



CITY COUNCIL AGENDA REPORT

MEETING DATE: May 21, 2013

ITEM NUMBER:

SUBJECT: COMMUNITY HOUSING DEVELOPMENT ORGANIZATION
PREDEVELOPMENT LOAN AND COMMITMENT OF HOME PROGRAM
FUNDS AGREEMENT

DATE: May 1, 2013

FROM: DEVELOPMENT SERVICES DEPARTMENT/HOUSING & COMMUNITY
DEVELOPMENT DIVISION

PRESENTATION BY: RICK FRANCIS, ASSISTANT CHIEF EXECUTIVE OFFICER
KATHE HEAD, CONSULTANT

FOR FURTHER INFORMATION CONTACT: MURIEL ULLMAN, CONSULTANT
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RECOMMENDATION:

Approve the Community Housing Development Organization Predevelopment Loan and Commitment of HOME Program Funds Agreement (“Agreement”) by and among the City of Costa Mesa (“City”) and the Costa Mesa Housing Authority (“Housing Authority”) and Mercy House CHDO, Inc. (“Mercy House”) and Wakeland Housing and Development Corporation (“Wakeland”). The Mercy House and Wakeland team is collectively referred to as “Developer”. The Predevelopment Loan commits up to \$500,000 in prior years’ HOME funds for a permanent supportive housing project to serve the Costa Mesa homeless population.

BACKGROUND:

The City of Costa Mesa formed a Homeless Task Force in January 2011 to address the challenges created by the homeless population in Costa Mesa. The goal of the Homeless Task Force was to “establish realistic strategies and make recommendations that address the needs of the Costa Mesa community, residents, business, and the homeless.” The Task Force ultimately established nine (9) goals that were adopted by the City Council. Goal 6 calls for the creation of a permanent supportive housing project and a possible access center. Goal 6 further calls for the City staff to develop a “Financing Strategy for Supportive Housing” using available City funds, and outside assistance sources targeted to the provision of housing for the homeless.

In June 2012, the City Council and Housing Authority approved a HOME Program Cooperation and Funds Commitment and Reservation Agreement to commit any 2009 and 2010 United States Department of Housing and Urban Development (HUD) HOME funds that had not been allocated by the Housing Authority prior to the end of Fiscal Year 2011. It was anticipated at that time that up to \$500,000 in HOME funds would be available for commitment to a permanent supportive housing project targeted to the homeless population. In September 2012, HUD denied the Housing Authority’s request to commit the HOME funds without the definition of a specific project and then in October 2012 HUD de-obligated the funds.

In order to fulfill HUD's requirements, the City embarked upon a Request for Qualifications process for the purpose of selecting a development team with which to enter into a predevelopment loan agreement prior to the June 30, 2013 deadline to obligate certain HOME Program funds. If the funds are not committed by this date, the Housing Authority will be required to return the funds to HUD.

On April 2, 2013, the City Council selected the development team of Wakeland and Mercy House to provide permanent supportive housing to the Costa Mesa homeless population and authorized Staff to negotiate the terms of a predevelopment loan commitment. Subsequently, City staff, consultants and legal counsel have negotiated the terms of the Agreement, which is being presented for consideration by the City Council and the Housing Authority Board (together, "Council").

Upon approval by the Council, the Agreement must be immediately submitted to HUD for review and approval. If HUD approval is not received prior to June 30, 2013, the City will be required to return the funds to HUD. If HUD approval is received, the Council authorized City staff to develop a site selection process with the Developer for review by the Council and the community.

ANALYSIS:

Based on the discussion above, the Developer was chosen by the City Council to implement Goal 6 of the Homeless Task Force Implementation Strategy. The attached Agreement authorizes the Developer to pay for certain eligible predevelopment expenses that are project-specific activities as more fully described in the attached Agreement. A summary of terms is below:

Developer Qualifications:

Mercy House is a qualified Community Housing Development Organization (CHDO) under the HOME Program whose mission and programs include homeless prevention, emergency services and shelter, transitional housing, rapid re-housing and permanent housing for chronically homeless and other vulnerable homeless subpopulations. Mercy House will co-lead the predevelopment activities, and then will take the lead on coordinating the provision of social services. Wakeland Housing is a nonprofit housing corporation whose primary mission is to create quality affordable housing opportunities for very-low and low income households. Wakeland Housing has completed 33 apartment projects and is familiar with the myriad of federal and state assistance funds. Wakeland will co-lead the predevelopment activities, and then will take the lead in the development and operation aspects of the project including site selection, identification of funding sources, submitting funding applications, and overseeing the operation and management of the Project.

Predevelopment Loan/Council Approval of Site Selection

The Predevelopment Loan will be funded solely from HOME funds that the City must commit prior to June 30, 2013. The proceeds of the Predevelopment Loan shall be applied towards the payment and/or reimbursement only for eligible predevelopment expenses as set forth in the Predevelopment Budget included as a part of Exhibit A to the Agreement. These expenses include environmental testing, financial feasibility, design costs, construction related costs, site control and analysis and preliminary relocation planning. City staff is authorized to calculate and approve the amount of the Developer's Eligible Predevelopment Expenses. City staff is authorized to approve or deny a request by the Developer to amend the Predevelopment budget including reallocation of Predevelopment Loan proceeds between or among specified eligible predevelopment categories and expenses listings.

During the term of this Agreement, the Developer will evaluate potential project sites assessing cost, location, zoning, amenities and other factors. Once the site or sites are identified, the Council will be asked to consider and take action to approve a "Site", and release proceeds from the Predevelopment Loan to pay for an option, or fund an earnest money deposit, or other contract rights to gain site control for the project.

Predevelopment Loan Repayment

If, after establishing a site selection process and the good faith implementation thereof, the Council does not approve one or more parcels as the Site for the development project, then the Agreement provides for waiver of repayment of the Predevelopment Loan by the Developer. Additionally, waiver of repayment will be triggered if the Developer provides satisfactory evidence that there are objective impediments to the project that are reasonably beyond the control of the Developer or the Site that causes project to be infeasible pursuant to the HOME regulations. The Predevelopment Loan will have no impact to the City's General Fund.

The Predevelopment Loan shall become immediately due and payable in the event that the Developer commits a material default of the Agreement and fails to cure the default with the time period(s) provided in the Agreement. Additionally, the Predevelopment Loan shall be immediately due and payable in the event that the Developer assigns any portion of the Agreement or otherwise fails to perform under the Agreement.

ALTERNATIVES CONSIDERED:

The Council could choose to let the HOME Program fund commitment date expire, and return the HOME funds to the federal treasury. This would impact the ability of the City and the Developer to successfully finance a supportive housing project; and, the return of the funds may impact negatively the amount of federal HOME Program funds allocated by HUD to the City in the future.

FISCAL REVIEW:

Up to \$500,000 in HOME funds proposed to be used to implement the project will come from the prior years' HOME Program allocations. In addition, based on prior and prospective appropriations, additional City General Funds may be committed to the project when and if the business terms of a complete affordable housing agreement to implement the project are negotiated among the parties and presented to the Council for review and action.

LEGAL REVIEW:

Special Counsel Mrs. Celeste Brady prepared the Community Housing Development Organization Predevelopment Loan and Commitment of HOME Program Funds Agreement and will be counsel in the future negotiations with the Developer in consultation with the City Attorney.

CONCLUSION:

The Community Housing Development Organization Predevelopment Loan and Commitment of HOME Program Funds Agreement embodies the Homeless Task Force goals approved by the City Council in March, 2012 by providing for permanent supportive housing. City staff recommends that the City Council approve the Agreement, which will enable the Housing Authority to capture prior years' HOME funds to allow for the implementation of a supportive housing project with the selected Developer.

