

HOUSING DEVELOPMENT PARTNERS OF SAN DIEGO
A California Nonprofit Public Benefit Corporation

July 18, 2017

Via Overnight Mail

Lucy Vang
California Tax Credit Allocation Committee
915 Capitol Mall, Room 485
Sacramento, CA 95814

Re: San Diego Square (CA-14-871)
Regulatory Agreement and Lease Rider

Dear Ms. Vang:

Enclosed please find the original and recorded Regulatory Agreement and the original and recorded Lease Rider for the above reference project. Also included is the cashier's check for the monitoring fee and additional reservation fee.

If you have any questions, please feel free to contact me at 619-269-4632 or ejacobs@hdpartners.org.

Best regards,



Emily S. Jacobs
Vice President

cc: Mary Carlson, City of San Diego (with attachments)
Jennifer Marks, Boston Capital (with attachments)
Chris White and Anita Chern, SK Management (with attachments)
Gina Ferguson, TCAC (letter only)

PURPOSE/REMITTER: TCAC MONITORING FEE/ADDITIONAL RESERVATION FEE



CASHIER'S CHECK

No. 4618511928

90-3582
1222

DATE: JULY 17, 2017

PAY SIXTY THREE THOUSAND FIVE HUNDRED FIFTY DOLLARS AND 00 CENTS

TO THE ORDER OF: CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

\$ 63,550.00

Location: 4618 San Diego Main

U.S. Bank National Association
Minneapolis, MN 55480

NON NEGOTIABLE

AUTHORIZED SIGNATURE

HARLAND CLARKE 20745 (01/13) 70003239



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AUTHORIZED SIGNATURE

⑈4618511928⑈ ⑆122235821⑆153410023953⑈

Details on Back

Security Features Included

Free recording in accordance with
California Government Code
Section 27383

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

California Tax Credit Allocation Committee
915 Capitol Mall, Rm 485
Sacramento, CA 95814

DOC# 2017-0320788



Jul 17, 2017 11:19 AM
OFFICIAL RECORDS
Ernest J. Dronenburg, Jr.,
SAN DIEGO COUNTY RECORDER
FEES: \$0.00

PAGES: 20

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

**LEASE RIDER AND
AGREEMENT (TAX CREDITS)**
Ground Lease

TCAC NUMBER CA-CA-14-871
San Diego Square

THIS LEASE RIDER AND ESTOPPEL AGREEMENT (the "Lease Rider Agreement") is dated this *6th* day of *July*, 2017, and is made and entered into for reference purposes only, by and among City of San Diego, a California municipal corporation (the "Lessor"), HDP Broadway, L.P., a California limited partnership (the "Lessee"), and the California Tax Credit Allocation Committee, a public agency of the State of California established under Section 50199.8 of the Health and Safety Code ("TCAC") in consideration of the following facts and circumstances:

- A. Lessor is the fee simple owner of that certain real property described in Exhibit A attached hereto and incorporated herein (the "Property");
- B. Lessor and Lessee entered into the following ground lease of the Property: that certain 65-year Percentage Ground Lease, which is on file with the Lessor as a public record and a memorandum of which was recorded in the official records of San Diego County, California, as Instrument No. November 25, 2014 (the "Memorandum of Lease") and as amended by that certain First Amendment to Percentage Ground Lease dated effective as of April 1, 2014, that certain Second Amendment to Percentage Ground Lease dated effective as of November 20, 2014, and that certain Addendum, Assignment, Assumption and Lessor Consent, Estoppel and Nondisturbance Agreement dated effective as of November 25, 2014 (the "Lease");
- C. Pursuant to the Lease, Lessee has a leasehold interest in the Property and agreed to develop, acquire, refinance, construct, rehabilitate, own, operate and manage a rental housing development on the Property consisting of not less than 155 residential rental units and nonresidential space(s) approved by TCAC. During the Term of the Lease, Lessee is the owner of the fee interest in all of those certain buildings, improvements and fixtures now or hereafter erected thereon, and all appurtenances, easements, and articles

of property now or hereafter affixed to, placed upon or used in connection with such real property and owned by Lessee or in which Lessee has an interest, together with all additions to, substitutions for, changes in our replacements of the whole or any part of said articles of property (collectively, the "Improvements"). Collectively, the Property and the Improvements are hereinafter sometimes referred to as the Development (the "Development");

D. TCAC has authorized an allocation of federal low-income housing tax credits by a Reservation Letter dated August 20, 2014 (the "Allocation") to Lessee to finance, in part, the Development, pursuant to the Low Income Housing Tax Credit Program ("Program"). The Allocation is subject to numerous terms and conditions, including without limitation, the execution and delivery of this Lease Rider Agreement and the TCAC Regulatory Agreement which sets forth certain use restrictions affecting the Development, which TCAC Regulatory Agreement is to be recorded in San Diego County, as required by Section 42 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (collectively, "Section 42");

E. As a further condition of the Allocation and pursuant to the requirements of the Program, Lessee and TCAC will have entered into a Regulatory Agreement, including any amendments thereto (the "Regulatory Agreement"), securing performance related to the Allocation, and governing the use, occupancy, operation, management and ownership of the Development. Consistent with the provisions of Section 17 hereof, Lessor and Lessee hereby waive any such provisions of the Lease in conflict with or which would frustrate Lessee's compliance with the Regulatory Agreement in favor of the terms of the Regulatory Agreement.

F. Lessee has requested that TCAC accept the Lease as an encumbrance on the Property in relation to the Regulatory Agreement and the Allocation. In order to induce TCAC to make the Allocation, Lessor and Lessee have agreed to enter into and record this Lease Rider Agreement for the benefit of TCAC, its successors, and assigns.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants hereinafter contained, TCAC, Lessee and Lessor hereby agree as follows:

1. Leasehold. As used herein, "Leasehold" means all of Lessee's interest in the Property described in Exhibit A, in the Development, in the Improvements now or hereafter located on the Property during the Term of the Lease, all options contained in the Lease or granted in connection with the Lease, all other rights of Lessee under the Lease, and all subleases ("the Subleases") entered into in connection with the Lease.

2. Representations and Warranties of Lessor and Lessee. Lessor and Lessee hereby represent and warrant to TCAC as of the date of this Lease Rider Agreement as follows:

a. Title. Lessor warrants and represents to TCAC that Lessor's fee interest in the Development is free and clear of all liens, encumbrances, covenants, easements, licenses, judgments, or other matters of record except those shown as affecting the fee interest of the Property in that certain Policy of Title Insurance Preliminary

Report regarding the Property issued on November 22, 2016 by Chicago Title Company , Order # 73716015310 (the "Report"). Lessor has not required or permitted, and has no knowledge of any other matters of record to be recorded that are not contained in the Report.

b. Priority. Lessor warrants and represents to TCAC that except as otherwise referenced in the Report, the Lease is superior to any and all mortgage liens on the Property and nothing encumbers fee title of the Property which would interfere with Lessee's ability to construct and operate the Development on the Property.

c. Transfers by Lessor. Lessor warrants and represents that it has not assigned, mortgaged, or otherwise hypothecated or transferred, or agreed to assign, mortgage or otherwise hypothecate or transfer, its interest in the Property and the Development in whole or in part, except as referenced in the Report and except as security for any loans or any other liens, conditions, covenants, or restrictions on the Property or with regard to the Development identified in the Report and approved in writing by TCAC.

d. Lessee's Lease. Lessee warrants and represents that it will provide TCAC with a copy of the Lease which is subject to TCAC approval prior to execution of this Lease Rider Agreement.

e. Status of Lease. As of the date hereof:

(1) Lessor is the current Lessor under the Lease. To the best of Lessor's knowledge and except as otherwise disclosed to TCAC and the City, the Lease is in full force, the Lease is not void, voidable or terminable at the option of any party thereto or of any other person or entity claiming an interest in or to such Lease or the Development, and there has been no default thereunder on the part of Lessee, nor has any event occurred which, with the giving of notice or the passage of time, or both, would be an event of default thereunder. Lessor has not given notice of any violation under the Lease to Lessee. Lessor has not been informed of and has not otherwise received notice from Lessee or from any other person or entity concerning any alleged default on the part of Lessor under the Lease. There exist no defenses or offsets to enforcement of the Lease by Lessee.

