

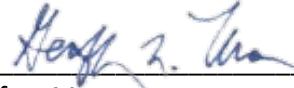
Report of the President & CEO

January 09, 2025

PROPOSED RESOLUTION AUTHORIZING THE ACQUISITION OF 3223 SHEFFIELD AVENUE, DEDICATING UP TO TWO (2) AVAILABLE RESTORE-REBUILD UNITS TO THE PROPERTY, AND MAKING A CEQA DETERMINATION



Lourdes Castro Ramirez
President & Chief Executive Officer



Geoffrey Moen
Director of Development



Carlos Van Natter
Director of Section 8

Purpose: To allow the Housing Authority of the City of Los Angeles (“HACLA” or “Authority”), to purchase the real property located at 3223 Sheffield Avenue Los Angeles, CA 90032 (the “Property”) in response to the State of California (“State”) Department of Transportation (“Caltrans”) Notice of Solicitation (“NOS”). Actions are required to be taken at this time in order to purchase the Property on or before the acquisition closing deadline of January 31, 2025. The resolution will further allow for HACLA to utilize its authority to create new public housing units pursuant to its Faircloth limit and to convert the associated assistance into one or more long-term project-based Section 8 housing assistance payments (“HAP”) contracts (altogether the “Restore-Rebuild Initiative”) to finance a portion of the costs of developing and operating the Property.

Regarding: Resolution No. 9817, adopted by the HACLA Board of Commissioners (“Board” or “BOC”) on March 31, 2022, authorized HACLA to submit multiple applications in response to the NOS.

Approval of this resolution is consistent with Resolution Nos. 9587, 9588 and 9589 adopted by the BOC approving the revised Acquisition Policy; authorizing internal resources to be used for due diligence, closing costs, minor property repairs and equity for acquisition; and providing authority to accept grants from private and public sources to facilitate property acquisition (all together known as the “Acquisition Program”).

Resolution No. 10103, adopted on April 11, 2024, authorized the creation of an Acquisition Equity Fund to be used as capital contributions for the acquisition of real properties, together with related activities including deposits, extension fees, vacant unit fees or credits paid at closing, closing costs, capital, operating, or related reserve deposits at closing, and immediate capital improvements.

Issues:**HACLA*****Acquisitions***

Under the Caltrans State Route 710 Sales Program, HACLA is considered a “Housing Related Entity,” (HRE) which qualifies HACLA to submit bids to acquire and manage one or more Caltrans properties as long-term affordable housing. The Asset Management and Development Services Departments evaluated the Property and determined that purchasing it would be aligned with the Objectives and Selection Criteria set forth in the Acquisition Policy, and the Board therefore authorized submission of the bid applications.

Pursuant to the bid, once the Property is acquired, HACLA will rehabilitate the existing two-bedroom single-family home. HACLA’s bid proposal also indicated that HACLA will add one accessory dwelling unit (“ADU”) to the Property. The new construction of the ADU will be financed using a combination of HACLA’s line of credit and HACLA non-federal funds, and the proposal indicated that the loan from HACLA’s line of credit will be taken out, following completion of construction, with permanent financing using commercial loans secured by interests in the Property and serviced using the net operating income generated by the Property.

Based on HACLA’s bid application, once construction is completed, HACLA will be providing up to two (2) units of deeply affordable housing in a unique and well-amenitized neighborhood. At closing, a Declaration of Covenants, Conditions, and Restrictions (“Use and Resale Covenant”) will be recorded on the title of the Property restricting occupancy to households with incomes not exceeding 120% of the area median income for Los Angeles County, adjusted for family size (“AMI”), for a period of at least fifty-five (55) years. HACLA will further restrict occupancy of the properties, upon completion of rehabilitation or development and successful use of Restore-Rebuild (R-R) authority, to families with incomes not exceeding 50% of AMI.

Overview of***Potential Costs***

The purchase price of the Property is \$13,019.75. HACLA anticipates that the existing home will need rehabilitation to meet Section 8 Housing Quality Standards and be consistent with the level of finishes within HACLA’s Asset Management portfolio. Rehabilitation is estimated to cost \$281,885. The build out of the ADU, including permitting and design, is estimated to cost \$379,108.

Staff anticipates the site will need substantial rehabilitation, which may take six to ten months depending on permitting and the extent of work. HACLA will use its existing contract with Bell Properties Inc. to initiate on-site management. Any additional contract services that are needed will be procured and executed in accordance with all applicable state and federal requirements and HACLA’s Procurement Policy.

Ownership &

Operations: The Purchase and Sale Agreement with Caltrans allows HACLA to transfer the purchase of fee title to the Property to an existing HACLA-controlled instrumentality, or a single-purpose entity with HACLA or one its instrumentalities as its sole member. The resolution attached to this report provides for HACLA's authority to exercise that right before or after closing and transfer the Property to Housing Opportunity for Angelenos, Inc.

HACLA will be responsible for funding the acquisition, predevelopment and development of the Property. The Property will be held as part of HACLA's Asset Management portfolio, and HACLA will use its current contract with Bell Properties Inc. for immediate property management. Annual operating costs of the property after rehabilitation and initial occupancy is projected for \$19,743. The loan will be to be repaid from the properties' stabilized cashflows over time, or partially repaid after construction and stabilization with proceeds from a conventional financing.

Restore Rebuild

Process The Property, will include the creation of two (2) affordable housing units through the Restore-Rebuild ("R-R") program. Following the issuance of an updated NARR for the Project, HACLA will submit a Mixed Finance Development Proposal ("MFDP") and upload a Financing Plan for the Project. HUD will issue a RAD Conversion Conditional Approval ("RCCA") prior to construction closing. Upon the completion of construction, HUD will enter the R-R units into the Public and Indian Housing Information Center ("PIC"). After a de minimis period, HUD will issue a Commitment to Enter into a Housing Assistance payments Contract ("CHAP") and a RAD Conversion Commitment for the Project. HACLA will then submit documents to escrow, including a RAD Use Agreement, a Release of the Declaration of Restrictive Covenants and Termination of the Regulatory & Operating Agreement, and a Termination of Mixed Finance Amendment to Annual Contributions Contract. Upon the approval of all documents, the Project will proceed to a RAD closing, at which point the conversion to Section 8 Project-Based Voucher rental assistance will be complete.