RICK FRANCIS

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Attachments: Community Housing Development Organization Predevelopment Loan and
Commitment of HOME Program Funds Agreement

**COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO) PREDEVELOPMENT
LOAN AND COMMITMENT OF
HOME PROGRAM FUNDS AGREEMENT
(Permanent Supportive Housing Project)**

This **COMMUNITY HOUSING DEVELOPMENT ORGANIZATION PREDEVELOPMENT LOAN AND COMMITMENT OF HOME PROGRAM FUNDS AGREEMENT** (“Agreement”) is entered into by and among the **CITY OF COSTA MESA**, a California municipal corporation (“City”), and the **COSTA MESA HOUSING AUTHORITY**, a public body corporate and politic (“CMHA”) (together, City and CMHA are referred to as “Costa Mesa”), and **MERCY HOUSE CHDO, INC.**, a California nonprofit corporation (“Mercy House”), and **WAKELAND HOUSING AND DEVELOPMENT CORPORATION**, a California nonprofit corporation (“Wakeland”) (together, Mercy House and Wakeland are referred to as “Developer”) and is dated as of May 21, 2013, which is the date that the City Council of the City of Costa Mesa (“City Council”) and CMHA board considered and approved this contract at an open public meeting thereof (“Effective Date”). Each of City, CMHA, Mercy House and Wakeland may be referred to as a “Party” and together as the “Parties”.

RECITALS

A. City is a municipal corporation that has received funds from the United States Department of Housing and Urban Development (“HUD”) pursuant to the HOME Investment Partnerships Act and HOME Investment Partnerships Program, Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended (42 U.S.C. §12701, *et seq.*), and the implementing regulations thereto (24 CFR Part 92) (collectively “HOME Program”) for the purposes of providing more decent, safe, sanitary, and affordable housing for Very Low Income and Lower Income (as the terms are hereinafter defined) citizens of, including homeless persons in, Costa Mesa. City is experienced in the acquisition, construction, development, rehabilitation and operation of housing and housing programs that are affordable to persons of Very Low Income and Lower Income.

B. CMHA is a housing authority duly organized and existing under the California Housing Authorities Law, Health and Safety Code Section 34200, *et seq.*, (“HAL”) and authorized to acquire, construct, develop, rehabilitate, and operate housing and housing programs that are affordable to persons of Very Low and Lower Income, including without limitation causing development and operation of a permanent supportive housing project intended for homeless persons of Costa Mesa.

C. Pursuant to HAL Section 34240, the City Council adopted Resolution No. 01-2012 on January 17, 2012 and declared the need for a housing authority to function within the City and declared that the members of the City Council would serve as members of the housing authority governing board. CMHA is and shall remain as a separate public body, corporate and politic, exercising governmental functions and performing a public function.

D. Pursuant to the HOME Program, City has reserved not less than fifteen percent (15%) of its allocation of HOME Funds for investment only in housing to be developed, sponsored, or owned by community housing development organizations (CHDOs) (24 CFR § 92.300).

E. The City is currently implementing a coordinated multi-year strategy and program to provide financial assistance to eligible Very Low Income and Lower Income persons, households and families to improve affordable housing opportunities in certain target areas in the community. This multi-year strategy, as approved in the 2010-2014 City of Costa Mesa Consolidated Plan (“Consolidated Plan”), allocates HOME Funds, in conjunction with, as and when required, a percentage matching funds pursuant to the HOME Program regulations and applicable laws and regulations.

F. The City formed a 17-member Homeless Task Force (“HTF”) in January, 2011 by application to and appointment by the City Council in response to a series of incidents in the center city in and near Lions Park. Problems due to vagrancy included individuals sleeping in the park overnight, multiple encounters between the homeless population and library and community center patrons as well as a variety of complaints from adjacent property owners and park users. Business owners in the City also complained about homeless individuals sleeping on their property at night and loitering in front of their businesses during the day. Many of the homeless in the City are mentally ill and/or suffer from substance abuse.

G. The HTF was subdivided into three subcommittees focusing on specific project areas such as services, impact of homelessness on the general community and data collection. The HTF met monthly beginning in March, 2011 and adopted a mission statement during the first meeting, charging the Task Force to: “Establish realistic strategies and make recommendations that address the Needs of the Costa Mesa Community, Residents, Businesses and the Homeless.” The result of many months of work by the HTF resulted in presentation to and adoption of multiple goals to the City Council in October 2012, including Goal 6, which includes the objective to cause development and operation of a permanent supportive housing project in the City to serve Costa Mesa’s homeless.

H. In September 2012 the City issued a Request for Proposals and Qualifications (“RFP”) to experienced developers and operators of affordable housing seeking proposals for the development and operation of a permanent supportive housing project in the City. Six proposals were submitted and reviewed by a subcommittee; and of the six proposing developers, four proposed developers were interviewed by the subcommittee. Thereafter, on April 2, 2013 City staff presented the four proposals and made a specific recommendation to the City Council that this Developer be selected for development of a permanent supportive housing project for Costa Mesa homeless persons (“Project”).

I. The proceeds of the Predevelopment Loan (defined in next recital) shall be disbursed pursuant and subject to the terms and conditions set forth herein shall be used by Developer only for certain eligible predevelopment expenses related to Developer’s Project-specific Predevelopment Activities, as described and defined herein as the “Eligible Predevelopment Expenses” and as costs therefor are set forth in the “Eligible Predevelopment Activities and Expenses with Predevelopment Budget and Performance Schedule”, attached hereto as Exhibit A and fully incorporated by this reference.

J. By this Agreement and pursuant to the §92.2 HOME Program Commitment intended hereunder, City desires to reserve and commit up to Five Hundred Thousand Dollars (\$500,000.00), part HOME set-aside funds for a CHDO and part non-set-aside funds, in order for City to fund the “Predevelopment Loan” to Developer to pay for certain Eligible Predevelopment Expenses that are Project-specific activities as more fully described herein. The Predevelopment Loan is evidenced by

that certain Promissory Note (Deferred Repayment Note), Exhibit B, attached hereto and fully incorporated by this reference.

K. Under the HOME Program certain funds may be reserved, committed, and expended by a developer (including Mercy House as a CHDO (defined in next recital) and part of the Developer hereunder) to provide a Project-specific predevelopment and site control funds in the predevelopment and site selection phases of an affordable housing development, specifically here to fund certain Project-specific predevelopment and site control activities for a permanent supportive housing Project in the City that will be targeted for housing for Costa Mesa homeless persons, which is an eligible project under the HOME Program.

L. Mercy House is a qualified Community Development Housing Organization (“CHDO”) under the HOME Program that has among its purposes the provision of decent housing that is affordable to Very Low and Lower Income persons as included in its articles of incorporation. Mercy House’s mission is to provide a system of housing alternatives, programs and supportive services to assist in ending homelessness. Mercy House programs include homeless prevention, emergency services and shelters, transitional housing, aftercare programs, rapid re-housing programs and permanent housing for chronically homeless and other vulnerable homeless subpopulations. Mercy House has extensive experience working in Costa Mesa, and throughout Orange County. For the Project, Mercy House will co-lead the predevelopment activities then later take the lead in service coordination, including mental health, job referral and medical services.

M. Wakeland is a nonprofit housing organization founded in 1998, with a primary mission to create quality affordable housing opportunities for Very Low Income and Lower Income households. Wakeland has completed 33 apartment projects and currently has two projects under construction. Wakeland has used federal and state assistance funds, federal and state tax credits (both 9% tax credits and 4% tax credits with bonds), Affordable Housing Program (AHP) funds, tenant-based rental assistance funds, and other federal, state and local affordable housing funding sources to complete and operate its projects. For the Project, Wakeland will co-lead the predevelopment activities and then take the lead in the development and operations aspects, including site analysis and selection, identifying federal, state, and local funding sources, submitting funding applications, coordinating with lenders and investors, managing design, causing completion of construction, and then overseeing the operation and management of the Project.

N. The City as a participating jurisdiction for the HOME Program has evaluated the Project, assessed Developer’s capacity and its fiscal soundness, and examined the neighborhood market conditions to ensure that there is an adequate need for the Project being funded with HOME Program monies hereunder.

