisors approval.

HCD reserves the right to require that units assisted under this loan utilize the County's Coordinated Entry System.

I. Loan Terms Applicable to the Permanent Loan

1. Term: 55 years from the date of completion of construction of the Project, as evidenced by a Certificate of Occupancy and recorded Notice of Completion.
2. Rate: 3% simple interest.
3. Repayment: Residual Receipts. %%% of the residual receipts will go to the County of Orange.
4. Security: Deed of Trust securing a Promissory Note in the amount of \$------. All loan documents shall be in a form approved by the County and borrower. The HCD loan shall be non-recourse to borrower except for liabilities arising out of, or due to, fraud, criminal activity, and other standard County conditions.
5. Loan Closing: Disbursement of loan proceeds will be based on completion of work and submission of invoices for approved expenses.

Disbursement of the County loan may occur upon completion of the following: (1) all construction has been completed; (2) notice of completion has been issued for the Project; (3) certificate of occupancy has been issued for the residential units; (4) HCD has received and approved a draft cost certification; (5) title to the subject property is free and clear of all labor and material liens; (6) HCD has received and approved all items per HCD Loan Closing Checklist, (7) the borrower satisfies the other conditions to closing set forth in the loan documents.
6. Subordination: The Deed of Trust securing said loan shall be recorded, insured and encumber the subject real property as a **second** Deed of Trust only. If said County loan is junior to senior debt approved by the County, the County will execute a subordination agreement confirming its subordination to said senior debt. Borrower shall cause all financing junior to the County's loan to provide an executed subordination agreement in favor of the County on County's standard form as a condition to the closing of County's loan.
7. Affordability: 55-year regulatory agreement to be recorded, unsubordinated

II. Other Financing

1. Terms Applicable to the Project-Based Housing Choice Vouchers

Affordability: (No. PBV) units restricted to homeless persons (as defined by the 2023 Supportive Housing NOFA) with incomes at or below 30% of Area Median Income for a term of twenty (20) years, or as stated in the OCHA Administrative Plan, which is revised from time to time.

2. Other Financing: The following financing has been underwritten as follows in the County's

Pro Forma dated _____, 2023:

Bank Loan: _____

Security: First Deed of Trust

City Grant: _____

Security: None

AHP Grant: _____

Security: Third position

Pro Forma dated _____, 2023:

III. Conditions Applicable to the Loan

1. The borrower shall take title to the subject property free and clear of all encumbrances, covenants and conditions, whether recorded or unrecorded, except for HCD & Homeless Prevention approved title encumbrances.
2. The borrower shall provide an ALTA Lender's Policy of Title Insurance containing such title endorsements as required by the County.
3. The borrower must comply with all the applicable requirements, statutes, and regulations of the funding source(s) being utilized for the proposed Project, which includes federal HOME funds, Orange County Housing Successor funds and Mental Health Services Act Funds.
4. The borrower shall complete and execute all Affirmative Action and Minority- and Women-Owned Business Enterprise plans provided by the County.
5. The borrower shall submit a project timeline for review and approval by HCD. The project schedule will be attached as an exhibit to the loan agreement. Non-compliance with this schedule, unless specifically permitted by HCD, shall be considered a default under the County loan agreement.
6. The borrower shall execute all County standard loan documents that are required or deemed appropriate by the County in a form approved by the County in its discretion.
7. The borrower shall submit evidence of insurance on County approved forms with such carriers and in such amounts and containing such deductibles as may be approved by the County.
8. The borrower shall submit a marketing plan for review and approval by HCD. The marketing plan must contain procedures that include marketing of the units to residents throughout Orange County including residents of unincorporated areas and other incorporated cities. For certain developments, including but not limited to those receiving Housing Choice Vouchers and/or Veterans Affairs Supportive Housing Project Based Vouchers from the cities of Anaheim, Garden Grove or Santa Ana, or are subject to special zoning ordinances requiring preference for City residents, further documentation from the borrower will be required demonstrating that residents throughout the County will have equal opportunity at obtaining units in the Project.
9. Upon execution of the loan agreement, the borrower shall execute and cause to be recorded County form affordability covenants restricting the occupancy of the units for a period of 55