Financing HACLA has underwritten the acquisition of the property and estimates the cost to be \$48,959 which includes a purchase price increase of \$13,019.75, closing costs of \$400 and due diligence costs of \$35,614.

Once the property has been transferred HACLA will immediately begin securing the property with two roving 24-hour security guards and engage property management. After acquisition HACLA will begin procurement of a design build contractor for the property, with the goal of completing the rehabilitation and construction of the property within 6 to 12 months. See the chart below for construction and design cost estimates.

HACLA will use its equity to initially finance the purchase and rehabilitation costs of the property, as well as certain due diligence and closing costs related thereto, through non-federal funds as set forth in the Funding section below. Acquisition costs, rehabilitation costs estimate, and soft costs estimates for the acquisitions are shown below.

Property Address	Purchase Price	Rehabilitation /Construction Costs /Design	Soft Cost Estimates	Security Costs (during predev)	Total Development Cost
3223 SHEFFIELD AVE	\$13,020	\$791,142	\$90,488	\$68,507	\$963,157

Terms: HACLA entered into a purchase and sale agreement (“PSA”) with the State of California, Department of Transportation “(Caltrans)” for the property in September 2024 for a purchase price totaling of \$19,013.75. The PSA includes the following substantive terms:

- Initial nonrefundable deposit of \$1,000 disbursed to escrow upon execution of the PSA and credited to the purchase price at closing; if a property becomes occupied prior to closing date and HACLA does not wish to move forward with the purchase the deposit is refundable
- Approval of sale by the California Transportation Commission
- HACLA Board of Commissioners approval of purchase
- HACLA has the right to rescind its right to purchase if it finds at any time prior to close that the property is occupied

At closing a Use and Resale Covenant shall be recorded on the property. The covenant is included as Attachment 3 with substantive terms are below:

- New tenants shall be Persons and Families of low or Moderate income and shall be charged only affordable rents (persons and Families of Moderate income are defined as persons and families whose income does not exceed 120 percent of area median income, adjusted for family size)
- Any new housing units added to the property are to be used for rental housing at Affordable rents for persons and families of low or moderate income.
- After acquisition the property can be transferred to Persons and Families of low or Moderate income and qualified housing related entity (HRE)
- HACLA may transfer the property to an HRE if the monitoring entity (the City of Los Angeles) provides written approval of the sale
- The sales price of any Transfer or Sale must be the Allowable Price (meaning the price HACLA paid to Caltrans to acquire the property) no matter how much money HACLA has invested in the Property or new improvements
- All ownership is subject to the Use and Resale covenant whose term ends 55 years from recordation if the property is used as rental housing
- If the price of the sale is higher than the Allowable Price all profits realized from a transfer must be paid to the Monitoring Entity (Los Angeles Housing Department) for use toward the construction of affordable housing in postal code 90032

Due Diligence: HACLA has engaged third party consultants to conduct investigations of the Property. A summary of the due diligence is presented below.

- The physical needs assessments (“PNA”) conducted by Bureau Veritas (“BV”) indicated that the Property was in fair to poor condition, and provided a twelve-

year long-term cost opinion. The immediate costs have been incorporated into the rehabilitation budget, and the long-term costs are reflected in the replacement reserve deposit figures incorporated into the property's projected operating budget.

- A Phase I Environmental Site Assessment conducted by CES Environmental Consultants revealed no evidence of recognized environmental conditions, controlled recognized environmental conditions, historical recognized environmental conditions, or business environmental risks in connection with any the Property. The report recommended no further investigation.
- D. Wolley & Associates prepared property survey reflecting the title and showing no encroachments onto the Property.
- An appraisal conducted by Valbridge Property Advisors concluded that the Property had an as-is fair market value above the purchase price.

Vision Plan: Place Strategy #2: Increase functionality and effectiveness of Asset Management portfolio

The acquisition of the site will increase the number of units HACLA offers for affordable housing and will diversify housing options available in the Asset Management portfolio.

Place Strategy #5: Expand HACLA's role in the broader communities it serves to improve neighborhood-wide health and well-being.

Acquiring and rehabilitating the vacant property, and adding an accessory dwelling unit, will provide decent, safe, and sanitary housing for lower income individuals and families will reduce the number of Angelenos exposed to adverse health outcomes in neighborhoods throughout the City of Los Angeles.

Funding: The Chief Administrative Officer confirms the following:

Source of Funds: In order to utilize the rent setting authority to cause R-R rents to exceed the NARR rents that would otherwise apply to the units, HACLA will need to use funds from either HACLA's HCV HAP "HAP" reserves or draw from the Faircloth Transition Fund established by Resolution No. 10103 on April 11, 2024 to pay for the augmentation amounts during the initial year of conversion. HAP reserves will be used for the first full year of occupancy. The total amount of HAP reserves projected to be used is set forth in the table below, based on rents for another R-R project. The actual amounts will depend on actual base rents set forth in the NARRs to be confirmed by HUD and R-R rents as may be affected by changes in the VPS or market conditions prior to conversion. The table below presents the maximum amount of funds that will be needed for R-R rent augmentation based on the property that will include two (2) units.

HACLA Caltrans HAP Reserve Impact					
	R-R Units	NARR rent	VPS rent (max.)	Difference	12 Months
One bedroom	1	\$645	\$2,364	\$1,719	\$20,628
Two bedroom	1	\$826	\$2,836	\$2,010	\$24,120
Total	2				\$44,748

HACLA will be providing a soft loan for the acquisition, predevelopment, rehabilitation and construction of the property not to exceed \$963,157 at this time. This loan will consist of available funds from the HACLA line of credit.

Budget and Program Impact: The HACLA funds will be contributed as equity and will have no hard debt service. HACLA will participate in the economic returns of the property, which will include: 100% of cash flow.

Environmental Review:

NEPA: The creation of available R-R units and their conversion through RAD will utilize federal funding and thus will trigger review under the provisions of the National Environmental Policy Act ("NEPA"). HACLA will submit an application for review and determination to LAHD. Based on discussions with LAHD, experience with similar projects, and the characteristics of the Project, HACLA anticipates that LAHD will provide a determination that the Project is categorically excluded from further review under NEPA.