O. During this term of this Agreement, Developer will evaluate potential development sites, location, amenities, zoning, land use entitlement requirements, and other factors to identify feasible sites and the scope of development to undertake and complete the Project. Once a site is, or sites are, identified, the Developer will establish and implement a site selection process that will involve the community and result in presentation of the potential site(s) by the Developer to the City Council for consideration (“Site Selection Process”). After such presentation, review and consideration, the City Council will take action to approve a “Site” and authorize release of proceeds from the Predevelopment Loan to pay for an option or other contract rights to gain site control for the Project, or otherwise disapprove the potential site or sites and provide direction to Developer about continuing to evaluate other potential development sites or to terminate this Agreement. If and when

a Site is selected, once earnest money is deposited or an option obtained, Developer will prepare and submit an application to the Tax Credit Allocation Committee (“TCAC”) for an allocation of tax credits, either or both 9% tax credits or 4% tax credits, and if 4% tax credits also will prepare and submit an application to the California Debt Limit Allocation Committee (“CDLAC”) for a bond allocation, and to seek other federal, state and local funding to continue to implement the Project.

P. The City’s provision of the Predevelopment Loan to Developer pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City and the welfare of its residents, and in accordance with the purpose and provisions of the HOME Program.

Q. A description of the Project is attached as the “Project Description”, Exhibit C, and is fully incorporated by this reference.

AGREEMENT

NOW THEREFORE, based upon the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by all Parties (City, CMHA, Mercy House and Wakeland), hereby agree as follows:

1. DEFINITIONS

The following terms as used in this Agreement shall have the meanings given below unless expressly provided to the contrary:

“**Agreement**” shall mean this *Community Housing Development Organization Predevelopment Loan and Commitment of HOME Program Funds Agreement* among City, CMHA, Mercy House and Wakeland, including all exhibits and other documents attached and incorporated hereto. The Agreement constitutes the written agreement required under 24 CFR § 92.504 (b) and 92.504(c)(3) to be entered into by the City as a recipient of HOME Funds and a nonprofit participant.

“**CHDO**” shall mean a community housing development organization that is a private nonprofit entity that meets the requirements of the HOME Program under 24 CFR § 92.2.

“**City**” shall mean the City of Costa Mesa, a California municipal corporation, organized under the laws of the State of California and having its offices at 77 Fair Drive, Costa Mesa, California 92628.

“**CMHA**” shall mean the Costa Mesa Housing Authority, a public body corporate and politic.

“**Contract Officer**” shall mean the Assistant Chief Executive Officer of the City or such other person as may be designated by the Chief Executive Officer of the City and Executive Director of the CMHA.

“**Developer**” shall mean, together, Mercy House and Wakeland.

“**Developer Representatives**” shall mean Larry Haynes, Executive Director of Mercy House CHDO, Inc. and Executive Director of Mercy House Living Centers and Rebecca Louie, Vice President, COO and Project Manager, for Wakeland, who are designated by Developer to represent each Mercy House and Wakeland, respectively, in the administration of this Agreement.

“Eligible Predevelopment Expenses” shall mean the expenses that are expressly provided for in this Agreement and that are eligible to be paid for from and/or reimbursed from the proceeds of the Predevelopment Loan. Eligible Predevelopment Expenses constitute allowable costs for a CHDO to determine project feasibility for a Site, to pay for the Site Selection Process, and other eligible predevelopment Project-specific activities and budgeted costs therefor as set forth in Exhibit A, but shall expressly exclude general operational expenses of the CHDO (Mercy House) and of Wakeland pursuant to 24 CFR § 92.301(a)(2). Exhibit A sets forth by line item a list of Eligible Predevelopment Expenses, a Predevelopment Budget, and Performance Schedule therefor, which include the following (if lawfully contracted for and incurred during the term of this Agreement): (i) professional and other consultants’ services that are limited to the Site Selection Process, engineering and/or architectural evaluation and services related to a scope of design for construction (rehabilitation or new construction) of the Project; (ii) appraisal(s), (iii) environmental testing and assessment of a potential Site or Sites; (iv) an option payment or earnest money deposit(s) into escrow for purchase/sale of a Site post-completion of the Site Selection Process and approval of a Site by the City Council to gain real property control, so long as not expended prior to or in violation of NEPA requirements pursuant to applicable laws and regulations; (v) pre-construction property management of a Site, post-completion of the Site Selection Process and approval of a Site by the City Council (also post-NEPA); (vi) physical needs assessment; and (ix) preliminary financial applications. The line item categories of Eligible Predevelopment Expenses and the amounts budgeted for all items are set forth in Exhibit A. No other costs, fees, or expenses shall be eligible for payment or reimbursement except as set forth in Exhibit A, unless expressly authorized and approved in writing by the Chief Executive Officer, which approval shall be in his sole discretion. In no event shall any of Developer’s general operational expenses, in-house personnel, or day-to-day staffing be categorized or payable as Eligible Predevelopment Expenses.

“HOME Funds” shall mean the funds allocated annually to the City by HUD under the HOME Program and may include more than one year of allocations, and may include both set-aside funds for CHDOs and non-set-aside funds for eligible activities.

“HOME Program” shall mean the HOME Investment Partnerships Act and HOME Investment Partnerships Program, Title II of the Cranston Gonzalez National Affordable Housing Act, as amended (42 U.S.C. §12701, *et seq.*), and the implementing regulations thereto (24 CFR Part 92, *et seq.*)

“Mercy House” shall mean Mercy House CHDO, Inc., a California non-profit corporation and eligible CHDO under the HOME Program.

“NEPA” shall mean the National Environmental Policy Act, 42 U.S.C. Sections 4331, *et seq.*, its implementing regulations (40 CFR Part 1500, *et seq.*), and the Administrative Procedure Act (5 U.S.C. Section 701 *et seq.*).

“Performance Schedule” shall mean that certain performance schedule included as a part of Exhibit A and incorporated herein by reference, setting out the dates and/or time periods by which certain obligations and tasks must be performed and completed.

“Predevelopment Activities” shall mean any and all work and tasks undertaken and services performed by Developer’s authorized consultants, contractors, and third parties toward predevelopment and implementation of the Project, including without limitation the Site Selection Process, selection of the Site, negotiating an affordable housing agreement with Costa Mesa,

preparing predevelopment plans, preparing tax credit and other funding applications, all toward the implementation of the Project, whether or not such predevelopment activities are included in Eligible Predevelopment Expenses and payable from the proceeds of the Predevelopment Loan. Not all Predevelopment Activities are Eligible Predevelopment Expenses and not all will allowed to be paid from the proceeds of the Predevelopment Loan.

“Predevelopment Loan” shall mean the loan of HOME Funds referred to the Recitals of this Agreement to be provided by the City to Developer for the Eligible Predevelopment Expenses, as more fully explained in Section 3 and itemized in Exhibit A to this Agreement.

“Predevelopment Loan Documents” shall mean this Agreement, the Promissory Note, and any other documents and instruments required to be executed and delivered by Developer in connection with the Predevelopment Loan of HOME Funds to Developer hereunder.

“Promissory Note” means the promissory note to be executed by Developer regarding repayment of the Predevelopment Loan, in the form attached hereto as Exhibit B and fully incorporated by this reference.

“Predevelopment Activities” shall mean HOME Program eligible tasks, activities and operations set forth in Exhibit A for which the timing of performance is therefor is set forth in the performance schedule also included in Exhibit A, which activities are carried out during this Agreement whether or not eligible to be paid from proceeds of the Predevelopment Loan, and all other obligations under this Agreement that Developer is required to perform.

“Predevelopment Budget” shall mean that certain Predevelopment Budget included as a part of Exhibit A that sets out specific, eligible line item categories of Eligible Predevelopment Activities and the amount of Predevelopment Loan proceeds allocated to each category.

“Project” shall mean the permanent supportive housing project for homeless persons in the City and generally described in the Recitals and as further described in the Project Description, Exhibit C hereto.

“Site” shall mean a parcel or parcel of real property, whether improved or unimproved, located in the City of Costa Mesa that is/are selected for the development and operation of the permanent supportive housing Project subject to and after completion of the Site Selection Process and approval of such Site by the City Council.

“Wakeland” shall mean Wakeland Housing and Development Corporation, a California non-profit corporation.

“§92.2 HOME Program Commitment” shall mean 24 CFR 92.2 as of the date of this Agreement as follows:

- (1) The participating jurisdiction [here City] has executed a legally binding agreement with a State recipient, a subrecipient or a contractor [here Developer] to use a specific amount of HOME funds [here, \$500,000] to produce affordable housing or provide tenant-based rental assistance [here, the Project]; or has executed a written agreement reserving a specific amount of funds to a community housing development organization [here, Mercy House/CHDO for the Eligible Predevelopment Expenses for the Project]; or has

met the requirements to commit to a specific local project, as defined in paragraph (2), of this definition [here, the permanent supportive housing Project].

