

**ATTACHMENT N 7**

**EXHIBIT D**

**ADDITIONAL TERMS & CONDITIONS: HOME FUNDS**

In addition to the requirements set forth in other provisions of the Agreement, Borrower shall comply, and shall cause all Borrower personnel and/or subcontractors to comply, with the following regulations and requirements.<sup>1</sup>

**1. Use of the HOME Funds.** The Loan shall be used only for eligible costs (see, e.g., 24 C.F.R. § 92.206, 92.214, 92.300(c), and 92.301), and any development work shall be completed within the times referred to in the Affordable Housing and Loan Agreement between County and Borrower.

**2. Affordability.** The Project units shall meet the affordability requirements of the HOME Requirements (24 C.F.R. § 92.254) or this Agreement and the Regulatory Agreement, whichever is more restrictive. If the Project units do not meet the affordability requirements of the HOME Requirements for the specified time period, Borrower shall repay the Loan to County promptly upon demand by County. In such event, Borrower shall not be released from the affordability and other covenants and restrictions set forth in this Agreement and the Regulatory Agreement, which shall continue to apply independent of the HOME Requirements.

**3. Equal Opportunity and Nondiscrimination.**

**a. Title VI of the Civil Rights Act of 1964, as amended, including Public Law 88-352 implemented in 24 CFR Part 1.** This law provides in part that no person shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. In regard to the sale or lease of the Property, Borrower shall cause or require a covenant running with the land to be inserted in the deed and leases prohibiting discrimination under this Title, and providing that County and the United States are beneficiaries of and entitled to enforce such covenants. Borrower shall enforce such covenant and shall not itself so discriminate.

**b. Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended, including Public Law 90-234.** The Fair Housing Act provides in part that there shall be no discrimination in housing practices on the basis of race, color, religion, sex, and national origin. The Fair Housing Act was amended in 1988 to provide protections from discrimination in any aspect of the sale or rental of housing for families with children and persons with disabilities. The Fair Housing Act also establishes requirements for the design and construction of new rental or for-sale multi-family housing to ensure a minimum level of accessibility for persons with disabilities.

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<sup>1</sup> **This exhibit is a list and summary of some of the applicable legal requirements and is not a complete list of all Borrower requirements. The description set forth next to a statute or regulation is a summary of certain provisions in the statute or regulation and is in no way intended to be a complete description or summary of the statute or regulation. In the event of any conflict between this summary and the requirements imposed by applicable laws, regulations, and requirements, the applicable laws, regulations, and requirements shall apply.**

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**c. Section 109 of Title I of the Housing and Community Development Act of 1974, as amended, including 42 U.S.C. 5301 et. seq., 42 U.S.C. 6101 et. seq., and 29 U.S.C. 794.** This law provides in part that no person on the grounds of race, color, national origin, sex, or religion shall be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any activity funded in whole or part with funds under this Title.

**d. Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended, including 42 U.S.C. 5301 et. seq.** This law provides in part that any grant under Section 106 shall be made only if the grantee certifies to the satisfaction of the Secretary of HUD that the grantee will, among other things, affirmatively further fair housing.

**e. Executive Order 11246, as amended.** This order includes a requirement that grantees and subrecipients and their contractors and subcontractors not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

**f. Executive Order 11063, as amended, including 24 CFR Part 107.** This order and its implementing regulations include requirements that all actions necessary be taken to prevent discrimination because of race, color, religion, sex, or national origin in the use, occupancy, sale, leasing, rental, or other disposition of property assisted with Federal loans, advances, grants, or contributions.

**g. Section 504 of the Rehabilitation Act of 1973, as amended.** This Act specifies in part that no otherwise qualified individual shall solely by reason of his or her disability or handicap be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal assistance. Borrower must ensure that its programs are accessible to and usable by persons with disabilities.

**h. The Americans with Disabilities Act (ADA) of 1990, as amended.** This Act prohibits discrimination on the basis of disability in employment by state and local governments and in places of public accommodation and commercial facilities. The ADA also requires that facilities that are newly constructed or altered, by, on behalf of, or for use of a public entity, be designed and constructed in a manner that makes the facility readily accessible to and usable by persons with disabilities. The Act defines the range of conditions that qualify as disabilities and the reasonable accommodations that must be made to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for persons with disabilities.

**i. The Age Discrimination Act of 1975, as amended.** This law provides in part that no person shall be excluded from participation in, be denied program benefits, or subjected to discrimination on the basis of age under any program or activity receiving federal assistance.

**j. EEO/AA Statement.** Borrower shall, in all solicitations or advertisements for employees placed by or on behalf of Borrower, state that it is an Equal Opportunity or Affirmative Action employer.