CEQA: The rehabilitation of the existing building and the construction of the ADU are subject to ministerial (non-discretionary) approval and are not subject to review under the California Environmental Quality Act ("CEQA") pursuant to California Public Resources Code Section 21080(b)(1). The acquisition of an interest in a housing unit or housing units by a housing authority to implement an adopted housing assistance plan is categorically exempt from review under CEQA pursuant to 14 CCR Section 15326. The dedication of the R-R units to the Project does not require review under CEQA.

If the Board makes a finding that the categorical exemptions apply, a Notice of Exemption ("NOE") for the Project will be filed with the Los Angeles County Registrar-Recorder/County Clerk ("LA RR/CC"), as applicable, pursuant to Public Resources Code section 21152(b).

Section 3: The Project will be subject to HUD Section 3 requirements and Davis Bacon requirements. The HACLA Entity in the Project will assist with the development of a Section 3 plan and will monitor Section 3 requirements.

Attachments:

1. Resolution
2. Declaration of Covenants, Conditions and Restrictions ("Use and Resale Covenant")

ATTACHMENT 1

Resolution

RESOLUTION NO. _____

PROPOSED RESOLUTION AUTHORIZING THE ACQUISITION OF 3223 SHEFFIELD AVENUE, DEDICATING UP TO TWO (2) AVAILABLE RESTORE-REBUILD UNITS TO THE PROPERTY, AND MAKING A CEQA DETERMINATION

WHEREAS, the Housing Authority of the City of Los Angeles (“HACLA” or the “Authority”) is a public body, corporate and politic, duly created, established and authorized to transact business and exercise powers under and pursuant to the provisions of the Housing Authorities Law, consisting of Part 2 of Division 24 of the California Health and Safety Code (the “Act”), including the power to finance, acquire and manage property in the furtherance of providing affordable housing;

WHEREAS, the Authority is authorized to acquire and dispose of real property and enter into contracts and agreements related thereto pursuant to California Health and Safety Code Section 34200 et seq. and particularly with respect to Section 34315;

WHEREAS, the Authority’s Board of Commissioners (“Board”) adopted by Resolution 9639, on October 22, 2020, an Acquisition and Disposition of Real Property Policy (the “Policy”) to institute a revised and updated real property acquisition program (“Acquisition Program”) and to revise and restate its prior policy to reflect the Authority’s Build HOPE Vision Plan goals to acquire additional real property and to provide for the disposition of real property;

WHEREAS, HACLA entered into a State Route 710 Sales Program Purchase and Sale Agreement dated as of September 16, 2024 (the “Purchase and Sale Agreement”) to purchase the real property asset located at 3223 Sheffield Avenue, Los Angeles, California 90032 (the “Property”), subject to certain terms and conditions as set forth therein;

WHEREAS, HACLA has obtained the results of due diligence investigations of the Property, including a physical needs assessment, a Phase I environmental site assessment, a survey and a title report for the Property, and has approved of the Property based on the results of those investigations;

WHEREAS, HACLA has obtained an appraisal performed by a third-party appraiser licensed to operate in California, which has determined that the fair market value of the Property meets or exceeds the contractual purchase price;

WHEREAS, the Property is located wholly within the City of Los Angeles;

WHEREAS, HACLA now wishes to approve the acquisition of the Property to provide affordable housing for individuals and families;

WHEREAS, the Authority intends to acquire, own, and operate the Property either under its own name or transfer the ownership to Housing Opportunity for Angelenos, Inc., a California nonprofit public benefit corporation and a wholly- controlled instrumentality of the Authority (“HOA”);

WHEREAS, according to the United States Department of Housing and Urban Development (“HUD”), HACLA may use amounts allocated to it from the capital fund or operating fund for the purpose of constructing two (2) public housing units, because such construction would not result in a net increase

from the number of public housing units owned, assisted, or operated by HACLA on October 1, 1999, including any public housing units demolished as part of any revitalization effort (the “Faircloth Limit”), in accordance with Section 9(g)(3) of the United States Housing Act of 1937, as amended (the “Faircloth Available Units”); and

WHEREAS, in review of Title 14, Division 6, Chapter 3, Article 19, Sections 15301, 15303, and 15326 of the California Code of Regulations and exemption criteria therein, and the information available at the time of the report on this acquisition recommendation, the Board has determined that the acquisition of the Property is categorically exempt from environmental review under the California Environmental Quality Act (“CEQA”).

NOW, THEREFORE, BE IT RESOLVED, the Board of Commissioners (the “Board”) of the Housing Authority of the City of Los Angeles does hereby authorize and approve as follows:

Section 1. The recitals hereinabove set forth are true and correct, and this Board of Commissioners so finds. This Resolution is being adopted pursuant to the powers granted the Authority by Chapter 1 of Part 2 of Division 24 of the California Health and Safety Code.

Section 2. HACLA is hereby authorized to acquire the Property pursuant to the terms of the Purchase and Sale Agreement, either directly or through one or more HACLA instrumentalities and authorizes the execution, by the Authority’s President and CEO, or any of the “Designated Officers” as defined below, of all related documents, certificates, and contracts for services, including, without limitation, a covenant restricting rent levels and household income of residents of the Property, with such changes as may be approved by legal counsel, in order to effectuate the purchase, escrow closing, lease-up and operation of the Property.

Section 3. The Designated Officers are hereby authorized, but not required, to assign all of HACLA’s rights under the Purchase and Sale Agreement to HOA, or following acquisition by HACLA, to transfer all of HACLA’s right and title in the Property to HOA at such time as the Designated Officers may deem appropriate.

Section 4. HACLA is hereby authorized to apply to HUD to dedicate two (2) of its Restore-Rebuild Units to the Property. HACLA further authorizes the President and CEO, or any of the Designated Officers set forth below, to execute all applications, certificates, and other documents necessary to apply to HUD to cause the capital and operating funds provided for the units to be converted to Section 8 Project-Based Voucher rental assistance through the HUD Restore-Rebuild Initiative “R-R”). HACLA further authorizes setting initial contract rents for the R-R units to levels that are higher than the NARR rents provided by HUD, but not exceeding the then-applicable HACLA Voucher Payment Standard rents for the Property on which the project will be located, and authorizes the use of HACLA’s Housing Assistance Payments reserve funds, or other such funds as HUD may approve, to accomplish this purpose, provided that the rental subsidy payments shall be paid by HUD in the period after the first full calendar year of the subject contract. The dedication of available R-R units to the Property and the commitment to converting those units through R-R shall be automatically terminated if HACLA fails to obtain financing commitments necessary to begin construction on a given Property prior to October 31, 2026.