(2) Commit to a specific local project means:

(i) If the project consists of rehabilitation or new construction (with or without acquisition) the participating jurisdiction (or State recipient or subrecipient) and project owner have executed a written legally binding agreement under which HOME assistance will be provided to the owner for an identifiable project under which construction can reasonably be expected to start within twelve months of the agreement date [that is anticipated hereunder]. If the project is owned by the participating jurisdiction or State recipient, the project has been set up in the disbursement and information system established by HUD, and construction can reasonably be expected to start within twelve months of the project set-up date.

(ii)(A) If the project consists of acquisition of standard housing and the participating jurisdiction (or State recipient or subrecipient) is acquiring the property with HOME funds, the participating jurisdiction (or State recipient or subrecipient) and the property owner have executed a legally binding contract for sale of an identifiable property and the property title will be transferred to the participating jurisdiction (or State recipient or subrecipient) within six months of the date of the contract.

2. TERM AND TERMINATION

2.1 Term. This Agreement shall be deemed effective and the term shall be deemed to have commenced on the Effective Date set forth in the first paragraph of this Agreement and, unless terminated earlier pursuant to Section 2.2, shall continue thereafter until an Affordable Housing Agreement is executed, or no later than April 30, 2014. Thereafter, the Contract Officer is authorized, in his sole discretion, to renew the Agreement for an additional period or periods cumulatively not to exceed an additional 60 days (for an outside date of June 30, 2014), upon the written request of Developer Representatives. Notwithstanding the expiration or earlier termination of this Agreement, Developer's obligations to Costa Mesa shall not terminate until all HOME Program and CHDO closeout requirements are completed. In addition, the following obligations of Developer shall survive the termination of this Agreement: (a) Developer's indemnity obligations; (b) obligation to cause audits to be performed relating to Developer's activities and costs eligible for payment and/or reimbursement under this Agreement; (c) obligation to repay to the City any proceeds improperly disbursed to Developer or disbursed or used for ineligible expenditures as determined by the City, or CMHA, or HUD and that have not been previously been repaid to the City; and (d) any other obligations which cannot by their nature be performed until after the expiration of the Agreement.

2.2 Termination.

a. Termination for Cause. This Agreement may be terminated by the City for cause as follows:

(i) **Lack of Funding.** If, for any reason, the HOME Funds required by the City to fund the Eligible Predevelopment Expenses are not received by the City or are de-

obligated or otherwise withdrawn from the City, then Costa Mesa may terminate this Agreement. Alternatively, if a reduction in funding is required, Costa Mesa may unilaterally reduce the principal amount of the Predevelopment Loan. In such event, Costa Mesa will provide Developer with a modified Exhibit A, including an amended Predevelopment Budget and modified list of Eligible Predevelopment Expenses. City will provide notice to Developer prior to terminating or reducing funding based on HUD's decision or direction regarding the HOME Program funds.

(ii) **Failure to Comply with Agreement.** If either or both Mercy House or Wakeland fail/fails to comply with the terms and conditions of this Agreement and fail/fails to cure the default after notice from Costa Mesa as set forth in Section 7.1 of this Agreement, then Costa Mesa, either or both the City or CMHA, may terminate this Agreement.

b. **Termination for Convenience.** This Agreement may be terminated for convenience as provided in 24 CFR § 85.44.

3. PREDEVELOPMENT LOAN

3.1 **General.** Subject to the terms and conditions set forth herein and provided Developer is not in default of this Agreement, the City agrees to loan to Developer and Developer agrees to borrow from City that certain Predevelopment Loan in an amount up to, but not to exceed, Five Hundred Thousand Dollars (\$500,000). The proceeds of the Predevelopment Loan shall be applied towards the payment and/or reimbursement only for items described and listed in Exhibit A as Eligible Predevelopment Expenses and within the Predevelopment Budget. The Predevelopment Budget may be amended, upon the mutual agreement of the Parties, but in no event shall the total, cumulative amount of the Predevelopment Loan exceed \$500,000 unless by amendment to this Agreement duly approved and executed by the Parties. The Contract Officer is hereby authorized to approve or deny a request or requests by Developer to amend the Predevelopment Budget, including the reallocation of Predevelopment Loan proceeds between or among specified Eligible Predevelopment Expenses listings (including the allocation of Predevelopment Loan proceeds to and from the "Contingency" line item) set forth in Exhibit A, which approval will not be unreasonably withheld.

a. **Repayment of Predevelopment Loan.** Developer's obligation to repay the Predevelopment Loan shall be set forth in the Promissory Note (Deferred Repayment Note) Exhibit B. Repayment of the Predevelopment Loan shall be as set forth in the Promissory Note and is deferred until one of the following conditions first occurs:

(i) **Failure to Select a Site after Completion of the Site Selection Process.** If after establishing a Site Selection Process and the good faith implementation by the Parties thereof, in the event the City Council does not approve one or more parcels as the Site for development of the Project, then the Contract Officer will waive repayment of the Predevelopment Loan by Developer based on reasonably satisfactory evidence that there are objective impediments to continuing to take steps toward completion of the Project that are reasonably beyond the control of Developer and that cause the Project to be infeasible pursuant to 24 CFR § 92.301(a)(3).

(ii) **Development of the Project is Infeasible.** The Contract Officer will waive repayment if Developer, as borrower, provides evidence reasonably satisfactory to the Contract Officer that there are objective impediments to the Project that are reasonably beyond the

control of Developer or the Site (post-selection by the City Council) that causes the Project to be infeasible pursuant to 24 CFR § 92.301(a)(3).

(iii) **Default.** There is a default of Developer's obligations under this Agreement, and Developer fails to cure the default within the time periods provided in Section 7.1.

(iv) **Predevelopment Loan Repayment Incorporated into Development Financing.** The Predevelopment Loan shall be incorporated into any additional City funding or assistance necessary to develop the Site and complete the Project as set forth in an Affordable Housing Agreement to be negotiated between and among the Parties and if approved by the City Council (and/or CMHA, as applicable) and entered into between City, and CMHA, and Mercy House and Wakeland (or a separate limited partnership or other corporate entity formed by Mercy House and Wakeland to implement the Project).

3.2 Permissible Uses of Predevelopment Loan; Eligible Predevelopment Expenses. Subject to all of the terms and conditions of this Agreement, Developer shall be permitted to use the Predevelopment Loan proceeds only for the Eligible Predevelopment Expenses as defined herein and further described and set forth in Exhibit A that are actually and reasonably incurred by Developer during the term of this Agreement and approved by the Contract Officer, which approval will not unreasonably withheld, and for no other purpose. Eligible Predevelopment Expenses constitute allowable costs for a CHDO to determine feasibility of the Project, including feasibility of the Site, and other predevelopment Project-specific activities undertaken and completed by Developer but shall intentionally and expressly *exclude* general operational expenses of both Mercy House (as a CHDO) and Wakeland pursuant to 24 CFR § 92.301(a)(2) and as the term is defined herein.

a. Procurement Policies; Selection of Consultants. Developer shall provide the Contract Officer with a copy of each the Developer entity's procurement procedures. Procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Consultants and other service providers or contractors that Developer proposes to provide services hereunder, for which costs incurred therefor and may be eligible for reimbursement and qualify as Eligible Predevelopment Expenses, shall first be approved by the Contract Officer. In this regard, each consultant or contractor or subcontractor for which reimbursement or other payment hereunder is desired shall have the experience and qualifications to provide professional services or undertake work in the selected field or expertise, such as economic consultant, engineer, architect, environmental consultant, relocation consultant, appraiser, etc., for projects of the type and scope of the Project hereunder.