(2) Any consent or approval of any third party (including any lender or government agency) that is required in order for Lessor to deliver this Lease Rider Agreement has been obtained.

(3) To the best of Lessor's knowledge, no alterations, improvements or additions now exist on the Property that have not been approved by the Lessor.

f. Other Agreements. All terms and conditions of the Lessee's tenancy under the Lease are set forth in the Lease and there have been no further or other

supplements, amendments, modifications or extensions thereof except those submitted to and approved by TCAC.

g. Lease Term. The Commencement Date of the Lease Term is November 25, 2014, and the Lease Term will end on November 30, 2079. All conditions precedent to the effectiveness of the Lease or the exercise of any of Lessee's rights thereunder as of the Effective Date of the Lease have been fully satisfied.

h. Development. To the best of Lessor's knowledge, the Development constructed, or to be constructed, by Lessee on the Property satisfies or is expected to satisfy all requirements affecting the design, use or characteristics of such Development imposed by Lessor under the Lease or otherwise, including a requirement by Lessor for Lessee to comply with any and all applicable provisions of federal, state and local laws, and all agreements with any public entities concerning the Development, as amended from time to time.

i. Insurance. All notices, certificates, binders, endorsements, copies of policies, and receipts required under the Lease have been delivered to and approved by Lessor.

i. Knowledge. For the purposes of this Lease Rider Agreement, if Lessor is a corporate or governmental entity, the obligation to assert facts related to the "Lessor's knowledge" shall include a duty [for the chief executive of the agency or corporation] to perform or otherwise be responsible for pursuit of reasonably diligent efforts to ascertain the existence or nonexistence of the facts asserted, contemporaneous to the assertion.

j. The holders of all mortgage liens set forth in the Report and all successors and assigns thereof including the holders of any mortgage lien against the Improvements or Lessee's interest in the Leasehold are collectively referred to as "Senior Lenders".

3. Cancellation, Transfer of Interest.

a. Subject to matters of record referenced in the Report and only to the extent necessary or appropriate pursuant to such matters of record, Lessor and Lessee agree that so long as TCAC, its successor or assigns holds the Regulatory Agreement encumbering the Development, no termination of the Lease or efforts by Lessor to terminate the Lease except a termination consistent with Section 5, and no subordination, cancellation, surrender, amendment or modification of the Lease shall be effective without the prior written consent of TCAC, which consent shall be in TCAC's sole and reasonable discretion, and may be conditioned upon the satisfaction of such terms and conditions as TCAC may reasonably prescribe. TCAC shall have 30 days after its receipt of such a notice and any clarifications thereof requested by TCAC to consent or deny any such variation from those obligations. Failure by TCAC to act within such a 30-day period shall constitute consent to such a variation. Any attempt by Lessee to take such action shall be void without TCAC's prior written consent.

b. Subject to matters of record referenced in the Report and only to the extent necessary or appropriate pursuant to such matters of record, Lessor agrees that it shall not transfer, convey, sell, hypothecate, assign, encumber or permit any liens against its interest, or any portion thereof, in the Property or the Development unless Lessor requires, and any purchaser, assignee, or transferee agrees, that the purchaser, assignee, or transferee will expressly assume all obligations of Lessor under the Lease and this Lease Rider Agreement by a written instrument recordable in the Official Records. Any variation from those obligations shall require prior written approval of TCAC, which consent shall be in TCAC's sole and absolute discretion, and may be conditioned upon the satisfaction of such terms and conditions as TCAC may prescribe. Lessor or Lessor's successors and assigns shall provide TCAC with copies of all documents related to the transfer, conveyance, sale, hypothecation, assignment, encumbrance or lien at least 30 days prior to the effective date of that transaction and TCAC shall have 30 days after its receipt to reasonably consent or deny any such variation from those obligations. Failure by TCAC to act within such a 30-day period shall constitute consent to such a variation.

c. Bankruptcy. Neither the Lessor nor the Lessee, in the event of bankruptcy by either, shall take the benefit of any provisions in the United States Bankruptcy Code that would cause the termination of the Lease or otherwise render it unenforceable in accordance with its terms.

d. No Merger. There shall be no merger of the Lease or any interest in the Lease, nor of the Leasehold interest, with the fee estate in the Property if the Lease or such interest therein, or such Leasehold estate may be directly or indirectly held by or for the account of any person who shall hold the fee estate in the Property, or any interest in such fee estate, nor shall there be such a merger by reason of the fact that all or any part of the Leasehold estate created thereby may be conveyed or mortgaged in a leasehold mortgage, deed of trust, or other security instrument to a leasehold mortgagee that shall hold the fee estate in the Development or any interest of the Lessor under the Lease.

4. Consent to Assignment, Payment of Rent.

a. Subject to any matters of record as referenced in the Report, Lessor hereby consents to and approves the following to the extent such consents or approvals are required under the Lease:

(1) Lessee's encumbering the Lease, the Leasehold and the Development by the Regulatory Agreement; possession of the Property and any Development thereon by TCAC or by a receiver under the Regulatory Agreement; and sale of the Leasehold and the Development pursuant to a court order or other agreement enforcing the Regulatory Agreement;

(2) Assignments to TCAC or its designee of any subleases and any and all rents from such subleases; and

(3) Sale or assignment of all or any part of any interest in the Leasehold to any purchaser or transferee pursuant to a court order or other agreement enforcing the Regulatory Agreement (such purchaser or transferee, including TCAC, is collectively referred to as the "Transferee"), and to subsequent transfers without restriction (all such assignments, transfers, and subsequent transfers referred to in this Lease Rider Agreement as the "Transfer").

b. Nothing in this Lease Rider Agreement, in the Regulatory Agreement or in the Lease shall impose on TCAC the obligations of Lessee under the Lease or require TCAC to assume the Lease unless TCAC takes possession or ownership pursuant to a court order or other agreement under the Regulatory Agreement. This Lease Rider Agreement remains in effect until the Regulatory Agreement expires or is terminated.

5. Notice of Defaults; Termination Notice.

a. Notice and Cure. Lessor shall provide simultaneously to TCAC a written copy of all notices and demands, including, without limitation, notices of default or breach which Lessor has given, delivered or sent to Lessee under the Lease. No notice or demand under the Lease shall be effective unless and until a copy of such notice is provided to TCAC as provided herein. Any notice of default under the Lease or this Lease Rider Agreement shall describe the default(s) with reasonable detail. TCAC shall have the right, but not the obligation, to cure any breach or default within the time period given in the Lease; provided that, if such notice to TCAC is not given or is delayed for any reason, the period of time within which TCAC may cure any such breach or default shall commence upon receipt by TCAC of such notice. Lessor and Lessee authorize TCAC to enter the Development after reasonable written notice or pursuant to a court order for the purpose of mitigating defaults or exercising its right to cure and any other powers given TCAC under the Regulatory Agreement, this Lease Rider Agreement or the Lease.

b. Termination Notice. After the expiration of the grace period given Lessee under the Lease to cure the default, Lessor shall not terminate the Lease on account of such default but shall give TCAC a written notice (the "Termination Notice") that Lessee has failed to cure the default within the grace period and that, on account thereof, Lessor intends to terminate the Lease, which notice shall set a termination date not earlier than ninety (90) days after TCAC's receipt of the Termination Notice, provided that Lessor agrees to extend such termination date if TCAC reasonably requires additional time to accommodate TCAC's taking possession of the Development where possession is necessary to cure Lessee's default. No Termination Notice shall be effective to terminate the Lease if:

(1) Except as provided in section 5.c., within ninety (90) days after receipt of the Termination Notice, TCAC cures any default which can be cured by payment or expenditure of money or without possession of the Development; or provides reasonable assurance and undertakings for the cure of such

default. To effect a cure of Lessee's default, TCAC may, subject to the rights of all Senior Lenders, make any repair or improvement, do any other act or thing required of Lessee under the Lease, or do any act or thing which may be necessary or proper to prevent termination of the Lease. TCAC and its agents and contractors shall have full access to the Development for purposes of accomplishing the curing of defaults under the Lease. Any of the foregoing done by TCAC shall be as effective to prevent a termination of the Lease as the same would have been if done by Lessee; or

(2) TCAC commences and diligently pursues judicial and/or administrative proceedings commenced under the Regulatory Agreement to cure a default.