Section 5. HACLA hereby dedicates up to \$963,157 of non-federal funds to be used for the acquisition, closing costs, predevelopment, rehabilitation, construction and security costs of the Property.

BE IT FURTHER RESOLVED that the Designated Officers of the Authority referred to above are as follows:

Name	Title
Lourdes Castro Ramirez	President and Chief Executive Officer
Marlene Garza	Chief Administrative Officer
Jenny Scanlin	Chief Development Officer
Margarita Lares	Chief Programs Officer

BE IT FURTHER RESOLVED that this Resolution shall be effective upon its adoption.

PASSED AND ADOPTED by the Housing Authority of the City of Los Angeles on January 09, 2025.

APPROVED AS TO FORM

HOUSING AUTHORITY OF THE
CITY OF LOS ANGELES

By: _____
Howard Baum, Deputy General Counsel

By: _____
Cielo Castro, Chairperson

DATE ADOPTED: _____

ATTACHMENT 2

Caltrans Declaration of Restrictive Covenant (Draft)

Commonwealth Land Title Company

Free Recording Pursuant to Government
Code Section 27383 at the Request of the
California Department of Transportation

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Housing Opportunity for Angelenos, Inc.
ATTN: Tina Smith Booth
2600 Wilshire Boulevard, 4th Floor Los
Angeles CA 90057

XXX, Los Angeles, CA 90032

(Space Above This Line for Recorder's Use]

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (STATE ROUTE 710 SALES PROGRAM)

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS ("Use and Resale Covenant") is made as of XXX ("**Effective** Date") by Housing Opportunity for Angelenos, Inc., a California nonprofit public benefit corporation, and its successors and assigns ("**Owner**"), for the benefit of the California Department of Transportation, a department of the State of California ("**Caltrans**" and the City of Los Angeles ("**Monitoring Entity**"). Owner is purchasing that certain real property, consisting of land and all improvements thereon, in the City of Los Angeles with a street address of 3134 Sheffield Avenue, Los Angeles, CA 90032, and a legal description found in Exhibit A attached hereto and made a part hereof ("**Property**"). Capitalized terms used in this Use and Resale Covenant not already defined above have the meanings given to them in Section 2 below. This Use and Resale Covenant is made with reference to the following facts:

RECITALS

A. WHEREAS, in 1979 the Legislature passed Senate Bill 86, commonly referred to as the "Roberti Act." (herein the "**Act**") The Act, as amended, is contained in Government Code sections 54235 et seq., and contains Legislative findings and declarations that the sale of certain surplus residential properties by Caltrans would directly serve an important public purpose. Caltrans, pursuant to the Act, is selling the Property to Owner, subject to the provisions of this document;

B. WHEREAS, in accordance with the Act, Caltrans has developed a program as more particularly set forth in Chapter 9.5, Division 2 of Title 21 of the California Code of Regulations (herein, the "**Regulations**") to provide housing opportunities to individuals and families with low and moderate incomes by offering homes for sale at prices which are below those otherwise prevailing in the real estate market;

C. WHEREAS, Caltrans has identified Owner as eligible to purchase the Property at Caltrans' original acquisition price in accordance with the Act based upon Owner's status as a Housing-Related Private Entity pursuant to California Code of Regulations, Title 21, section 1485;

D. WHEREAS, to effectuate the sale of the Property to Owner, Owner has agreed to use and resale restrictions in accordance with the Act and evidenced by this Use and Resale Covenant; and

E. WHEREAS, Caltrans has determined the Property is "excess real property" within the meaning of Streets and Highways Code section 118.6 and approved the sale;

NOW, THEREFORE, in consideration of the substantial economic benefits inuring to Owner and the public purposes to be achieved under the Act, Caltrans, Owner, and Monitoring Entity hereby declare and agree as follows:

Section 1. Extraordinary Provisions.

1.1 Purchase Price. Owner's purchase price for the Property is the price paid by Caltrans for its original acquisition of the Property, without any adjustment for inflation. This purchase price is the Reasonable Price specified in California Code of Regulations, Title 21, section 1485(c)(1). Owner's purchase price complies with Government Code, section 54239.1, subdivision (c)(1).

1.2 Owner Acknowledgments.

- (a) Owner understands and agrees to abide by the provisions of this Use and Resale Covenant.
- (b) Owner hereby takes the Property subject to certain restrictions and limitations of the full enjoyment and use of the Property as set forth in this Use and Resale Covenant. Owner acknowledges that Owner may not enjoy the same economic benefits from owning the Property that Owner would enjoy if this Use and Resale Covenant did not exist.

- (c) Absent the assistance provided by Caltrans, and the provisions of this Use and Resale Covenant, the Property could not be made available to Persons and Families of Low or Moderate Income for rental or owner-occupied housing. If the Property is developed as a limited-equity housing cooperative pursuant to Civil Code section 817, then the assistance provided by Caltrans shall be considered a public subsidy for the purposes of Civil Code section 817.2.
- (d) In recognition of the acknowledgements and agreements stated herein, Owner accepts and agrees to the provisions of this Use and Resale Covenant with the understanding that this Use and Resale Covenant will remain in full force and effect to limit use and transfer of the Property unless terminated pursuant to the terms herein.
- (e) Owner covenants and agrees for itself, its successors, its assigns, and every successor in interest in the Property or any part thereof, that Owner, such successors and such assignees, shall regularly and continuously use the Property only for the purposes authorized in this Use and Resale Covenant; provided, however, no Owner shall be liable for breach of the covenants herein by any prior or successor owner of the Property.
- (f) Owner further agrees not to challenge the terms and provisions of this Use and Resale Covenant or any right of Caltrans or Monitoring Entity under this Use and Resale Covenant and acknowledges that these terms are not an unreasonable restraint on any use or Transfer of the Property.

Section 2. Definitions.