3.3 Disbursement of Predevelopment Loan.

a. Reimbursement Payment Method. Provided that Developer is not in default of this Agreement, the Predevelopment Loan shall be disbursed by City to Developer on a reimbursement basis, except that the Contract Officer may fund an option payment or other earnest deposit directly for such purpose, as Eligible Predevelopment Expenses are incurred by Developer, as set forth in this Section 3.3. The Predevelopment Loan proceeds shall be disbursed to Developer in the form of a reimbursement payment for Eligible Predevelopment Expenses incurred by Developer, and in the case of an option payment or deposit of earnest money into an escrow then payment may be made directly by Costa Mesa for such purpose, and Developer shall not be entitled to advance disbursements of the Predevelopment Loan proceeds for Eligible Predevelopment Expenses not yet incurred, except as to the direct payment for an option or earnest money deposit into escrow.

b. Submittal of Reimbursement Request. No later than the fifteenth (15th) day of each month of the calendar year after the Effective Date, Developer shall submit to the Contract Officer a detailed invoice with complete and legible copies of supporting documentation so that proceeds of the Predevelopment Loan may be reimbursed to Developer for Eligible Predevelopment Expenses incurred by Developer. Each monthly reimbursement request shall itemize in detail the Eligible Predevelopment Expenses by listing each line item category from the Predevelopment Budget and including the following information for each category: (a) a description and the amount of each Eligible Expense included within that category for which reimbursement is sought; (b) the total amount budgeted in the Predevelopment Budget to the budget line item category; and (c) the total amount reimbursed to Developer for the budget line item category to date.

c. Costa Mesa's Review of Payment Request and Disbursement of Funds. The Contract Officer shall have the authority on behalf of Costa Mesa to calculate and approve the amount of Developer's Eligible Predevelopment Expenses. To the extent that Costa Mesa has received sufficient HOME Funds from the HUD, payment of the Predevelopment Loan amount determined by Costa Mesa to be owing to Developer pursuant to this Agreement for each month during the term of this Agreement shall be made by Costa Mesa within thirty (30) days after Developer's submission of a complete invoice/reimbursement request. If Costa Mesa disapproves an invoice for reimbursement, Costa Mesa shall notify Developer in writing of the reasons for disapproval within fifteen (15) days of its receipt of a reimbursement request.

d. Conditions Precedent to Disbursement of Predevelopment Loan. The Predevelopment Loan shall be disbursed to or on behalf of Developer upon the satisfaction of the following conditions:

(i) **Execution and Delivery of Documents.** Developer shall have executed and delivered to Costa Mesa the Promissory Note (Deferred Repayment Note) in the form attached hereto as Exhibit B and any other documents and instruments required to be executed and delivered by Developer (collectively, the "Predevelopment Loan Documents").

(ii) **Continuing Qualification as a Community Housing Development Organization.** Prior to June 30, 0213 and then prior to June 30 of each following year, Mercy House shall provide Costa Mesa with all documents required to recertify Mercy House as a CHDO in accordance with the minimum eligibility criteria set forth under the HOME Requirements at 24 CFR 92.2.

(iii) **Reimbursement Request.** Developer shall have provided a complete invoice/reimbursement request in accordance with Section 3.3b.

(iv) **Insurance.** Developer shall have presented a certificate to Costa Mesa of the insurance policies/coverage and endorsements that are required pursuant to Section 6.1 hereof and shall be maintained by Developer and remain in full force and effect.

(v) **No Default.** There shall exist no condition, event or act which would constitute an Event of Default (as hereinafter defined) hereunder or which, upon the giving of notice or the passage of time, or both, would constitute an Event of Default.

(vi) **Representations and Warranties.** All representations and warranties of both Mercy House and Wakeland contained herein shall be true and correct.

3.4 Return of Predevelopment Loan Proceeds. If it is determined, as a result of an audit or otherwise, that any disbursement of the Predevelopment Loan proceeds was improper or made for expenditures not eligible for reimbursement or other payment hereunder, Developer shall immediately owe and shall promptly repay to Costa Mesa the amounts of each and all such disbursements.

3.5 Excess Predevelopment Loan Proceeds. If the amount of Eligible Predevelopment Expenses incurred by Developer during the term of this Agreement is less than the Predevelopment Loan, the excess Predevelopment Loan proceeds shall remain with and revert to the City as HOME Program Funds and thereafter shall not be encumbered by this Agreement. In addition, the Predevelopment Loan funds for Eligible Predevelopment Expenses for which Developer has not submitted a complete invoice/reimbursement request to Costa Mesa within ten (10) days following the termination of this Agreement shall revert to the City and be allocated for other eligible activities under the HOME Program.

4. PERFORMANCE OF PREDEVELOPMENT ACTIVITIES

4.1 Predevelopment Activities. Developer shall perform and complete all Predevelopment Activities diligently, in a timely manner, and in compliance with applicable federal, state, and local laws and regulations. If any Predevelopment Activity constitutes a specific task or activity that is required under this Agreement to be commenced or completed by a certain date or time period, then Developer shall commence, complete and perform the task or activity within the specified time period. In connection therewith, Developer shall perform all Predevelopment Activities included in the Performance Schedule that is a part of Exhibit A, which tasks shall be performed within the time period set forth therein.

4.2 Standard of Performance. Developer shall perform all Predevelopment Activities in a competent manner to the reasonable satisfaction of Costa Mesa and in accordance with this Agreement. In addition, Developer shall perform the Predevelopment Activities in compliance with the HOME Program and in a manner that meets the CHDO guidelines under which the Predevelopment Loan was awarded to Developer. Developer represents to Costa Mesa that the Predevelopment Activities will be performed by Developer under direct supervision by Mercy House and Wakeland's Developer Representatives, and that all personnel engaged in the Predevelopment Activities shall be fully qualified, authorized, and permitted under applicable law to perform such Predevelopment Activities.

4.3 Monitoring. Costa Mesa through its Contract Officer shall monitor and evaluate Developer's performance under this Agreement to determine compliance with this Agreement and the HOME Program. Developer shall cooperate with Costa Mesa and shall make available to Costa Mesa all information, documents and records reasonably requested by Costa Mesa and shall provide Costa Mesa the reasonable right of access to the Site (post-selection) during normal business hours for the purpose of assuring compliance with this Agreement and evaluating Developer's performance hereunder.

4.4 Compliance with Laws and Regulations and HOME Program. Developer shall observe and comply with all applicable federal, state, and local laws, regulations and rules of governmental agencies having jurisdiction, including without limitation the HOME Program and the statutes and regulations referenced therein. Because the source of the Predevelopment Loan is funds received from HUD pursuant to HOME Program, Developer is required to comply with all applicable

requirements of the HOME Program. In the case of any conflict between the HOME Program and this Agreement, the HOME Program shall control; it being understood, however, that in order to be in compliance with this Agreement and the HOME Program, Developer shall, to the extent possible, comply with the most restrictive provisions in this Agreement and the HOME Program.

4.5 Licenses, Approvals and Permits. Developer shall secure, at its sole cost and expense, any and all licenses, permits and approvals that may be required by law for the performance of the Predevelopment Activities.

4.6 Program Costs. Except to the extent Costa Mesa has specifically agreed to provide the Predevelopment Loan and disburse proceeds thereof for Eligible Predevelopment Expenses pursuant to Section 3, Developer shall be responsible for any and all costs, fees, and other expense related in any manner directly or indirectly to the Project and any Predevelopment Activities whether or not there are adequate HOME Funds or proceeds available from the Predevelopment Loan therefor.

5. RECORDS AND REPORTS

5.1 Records

a. Records to be Maintained. Developer shall keep and maintain records providing a full description of the Predevelopment Activities undertaken, records demonstrating that the Predevelopment Activities meet the HOME Program requirements, including CHDO requirements and maintain all records demonstrating the eligibility of the Predevelopment Activities constituting any Eligible Predevelopment Expenses and such other records as may be reasonably required by Costa Mesa to enable Costa Mesa to evaluate Developer's compliance with the HOME Program, and to identify and account for the use of the Predevelopment Loan proceeds, all expenditures for Eligible Predevelopment Expenses, all expenses for other Predevelopment Activities whether or not eligible or reimbursed or paid from loan proceeds, and all other costs pertaining to this Agreement to enable Costa Mesa to comply with its record keeping and reporting requirements under the HOME Program. Books and records pertaining to the Predevelopment Loan, Eligible Predevelopment Expenses, and all other Predevelopment Activities shall be kept and prepared in accordance with generally accepted accounting principles.

b. Retention. The books and records required to be maintained by Developer under this Agreement shall be retained for a period of five (5) years following the termination of this Agreement; provided, however, in the event any litigation, audit, negotiation or other action involving the books and records is commenced prior to the expiration of the five (5) year retention period, Developer shall retain the books and records until completion of the action and resolution of all issues which arise from it.

c. Location of Records. The books and records required to be maintained by Developer shall be kept at Mercy House's corporate offices in Orange County, California.

d. Access to Records. Costa Mesa and HUD and/or their representatives shall have full and free access to and the right to examine, inspect and audit all books and records of Developer pertaining to this Agreement at all times during normal business hours.

e. **Audits.** Developer shall perform all audits of its books and records required by the HOME Program and/or by Costa Mesa and/or by HUD, and a copy of such audits shall be forwarded to Costa Mesa within thirty (30) days after completion. Such audits shall be conducted in accordance to the “Standards for Financial Management Systems” (24 CFR 84.21). Developer shall be subject to all audit and review requirements imposed on Costa Mesa in connection with this Agreement and shall, at its sole cost and expense, because such audits and reviews to be timely performed.