If TCAC has not cured such a default upon the expiration of such Termination Notice, and subject to compliance with other provisions of this Paragraph 5.b., Lessor may terminate the Lease and pursue such other remedies as are available under the terms of the Lease.

c. Defaults Not Susceptible to TCAC Cure. TCAC shall not be required to perform any act which is not susceptible to performance by TCAC, such as to cure a filing or condition of bankruptcy or insolvency or to cure or commence the cure of any default which is Lessee's failure to pay or comply with any lien, charge or encumbrance which is junior in priority to the Regulatory Agreement, or to pay any amount owed under an indemnity of Lessor by Lessee based on an event occurring prior to TCAC's possession of the Development.

d. Reimbursement of Lessor's Payment of Arrears. Lessor agrees that if Lessor cures Lessee's failure to make any payment due under the Lease or any loan identified in Section 2.a., it shall seek reimbursement of amounts so paid solely from Lessee and TCAC shall have no obligation to pay such amounts to Lessor.

e. Waiver of Breach or Default. On transfer of the Leasehold interest pursuant to a court order or other agreement enforcing the Regulatory Agreement, all violations, defaults and breaches by Lessee under the Lease, including, without limitation, nonpayment of rent or other amounts payable under the Lease, shall be deemed personal obligations of Lessee, and TCAC or other Transferee shall be entitled to the New Lease as described in section 6 below without incurring or assuming any liability or obligation of, or claim against, Lessee under the Lease. Nothing in this section shall be deemed a waiver of any claim by Lessor against Lessee under the Lease.

f. Enforcement Not a Breach. Any action taken by TCAC to enforce its rights under this Lease Rider Agreement with respect to Lessee with respect to any of the documents governing the Allocation including, without limitation, any actions taken to collect any amounts due and owing to TCAC or any action to appoint a receiver for the Development or to otherwise ensure compliance with the Regulatory Agreement, shall not constitute or result in a breach or violation of the Lease.

g. Status Quo Ante. Any default by Lessee shall not prejudice TCAC if TCAC chooses to cure such default within the applicable grace period specified by this Lease Rider Agreement or the Lease, and Lessor acknowledges and agrees that upon TCAC's cure of any such default, the Lease shall be restored status quo ante.

6. New Lease.

a. Conditions. Section 5 hereof notwithstanding, and subject to the rights of Senior Lenders, Lessor agrees to comply with the requirements of subsection 6.b. if the following conditions specified in this subsection 6.a. apply:

(1) The Lease is terminated for any reason whatsoever or if TCAC acquires possession or ownership as a result of enforcing its Remedies authorized by the Regulatory Agreement; and

(2) TCAC or other Transferee, whether or not such party has assumed the Lease, requests Lessor in writing pursuant to Section 6.b. to enter into a new lease of the Property within ninety (90) days after TCAC or the transferee takes possession or ownership as a result of a court order or other agreement under the Regulatory Agreement, or the end of the cure period provided to TCAC in the Termination Notice (the "New Lease").

b. Obligations. If the conditions specified in section 6.a. have been satisfied, [and subject to the provisions of matters of record as referenced in the Report and the rights of Senior Lenders,] Lessor shall:

(1) upon receipt of the request for New Lease described in subsection 6.a.(2) above, enter into a New Lease of the Property with TCAC, its nominee, or its successor-in-interest or other Transferee, for the remainder of the term of the Lease, effective as of the date of the termination or conveyance pursuant to a court order or other agreement under the Regulatory Agreement. The New Lease shall be at the rent of, and consistent with the terms, provisions, covenants, options and agreements contained in the terminated or original Lease, [as amended,] or granted by the Lessor in connection with the Lease, all as modified or supplemented by this Lease Rider Agreement;

(2) convey to TCAC, its nominee or its successor-in-interest or other Transferee, all title and interest to the improvements encumbered by the Regulatory Agreement, if any, which may become or has become vested in Lessor as a result of any termination of the Lease or conveyance by court order or other agreement under the Regulatory Agreement, so long as the New Lease contains provisions that require TCAC, its nominee, or its successor-in-interest or other Transferee to reconvey by grant deed all title and interest conveyed by Lessor's grant deed in the Improvements at the termination of the term of the New Lease;

(3) assign to TCAC, its nominee, or its successor-in-interest or other Transferee, all of Lessor's interest, if any, in all existing subleases of all or any part of the Development and all attornments given by the sublessees.

c. Priority. The Leasehold estate and any other interest (if any) in the Development granted to TCAC, its nominee or its successor-in-interest under this section 6 shall be prior to any mortgage or other lien, charge or encumbrance on the Development, except for the liens of Senior Lenders or as approved in writing by TCAC or as referenced in the Report.

7. Successors to TCAC. Subject to section 4 hereof, if the Leasehold is transferred pursuant to a court order or other agreement enforcing the Regulatory Agreement, Lessor shall recognize the Transferee as the tenant under the Lease, subject to the liens of Senior Lenders. Anything in the Lease notwithstanding, the rights and benefits of TCAC under this Lease Rider Agreement shall benefit and may be exercised by any Transferee or by the holder of any mortgage or deed of trust which may be given to secure a portion of the purchase price in any sale by TCAC or its successor(s) after TCAC acquires the Leasehold interest or enters into a New Lease under this Lease Rider Agreement.

8. Diligence of TCAC. So long as TCAC is prevented by any process or injunction issued by any court or by any statutory stay, or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Lessor or Lessee, from commencing or prosecuting its remedies under the Regulatory Agreement or other appropriate proceedings in the nature thereof, or undertaking or completing any of TCAC's rights or remedies under the Lease or this Lease Rider Agreement, TCAC shall not be deemed for that reason to have failed to commence such proceedings or to have failed to prosecute diligently such proceedings, provided, however, that TCAC shall use reasonable efforts to contest and appeal the issuance or continuance of any such process, stay or injunction.

9. Certificates.

(a) Certificate by Lessor. Within fifteen (15) calendar days after written request made by TCAC, Lessor shall execute and deliver to TCAC, or to any proposed purchaser, transferee, or encumbrancer of Lessee's leasehold interest, a certificate declaring (i) the existence and validity of the Lease, or New Lease as the case may be, and amendments thereto, if any, and that it remains in full force and effect; (ii) that all conditions under the Lease, or New Lease, have been satisfied, and that there are no defaults under the Lease or New Lease, or if there has been a default under the Lease or New Lease, a description of the nature of such default; (iii) any other information relating to the condition of the Leasehold reasonably requested by TCAC; (iv) any other information to the best of Lessor's knowledge relating to the condition of the Property reasonably requested by TCAC; and v) that Lessor understands the recipient will rely on the certificate and that the Lessor will describe in reasonable detail any exceptions to the foregoing statements.

(b) Certificate by Lessee. Within fifteen (15) calendar days after written request made by TCAC, Lessee shall execute and deliver to TCAC, or to any proposed purchaser, transferee, or encumbrancer of Lessee's leasehold interest, a certificate declaring (i) the existence and validity of the Lease, or New Lease as the case may be, and amendments thereto, if any, and that it remains in full force and effect; (ii) that all conditions under the Lease, or New Lease, have been satisfied, and that there are no defaults under the Lease or New Lease, or if there has been a default under the Lease or New Lease, a description of the nature of such default; (iii) any other information relating to the condition of the Leasehold reasonably requested by TCAC; (iv) that Lessee understands the recipient will rely on the certificate and that the Lessee will describe in reasonable detail any exceptions to the foregoing statements.