As used in this Use and Resale Covenant, the capitalized terms set forth below shall have the following meanings:

- (a) **"Affordable Rent"** means rent calculated in a manner consistent with the provisions of Government Code section 54236(g) and California Code of Regulations, Title 25, section 6922. The Affordable Rent amount may not be increased by passing through the costs of secured and unsecured debt service or other costs not consistent with the provisions of Government Code section 54236(g) and California Code of Regulations, Title 25, section 6922.
- (b) **"Allowable Price"** means, as applicable, (i) when transferring the Property to an HRE pursuant to Section 4.2, the same price Owner paid to Caltrans to acquire the Property and (ii) when transferring to

Persons and Families of Low or Moderate Income pursuant to Section 4.3, the "Affordable Price" as calculated pursuant to 21 CCR section 1481.2(c). For avoidance of doubt, Housing Cost, as referenced in 21 CCR section 1481.2(c) and 25 CCR section 6920, will be determined based on the estimate of the average monthly costs for the 12 months following the date of purchase for the Persons and Families of Low or Moderate Income purchasing the Property. Further, for the avoidance of doubt, the sales price of the Property to Persons and Families of Low or Moderate Income may exceed the "Affordable Price" by (i) the amount of grants and/or subsidies (including under the CalHome Program) made on behalf of the purchaser provided the Housing Cost does not exceed the limits pursuant to 21 CCR section 1481.2(c)(4)(a-c). When transferring to Persons and Families of Low or Moderate Income, the Affordable Price as calculated pursuant to 21 CCR section 1481.2(c) shall not be increased to pass through the costs of secured and unsecured debt burdening the Property or other costs not consistent with 21 CCR section 1481.2(c).

- (c) **"Broker"** means a real estate broker licensed by the California Department of Real Estate to assist Owner in identifying purchasers for the Transfer of the Property.
- (d) **"Capital Improvement"** means a permanent improvement to the Property made during Owner's ownership of the Property which: (a) has a value in excess of one-half of one percent (0.5%) of the Owner's purchase price; (b) has a useful life of greater than five (5) years; and (c) is made with all required permits and approvals, including without limitation homeowner's association and governmental approvals obtained prior to the construction or installation of the Capital Improvement(s).
- (e) **"Event of Default"** is defined in Section 10.1.
- (f) **"HRE"** means housing-related entity as further defined in the Act and the Regulations, including 21 CCR section 1485(a).
- (g) **"Lender"** means a bank, savings and loan association, insurance company, pension fund, publicly traded real estate investment trust, governmental agency, or charitable organization customarily engaged in making residential purchase money loans and which has loaned money to Owner to purchase the Property, refinance debt encumbering the Property, to fund rehabilitation of the Property, and/or for the construction of new or replacement housing units on the Property.

- (h) **"Lender Lien"** means one or more deed(s) of trust or other security instruments used for the purpose of securing one or more loans, including down payment assistance loans, from a Lender to finance the purchase of the Property, refinance debt encumbering the Property, to fund rehabilitation of the Property, and/or for the construction of new or replacement housing units on the Property.
- (i) **"Net Casualty/Condemnation Proceeds"** means the combined insurance, condemnation, and sale proceeds, each as applicable, up to the amount equal to the Allowable Price calculated for a person at the Qualifying Income if the Property was previously sold to Persons and Families of Low or Moderate Income hereunder less the amount applied to repayment of the loan secured by the Property and to removal of any other liens against the Property. If the Property has not been previously sold to Persons and Families of Low or Moderate Income hereunder, then the **"Net Casualty/Condemnation Proceeds"** shall mean, to the extent of proceeds of insurance, condemnation and sale, an amount up to Owner's cost of acquisition of the Property, cost of Capital Improvements and sale transactions costs less the amount applied to repayment of the loan secured by the Property and to removal of any other liens against the Property.
- (j) **"Notice"** means any notice, demand or other communication required or permitted to be given under this Use and Resale Covenant by one party to this Use and Resale Covenant to another party to this Use and Resale Covenant.
- (k) **"Official Records"** means the Official Records of the Office of the County Recorder Los Angeles County, California.
- (l) **"Persons and Families of Low or Moderate Income"** shall have the same meaning as set forth in Health and Safety Code section 50093.
- (m) **"Qualifying Income"** means the income limit to be classified as Persons and Families of Low or Moderate Income specified in Health and Safety Code section 50093.
- (n) **"Transfer"** means any sale, assignment, or conveyance, voluntary or involuntary, of any interest in the Property, excluding lease or rental, or recordation of a Lender Lien. "Transfer" shall not include any sale, assignment, or conveyance of any interest in the Property to an entity or instrumentality wholly controlled by the Housing Authority of the City of Los Angeles or Owner.

Section 3. Use of the Property.

3.1 Uses Permitted. No use of the Property is permitted unless it conforms to the terms of this Use and Resale Covenant and is authorized by this section of the Use and Resale Covenant.

3.2 Use as a Rental. The Property may be used as rental housing only as specified:

- (a) Owner shall give right of first occupancy to present lawful tenants.
- (b) Present tenants who are not Persons and Families of Low or Moderate Income may be charged fair market rent until they vacate or are otherwise lawfully removed from the Property.
- (c) Present tenants who are Persons and Families of Low or Moderate Income shall be charged only Affordable Rents.
- (d) New tenants shall be Persons and Families of Low or Moderate Income and shall be charged only Affordable Rents.
- (e) Owner shall cause any new housing units added to the Property to be used only for rental housing at Affordable Rents for Persons and Families of Low or Moderate Income.

3.3 Use as Owner-Occupied Affordable Housing. If the Property is a single-family residence, then Owner may Transfer the Property pursuant to Section 4.3 to Persons and Families of Low or Moderate Income to be used as owner-occupied affordable housing, as defined in California Government Code section 62250. In the event of such Transfer:

- (a) Owner shall give first right of refusal to present tenants if they are Persons and Families of Low or Moderate Income in accordance with the terms of this Use and Resale Covenant.
- (b) If Owner is an HRE, then Owner shall dedicate all profits realized from the Transfer to the construction of affordable housing within the 90032 postal ZIP Code.
- (c) All subsequent Transfers of the Property shall be to Persons and Families of Low or Moderate Income to be used as owner-occupied affordable housing, as defined in California Government Code section 62250.
- (d) Owner shall cause any new housing units added to the Property after the Transfer to Persons and Families of Low or Moderate Income to be

used only for rental housing at Affordable Rents for Persons and Families of Low or Moderate Income.