6. INSURANCE AND INDEMNITY

6.1 Commencement of Work. Developer shall not commence work under this Agreement until all certificates and endorsements have been received and approved by Costa Mesa’s risk management staff. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify the City and CMHA of any material change, cancellation, or termination at least thirty (30) days in advance.

6.2 Workers Compensation Insurance. For the duration of this Agreement, Developer and all subcontractors shall maintain Workers Compensation Insurance in the amount and type required by law, if applicable.

a. **Workers Compensation coverage/insurance:** At all times during the term of this Agreement, Mercy House and Wakeland each, and each and all of their subcontractors, shall maintain Workers Compensation Insurance in the amount and type required by law. Both and each Mercy House and Wakeland agree to waive, and to obtain endorsement from each workers’ compensation insurer waiving, subrogation rights under its workers’ compensation insurance policy against the City and CMHA and shall require each and all of the subcontractors, if any, to do likewise under their workers’ compensation insurance policies.

6.3 Insurance Amounts. Developer shall maintain the following insurance for the duration of this Agreement:

a. **CGL coverage:** Commercial general liability in the amount of \$1,000,000 per occurrence; insurance companies, and the issued endorsements/certificates must be acceptable to the City of Costa Mesa, Risk Management Department, and each insurance company must have a Best’s Guide Rating of A-Class VII or better, as approved by the City’s risk management staff.

b. **Auto coverage:** Automobile liability in the amount of \$1,000,000 combined single limit; Insurance companies must be acceptable to Costa Mesa and have a Best’s Guide Rating of A- Class VII or better, as approved by Costa Mesa’s risk management staff.

An Additional Insured Endorsement, for the policy under Section 6.3a. shall designate the City of Costa Mesa and the Costa Mesa Housing Authority, and their elected and appointed officials, officers, directors, employees, agents, counsels, and volunteers as additional insureds and loss payees (together, “Additional Insureds”) for liability arising out of work or operations performed by or on behalf of Mercy House and Wakeland. Developer shall provide to Contract Officer proof of insurance and endorsement forms that conform to Costa Mesa’s requirements, as approved by Costa Mesa’s risk management staff.

An Additional Insured Endorsement for the policy under Section 6.3b. shall designate the Additional Insureds, as additional insureds and loss payees, for automobiles owned, leased, hired, or borrowed by Developer both Mercy House and Wakeland. Developer shall provide to Contract Officer proof of insurance and endorsement forms that conform to Costa Mesa's requirements, as approved by Costa Mesa's risk management staff.

For any claims related to this Agreement, Developer's insurance coverage shall be primary insurance as respects the Additional Insureds. Any insurance or self-insurance maintained by any of the Additional Insureds shall be in excess of Developer's insurance and shall not contribute with it.

The Chief Executive Officer, in consultation with the City's Risk Manager and City Attorney, is hereby authorized to reduce the requirements set forth above in the event the CEO determines that such reduction is in Costa Mesa's best interests.

6.4 Disclosure to Mercy House and Wakeland re Mandatory Insurance under Future Contracts. Mercy House and Wakeland each knowingly acknowledge and agree that in the event the Parties proceed to negotiation of and entering into an affordable housing agreement and/or other implementing contract(s) for the Project with Costa Mesa that such contract(s) will include mandatory and expanded insurance requirements well beyond the basic coverage set forth above in Section 6.2 and 6.3, including insurance requirements for Mercy House, Wakeland, and their general contractor(s) and subcontractor(s) that may construct or otherwise work on the Project. In this regard, Mercy House and Wakeland each acknowledge and agree that such insurance coverage will be a material and mandatory part of such contract(s) to be negotiated and compliance with such may require each or both to obtain, maintain, and pay for insurance policies, coverages, endorsements and/or certificates not presently maintained by each or both.

7. DEFAULTS AND REMEDIES

7.1 Defaults-General.

a. Subject to any extensions of time pursuant to Section 8.4, failure or delay by any Party to perform any term or provision of this Agreement constitutes a default under this Agreement. The Party who so fails or delays must immediately commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence and during any period of curing shall not be in default.

b. The nondefaulting Party shall give written notice of default to the Party in default, specifying: (a) the nature of the event or deficiency giving rise to the event of default, (b) the action required to cure the event or deficiency, if an action to cure is possible and can be ascertained, and (c) a date by which such action to cure must be taken, if applicable. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

c. Neither Party may exercise any rights or remedies upon a default by the other Party, unless and until such default continues for a period of thirty (30) days after written notice thereof from the non-defaulting Party unless otherwise provided. If the nature of the default is such that more than thirty (30) days are reasonably required for its cure, then the defaulting Party shall not be deemed to be in default if it has commenced a cure within the 30-day period and thereafter diligently prosecutes such cure to completion within ninety (90) days after receipt of written notice thereof.

d. Any failures or delays by any Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive any Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect assert or enforce any such rights or remedies.

7.2 Remedies. In addition to any other rights or remedies available at law or in equity, upon a default of Developer, Costa Mesa may:

(i) Temporarily withhold disbursement of the Predevelopment Loan proceeds pending correction of the default by Developer.

(ii) Refuse to disburse all or any part of the Predevelopment Loan and reallocate the funds to another activity.

(iii) Wholly or partially suspend or terminate the award of the Predevelopment Loan.

(iv) Wholly or partially suspend or terminate this Agreement.

(v) Require Developer to repay any Predevelopment Loan funds that Costa Mesa determines were not expended in compliance with the requirements of this Agreement or the HOME Requirements.

(vi) Institute legal action to cure, correct or remedy any default, to recover damages for any default or to obtain any other remedy consistent with the purposes of this Agreement,

Except as otherwise expressly provided in this Agreement, any failure or delay by Costa Mesa in asserting any of its rights and remedies as to any default shall not constitute a waiver of any default, nor shall it change the time of default, nor shall it deprive Costa Mesa of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

7.3 Remedies Cumulative. No right, power, or remedy given by the terms of this Agreement or the Predevelopment Loan Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given by the terms of any such instrument, or by any statute or otherwise.

8. GENERAL PROVISIONS

8.1 Notices. Any approval, disapproval, demand, document or other notice (“Notice”) which either Party may desire to give to the other Party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (iii) mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the Party as set forth below, or at any other address as that Party may later designate by Notice:

Mercy House
/CHDO: Mercy House CHDO, Inc.
P.O. Box 1905
Santa Ana, CA 92702
Attention: Larry Haynes, Executive Director

Wakeland: Wakeland Housing and Development Corporation
1230 Columbia St., Ste. 950
San Diego, CA 92101
Attention: Rebecca Louie, Vice President and COO

City: City of Costa Mesa
77 Fair Drive
Costa Mesa, California 92628
Attention: Thomas R. Hatch, Chief Executive Officer

CMHA: Costa Mesa Housing Authority
77 Fair Drive
Costa Mesa, California 92628
Attention: Thomas R. Hatch, Executive Director

8.2 Non-Liability of Developer Officials and Employees. No member, official, employee or agent of Developer shall be personally liable to the City of Costa Mesa, or any successor(s) in interest, in the event of any default or breach by Developer or for any amount that may become due to City of Costa Mesa or their successors, or on any obligations under the terms of this Agreement.

