

ATTACHMENT A

RESOLUTION NO. 14-____

(attached)

RESOLUTION NO. 14-___

A JOINT RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA AND THE COSTA MESA HOUSING AUTHORITY APPROVING A COOPERATION AGREEMENT BETWEEN THE CITY AND AUTHORITY; AND, AUTHORIZING THE CITY APPROPRIATION OF MONIES FROM THE GENERAL FUND RELATING TO CIVIC CENTER BARRIO HOUSING CORPORATION PROJECTS LOCATED AT 707, 711 W. 18TH ST., 745 W. 18TH ST., 717, 721 JAMES ST. AND 734, 740, 744 JAMES ST.

THE CITY COUNCIL OF THE CITY OF COSTA MESA AND THE COSTA MESA HOUSING AUTHORITY DO HEREBY RESOLVE AS FOLLOWS:

WHEREAS, the City of Costa Mesa ("City") is a California municipal corporation; and

WHEREAS, the City Council by Resolution adopted on January 17, 2012 declared the need for a housing authority to function in the City of Costa Mesa, established the "Costa Mesa Housing Authority" ("Authority"), and declared that the members of the City Council are the Commissioners of the Housing Authority so formed all pursuant to the California Housing Authorities Law, commencing with Health & Safety Code Section 34200, *et seq.* ("HAL"); and

WHEREAS, the Authority is the housing successor under Parts 1.8 and 1.85, Division 24, of the California Health and Safety Code ("Dissolution Law"); and

WHEREAS, in May 2014, the City and Authority through the City Attorney initiated litigation against Civic Center Barrio Housing Corporation, a California non-profit corporation ("CCBHC"), relating CCBHC defaults on all four of its affordable housing projects located in the City for which the City as to three projects and the former Costa Mesa Redevelopment Agency now the Authority, as housing successor, as to one project, provided subordinate financing; and

WHEREAS, the pending legal action in Orange County Superior Court is titled: *City of Costa Mesa, a municipal corporation, et al., v. Civic Center Barrio Housing*, Case No. 30-2014-00715552-CU-BC-CJC ("Action"); and the causes of action in the Action alleged against CCBHC include breach of contract and judicial foreclosure relating to four affordable housing projects comprising 30 Affordable Units that are covenanted for occupancy by eligible and qualified Very Low and Low Income tenants for 55-year affordability terms; and

WHEREAS, excluding the 717, 721 James St. project as that First Lien loan was paid off in December 2013, the total of the outstanding balances of the three remaining First Lien loans, (i) one Pacific Life First Lien loan on 734, 740 744 James St. project and

(ii) the two Chase Bank First Lien loans on 707, 711 W. 18th St. and 745 W. 18th St., are estimated at \$636,000 plus lenders' costs and fees due under the respective deeds of trust (together cumulatively, the "First Lien Balances"); and

WHEREAS, the full amount of the First Lien Balances are to be allocated from the General Fund balance for the City to make the loan to the Authority; then, through the pending legal Action, Costa Mesa will cause payment of the full amounts due to Pacific Life and Chase Bank to pay off their First Lien Balances; and

WHEREAS, in order to preserve these "at-risk" affordable housing units, staff and legal counsels recommend that the City and Authority enter into that certain Cooperation Agreement (attached hereto as Exhibit A) and authorize the City Attorney to settle and resolve the Action as to the first lien lenders Pacific Life and Chase Bank loans; and

WHEREAS, the City and Authority desire to enter into the Cooperation Agreement and for the City to authorize the appropriation of the First Lien Balances from the General Fund balance for preservation of affordable housing in connection with the pending Action.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COSTA MESA AND THE COSTA MESA HOUSING AUTHORITY as follows:

SECTION 1: The City and Authority hereby approve the Cooperation Agreement with such changes mutually agreed upon by the CEO and Executive Director (or authorized representative), the City Attorney, and General Counsel as are minor and in substantial conformance with the form of the Cooperation Agreement that is submitted with this Resolution. The City Council and Authority Board authorize the CEO and Executive Director and the City Clerk and Secretary to execute and attest the Cooperation Agreement, including the Loan Agreement, Exhibit A thereto on behalf of the City and Authority. Copies of the final form of the Cooperation Agreement, when duly executed and attested, shall be placed on file in the office of the City Clerk. Further, the CEO and Executive Director (or authorized representative) is authorized to implement the Cooperation Agreement, issue warrants, and take all further actions and execute all documents referenced therein and/or necessary and appropriate to carry out the Cooperation Agreement. The CEO and Executive Director (or authorized representative) is hereby authorized to the extent necessary during the implementation of the Cooperation Agreement and related Loan Agreement to make technical or minor changes thereto after execution, as necessary to properly implement and carry out the Cooperation Agreement and related Loan Agreement provided the changes shall not in any manner materially affect the rights and obligations of the City or the Authority.