**k. Minority/Women/Small and Disadvantaged Business Enterprise.** Borrower will use its best efforts to afford small and disadvantaged businesses and minority and

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women-owned business enterprises the maximum practicable opportunity to participate in the performance of the Agreement. As used in the Agreement, the term “small business” means a business that meets the criteria set forth in Section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and “minority and women-owned business enterprise” means a business at least fifty-one percent (51%) owned and controlled by minority group members or women. For the purpose of this definition, “minority group members” are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. Borrower may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation. A small and disadvantage business is a small business that is at least fifty-one percent (51%) owned and controlled by a socially and economically disadvantaged individual(s).

**l. Nondiscrimination.** Borrower shall comply with the federal requirements and nondiscrimination provisions in 24 C.F.R. § 92.350, which include requirements on nondiscrimination and equal opportunity, disclosure requirements, debarred, suspended or ineligible contractors, and maintaining a drug-free workplace.

#### 4. Environmental. [Insert mitigation measures]

**a. Air and Water.** Borrower shall comply with the following regulations insofar as they apply to the performance of the Agreement: Clean Air Act, 42 U.S.C. 7401, *et seq.*; Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder; and the U.S. Environmental Protection County regulations pursuant to 40 CFR Part 50, as amended.

**b. Flood Disaster Protection Act of 1973.** Borrower shall assure that for activities located in an area identified by FEMA as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained.

**c. Lead-Based Paint.** Borrower shall comply with the Lead-Based Paint Regulations referenced in 24 C.F.R. 92.355, including 24 C.F.R. Part 35, *et. al.*

**d. Historic Preservation.** Borrower shall comply with the historic preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 C.F.R. Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties and related laws and Executive Orders, insofar as they apply to the performance of this Agreement. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a federal, state, or local historic property list.

**e. Limitation on Activities Pending Clearance.** In accordance with 24 C.F.R. § 58.22 entitled “Limitations on activities pending clearance,” neither a recipient nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance under a program listed in 24 C.F.R. §

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58.1(b) on an activity or project until HUD or the state has approved the recipient's Request for Release of Funds (RROF) and the related certifications have been approved. Neither a recipient nor any participant in the development process may commit non-HUD funds or undertake an activity or project that would have an adverse environmental impact or limit the choice of reasonable alternatives. Upon completion of environmental review or receipt of environmental clearance, County shall notify Borrower. HUD funds shall not be utilized before this requirement is satisfied. The environmental review or violation of the provisions may result in approval, modification or cancellation of the Loan. If a project or activity is exempt under 24 C.F.R. § 58.34, or is categorically excluded (except in extraordinary circumstances) under 24 C.F.R. § 58.35(b), no RROF is required and the recipient may undertake the activity immediately after the County has documented its determination that each activity or project is exempt and meets the conditions specified for such exemption under this section by issuing a Notice to Proceed.

**5. Uniform Administrative Requirements.** Borrower shall comply with applicable uniform administrative requirements as described in 24 C.F.R. §§ 92.205.

**6. Other Program Requirements.** Borrower shall carry out each activity under the Agreement in accordance with all applicable federal laws and regulations described in Subpart H of 24 C.F.R. § 92 except for County's responsibility for initiating the environmental review process under the provisions of 24 C.F.R. Part 58.

**7. Project Requirements.** Borrower shall comply with all project requirements set forth in 24 C.F.R. §§ 92.250-92.258, as applicable in accordance with the type of project assisted.

**8. Property Standards.** Borrower shall perform any construction work and maintain the Project units in compliance with the property standards in 24 C.F.R. § 92.251 and the lead-based paint requirements in 24 C.F.R. § 92 Part 35, Subparts A, B, J, K, M and R, as applicable.

**9. Records and Reports.** Borrower shall provide to County all records and reports relating to the Program Activities that may be reasonably requested by County in order to enable it to perform its recordkeeping and reporting obligations pursuant to the HOME Requirements, including 24 C.F.R. §§ 92.508 and 92.509.

**10. Conflict of Interest.** Borrower will comply with 24 C.F.R. Part 200 and 24 C.F.R. 84.42, 85.36 and 92.356, as applicable, regarding the avoidance of conflict of interest, which provisions include (but are not limited to) the following:

i. Borrower shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.

ii. No employee, officer or agent of the Borrower shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

iii. No covered persons who exercise or have exercised any functions or responsibilities with respect to HOME-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such

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activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the HOME-assisted activity, or with respect to the proceeds from the HOME-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a “covered person” includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the Borrower, or any designated public agency.