8.3 Non-Liability of Costa Mesa Officials and Employees. No member, official, employee or agent of Costa Mesa shall be personally liable to Mercy House and/or to Wakeland, or any successor(s) in interest, in the event of any default or breach by Costa Mesa or for any amount that may become due to Developer or their successors, or on any obligations under the terms of this Agreement.

8.4 Contract Administration. The Contract Officer shall be the person designated by Costa Mesa to administer this Agreement on behalf of Costa Mesa, and Developer Representatives shall be the persons designated by Developer to administer this Agreement on behalf of Developer.

8.5 Force Majeure. Subject to each Party's compliance with the notice requirements, performance by a Party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to causes beyond the control and without the fault of the Party claiming an extension of time to perform, which may include the following: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, assaults, acts of God, acts of a public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, materials or tools, acts or omissions of another Party, or acts or failures to act of any public or governmental entity (except that the acts or failure to act of Costa Mesa shall not excuse performance of Costa Mesa hereunder). An extension of the time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the

commencement of the cause, if notice by the Party claiming such extension is sent to the other Parties within thirty (30) days of the commencement of the cause.

8.6 Entire Agreement, Waivers and Amendments. This Agreement including its Exhibits integrates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous agreements among the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Party to be charged, and all amendments and modifications hereto must be in writing and signed by the appropriate authorities of Costa Mesa and Developer.

8.7 Applicable Law: Venue. The internal laws of the State of California shall govern the interpretation of this Agreement. All legal actions must be instituted and maintained in the Superior Court of the County of Orange, State of California, or in any other appropriate court in Orange County.

8.8 Litigation Expenses. In addition to any other remedies provided hereunder or available pursuant to law, if any Party brings an action or proceeding to enforce, protect or establish any right or remedy hereunder, the prevailing Party shall be entitled to recover from the other Party(ies) its costs of suit and reasonable attorneys' fees.

8.9 Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement.

8.10 Prohibition against Assignment and Transfer. The qualifications and identity of both Mercy House and Wakeland are of particular concern to Costa Mesa. It is because of those qualifications and identity that Costa Mesa has provided financial assistance to Developer and entered into this Agreement with Developer. Accordingly, Developer shall not, whether voluntarily, involuntarily or by operation of law, undergo any significant change in ownership or assign all or any part of this Agreement or any rights hereunder associated with the Project, a Site (once selected), Predevelopment Loan, Eligible Predevelopment Expenses, or other Predevelopment Activities without Costa Mesa prior written approval, which Costa Mesa may grant or withhold in their sole and absolute discretion.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have executed this *Community Housing Development Organization Predevelopment Loan and Commitment of HOME Program Funds Agreement* as of the Effective Date set forth above.

DEVELOPER:

MERCY HOUSE CHDO, INC.
a California nonprofit corporation

By: _____
Larry Haynes
Its: Executive Director
Date: _____

APPROVED AS TO FORM:

By: _____
Counsel to Mercy House

WAKELAND HOUSING AND DEVELOPMENT CORPORATION,
a California nonprofit corporation

By: _____
Kenneth L. Sauder
Its: President and CEO
Date: _____

By: _____
Rebecca Louis
Its: Vice President and COO
Date: _____

APPROVED AS TO FORM:

By: _____
Counsel to Wakeland

[Corporations Code: requires two authorized officer/director signatures for each corporation]

[SIGNATURES CONTINUE ON NEXT PAGE]

COSTA MESA

CITY OF COSTA MESA,
a California municipal corporation

By: _____
Stephen M. Mensinger, Mayor Pro Tem

Date: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

COSTA MESA HOUSING AUTHORITY,
a public body corporate and politic

By: _____
Stephen M. Mensinger, Vice Chair

Date: _____

ATTEST:

Secretary

APPROVED AS TO FORM:

By: _____
General Counsel or Special Counsel

EXHIBIT A

**ELIGIBLE PREDEVELOPMENT ACTIVITIES AND EXPENSES WITH
PREDEVELOPMENT BUDGET AND PERFORMANCE SCHEDULE**

Predevelopment Expenses	2013					2014						Total
	July	August	September	November	December	January	February	March	April	May	June	
Environmental Testing												
Phase I/II			5,000	5,000								10,000
Lead/Asbestos				5,000	5,000							10,000
Financial Feasibility												
Appraisal			5,000	5,000								10,000
Market Study				2,000	3,000							5,000
Financial Consulting	500	500	500	500	1,000	1,000	2,000					6,000
Design Costs												
Architect/Engineering/PNA	1,000	1,000	1,000	2,000	5,000	10,000	10,000	25,000	25,000	45,000	45,000	170,000
Soils/Geotechnical					2,500	2,500	2,500	2,500				10,000
Construction-Related												
Permits & Fees						2,000	3,000				20,000	25,000
Survey/Civil								1,000	3,000	3,000	3,000	10,000
Construction Consultant								500	500	2,000	2,000	5,000
Preliminary Relocation Planning							3,500	3,500				7,000
Site Control												
Earnest Money Deposit				25,000								25,000
Option Payment								180,000				180,000
Legal			3,000	3,000					4,000		5,000	15,000
Contingency	500	500	500	500	1,000	1,000	1,000	1,000	1,000	2,000	3,000	12,000
Total Expenditures by Month	2,000	2,000	15,000	48,000	17,500	16,500	202,000	33,500	33,500	52,000	78,000	500,000

Project Timeline

Milestones	2013					2014					
	July	August	September	November	December	January	February	March	April	May	June
City Council/HUD Approval	█										
Site Selection/Feasibility	█	█	█								
Execute Purchase Agreement				█							
Due Diligence				█	█						
City Council Approves Site						█					
Fund Option Payment							█				
Design Development						█	█	█			
Submit Financing Applications								█			
Construction Drawings								█	█	█	
Close Escrow/Start Constuction											█

EXHIBIT A

**ELIGIBLE PREDEVELOPMENT ACTIVITIES AND EXPENSES
WITH PREDEVELOPMENT BUDGET AND PERFORMANCE SCHEDULE**

EXHIBIT B

**PROMISSORY NOTE
(Deferred Repayment Note)**

\$500,000.00

May 21, 2013
Costa Mesa, California

FOR VALUE RECEIVED, MERCY HOUSE CHDO, INC., a California nonprofit corporation, and **WAKELAND HOUSING AND DEVELOPMENT CORPORATION**, a California nonprofit corporation (together, jointly and severally, “Developer”), jointly and severally promise to pay to the **CITY OF COSTA MESA**, a California municipal corporation (“City”), or order, at the City’s office at 77 Fair Drive, Costa Mesa, California, 92628, or such other place as the City may designate in writing, the principal sum of **Five Hundred Thousand Dollars (\$500,000.00)**, or so much of such amount which has been disbursed by the City to or on behalf of Developer for Eligible Predevelopment Expenses (“Predevelopment Loan”), in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

1. Agreement. This Promissory Note (Deferred Payment Note) (“Note”) is given in accordance with that certain *Community Housing Development Organization Predevelopment Loan and Commitment of HOME Program Funds Agreement* entered into and executed by the City, the Costa Mesa Housing Authority, a public body corporate and politic, and Mercy House and Wakeland and dated as of May 21, 2013 (“Agreement”). The rights and obligations of Developer and City under this Note shall be governed by the Agreement and by the additional terms set forth in this Note.

2. Interest. No interest shall accrue on the Predevelopment Loan.

3. Repayment of Predevelopment Loan.

(a) City will waive repayment if:

(i) *Failure to Select a Site after Completion of the Site Selection Process.* If after establishing a Site Selection Process and the good faith implementation by the Parties thereof, in the event the City Council does not approve one or more parcels as the Site for development of the Project, then the Contract Officer will waive repayment of the Predevelopment Loan by Developer based on satisfactory evidence that there are objective impediments to continuing to take steps toward completion of the Project that are reasonably beyond the control of Developer and that cause the Project to be infeasible pursuant to 24 CFR §92.301(a)(3).