SECTION 2. The City Council authorizes the appropriation of money from the General Fund in the full amount of the First Lien Balances, which funds are required to implement the Cooperation Agreement as set forth above and therein.

SECTION 3: The City Council and Authority authorize the CEO/Executive Director and legal counsels (and their designees) to take all necessary actions in the Action, including issuance of warrants, in connection with the payoff of first lien mortgages of lenders Pacific Life and Chase Bank.

[resolution continues on next page]

SECTION 4: The City Clerk and Authority Secretary shall certify to the adoption of this Joint Resolution.

PASSED AND ADOPTED this 1st day of July, 2014.

CITY COUNCIL:

James M. Righeimer, Mayor

ATTEST:

APPROVED AS TO FORM:

Brenda Green, City Clerk

Thomas P. Duarte, City Attorney

COSTA MESA HOUSING AUTHORITY:

James M. Righeimer, Chair

ATTEST:

APPROVED AS TO FORM:

Brenda Green, Secretary

Celeste Stahl Brady, General Counsel

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF COSTA MESA)

I, BRENDA GREEN, City Clerk of the City of Costa Mesa and Secretary of the Costa Mesa Housing Authority, DO HEREBY CERTIFY that the above and foregoing Resolution No. 14- ____ is the original joint resolution of the City Council and Authority that was duly passed and adopted by the City Council of the City of Costa Mesa at a regular meeting and by the Costa Mesa Housing Authority at a special meeting held on the 1st day of July 2014, by the following roll call vote, to wit:

CITY COUNCIL:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

Authority:

AYES: BOARD MEMBERS:
NOES: BOARD MEMBERS:
ABSENT: BOARD MEMBERS:

EXHIBIT A
COOPERATION AGREEMENT
(attached)

COOPERATION AGREEMENT

This **COOPERATION AGREEMENT** (“Agreement”), dated as of July ___, 2014 (“Date of Agreement”), is entered into by and between the **CITY OF COSTA MESA**, a municipal corporation (“City”), and the **COSTA MESA HOUSING AUTHORITY**, a public body, corporate and politic and legal entity (“Authority”). The City and Authority together may be referred to as “Costa Mesa”.

RECITALS

A. The City is a municipal corporation and charter city incorporated and existing under the laws of the State. The City is authorized by the Government Code, has committed in its Housing Element, and under other laws to preserve and provide affordable housing in the community.

B. The Authority is a public body, corporate and politic formed, organized, existing, and exercising its powers pursuant to the California Housing Authorities Law, Health and Safety Code, Section 34200, *et seq.* (“HAL”) and is the housing successor to the former Costa Mesa Redevelopment Agency under Parts 1.8 and 1.85 of Division 24 of the California Health and Safety Code (“Dissolution Law”), in particular Sections 34176 and 34176.1. The Authority is authorized to transact business pursuant to action of the City. The Authority is and shall remain as a separate public body, corporate and politic, exercising governmental functions and performing a public function of the City.

C. In May 2014, Costa Mesa through the City Attorney has initiated litigation against Civic Center Barrio Housing Corporation, a California non-profit corporation (“CCBHC”), relating CCBHC defaults on all four of its affordable housing projects located in the City for which the City as to three projects and the former Costa Mesa Redevelopment Agency now the Authority, as housing successor, as to one project, provided subordinate financing as described below. The pending legal action in Orange County Superior Court is titled: *City of Costa Mesa, a municipal corporation, et al., v. Civic Center Barrio Housing*, Case No. 30-2014-00715552-CU-BC-CJC (“Action”). The causes of action in the Action alleged against CCBHC include breach of contract and judicial foreclosure.