3.4 Use as a Limited-Equity Cooperative. If the Property is a single-family residence, then the Property may be developed as a limited-equity housing cooperative housing pursuant to Civil Code section 817. If developed as a limited-equity housing cooperative, then present occupants shall be the first to be offered stock or membership interests.

3.5 Rehabilitation for Use. Owner shall rehabilitate the Property as necessary to comply with applicable law prior to use under Sections 3.2 or 3.3. Owner shall comply with Government Code section 54239.3.

Section 4. Transfers.

4.1 Transfers Permitted. No Transfer of the Property is permitted unless it conforms to the terms of this Use and Resale Covenant, it is authorized by this section, and it follows the procedures delineated in Section 5 of this Use and Resale Covenant.

4.2 Transfers to an HRE. Owner may Transfer the Property to an HRE if:

- (a) Monitoring Entity has provided written approval of the sale; and
- (b) The sales price is the Allowable Price for transfer to an HRE; and
- (c) The purchasing HRE agrees to take ownership subject to this Use and Resale Covenant. Upon taking ownership, the purchasing HRE becomes the Owner.

4.3 Transfers to Persons and Families of Low or Moderate Income. In compliance with Sections 3.3 and 5 of this Use and Resale Covenant, Owner may Transfer the Property to Persons and Families of Low or Moderate Income for the Allowable Price, to be used as owner-occupied affordable housing, as defined in California Government Code section 62250. Such new purchasers shall take ownership of the Property subject to the Use and Resale Covenant.

4.4 Other Transfers. Owner may Transfer the Property as authorized or required by Sections 7.2, 11.2, and 11.4.

4.5 Transfers After Condemnation. If a portion of the Property is condemned and Owner determines it is not feasible to continue to use the Property for affordable housing, as required by the Use and Resale Covenant, then Owner shall sell the Property pursuant to Section 7.2.

Section 5. Transfer Procedures.

5.1 Notice of Proposed Transfer. If Owner desires to Transfer the Property, Owner shall deliver written notice to Monitoring Entity at least thirty (30) days prior to the proposed Transfer of the Property.

5.2 No Fees Allowed. Owner shall not receive any fees or other consideration upon Transfer except the Allowable Price under this Use and Resale Covenant. Arrangements with a Broker to circumvent the normal brokerage fee practices shall not be allowed.

5.3 Excess Proceeds. If Owner receives more than the Allowable Price under this Use and Resale Covenant when the Property is Transferred, then the excess proceeds shall be disgorged and paid by Owner to Monitoring Entity. Monitoring Entity shall dedicate all excess proceeds to the construction of housing for Persons and Families of Low or Moderate Income within the boundaries of United States Postal Service ZIP Code 90032.

Section 6. Closing Escrow.

6.1 Conditions to Closing Escrow. Except for Transfers by foreclosure or the Lender's acceptance of a deed in lieu of foreclosure and Transfers pursuant to Section 4.4, all Transfers shall take place through an escrow with a California licensed independent escrow or a title insurance company, underwritten title company, or controlled escrow company regulated by the California Department of Insurance. It shall be a condition to closing that the escrow agent involved in the transaction has received the following:

(a) If the Property is Transferred to an HRE pursuant to Section 4.2:

- a. A grant deed executed and acknowledged by Owner granting the Property to the HRE which shall be recorded in the Official Records at the time of closing; and
- b. A written acknowledgment, in a form to be determined by Monitoring Entity in its sole discretion, signed by Owner and the HRE acknowledging that the terms of this Use and Resale Covenant remain in effect.

(b) If to Persons and Families of Low or Moderate Income pursuant to Section 4.3:

- a. A grant deed executed and acknowledged by Owner granting the Property to the Persons and Families of Low or Moderate Income, which shall be recorded in the Official Records at the time of closing; and

- b. A written acknowledgment, in a form to be determined by Monitoring Entity in its sole discretion, signed by Owner and the Persons and Families of Low or Moderate Income acknowledging that the terms of this Use and Resale Covenant remain in effect.
- c. The Monitoring Entity shall conduct and certify the income qualifications of the buyer prior to the consummation of the purchase and sales contract and the opening of escrow within a reasonable time following its receipt of information necessary for such certification.

6.2 Closing Procedures. At closing, Owner shall convey the Property to the new owner by grant deed.

Section 7. Property Condition and Insurance.

7.1 Maintenance. Owner shall maintain Property as decent, safe, and sanitary housing in compliance with state and local laws and building codes.

7.2 Damage and Destruction; Condemnation. If the Property is condemned or the improvements located on the Property are damaged or destroyed, all proceeds from insurance or condemnation shall be distributed in accordance with this Section 7.2, unless Owner, Monitoring Entity, and Lender otherwise agree in writing.

If the insurance proceeds are insufficient to restore or repair the damage to the Property, Owner may pay the balance for restoration or repair and continue to use the Property consistent with the terms of the Use and Resale Covenant. If the Owner chooses not to pay the balance for repair, then Owner shall sell the Property and apply the insurance and sale proceeds first to any loan secured by the Property. Owner shall be solely responsible for any loan amount not covered by the combined proceeds from insurance and sale; provided, nothing herein shall affect the rights or remedies of any Lender against Owner. Owner shall dedicate any amount in excess of the Net Casualty/Condemnation Proceeds to the construction of housing for Persons and Families of Low or Moderate Income within the 90032 postal ZIP Code.

If the whole of the Property is condemned, then the condemnation proceeds shall first be applied to any loan secured by the Property. Owner shall be solely responsible for any loan amount not covered by the condemnation proceeds; provided, nothing herein shall affect the rights or remedies of any Lender against Owner. Owner shall dedicate any amount in excess of the Net Casualty/Condemnation Proceeds to the construction of housing for Persons and Families of Low or Moderate Income within the 90032 postal ZIP Code.