(ii) *Development of the Project is Infeasible.* The Contract Officer will waive repayment if Developer, as borrower, provides evidence reasonably satisfactory to the Contract Officer that there are objective impediments to the Project that are reasonably beyond the control of Developer or Site (post-selection by the City Council) that causes the Project to be infeasible pursuant to 24 CFR § 92.301(a)(3). (a)

**EXHIBIT B
PROMISSORY NOTE**

(b) If Costa Mesa (City and/or CMHA) and Developer enter into an Affordable Housing Agreement (“AHA”) for the Project, any such agreement shall set forth repayment terms of the Predevelopment Loan and fold in this Predevelopment Loan into the loan provided by and under such AHA.

(c) The Predevelopment Loan shall be immediately due and payable in the event that Developer commits a material default of the Agreement and fails to cure the default within the time period(s) provided in the Agreement.

(d) The Predevelopment Loan shall be immediately due and payable in the event that Developer assigns or attempts to assign any portion of the Agreement or the Project or the Site (post-selection).

(e) The Predevelopment Loan shall be immediately due and payable in the event that Costa Mesa and Developer fail to enter into an AHA for the Project within six-months after expiration of the term set forth in Section 2.1 of the Agreement.

Failure to declare such amounts due shall not constitute a waiver on the part of City to declare them due subsequently.

5. Waivers.

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

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

(c) The obligations of Developer under this Note shall be absolute and Developer waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reasons whatsoever.

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

7. Amendments and Modifications. This Note may not be changed orally, but only by an amendment in writing signed by Developer and by City.

8. Developer Assignment Prohibited. In no event shall Developer assign or transfer any portion of this Note (or the Agreement, or the Project, or the Site (post-selection)) without the prior express written consent of City, which consent may be given or withheld in the City’s sole discretion

**EXHIBIT B
PROMISSORY NOTE**

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

DEVELOPER:

MERCY HOUSE

MERCY HOUSE CHDO, INC.
a California nonprofit corporation

By: _____
Larry Haynes
Its: Executive Director
Date: _____

WAKELAND

WAKELAND HOUSING AND DEVELOPMENT CORPORATION,
a California nonprofit corporation

By: _____
Kenneth L. Sauder
Its: President and CEO
Date: _____

By: _____
Rebecca Louis
Its: Vice President and COO
Date: _____

[Corporations Code: requires two authorized officer/director signatures for each corporation]

EXHIBIT C

PROJECT DESCRIPTION

Wakeland and Mercy House (Developer) believe strongly that the solution to ending homelessness is to provide permanent housing options combined with supportive services. The following section outlines our approach to developing and operating a model permanent supportive housing project – one that is well-designed, well-managed and provides its residents with stability and an improved quality of life. The Project proposed by the Developer and that will be implemented pursuant to the Community Housing Development Organization (CHDO) Predevelopment Loan and Commitment of HOME Program Funds Agreement (Permanent Supportive Housing Project) (herein “Agreement”) and other implementing contracts, including an Affordable Housing Agreement is described in this Exhibit C, Project Description.

Select a Project Location

The first step in the development of a permanent supportive housing project is locating a suitable site. There are two possible approaches for locating the supportive housing project. The first, and preferred, strategy is to acquire and renovate an existing motel, ideally one with a track record of crime and police calls so that the project can provide multiple benefits to the community. The second is to build a new development on a vacant or underutilized site. Each approach is discussed in more detail below.

Approach # 1 Motel Acquisition and Renovation

This strategy would meet two city goals: creating permanent supportive housing and eliminating a problem property. The ideal motel for conversion would meet the following requirements:

1. High volume of police calls
2. Private ownership (i.e. not part of a motel chain, for acquisition purposes)
3. Ten years of continuous ownership (necessary for obtaining tax credits)
4. Design that lends itself to conversion to permanent supportive housing and meets all city and funder requirements for supportive housing, including:
 - a. Minimum and maximum unit sizes
 - b. Number and location of baths
 - c. Cooking area requirements
 - d. Service space needs
5. A location that minimizes community opposition (i.e. not overly residential)
6. Able to obtain 9 percent tax credits based on location and amenities
7. Minimal environmental or physical hazards or constraints

Our initial analysis from applying these criteria to the list of Area 1 and Area 2 Target.

Once an agreed-upon target list has been formed, Wakeland will utilize local resources to contact the owner and determine the feasibility of a sale.

Approach # 2: Development on Vacant or Underutilized Parcel

The second alternative is to develop the permanent supportive housing project on a vacant or underutilized lot in the Costa Mesa. The primary benefit to this strategy is that the project can

EXHIBIT C PROJECT DESCRIPTION

be designed and built from the ground up, allowing for greater flexibility in unit configuration, site plan, etc. The downside, however, is that the city does not receive the dual benefit of removing a problem motel. If this strategy is pursued, Wakeland would work with the city and local resources to develop a list of potential sites which would be evaluated using similar criteria to those used for the motel acquisition strategy.

Designing and Constructing a High-Quality, Cost-Efficient Project

The Corporation for Supportive Housing states that in a successful supportive housing project, “the design, construction, appearance, physical integrity, and maintenance of the housing units provide an environment that is attractive, sustainable, functional, appropriate for the surrounding community and conducive to the tenants’ stability.” Our team will take each of these factors into consideration during project design, which will involve a wide range of key stakeholders, including neighbors, community groups, local businesses, service providers, potential residents and City of Costa Mesa staff.

Additionally, the project will be designed to be as cost-effective as possible. This is achieved through the early involvement of a skilled general contractor, who works closely with the architect to ensure that cost-efficient materials and designs are incorporated into the project whenever possible. The general contractor would be selected based on relevant experience and a competitive bid.

Identifying and Obtaining Project Funding

A successful permanent supportive housing project requires the layering of many funding sources to cover construction, operation and services. Wakeland will take the lead in identifying and obtaining all available sources of funds for the project at the most competitive rates.

Provide Intensive On-Site Services

Mercy House will be the lead service provider and coordinate auxiliary services for the Permanent Supportive Housing Project. Mercy House’s work with the Homeless Task Force and its collaboration on the HPRP program with the city’s Social Worker has shown the level of commitment to the community of Costa Mesa in helping to develop proactive and constructive strategies toward reducing the impact of homelessness.

Mercy House’s existing Supportive Services Program would be implemented on site at this project. This program is designed to help residents maintain their housing and promote continued self-sufficiency. Meetings are held in the resident’s home and tailored to the specific needs of each household. Each household is assigned a case manager who completes an initial assessment and service plan. Meetings are held monthly or more frequently, as needed or requested. Residents at the proposed permanent supportive housing project would be able to select from the following services:

- Direct case management
- Life skills courses
- Resident Advisory Councils/Leadership Training
- Educational and recreational group activities
- Referrals to community resources

EXHIBIT C PROJECT DESCRIPTION

Additionally, Mercy House has already identified a number of auxiliary service providers to participate in the Costa Mesa project, including:

- The Church's Consortium
- Vanguard University
- City of Costa Mesa Social Worker
- California State University, Fullerton
- Orange County Rescue Mission
- Local schools

Additional services and partners will be identified based on the population(s) to be served and needs assessment.

Identify Eligible Tenants

Eligible tenants for the Costa Mesa Permanent Supportive Housing project will be identified in partnership with local service providers who offer services to the City's homeless such as the Churches Consortium. These partner agencies will serve as hub locations where clients can be informed of the Supportive Housing project and referred for the qualification process. Instrumental in these outreach efforts is the City's Outreach Social Worker who will also be key in referring potential tenants to the project.

Potential clients will then be qualified according to the requirements of the various funding sources (Tax Credit, MHSA, etc.) and any other tenant qualification criteria developed for the project. A key consideration in the development of any criteria will be the potential "magnet effect" that operating homeless programs can promote, so all available efforts will be applied to maintaining a focus on serving Costa Mesa residents versus the regionally homeless populations. Wakeland's Los Vecinos project, for example, utilized a scoring system which gave an increased score to those living or working in the City of Chula Vista – resulting in a 100% local occupancy rate.

Manage and Operate Completed Project

Wakeland will take the lead in managing and operating the permanent supportive housing project, working closely with Solari Enterprises property management to ensure that the property supports the mission and goals of the housing while also sustaining the physical and financial viability of the property. Additionally, the team will ensure that the property is in full compliance with all local, state and federal regulations, and that all required reporting is done on a timely basis.