D. The four CCBHC affordable housing projects include and are described in summary as follows:

- (1) **717 and 721 James Street**; 8 units in two 4-plexes; restricted to Very Low Income Tenants; Affordable Housing Agreement with City dated August 27, 2002; subject to a 55-year Affordability Period until 2057; First Amendment May 10, 2011; Residual Receipts Loan to CCBHC in original principal amount of \$1,041,940; First Lien lender Low Income Investment Fund (as agent for Self-Help Credit); City payoff of such loan (\$311,826.25) on December 6, 2013 pursuant to City Council authorization on September 17, 2013; Costa Mesa issued Notice of Defaults July 16, 2013; LIIF Notice of Default recorded August 21, 2013 (non-judicial foreclosure by REFS, Inc.); the City Attorney will settle with and dismiss LIIF and Self-Help as defendants upon LIIF’s recordation of a reconveyance deed.

- (2) **734, 740 and 744 James Street**; 11 units in one 3-plex and two 4-plexes; 9 units restricted to Low Income Tenants, 2 units restricted to Very Low Income Tenants; Affordable Housing Agreement with City dated December 20, 1993; 55-year Affordability Period until 2048; First Amendment May 10, 2011; Residual Receipts Loan to CCBHC by City \$690,921; First Lien Lender CCRC to Wells Fargo to Pacific Life as agent for Low Impact Fund with a 1st lien in original principal amount of \$558,675; Costa Mesa issued Notice of Defaults July 16, 2013; Costa Mesa initiated non-judicial foreclosure on November 1, 2013 that was substituted by the pending Action.
- (3) **745 W. 18th Street**; 3 units in one 3-plex; restricted to Very Low Income Tenants; Affordable Housing Agreement with City dated May 1, 1995; 55-year Affordability Period until 2050; First Amendment May 10, 2011; Residual Receipts Loan to CCBHC original principal amount of \$370,000; First Lien lender American Savings Bank as succeeded by Chase Bank 1st lien in original principal amount of \$50,000; Costa Mesa issued Notice of Defaults July 16, 2013; Costa Mesa initiated non-judicial foreclosure on November 1, 2013 that was substituted by the pending Action.
- (4) **707 and 711 W. 18th Street**; 8 units in two 4-plexes; restricted to Low Income Tenants; Affordable Housing Agreement with former RDA and thus now with Authority, as housing successor, dated October 11, 1995; 55-year Affordability Period until 2050; First Amendment August 12, 1996 (to add \$7000 to CM loan); another amendment May 10, 2011; Lender American Savings Bank, as succeeded by Chase Bank 1st lien in original principal amount of \$333,868; Residual Receipts Loan to CCBHC by RDA in original principal amount \$577,192; Costa Mesa issued Notice of Defaults July 16, 2013; Costa Mesa City initiated non-judicial foreclosure on November 1, 2013 that was substituted by the pending Action.

E. The Costa Mesa residual receipts loans on the four CCBHC Projects originally totaled \$2,680,053 for a total of 30 covenanted Affordable Units, which loans include annual debt service fifty percent (50%) Residual Receipts.

F. Excluding the 717, 721 James St. project as that First Lien loan was paid off in December 2013, the total of the outstanding balances of the three remaining First Lien loans, (i) one Pacific Life First Lien loan on 734, 740 744 James St. project and (ii) the two Chase Bank First Lien loans on 707, 711 W. 18th St. and 745 W. 18th St., are estimated at \$636,000 plus lenders' costs and fees due under the respective deeds of trust (together cumulatively, the "First Lien Balances").

G. The City Council by action of even date herewith appropriated the full amount of the First Lien Balances from the General Fund balance for the City to make the loan to the Authority hereunder.

H. Through the pending legal Action, Costa Mesa will cause payment of the full amounts due to Pacific Life and Chase Bank to pay off their First Lien Balances.

I. Pursuant to contract with HUD, the City has received and administers certain funds pursuant to the HOME Investments Partnership Act and Home Investment Partnership Program ("HOME Funds") pursuant to Title II of the Cranston Gonzalez National Affordable Housing Act (42 U.S.C. 12701 12839) and the HOME Program regulations codified at 24 CFR Part 92, as

amended by the “2013 HOME Final Rule” at 24 CFR Part 92 (together, the “HOME Program”). Costa Mesa must comply with these regulations in the preservation of the 30 Affordable Units in the CCBHC projects. Therefore, through the Action, Costa Mesa seeks to preserve the affordability and proper ownership, operation, maintenance and management of the 30 Affordable Units as required by HUD, which was the primary source of funding for all four of the subordinate Residual Receipts loans by Costa Mesa to CCBHC.