If only a portion of the Property is condemned, then Owner shall determine if it is feasible to continue to use the Property for affordable housing, as required by the Use and Resale Covenant. If the Owner determines it is feasible, then Owner may use the condemnation proceeds to: address injury to the Property caused by the condemnation, make improvements to the Property, and/or pay down any loan secured by the Property. If Owner determines it is not feasible, then Owner shall sell the Property and apply the condemnation and sale proceeds first to any loan secured by the Property. Owner shall be solely responsible for any loan amount not covered by the combined proceeds from condemnation and sale; provided, nothing herein shall affect the rights or remedies of any Lender against Owner. Owner shall dedicate any amount in excess of the Net Casualty/Condemnation Proceeds to the construction of housing for Persons and Families of Low or Moderate Income within 90032 postal ZIP Code.

For purposes of this Section 7.2, any Owner who acquired the Property hereunder as Persons and Families of Low or Moderate Income shall, for purposes of dedicating the applicable amount to construction of housing for Persons and Families of Low or Moderate Income within the 90032 postal ZIP Code, deliver the funds to the Monitoring Entity.

Section 8. Monitoring.

8.1 Monitoring Fees. Monitoring Entity may charge the Owner a fee to recover the cost of monitoring and reporting requirements pursuant to Government Code section 54239.1 (c)(4)(B). The Owner agrees to pay the Monitoring Entity \$173.00 per residential unit in the Property each year, subject to changes in the cost of labor, to offset the cost of performing the requirements in the Use and Resale Covenant. The Owner shall pay the fee on a date the Monitoring Entity designates and annually on that date thereafter. Owner and Monitoring Entity may enter into an agreement that reduces, eliminates, or waives the monitoring fee, and such agreement shall not be a violation of this Use and Resale Covenant.

8.2 Owner Occupancy Verification: Inspection. If Owner is an HRE, then Owner shall provide to Monitoring Entity a certification verifying occupancy and compliance with the Use and Resale Covenant by February 1 of each year for the previous calendar year. It shall not be a violation of this Use and Resale Covenant if the Property is held vacant by Owner while conducting predevelopment or development activities related to a Capital Improvement, conducting leasing activities, or other activities reasonably determined by Owner to require that the Property remain vacant. The Property shall not be held vacant for a continuous period that exceeds twelve (12) months unless such greater vacancy period is authorized by Monitoring Entity.

If Owner is not an HRE and occupies the Property pursuant to Section 3.3, then Monitoring Entity shall send a written request to the Property's address requesting Owner to verify occupancy and compliance with the Use and Resale Covenant, including compliance with Section 11.1. The written request shall be sent no later than December 10 of each year and Owner's response shall be due by February 1 of each year.

Within sixty (60) days after Monitoring Entity's receipt of the certification, Monitoring Entity shall have the right to enter and verify the Owner's use of the Property. Monitoring Entity shall give Owner no less than forty-eight (48) hours prior written notice before conducting an on-site inspection.

Section 9. Termination.

9.1 Termination of Use and Resale Covenant. Subject to Section 9.2, this Use and Resale Covenant shall terminate:

- (a) 55 years from the Effective Date if the Property is used at any time as rental housing pursuant to Section 3.2.
- (b) 45 years from the Effective Date if the Property is used exclusively as Owner-occupied affordable housing, as defined in California Government Code section 62250, pursuant to Section 3.3, or exclusively as a limited-equity housing cooperative pursuant to Section 3.4.
- (c) Upon a sale pursuant to Section 7.2 if not sold to Persons and Families of Low or Moderate Income.
- (d) Pursuant to Section 11.2.

9.2 Terms that Survive Termination. Notwithstanding Section 9.1, the requirements in Sections 3.3(b), 5.3, and 7.2 to dedicate all excess proceeds to the construction of housing for Persons and Families of Low or Moderate Income within the 90032 postal ZIP Code, shall survive the termination of this Use and Resale Covenant as follows:

- (a) For Section 3.3(b), if escrow closed on the Transfer before this Use and Resale Covenant otherwise terminates.
- (b) For Section 5.3 if Owner collected or was promised any excess proceeds before this Use and Resale Covenant otherwise terminates.
- (c) For Section 7.2, the Transfer following a circumstance in which the Property is condemned, or the improvements located on the Property

are damaged or destroyed and not rebuilt and re-occupied as affordable housing, before this Use and Resale Covenant otherwise terminates.

Section 10. Default and Remedies.

10.1 Event of Default. The occurrence of any one of the following events or circumstances shall constitute an **"Event of Default"** by Owner under this Use and Resale Covenant:

- (a) Owner has Transferred or attempted to Transfer the Property in violation of the provisions of in this Use and Resale Covenant.
- (b) Owner fails to timely pay property taxes, assessments, or homeowner's association dues; or Owner places any mortgages on the Property (other than as permitted in Section 11.1 below); and such event or condition shall not have been cured within thirty (30) days following the date of written notice to cure by Monitoring Entity to Owner.
- (c) Owner fails to perform any other agreements or obligations required to be performed by Owner under this Use and Resale Covenant, and such failure continues for thirty (30) days following the date of written notice to cure by Monitoring Entity to Owner, or in the case of a default not susceptible of cure within thirty (30) days, Owner fails to commence such cure within thirty (30) days and thereafter fails to diligently complete such cure.
- (d) Owner defaults under the terms of the Lender Lien and fails to cure such default(s).

102 Remedies. Upon the occurrence of an Event of Default by Owner, Monitoring Entity may exercise any or all the remedies set forth below:

- (a) Monitoring Entity shall have the right to institute an action for specific performance of the terms of this Use and Resale Covenant, including but not limited to, enforcement of any section herein and/or an injunction prohibiting a proposed Transfer that violates the terms of this Use and Resale Covenant; and
- (b) Monitoring Entity shall have the right to exercise all other rights and remedies permitted by this Use and Resale Covenant and any applicable laws.

Section 11. Lender Provisions.