10. Notices. Notices and other communications required by this Lease Rider Agreement shall be delivered by messenger to the addresses provided below or sent by U.S Postal Service certified mail, return receipt requested, postage prepaid, addressed as follows:

To TCAC: California Tax Credit Allocation Committee
915 Capitol Mall, Room 485
Sacramento, CA 95814
Attn. Executive Director

To Lessor: City of San Diego
Attn: Director, Real Estate Assets
1200 Third Ave, Suite 1700
San Diego, CA 92101

To Lessee: HDP Broadway, L.P.
c/o Housing Development Partners of San Diego
1100 Broadway Street
San Diego, CA 92101

With a copy to:

Boston Capital
One Boston Place, 21st Floor
Boston, MA 02108
Attn: San Diego Square - Asset Management

These addresses may be changed by a notice given in the same manner provided that Lessor acknowledges and agrees that it shall have a duty to verify the addresses provided herein. Notices shall be effective on receipt.

11. TCAC's Rights Against Lessee. Nothing in this Lease Rider Agreement shall limit or restrict TCAC's rights and remedies under the Regulatory Agreement, or any other agreement between TCAC and Lessee.

12. Successors and Assigns. This Lease Rider Agreement shall inure to the benefit of and bind the successors and assigns of TCAC, Lessor and Lessee.

13. Uninsured Hazard. Lessor agrees that neither TCAC nor any person acquiring the Development, or a portion of the Leasehold pursuant to a court order or other agreement enforcing the Regulatory Agreement, nor the lessee under a New Lease pursuant to section 6 hereof, nor any successive owner of a portion of the Leasehold after such transfer or New Lease shall have any obligation hereunder or under the Lease or New Lease to repair or reconstruct any damage or loss to the Development which is due to a hazard not required to be covered by insurance under the Lease or New Lease.

14. Duty to Repair. Lessor agrees that if TCAC, its nominee, or its successor-in-interest succeeds to Lessee's leasehold interest in the Property and if the Development on the Property shall have been or becomes materially damaged before or after the date of such acquisition, TCAC's, its nominee's, or its successor-in-interest's obligation, if any, to repair, replace or reconstruct the Development shall in any such event be limited to the greater of: i) the amount of the net insurance proceeds received by TCAC, its nominee, or its successor-in-interest by reason of that damage or ii) the amount TCAC, its nominee, or its successor-in-interest would be entitled to if in compliance with the minimum insurance requirements of Lessee under the Lease.

15. Options. In the event TCAC becomes the Transferee pursuant to the terms of this Agreement, Lessor and Lessee agree that TCAC or its successor-in-interest or other Transferee may exercise any option to extend the term of the Lease or New Lease or to purchase any interest in the Property which is granted to Lessee under or in connection with the Lease or the New Lease.

16. Limitation on Liability. If TCAC agrees to be bound by the terms of the Lease, or in the event of any Transfer to a Transferee, unless so ordered by a court or as agreed to by TCAC, any Transferee, and any secured creditors, neither TCAC nor Transferee shall have any obligation under the Lease or the New Lease with respect to any liabilities, obligations, losses, damages, fines, penalties, claims, demands, suits, actions, causes of actions, charges, judgments, costs, and expenses (including architects' and attorneys' fees and court costs) arising out of or resulting from acts, omissions, circumstances or events occurring before or existing at the time of such Transfer or TCAC's agreement to be bound by the Lease or the New Lease except for matters of record identified in the Report at the time of execution of this Lease Rider Agreement. Nothing in this Lease Rider Agreement or in the Lease or New Lease shall impose on TCAC any liability to perform the obligations of Lessee under the Lease or New Lease or require TCAC to assume the Lease or New Lease unless and until TCAC acquires Lessee's leasehold rights pursuant to a court order or other agreement enforcing the Regulatory Agreement. After acquiring Lessee's leasehold rights in such a manner, TCAC shall be liable to perform Lessee's obligations only until TCAC assigns or transfers the Leasehold. TCAC shall not, however, be required

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

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Salramento)On June 9, 2017 before me, B. Trost Notary Public
Date Here Insert Name and Title of the Officerpersonally appeared Anthony Zeto
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: _____

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

Signer Is Representing: _____

Signer's Name: _____

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

Signer Is Representing: _____

to cure Lessee's defaults occurring before TCAC's acquisition of Lessee's rights in such a manner.

17. Conflict With Lease. The provisions herein are intended to be supplementary to, and not in derogation of, the parties' rights and obligations contained in the Lease (including all of TCAC's rights under the Lease as a party with a recorded encumbrance). In the event of any conflict or inconsistency between the terms of the Lease and the terms of this Lease Rider Agreement the terms of this Lease Rider Agreement shall govern and control, and the Lease shall be deemed to be modified hereby. Notwithstanding the foregoing, nothing contained herein shall affect the rights of Senior Lenders, nor shall anything contained herein subordinate the lien of any Senior Lender to any rights of TCAC hereunder.

18. Regulatory Agreement Remedies. Nothing in this Lease Rider Agreement is intended to create enforcement rights under the Regulatory Agreement that do not otherwise exist in the Regulatory Agreement.

19. Calendar Days. All references to "days" will mean calendar days.

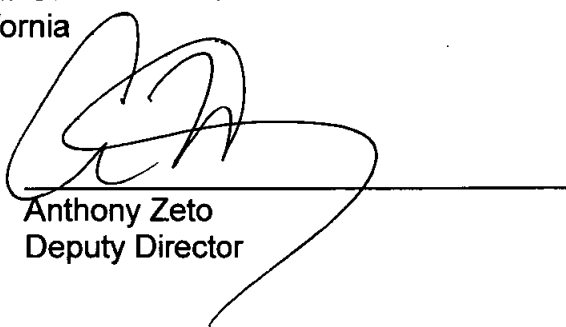
20. In all cases, the City shall be given the opportunity and the right to comply with its Charter Section 225 obligations.

20. Acknowledgment. Lessor and Lessee acknowledge that TCAC is relying on the foregoing representations, warranties, covenants and agreements of the undersigned in allocating the allocation of low income housing tax credits to Lessee, and warrants and affirms to and for the benefit of TCAC that each of those representations is true, correct and complete as of this date.

TCAC:

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE, a public agency of the State of California

BY:



Anthony Zeto
Deputy Director

LESSEE:

HDP Broadway, L.P.,
a California limited partnership

By: HDP Broadway Management, LLC,
a California limited liability company,
its Managing General Partner

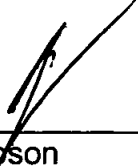
By: Housing Development Partners of San Diego, a
California nonprofit public benefit corporation, its
Managing Member

By:


for Emily Jacobs
Vice President

LESSOR:

THE CITY OF SAN DIEGO, a California municipal corporation

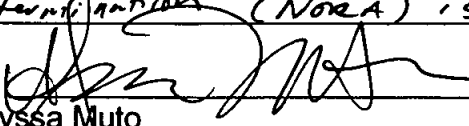
BY:  _____

Cybele Thompson
Director, Real Estate Assets

San Diego City Council Authorization Resolution No. 311161
Date of Final Passage: 6/15/2017

Environmental Analysis Section Environmental Clearance:

The determination that this is not subject to CEQA
pursuant to Section 15060(e)(3); is not appealable
and a Notice of Right to Appeal The Environmental
Determination (NORA) is not required.

BY:  6/30/17

Alyssa Muto
Deputy Director, Environmental & Policy Analysis
Planning Department

Approved as to form this 6th day of
July, 2017.

MARA W. ELLIOTT, City Attorney

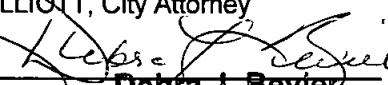
BY: 
Name: Debra J. Bevier
Title: Deputy City Attorney

EXHIBIT A
Legal Description

LOTS A, B, C, D, E, F, G, H, I, J, K AND L IN BLOCK 31 OF HORTON'S ADDITION, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY L.L. LOCKLING FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

EXCLUDING ALL BUILDINGS AND IMPROVEMENTS THEREON.