J. In the Action, all lienholders are named in the title company’s litigation guarantee and thus named as defendants by the City Attorney in the Action, including Pacific Life Chase Bank. The defaults alleged by Costa Mesa against CCBHC are the basis of cross-defaults under the Pacific Life and Chase Bank First Lien loans. Pacific Life and Chase Bank are the only senior First Lien lenders on the four projects; thus, if these senior lenders were to initiate foreclosures against CCBHC on their respective loans due to CCBHC’s defaults, then Costa Mesa’s Regulatory Agreements establishing the affordable housing covenants of record and Costa Mesa’s subordinate loans may be at risk of termination or payment of less than the full amounts due.

K. The City desires to advance and loan to the Authority the full amount of the First Lien Balances due to Pacific Life and Chase Bank in order to settle the Action as to all remaining senior First Lien lenders/parties.

L. The City and the Authority desire to enter into this Agreement to cause the City to loan such funds to the Authority and the Authority will repay such advance and loan from monies expected to be on account with the Authority, as housing successor, in August 2014 or soon thereafter.

M. Under this Agreement, the City and Authority desire:

(1) for the City to allocate, advance, loan and make available to the Authority the full amount of the First Lien Balances to pay off the Pacific Life and Chase Bank First Lien loans against three of the CCBHC projects (“Loan Amount”); and

(2) Such funds will be advanced and loaned by the City to the Authority, as needed, for the First Lien Balances payoffs as described in this Agreement and that certain Loan Agreement attached and fully incorporated as Exhibit A hereto.

N. The City and Authority are authorized by statute to preserve affordable housing in the community, provide funding for the preservation of affordable housing, including without limitation under provisions of the HAL, the Government Code, and the Health and Safety Code, in particular Sections 33220, 34176, 34176.1 thereto.

O. The foregoing Recitals are true and correct and constitute a substantive part of this Agreement.

NOW THEREFORE, in consideration of the above Recitals and all of the covenants and conditions set forth in this Agreement, the City and Authority agree as follows:

Section 1. City Loan to Authority. City agrees to loan to the Authority the Loan Amount of the First Lien Balances (estimated at \$636,000 plus lenders’ costs/fees under their

respective deeds of trust), as needed and necessary to pay off the Pacific Life and Chase Bank First Lien loans against three of the CCBHC projects.

Section 2. Authority Use of Loan Amount. Authority agrees that the Loan Amount funded by the City under this Agreement shall be expended as needed and necessary for the pay offs of the First Lien Balances to Pacific Life and Chase Bank for the First Lien loans against three of the four CCBHC projects.

Section 3. Indebtedness. The obligations of the Authority under this Agreement shall constitute an indebtedness of the Authority for the purposes of preserving affordable housing, which indebtedness shall be payable from monies available in the Authority's account, including without limitation monies generated loan payoffs to the housing successor under the Dissolution Law and monies made deposited into the Authority's account pursuant to the Dissolution Law, including Section 34191.4. Notwithstanding anything to the contrary set forth in this Agreement, the Authority's payment obligation hereunder is not, and shall not be deemed to be, a pledge of revenues of the Authority. The indebtedness of Authority under this Agreement shall be subordinate to the rights of the holder or holders of any existing bonds, notes or other instruments of indebtedness (all referred to herein as "indebtedness") of the Authority.

Section 4. General Provisions.

(a) Approvals and Actions. The Authority and City shall maintain the authority to implement this Agreement through the Executive Director and Chief Executive Officer (or his duly authorized representative), who shall have the authority to make approvals, issue interpretations, waive provisions, and/or enter into certain amendments of this Agreement on behalf of the City and Authority, as applicable, so long as such actions do not add to the costs incurred or to be incurred by the City as specified herein.

(b) Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

(c) Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

(d) Third Party Beneficiaries. The terms and provisions of this Agreement are for the benefit of the Authority and City, and as and if applicable for the benefit of any successor entity pursuant to applicable laws and regulations, as now existing or hereafter amended or added.

(e) Cooperation. Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

(f) Liability and Indemnification. In contemplation of the provisions of California Government Code Section 895.2 imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement as defined by Government Code Section 895, the parties hereto, as between themselves, pursuant to the authorization contained in Government Code Sections 895.4 and 895.6, shall each assume the full liability imposed upon it, or any of its officers, agents or employees, by law for injury caused by negligent or wrongful acts or omissions occurring in the performance of this Agreement to the same extent that such liability would be imposed in the absence of Government Code Section 895.2. To achieve the above-stated purpose, each party indemnifies, defends and holds harmless the other party for any liability, losses, cost or expenses that may be incurred by such other party solely by reason of Government Code Section 895.2.