**11. Affirmative Marketing.** If the Loan will be used for housing containing 5 or more assisted units, Borrower shall establish for County’s review and approval a plan and procedures to affirmatively market the units. The objective of the plan shall be to provide information and attract eligible persons from all racial, ethnic and general groups in the housing market area to the available housing. In connection therewith, Borrower shall perform those affirmative marketing responsibilities set forth in 24 C.F.R. § 92.351(a) and the marketing plan shall include the following:

- a. methods for informing the public, owners, and potential tenants about federal fair housing loans and the County’s affirmative marketing policy;
- b. requirements and practices Borrower must adhere to in order to carry out the affirmative marketing procedures and requirements;
- c. procedures to be used by Borrower to inform and solicit applications from persons in the housing market area that are not likely to apply for the housing without special outreach;
- d. records that will be kept describing actions taken by Borrower to affirmatively market units and records to assess the results of those actions; and
- e. a description of how Borrower will assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.

**12. Displacement.** Consistent with the other goals and objectives of Subpart H of 24 C.F.R. § 92, Borrower shall take all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of the Program Activities.

**13. Debarment and Suspension.** As required in 24 C.F.R. § 92.357, Borrower shall comply with all debarment and suspension certifications.

**14. Enforcement of Agreement.** In addition to the other provisions set forth in the Agreement, County shall have the authority to enforce Borrower’s obligation to comply with the HOME Requirements.

**15. Return of HOME Funds.** Upon the completion of the Project or earlier termination of the Agreement, Borrower shall transfer to County any HOME funds on hand for which expenses have not been incurred and any accounts receivable attributable to the use of

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HOME funds. In addition to the foregoing, in the event the expenses for which any disbursement of Loan funds are disbursed are not incurred by Borrower within thirty (30) days after County's disbursement, or such longer time as County approves in its sole discretion, County shall have the right to require that Borrower immediately return the Loan proceeds to County.

**16. Monitoring.** Not less than once per year, County shall review Borrower's activities and operations under the Agreement and Borrower's compliance with the HOME Requirements. Such review may include an on-site inspection of the Project units (including unit interiors). If such an on-site inspection of the Project units is to be undertaken, County shall coordinate such inspection with Borrower. The monitoring required pursuant to this paragraph shall be in compliance with the requirements of 24 C.F.R. § 92.504.

**17. Tenant Participation Plan.** Borrower shall provide to County for approval the form of the lease agreement to be used for the rental units, which lease must be fair and provide for a grievance procedure. In addition, Borrower shall provide to County for approval a plan that provides for tenant participation in management decisions. (24 C.F.R § 92.303.)

**18 Anti-Lobbying Certification.** By its execution of the Agreement, Borrower hereby certifies that:

i. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

iii. It will require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. This certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. At the request of County, Borrower shall execute a separate document that contains the certifications set forth above.

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**19. Drug-Free Workplace Requirements.** Borrower shall comply with and be subject to the requirements of the federal drug-free workplace requirements, which include the following actions be taken:

i. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition.

ii. Establishing an ongoing drug-free awareness program to inform employees about: (a) the dangers of drug abuse in the work place; (b) the grantee's policy of maintaining a drug-free workplace; (c) any available drug counseling, rehabilitation, and employee assistance programs; and (d) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

iii. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (i).

iv. Notifying the employee in the statement required by paragraph (i) that, as a condition of employment under the grant, the employee will: (a) abide by the terms of the statement; and (b) notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.

v. Notifying the agency in writing, within ten calendar days after receiving notice under sub-paragraph (iv) (b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant.

vi. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (iv)(b), with respect to any employee who is so convicted: (a) taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or (b) requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

vii. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (i), (ii), (iii), (iv), (v), and (vi).

**20. Procurement.** If applicable, Borrower will comply with the procurement standards under 24 CFR 85.36 for governmental subrecipients and 24 CFR 84.40-48 for subrecipients that are non-profit organizations. Borrower shall comply with all existing and future County policies concerning the purchase of equipment.

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**21. Hatch Act.** The Borrower agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Title V United States Code Section 1501 et seq.

**22. Labor Provisions.**

**a. Section 3 of the Housing and Community Development Act of 1968.** Borrower shall comply with and cause its contractors and subcontractors to comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u) (“Section 3”), the HUD regulations issued pursuant thereto at 24 C.F.R, Part 75, and any applicable rules and orders of HUD issued thereunder. Borrower acknowledges and agrees that compliance with this provision is a condition of the federal financial assistance provided under this Agreement and failure to fulfill these requirements constitute a breach of this Agreement. The Borrower certifies and agrees that no contractual or other disability exists which would prevent compliance with Section 3.

**23. Violence Against Women Act (VAWA) Requirement Compliance.**

Borrower acknowledges and agrees that compliance with the Violence Against Women Act (VAWA) requirements set forth in 24 CFR part 5, subpart L, as described in 24 C.F.R. § 92.359, is a condition to receiving the Loan and that failure to comply with the VAWA requirements is considered a breach under this Agreement.

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