June 6th 2017

(R-2017-603) #100

RESOLUTION NUMBER R- 311161

DATE OF FINAL PASSAGE JUN 15 2017

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE MAYOR, OR HIS DESIGNEE, TO EXECUTE THAT CERTAIN LEASE RIDER AND ESTOPPEL AGREEMENT BETWEEN THE CITY OF SAN DIEGO, HDP BROADWAY, LP, AND THE CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE, WHICH, BY ITS TERMS, AMENDS THE EXISTING GROUND LEASE BETWEEN THE CITY OF SAN DIEGO AND HDP BROADWAY, LP, IN FAVOR OF THE CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE.

WHEREAS, the City of San Diego (City) owns that certain real property, consisting of approximately 60,000 square feet, bordered by 9th Avenue, 10th Avenue, C Street, and Broadway, located within the City of San Diego (the City's Property); and

WHEREAS, the City's Property is subject to a 65-year ground lease (Ground Lease), between the City of San Diego and HDP Broadway, LP, a California limited partnership (HDP), the current lessee, on file in the Office of the City Clerk as Document No. RR-308156; 62 years remain on the Ground Lease's term; and

WHEREAS, the California Tax Credit Allocation Committee (TCAC) is a public agency of the State of California; TCAC authorized an allocation of federal low-income housing tax credits to HDP (the Allocation) to finance the further development of the City's Property, pursuant to the Low Income Housing Tax Credit Program; and

WHEREAS, the Allocation is subject to numerous terms and conditions, including the requirement that HDP and City enter into that certain Lease Rider and Estoppel Agreement (Rider); and

WHEREAS, the Rider is an encumbrance on the development on the City's Property in favor of TCAC and requires that its provisions supersede provisions within the Ground Lease that conflict with the Rider; and

WHEREAS, execution of the Rider equates to amending the Ground Lease because certain provisions within the Rider conflict with the provisions of the Ground Lease (including those provisions related to lenders' rights, noticing, and consent requirements), thus necessitating the Council authorization before the Mayor, or his designee, can execute the Rider; NOW, THEREFORE,

BE IT RESOLVED, that the Mayor, or his designee, is authorized and directed to execute that certain Lease Rider and Estoppel Agreement between the City of San Diego, HDP Broadway, LP, and the California Tax Credit Allocation Committee, the terms and conditions of which are more fully set forth in Document No. RR 311161, which is on file in the Office of the City Clerk.

APPROVED: MARA W. ELLIOTT, City Attorney

By


Debra J. Bevier
Deputy City Attorney

DJB:mcm

May 18, 2017

Or.Dept: Real Estate Assets Depart.

Doc. No.: 1507121

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUN 06 2017.

ELIZABETH S. MALAND

City Clerk

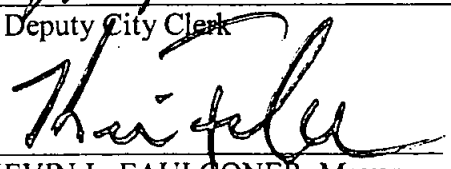
By


Deputy City Clerk

Approved:

6/15/17

(date)


KEVIN L. FAULCONER, Mayor

Vetoed:

(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on JUN 06 2017, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	☒	☐	☐	☐
Lorie Zapf	☒	☐	☐	☐
Chris Ward	☒	☐	☐	☐
Myrtle Cole	☒	☐	☐	☐
Mark Kersey	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Scott Sherman	☒	☐	☐	☐
David Alvarez	☒	☐	☐	☐
Georgette Gomez	☒	☐	☐	☐

Date of final passage JUN 15 2017

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

(Seal)

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By , Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 311161

DOC# 2017-0320789



Recording requested by and
when recorded mail to:

Tax Credit Allocation Committee
915 Capitol Mall, Room 485
P.O. Box 942809
Sacramento, CA 94209-0001

Jul 17, 2017 11:19 AM
OFFICIAL RECORDS
Ernest J. Dronenburg, Jr.,
SAN DIEGO COUNTY RECORDER
FEES: \$0.00

PAGES: 13

Free Recording Requested
In Accordance With
Government Code 27383

Space above this line
for Recorder's use

REGULATORY AGREEMENT

Federal Credits

Tax-Exempt Bond Financed Project
(Ground Lease)

This Regulatory Agreement (this "Agreement") is made between the California Tax Credit Allocation Committee ("TCAC"), established under Section 50199.8 of the Health and Safety Code of the State of California, and HDP Broadway, L.P. ("Owner") and is dated as of August 1, 2015 (the "Effective Date"). The Owner has requested TCAC's determination and TCAC has determined that the Project (as herein defined) satisfies the requirements of the State of California's Qualified Allocation Plan relating to the low-income housing tax credit (the "Federal Tax Credit") under Section 42 of the Internal Revenue Code of 1986. The Tax Credit relates to a multifamily rental housing project known as San Diego Square, identified in the records of TCAC by TCAC# CA-14-871 and IRS Building Identification Number CA-14-87101 ("the Project"), and located on the real property described in Exhibit A of this Agreement, attached hereto and incorporated herein (the "Property"). Owner is the owner of a leasehold interest in the Property and the owner of a fee interest in all improvements now or hereafter during the 65-year term of the ground lease between the City of San Diego and HDP Broadway, L.P. located thereon which comprises the Project; said ground lease and a TCAC-approved Lease Rider is attached hereto as Exhibit B. This Agreement is intended to constitute the extended low income housing commitment required by Section 42(h)(6) of the Internal Revenue Code. Accordingly, in consideration of the allocation relating to the Tax Credit by TCAC and the requirements of the Internal Revenue Code, the Owner and TCAC hereby agree as follows:

Section 1. Definitions.

a. Unless the context otherwise requires, capitalized terms used in this Agreement shall have the following meanings:

"Agreement" means this Regulatory Agreement between TCAC and the Owner.

"Applicable Fraction" means the smaller of the Unit Fraction or the Floor Space Fraction, all calculated in accordance with Section 42(c)(1) of the Code.

"Area Median Gross Income" means the median gross income of the area in which the Project is located as determined by the Secretary for purposes of Section 42 of the Code, including adjustments for family size.

"Assumption Agreement" shall have the meaning assigned in Section 14 hereof.

"Code" means those provisions of the Internal Revenue Code of 1986, as amended, and regulations promulgated pursuant thereto.

"Compliance Period" means the period of 30 consecutive taxable years beginning with the first taxable year of the Credit Period, or such longer period as is prescribed at Appendix A.

"Credit Period" means, with respect to the State Tax Credit, the period of four taxable years beginning with the taxable year the Project is placed in service or (at the election of the Owner) the succeeding taxable year, and with respect to the Federal Tax Credit, the period of ten taxable years beginning with the taxable year the Project is placed in service or (at the election of the Owner) the succeeding taxable year, as further provided pursuant to Section 2b hereof.

"Effective Date" means the date first set forth herein above.

"Federal Tax Credit" means the low-income housing tax credit under Section 42 of the Code.

"Floor Space Fraction" means the fraction, the numerator of which is the total floor space of the Low-Income Units in a building and the denominator of which is the total floor space of the Units in such building.

"Gross Rent" means all amounts paid by a Tenant for rent, determined in a manner consistent with Section 42(g)(2) of the Code. If the Tenant pays utilities directly, Gross Rent shall include any utility allowance prescribed by the Secretary.

"Ground Lease" means the Owner's lease of the Property upon which the Project is constructed and operated, and includes a TCAC-approved Lease Rider.

"Income" means the income of a Tenant determined in a manner consistent with the requirements of Section 142(d)(2)(B) of the Code.

"Low-Income" means, with respect to any Tenant, an income level not exceeding 50% or 60% of Area Median Gross Income, as provided in Section 4c hereof, or such alternative income level as may be set forth in Appendix A.

"Low-Income Tenant" means a Tenant who, when the Tenant originally occupied the Unit, had an Income qualifying as Low-Income. For so long as the Tenant occupies the particular Unit [or another unit in the same building], the Tenant will remain a Low-Income Tenant if the Tenant's Income, upon the most recent income certification, does not exceed 140% of Low-Income.

"Low-Income Unit" means a Unit in the Project that is occupied by a Low-Income Tenant, is Rent-Restricted and meets the other requirements of Section 42 of the Code, in particular, Section 42(i)(3).