(g) Default. If either party fails to perform or adequately perform an obligation required by this Agreement within thirty (30) calendar days of receiving written notice from the non-defaulting party, the party failing to perform shall be in default hereunder. In the event of default, the non-defaulting party will have all the rights and remedies available to it at law or in equity to enforce the provisions of this contract, including without limitation the right to sue for damages for breach of contract. The rights and remedies of the non-defaulting party enumerated in this paragraph are cumulative and shall not limit the non-defaulting party's rights under any other provision of this Agreement, or otherwise waive or deny any right or remedy, at law or in equity, existing as of the Date of Agreement or hereinafter enacted or established, that may be available to the non-defaulting party against the defaulting party. All notices of defaults shall clearly indicate a notice of default under this Agreement.

(h) Binding on Successors. This Agreement shall be binding on and shall inure to the benefit of all successors and assigns of the parties, whether by agreement or operation of law.

(i) Right to Terminate. The City shall have the right to terminate this Agreement in its sole determination upon reasonable cause. In the event the City terminates this Agreement, Authority shall immediately pay the entire portion of the Loan Amount.

(j) Term. Unless earlier terminated by the City pursuant hereto, this Agreement shall remain in effect until the Authority re-pays in full the Loan Amount to the City.

IN WITNESS HEREOF, the City and Authority have executed this Agreement as of the respective dates set forth below.

“CITY”

CITY OF COSTA MESA
a municipal corporation

Dated: July ____, 2014

By: _____
Thomas R. Hatch,
Chief Executive Officer

ATTEST:

CITY CLERK

Brenda Green, City Clerk

APPROVED AS TO FORM:

JONES & MAYER

Thomas P. Duarte, Esq.
City Attorney

AUTHORITY:

COSTA MESA HOUSING AUTHORITY,
a public body, corporate and politic

Dated: July ___, 2014

By: _____
Thomas R. Hatch, Executive Director

ATTEST:

HOUSING AUTHORITY SECRETARY

Brenda Green, Authority Secretary

APPROVED AS TO FORM:

STRADLING YOCCA CARLSON & RAUTH

Celeste Stahl Brady, General Counsel

EXHIBIT A

LOAN AGREEMENT

This **LOAN AGREEMENT** is entered into this ___ day of July, 2014 between the **CITY OF COSTA MESA**, a California municipal corporation (“City”) and the **COSTA MESA HOUSING AUTHORITY**, a public body corporate and politic (“Authority”).

The City and the Authority hereby agree as follows:

1. Amount. The City agrees to loan the Authority \$636,000 plus costs as needed and necessary to pay off the Pacific Life and Chase Bank first lien loans against three of the CCBHC projects.
2. Interest. Outstanding principal shall accrue interest at the rate of interest earned by the City on other short-term investments of the City, compounded daily, and as computed by the City Treasurer.
3. Payment. The Authority agrees to repay principal and all accrued interest on any loaned funds as funds become available but within no longer a period than one year from the date of this Loan Agreement, or at such other extended time as the parties may agree.
4. Penalty. In the event the Authority fails to make payment in full as required under this Agreement, the Authority shall pay to the City a late charge of one percent (1%) of the overdue amount and an additional one percent (1%) of the overdue amount for each calendar month such amount remains unpaid. Any unpaid portion of the loan will continue to accrue interest at the rate provided in Section 2 until paid in full.

IN WITNESS WHEREOF, the City and Authority have caused this Loan Agreement to be executed by their officers duly authorized on the date first above written.

CITY OF COSTA MESA, a California municipal corporation

Thomas R. Hatch, Chief Executive Officer

ATTEST:

Brenda Green, City Clerk

[Signature block continues on page 2]

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**APPROVED AS TO FORM:
JONES & MAYER**

Thomas P. Duarte, City Attorney

COSTA MESA HOUSING AUTHORITY
a public body corporate and politic

Thomas R. Hatch, Executive Director

ATTEST:

Brenda Green, Authority Secretary

**APPROVED AS TO FORM:
STRADLING YOCCA CARLSON & RAUTH**

Celeste Stahl Brady
Authority General Counsel