- years. The affordability covenants will remain in effect for not less than the agreed upon term regardless of the date upon which the HCD loan is fully repaid if that date occurs prior to the expiration of the covenant. Said covenant shall be in a form approved by the County.
10. The borrower shall submit for review and approval by HCD by-laws and articles of incorporation as well as a Board of Director's resolution authorizing the loan.
 11. The borrower shall submit for HCD review and approval executed commitments and loan documents for all sources of financing in amounts and with terms consistent with the Financial Pro Forma -----.
 12. The borrower shall submit for HCD review and approval the construction drawings, as approved by the City of -----. HCD will have the right to review and approve all material changes to the construction drawings.
 13. If applicable, the borrower shall submit for review and approval by HCD all service contracts budgeted in the development costs. No disbursements will be processed for services whose contracts were not approved in advance and/or which are not in compliance with the budget submitted to HCD
 14. The borrower shall submit a management plan for review and approval by HCD. HCD will have the right to review, approve, and require changes to the property management plan, operation of the building, and property management entity in order to preserve the affordability, physical appearance and condition of the project, during the fifty (55) years of the covenant.
 15. A Phase I environmental assessment dated ----- has been reviewed and approved by the County. No funds shall be disbursed until an updated environmental clearance showing no material changes to the environmental condition to the property has been received and approved by the County.
 16. The borrower shall submit within sixty (60) days after issuance of the Certificate of Occupancy a certified statement setting forth a complete breakdown of the development costs with supporting documentation.
 17. The borrower shall comply with Davis-Bacon and State Prevailing Wage requirements, if applicable.
 18. HCD may subordinate its security to approved construction and permanent financing. Any changes to subordination amount or position on title require approval prior to funding.
 19. The borrower and HCD agree to comply with the requirements of Article XXXIV of the California Constitution as applicable.
 20. HCD will specify in the County loan documents events which will cause HCD to declare the borrower in default. These events include, but are not limited to, development or operational cost overruns, breach of rent covenants, failure to maintain the property, failure to make agreed upon loan repayments, breach of affirmative action, equal opportunity and MBE/WBE requirements, failure to abide by prevailing wage requirements if applicable, failure to maintain appropriate insurance coverage, failure to abide by development and/or construction schedules, bankruptcy, and dissolution or insolvency of the borrower or general partner or borrower's partnership.
 21. The loan is subject to the total development cost and, specifically, the developer fee and contractor's overhead and profit, not differing by more than 5% from the amount indicated in the Development Cost Schedule.

22. Prior to the commencement of any construction of the project, Borrower shall deliver to County a complete copy of the executed construction contract
23. The construction contract(s) shall be awarded pursuant to a negotiated bid. HCD shall approve the final construction cost breakdown, the construction contract, and the contractor. HCD will have the right to review any change orders related to the construction of the project.
24. Prior to the commencement of any construction of the project, Borrower shall deliver to County copies of performance and payment bonds for such construction.
25. The borrower agrees to comply with and complete all mitigation measures and requirements identified in the Environmental Assessment and the National Environmental Protection Act (NEPA) process.

The parties intend that the County shall only be obligated to fund the subject loan and project based vouchers when: (i) all of the matters set forth in this commitment letter have been satisfied, completed or waived, (ii) the borrower has satisfied all of the conditions to closing set forth in the County's loan documents, and (iii) the borrower has executed and delivered, in recordable form, the County's standard form loan documents in a form acceptable to the County.

Notwithstanding any other provision of this commitment letter, in the event that the County is unable to provide the Loan due to a requirement by the State of California or HUD to transfer all, or a portion, of the County's Housing Successor Agency Fund or other County housing funds, to the State's general fund or HUD, the Borrower and the County agree and acknowledge that this letter shall be terminated and the County or the Orange County Housing Successor Agency, as applicable, shall have no obligation to make the Loan and shall be released by Borrower from all further liability pertaining thereto.

Please acknowledge your consent to the terms and conditions of this letter by signing and returning the original to HCD at 1501 E St. Andrew Place, Santa Ana CA, 92705

Sincerely,

Director

Partnership, LLC consents to the terms and conditions set forth in this letter.

By: _____
Name

Title

Date

By: _____
Name

Title

Date

Attachment: County of Orange Agenda Staff Report (ASR) – -----