"Minimum Amount" means the number of Units in the Project required to be Low-Income Units, which Minimum Amount for this Project is 20% or 40% of the Units, as provided in Section 4c hereof. Notwithstanding the Minimum Amount, the Applicable Fraction for this project shall be no less than that set forth at Section 4d hereof.

"Owner" means HDP Broadway, L.P. or successors.

"Project" means the residential rental housing project known as San Diego Square, TCAC# CA-14-871, and located on the real property described in Exhibit A.

"Qualified Low-Income Housing Project" means a residential rental project meeting the requirements of Section 4 hereof.

"Rent-Restricted" means, with respect to any Unit, that the Gross Rent with respect to such Unit is not more than 30% of the imputed income limitation applicable to such Unit pursuant to Section 42(g)(2)(C) of the Code, as modified by Appendix A, if applicable.

"Secretary" means the Secretary of the Treasury of the United States.

"Service" means the United States Internal Revenue Service and any successor thereto.

"State Tax Credit" means the low-income housing tax credit under the provisions of Sections 12206 17058 and 23610.5 of the Revenue and Taxation Code.

"Tax Credit" means the low-income housing tax credit under Section 42 of the Code.

"TCAC" means the Tax Credit Allocation Committee and its successor.

"TCAC Compliance Monitoring Procedures" means those procedures and requirements adopted or imposed by TCAC for the purpose of discharging its responsibilities pursuant to Section 42(m)(1)(B)(iii) of the Code to monitor compliance by the Owner and the Project with the provisions of Section 42 of the Code and notify the Service of instances of noncompliance.

"Tenant" means the individual or individuals entitled to occupy a Unit in the Project by lease or other legal relationship with the Owner.

"Unit" means any residential rental unit in the Project consisting of an accommodation containing separate and complete facilities for living, sleeping, eating, cooking, and sanitation; provided, however, that single room occupancy units used on a nontransient basis may be treated as Units.

"Unit Fraction" means the fraction, the numerator of which is the number of Low-Income Units in a building and the denominator of which is the number of Units in such building.

b. Any term or phrase which is used in this Agreement and not defined herein shall have the meaning, if any, assigned thereto in Section 42 of the Code. Any term or phrase which is defined herein shall, unless the context shall clearly indicate otherwise, be interpreted in a manner consistent with the provisions and requirements of Section 42 of the Code.

Section 2. Term.

a. This Agreement shall commence as of the Effective Date and shall terminate on the last day of the Compliance Period (the "Term"), unless earlier terminated pursuant to Section 2c hereof.

b. The Credit Period commences with respect to each building in the Project (i) the taxable year in which the building is placed in service or (ii) the succeeding taxable year, at the irrevocable election of the Owner pursuant to Section 42(f)(1)(B) of the Code. In the case of the Project, the Credit Period begins in the calendar year 20~~15~~ or as set forth at Appendix A with respect to individual buildings.

c. Notwithstanding subsection 2.a., this Agreement shall terminate with respect to any building in the Project on the date such building is acquired by foreclosure or instrument in lieu of foreclosure or by termination of the Ground Lease unless the Secretary determines that such acquisition is part of an arrangement a purpose of which is to terminate such period; provided, however, that, except for eviction for good cause, the Tenant of any Low-Income Unit shall be entitled to occupy such Unit in accordance with the provisions of this Agreement for a period of three years following such termination.

Section 3. Filing. This Agreement, and all amendments hereto and the Ground Lease and TCAC Lease Rider, shall be recorded as a restrictive covenant in the official records of the County of San Diego in which the Project is located. The Owner shall pay all fees and charges incurred in connection with such recording.

The Owner intends, declares and covenants, on behalf of itself and all future owners and operators of the Project during the Term of this Agreement, that this Agreement and the covenants and restrictions set forth in this Agreement regulating and restricting the use, occupancy and transfer of the Project (i) shall be and are covenants secured by the Ground Lease, encumbering the Project for the Term of this Agreement and binding upon the Owner's successors in title and all subsequent owners and operators of the Project, and (ii) shall bind the Owner (and the benefits shall inure to TCAC and any past, present or prospective Tenant of the Project) and its respective successors and assigns during the Term of this Agreement. The Owner hereby agrees that any and all requirements of the laws of the State of California to be satisfied in order for the provisions of this Agreement to constitute deed restrictions and covenants secured by the Ground Lease shall be deemed to be satisfied in full, and that any requirements or privileges of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to insure that these restrictions run with the Ground Lease. For the Term of this Agreement, each and every contract, deed or other instrument hereafter executed conveying the Project or portion thereof shall expressly provide that such conveyance is subject to this Agreement; provided, however, that the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Project or portion thereof provides that such conveyance is subject to this Agreement.

Section 4. Qualified Low-Income Housing Project.

a. The Owner shall maintain the Project as a Qualified Low-Income Housing Project within the meaning of Section 42 of the Code at all times, commencing with the last day of the first year of the Credit Period and continuing throughout the Term of this Agreement. To this end, and without limitation, the Owner shall --

(i) operate the Project such that at least the Minimum Amount of the Units in the Project are Low-Income Units, and

(ii) assure that Units in the Project are (A) available for use by the general public, (B) suitable for occupancy and (C) used on other than a transient basis.

b. During the Term of this Agreement, the Owner shall not evict, terminate the tenancy, or refuse to renew the lease or rental agreement of any tenant of any Low-Income Unit without good cause.

c. For purposes of this Agreement and Section 42 of the Code, the Owner has elected to comply with [] the "20-50 test" pursuant to which "Low-Income" is defined as 50% of Area Median Gross Income and the Minimum Amount is 20% of the Units in the Project or [X] the "40-60 test" pursuant to which "Low-Income" is defined as 60% of Area Median Gross Income and the Minimum Amount is 40% of the Units in the Project.

d. The amount of Tax Credit allocated to the Project is based on the requirement that the Applicable Fraction for buildings in the Project will be at least 100% or as specified, building-by-building, at Appendix A. The Owner's failure to ensure that each building in the Project complies with such requirement will cause TCAC to report such fact to the Service which may result in the reduction and recapture by the Service of Tax Credit, and (ii) to take other appropriate enforcement action, including, but not limited to, the remedies provided herein.

e. The Owner may not refuse to lease a Unit in the Project to a prospective Tenant who holds a voucher or certificate of eligibility for assistance pursuant to Section 8 of the United States Housing Act of 1937, as amended, because of the status of such prospective Tenant as the holder of such voucher or certificate.

f. The Project and the Owner are subject to the additional and/or modified requirements, if any, set forth at Appendix A, which requirements are incorporated herein and made a part hereof.

Section 5. Annual Determinations; Low-Income Units. Upon initial occupancy and, unless otherwise allowed under Section 42 of the Code and specifically authorized by TCAC, at least annually thereafter, the Owner shall determine and certify the Income of each Low-Income Tenant. If, upon any such annual certification, the Tenant of a Low-Income Unit who was, at the last income certification, a Low-Income Tenant, is found no longer to be a Low-Income Tenant, such Unit will continue to be treated as a Low-Income Unit until the next available Unit of comparable or smaller size in the building (i) is rented to a person who is not a Low-Income Tenant or (ii) is rented without being Rent-Restricted. A Low-Income Unit that has been vacated will continue to be treated as a Low-Income Unit provided that (I) reasonable attempts are made to rent the Unit and (II) no other Units of comparable or smaller size in the building are rented to persons who are not Low-Income Tenants or are rented without being Rent-Restricted. In no case will a Unit be treated as a Low-Income Unit if all the Tenants of the Unit are students (as determined under Section 151(c)(4) of the Code), no one of whom is entitled to file a joint income tax return; provided, however, that such rule shall not apply to the types of students identified at Section 42(i)(3)(D) of the Code, or any successor to such provision, as applicable to the Project.

Section 6. Compliance Monitoring. The Owner acknowledges that TCAC is required, pursuant to Section 42(m)(1)(B)(iii) of the Code, (i) to monitor the Owner's and the Project's compliance with the requirements of Section 42 of the Code and (ii) to notify the Service of any noncompliance which is found. The Owner agrees (I) to maintain records that substantiate and document such compliance, preserving such records for the period required by the Service and TCAC, (II) to take all actions required by TCAC pursuant to the TCAC Compliance Monitoring Procedures to assist or cooperate with TCAC in monitoring such compliance and (III) to pay the fee prescribed by TCAC with respect to such monitoring. The TCAC Compliance Monitoring Procedures require, among other things, that the Owner annually certify to TCAC (on such forms as are prescribed by TCAC) the number of Units in the Project which are Low-Income Units, the percentage of floor space in the Project which is allocable to Low-Income Units, that the Project continues to be a Qualified Low-Income Housing Project; provided, however, that in the first year of the Credit Period, the Owner shall certify individually with respect to each month of such year the number of Low-Income Units in the Project and the percentage of floor space devoted to such Units on the last day of the month. The Owner is responsible for full adherence to the TCAC Compliance Monitoring Procedures without regard to whether particular requirements of those procedures are enumerated in this Agreement. The Owner agrees TCAC may, at any time during the construction, rehabilitation, or operation of the Project, enter and inspect the Project to evaluate its physical and financial condition, construction, rehabilitation, operation, management and maintenance.

Section 7. Notification of Noncompliance. The Owner agrees to notify TCAC or its designee if there is a determination by the Service that the Project is not a "qualified low-income housing project" within the meaning of Section 42(g) of the Code. Notification to TCAC will be made within ten business days of receipt of any such determination.

Section 8. Security for Performance. The Owner hereby assigns its interest in the rents from the Project to TCAC as security for the performance of the Owner's obligations under this Agreement. However, until and unless the Owner defaults in its obligations under this Agreement, the Owner is entitled to collect, retain and apply such rents.

Section 9. Remedies. In the event the Owner defaults in its obligations under this Agreement and such default is not cured within a reasonable time period, the remedies of TCAC, the Tenants and any former or prospective Low-Income Tenants shall include, but are not limited to, the following:

a. collecting all rents with respect to the Project and applying them (i) to meet the ongoing costs of operating the Project, (ii) to pay debt service, (iii) to reimburse any Low-Income Tenants who may have been charged a Gross Rent above the applicable Rent-Restricted level or (iv) to assure the long-term, Low-Income use of the Project consistent with the requirements of Section 42 of the Code and this Agreement;

b. taking possession of the Project and operating the Project in accordance with the requirements of this Agreement, including the collection and application of rents in accordance with subsection a of this Section 9, until the Owner demonstrates that it will operate the Project in accordance with this Agreement;

c. applying to any court for specific performance of any of the obligations herein set forth;

d. securing the appointment of a receiver to operate the Project in a manner consistent with this Agreement, including subsections a and b of this Section 9;

e. suit against the Owner for damages or for the disgorgement of rents collected in excess of those which would have been received had the Owner complied with the requirements of this Agreement;

f. requiring the replacement of the manager of the Project with a property manager approved by TCAC, in the event the Owner fails to maintain the Project in sound and habitable condition, such that each Low-Income Unit is suitable for occupancy in accordance with the requirements of Section 42 (I) (3) (B) (I) of the Code and Section 4a of this Agreement;

g. requiring the payment of an increased compliance monitoring fee by the Owner for such period as TCAC determines appropriate; and

h. such other relief as may be appropriate.

Section 10. Enforceability. This Agreement may be enforced by TCAC or its designee, including any agency of State or local government identified at Appendix A hereto or otherwise in a written notice provided by TCAC to Owner. In addition, the Agreement shall be deemed a contract enforceable by, and shall inure to the benefit of, one or more Tenants or persons meeting the Low-Income restriction, whether past, present, or prospective Tenants, as third-party beneficiaries hereof. TCAC, its designee and/or any Tenant or other third-party beneficiary shall be entitled to reasonable attorneys' fees and other legal costs in any judicial or administrative action in which such party shall prevail.

Section 11. No Conflicting Agreements. The Owner warrants that it is not bound by and will not execute any other agreement with provisions that bind it to violate the provisions of this Agreement; provided, however, that with the approval of TCAC, this Agreement may be subordinated, if required, to any lien or encumbrance of any banks or other institutional lenders to the Project; provided, further, that the terms of any such subordination shall provide that (i) prior to any such lender's acquisition of the Project by foreclosure or instrument in lieu of foreclosure, the exercise of any remedy or authority by any such lender shall be subject to all of the requirements of the Agreement, and (ii) subsequent to any such lender's acquisition of the Project by foreclosure or instrument in lieu of foreclosure, the requirement of Section 2c hereof, with respect to the continuation of occupancy and rent restrictions for three years following certain terminations of this Agreement, shall remain in effect.

Section 12. Successors Bound. This Agreement and the covenants and conditions contained herein shall run with the land and shall bind, and the benefits shall inure to, respectively, the Owner and its successors and assigns and all subsequent owners of the Project or any interest therein, and TCAC and its successors and assigns, for the Term of this Agreement, without regard to whether any such parties shall have executed an Assumption Agreement with respect hereto. Upon termination of this Agreement, the covenants and conditions contained herein shall expire, except that the requirement of Section 2c hereof, with respect to the continuation of occupancy and rent restrictions for three years following certain terminations of this Agreement, shall remain in effect.

Section 13. Amendments; Waivers. Except as otherwise provided in this Agreement, this Agreement may not be amended, changed, modified, altered or terminated except by written instrument executed and acknowledged by each of the parties hereto or their successors and duly recorded in the official records of the county in which this Agreement is recorded. Any waiver of any provision of this Agreement shall not be deemed to be an amendment hereof. Upon request

by TCAC, the Owner agrees that it will take all actions necessary to effect any amendment of this Agreement which may be necessary in TCAC's sole discretion to comply with the Code, and any and all applicable rules, regulations, policies, procedures, rulings or other official statements pertaining to the Tax Credits.

Section 14. Assignment by Owner. The Owner may not sell or otherwise dispose of any portion of any building in the Project unless it disposes of the entire building to the same person. Upon sale or transfer of the Project, the Owner shall be relieved of all obligations under the Agreement and the transferee shall succeed to and be bound by all of the Owner's rights and obligations hereunder, without regard to whether the transferee has executed an Assumption Agreement as hereinafter provided. Prior to any transfer of the Project, the Owner shall notify TCAC in writing and provide the name(s) and address(es), financial reports, and other relevant information of the prospective successor owner and operator. The Owner shall require, as a condition precedent to any sale, transfer or exchange or any other disposition of the Project prior to termination of this Agreement, that the purchaser or successor assume, in writing, in an Assumption Agreement acceptable to TCAC, the Owner's obligations hereunder and under Section 42 of the Code and applicable regulations, which Assumption Agreement shall be delivered to TCAC in executed, recordable form prior to any such sale, transfer or exchange. This provision shall not act to waive any other restriction on sale, transfer or exchange of the Project or any building in the Project. The Owner agrees that any sale, transfer or exchange of the Project without execution of an Assumption Agreement or otherwise in contravention of the provisions of this Section 14 shall be voidable at the discretion of TCAC. Changes in the constituents of the Owner shall not constitute a default under this Agreement. Owner acknowledges that the sale, transfer or exchange of the Project, or any interest in the Project or the Owner, consistent with the requirements of this Agreement, does not relieve the Owner or any of its constituents from any obligations which it may have under Section 42 of the Code, including those with respect to recapture of Tax Credit or any alternative thereto.

Section 15. Notices. All notices, certificates or other communications shall be sufficiently given and shall be deemed received on the second day following the date on which the same have been mailed by certified mail, postage prepaid, or sent by other method which produces evidence of delivery thereof, addressed as follows:

To the TCAC:

California Tax Credit Allocation Committee
915 Capitol Mall, Room 485
P.O. Box 942809
Sacramento, CA 94209-0001

To the Owner:

HDP Broadway, L.P.
1100 Broadway Street
San Diego, CA 92101

TCAC and the Owner may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 16. Indemnification. The Owner agrees to indemnify and hold harmless the Chairperson, TCAC committee members, TCAC officers, directors and employees from and

against all liabilities, losses, claims, damages, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by TCAC as a result of any material inaccuracy in any of the representations and warranties contained in this Agreement, or as a result of any action by the Owner, including claims by third parties.

The Owner agrees that should any claims, demands, suits or other legal proceedings be made or instituted by any person against TCAC which arise out of any of the matters relating to this Agreement, the Owner will cooperate fully with TCAC in the defense or other disposition thereof.

Section 17. Severability. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

Section 18. Governing Law. This Agreement shall be governed by the laws of the State of California, excluding conflicts provisions, and, where applicable, the laws of the United States of America.

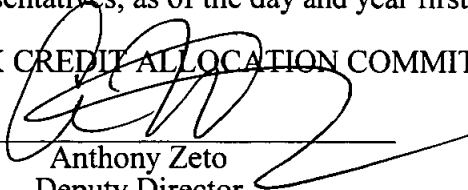
Section 19. Survival of Obligations. The obligations of the Owner as set forth herein and in the application shall survive the allocation of the Tax Credit and shall not be deemed to terminate or merge with the awarding of the allocation.

Section 20. Interpretation. TCAC's interpretation of this Agreement shall be controlling for purposes of determining whether (i) the Compliance Period shall have commenced, (ii) this Agreement shall have been terminated in accordance with Section 2 hereof, and (iii) the Additional Use Restrictions elected at Appendix A hereto, if any, shall have been complied with.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective duly authorized representatives, as of the day and year first written above.

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

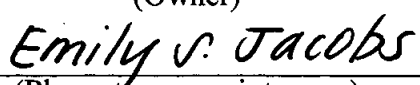
By _____


Anthony Zeto
Deputy Director

HDP BROADWAY, L.P.

By _____


(Owner)


(Please type or print name)

The undersigned, owners of the property described on Exhibit A hereto, hereby consent to recordation of this Regulatory Agreement against such property, and agree that such property shall be bound by the provisions thereof.

HDP BROADWAY, L.P.

By 

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Sacramento)

On June 9, 2017 before me, B. Trost, Notary Public
(insert name and title of the officer)

personally appeared Anthony Zeto,
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 B. Trost (Seal)

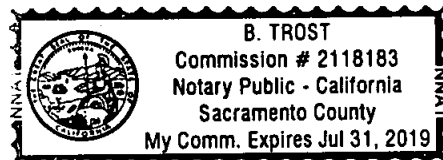


EXHIBIT A
to Regulatory Agreement

Description of the real property
on which the Project is located

CA-14-871

Location:

1055 9th Avenue (910 C Street)
San Diego, CA 92101

Legal Description:

Situate in the City of San Diego, County of San Diego, State of California, described as follows:

ALL BUILDINGS AND IMPROVEMENTS SITUATED ON LOTS A, B, C, D, E, F, G, H, I, J, K AND L IN BLOCK 31 OF HORTON'S ADDITION, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY L.L. LOCKLING FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, WHICH BUILDINGS AND IMPROVEMENTS ARE AND SHALL REMAIN REAL PROPERTY.

APN/Parcel ID(s): 760-214-04-00

Project Size Description:

1 Building
154 Low-Income Units; 2 Manager's Unit
0 SRO; 155 1-Bedroom; 1 2-Bedroom;
0 3-Bedroom; 0 4-Bedroom;
0 5-Bedroom

Appendix A

Income Target

☒ Throughout the Compliance Period, unless otherwise permitted by TCAC, Units must be occupied by Tenants such that:

- 32 of the Low-Income Units @ or below 50% of Area Median Gross Income
- 122 of the Low-Income Units @ or below 60% of Area Median Gross Income

Longer Compliance Period

☒ The Compliance Period shall be a period of 55 consecutive taxable years commencing with the first year of the Credit Period.

Designation of First Year of Credit Period by Building

Building Id. _____ First Year of Credit Period 2015

CA-14-871-01

Minimum Applicable Fraction by Building

Building Id. _____ Minimum Applicable Fraction 100%

CA-14-871-01

Agency Designated to Enforce

At any time during the Compliance Period, the California Tax Credit Allocation Committee may designate an agency of local government to enforce the terms of this Agreement. The Department designates the following agency of local government for such purpose:

EXHIBIT B
to Regulatory Agreement

Attached hereto is the Property Lease and Lease Rider, which is incorporated herein as though set forth in full.

June 6th 2017

(R-2017-603) #100

RESOLUTION NUMBER R- 311161

DATE OF FINAL PASSAGE JUN 15 2017

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE MAYOR, OR HIS DESIGNEE, TO EXECUTE THAT CERTAIN LEASE RIDER AND ESTOPPEL AGREEMENT BETWEEN THE CITY OF SAN DIEGO, HDP BROADWAY, LP, AND THE CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE, WHICH, BY ITS TERMS, AMENDS THE EXISTING GROUND LEASE BETWEEN THE CITY OF SAN DIEGO AND HDP BROADWAY, LP, IN FAVOR OF THE CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE.

WHEREAS, the City of San Diego (City) owns that certain real property, consisting of approximately 60,000 square feet, bordered by 9th Avenue, 10th Avenue, C Street, and Broadway, located within the City of San Diego (the City's Property); and

WHEREAS, the City's Property is subject to a 65-year ground lease (Ground Lease), between the City of San Diego and HDP Broadway, LP, a California limited partnership (HDP), the current lessee, on file in the Office of the City Clerk as Document No. RR-308156; 62 years remain on the Ground Lease's term; and

WHEREAS, the California Tax Credit Allocation Committee (TCAC) is a public agency of the State of California; TCAC authorized an allocation of federal low-income housing tax credits to HDP (the Allocation) to finance the further development of the City's Property, pursuant to the Low Income Housing Tax Credit Program; and

WHEREAS, the Allocation is subject to numerous terms and conditions, including the requirement that HDP and City enter into that certain Lease Rider and Estoppel Agreement (Rider); and

WHEREAS, the Rider is an encumbrance on the development on the City's Property in favor of TCAC and requires that its provisions supersede provisions within the Ground Lease that conflict with the Rider; and

WHEREAS, execution of the Rider equates to amending the Ground Lease because certain provisions within the Rider conflict with the provisions of the Ground Lease (including those provisions related to lenders' rights, noticing, and consent requirements), thus necessitating the Council authorization before the Mayor, or his designee, can execute the Rider; NOW, THEREFORE,

BE IT RESOLVED, that the Mayor, or his designee, is authorized and directed to execute that certain Lease Rider and Estoppel Agreement between the City of San Diego, HDP Broadway, LP, and the California Tax Credit Allocation Committee, the terms and conditions of which are more fully set forth in Document No. RR 311161, which is on file in the Office of the City Clerk.

APPROVED: MARA W. ELLIOTT, City Attorney

By


Debra J. Bevier
Deputy City Attorney

DJB:mcm

May 18, 2017

Or.Dept: Real Estate Assets Depart.

Doc. No.: 1507121

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUN 06 2017.

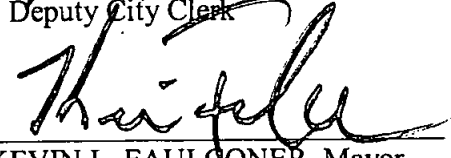
ELIZABETH S. MALAND
City Clerk

By


Deputy City Clerk

Approved:

6/15/17
(date)


KEVIN L. FAULCONER, Mayor

Vetoed:

(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on JUN 06 2017, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	☒	☐	☐	☐
Lorie Zapf	☒	☐	☐	☐
Chris Ward	☒	☐	☐	☐
Myrtle Cole	☒	☐	☐	☐
Mark Kersey	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Scott Sherman	☒	☐	☐	☐
David Alvarez	☒	☐	☐	☐
Georgette Gomez	☒	☐	☐	☐

Date of final passage JUN 15 2017

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

(Seal)

KEVIN L. FAULCONER

Mayor of The City of San Diego, California.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

By [Signature], Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 311161