11.1 Purposes of Financing. Subject to Monitoring Entity's prior written approval, not to be unreasonably withheld or delayed, Owner may encumber title to the Property for securing financing to refinance the Property, to fund rehabilitation of the Property, or to fund the construction of new or replacement housing units on the Property. Refinancing shall be permitted to secure a lower interest rate to reduce debt service cost and/or to make Capital Improvements to the Property. Financing or Refinancing shall not exceed such an amount that would jeopardize the continued operation of the Property as affordable housing for Persons and Families of Low to Moderate Income. Owner shall not otherwise encumber the Property, except Owner may, with the consent of Monitoring Entity, record restrictions which (i) extend the period under which the Property must be rented to Persons and Families of Low to Moderate Income and/or (ii) restrict the rental amounts for the Property to an amount less than the Allowable Rent if such additional restrictions are required by an applicable grant, loan, or other funding source that will be used to improve, maintain, or operate the Property. Additional encumbrances of the Property shall not increase or otherwise alter the amount of the Affordable Rent as defined herein. Owner shall submit to Monitoring Entity by February 1 of each year a certification that Owner has not encumbered the Property in violation of this Section 11.1. Further, Owner and Lender shall ensure that the terms of any security instrument contain a provision giving Monitoring Entity notice of any Notice of Default and of any Notice of Sale.

11.2 Subordination. All Lender Liens placed against the Property, or any portion thereof, other than covenants or liens required by HUD, shall be subject and subordinate to this Use and Resale Covenant, except as provided in this Section 11.2.

(a) In the event title to the Property is Transferred following foreclosure by, or deed in lieu of foreclosure to a Lender in first position, or a Lender Lien in first position is assigned to the Secretary of HUD, the terms of this Use and Resale Covenant applicable to the Property shall automatically terminate subject to (b) and (c).

(b) In the event title to the Property is Transferred according to the provisions of (a), the proceeds from such foreclosure or Transfer shall be apportioned and paid as follows: first, to any Lender, in the amount of debt secured under any Lender Liens, including accrued interest (regular and default interest), commercially reasonable costs and expenses, if any, incurred by any Lender and due and payable by Owner under the terms of any Lender Lien; second, to the Affordable Housing Trust Account as established pursuant to Government Code section 54237.1(b). The provisions of this Use and Resale Covenant shall not

restrict the sales price of the Property if the Property is sold pursuant to the provisions of Section 11.2(a).

- (c) In the event a Lender Lien recorded in the first position against the Property is assigned to the Secretary of HUD, the following shall occur upon the date of assignment: the Monitoring Entity's right to purchase pursuant to Section 11.4, whether or not such right has been triggered, shall automatically expire and the terms of this Use and Resale Covenant applicable to the Property shall automatically terminate, except that upon sale of the Property by Owner or foreclosure or deed in lieu thereof, the proceeds of such sale shall be apportioned as provided in (b).
- (d) Except as provided in (a), this Use and Resale Covenant shall not be released or terminated and the Lender or any person who takes title to the Property through a foreclosure sale shall become the Owner as if the Property was Transferred pursuant to Section 4.2. A breach of the terms, conditions, covenants, or restrictions contained in this Use and Resale Covenant shall not defeat or render invalid a Lender Lien or mortgage made in good faith and for value, but all such terms, conditions, covenants, or restrictions contained in this Use and Resale Agreement shall be binding upon and effective against any person who acquires title to the Property except as provided in this Section 11.2.

11.3 Default and Foreclosure. Owner shall provide Monitoring Entity a copy of any Notice of Default and Notice of Intent to Foreclose under the Lender Lien for the Property within 10 days of issuance. Notwithstanding the foregoing, in no event shall failure to provide such notices preclude the Lender's right to proceed with its remedies for default under the Lender Lien.

11.4 Right to Purchase. Monitoring Entity shall have the right to purchase the Property in the event a Notice of Default or Notice of Intent to Foreclose for a Lender Lien was recorded in the Land Records. The purchase price shall be the amount of the debt, including accrued interest (regular and default) secured by the Lender Lien recorded against the Property, including commercially reasonable costs and expenses, if any, incurred by Lender as a result of a default and due and payable by Owner under the terms of the Lender Lien. Monitoring Entity shall have thirty (30) days from the date a Notice of Default or a Notice of Foreclosure sale was recorded in the Land Records to exercise its option and initiate the process to purchase the Property. Monitoring Entity's right to purchase shall terminate if the Owner reinstates or pays in full the Lender Lien. Monitoring Entity's right to purchase shall automatically expire upon the transfer of the Property by foreclosure or deed in lieu thereof, unless the Use and Resale Covenant survives the foreclosure sale and transfer, in which case the right to purchase shall apply to any subsequent Notice of

Default recorded in the Land Records. Monitoring Entity may designate a third party to take title to the Property.

Section 12. Miscellaneous.

12.1 Nondiscrimination. Owner covenants by and for itself and its successors and assigns that use of the Property shall comply with Government Code section 12955.

12.2 Covenants Run with the Land. This Use and Resale Covenant is and shall be binding upon the Property and shall run with the land as of the Effective Date through the Termination pursuant to Section 9.1. The rights and obligations of Monitoring Entity and Owner, and their respective successors, heirs, and assigns shall be binding upon and inure to the benefit of the foregoing parties and their respective successors, heirs, and assigns; provided however that all rights of Monitoring Entity pertaining to the monitoring and/or enforcement of the obligations of Owner hereunder shall be retained by Monitoring Entity, or such designee of Monitoring Entity as the Monitoring Entity may so determine. No Transfer or foreclosure shall affect the validity of this Use and Resale Covenant, except as provided in this Use and Resale Covenant.

12.3 Notice. Any notices given under this Use and Resale Covenant shall be in writing and delivered by certified mail (return receipt requested, postage pre-paid), by hand, or by reputable private overnight commercial courier service to the applicable person at the addresses specified as follows:

If to OWNER:	Housing Opportunity for Angelenos, Inc. Attn: Tina Smith Booth 2600 Wilshire Boulevard, Fourth Floor Los Angeles, CA 90057
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With a copy to:
Housing Authority of the City of Los Angeles
Attn: Jenny Scanlin, Chief Strategic
Development Officer
2600 Wilshire Boulevard, Third Floor
Los Angeles, CA 90057

If to MONITORING ENTITY:	Los Angeles Housing Department Attn: Asset Management 1910 Sunset Blvd., Suite 360 Los Angeles, CA 90026
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Any such Notice transmitted in accordance with this Section 12.3 shall be deemed delivered upon receipt, or upon the date delivery was refused. Any party may change its address for notices by written Notice given to the other party in accordance with the provisions of this Section 12.3.

12.4 Remedies Cumulative. Subject to applicable law, Monitoring Entity's rights and remedies, whether provided by law, in equity, or by this Use and Resale Covenant, shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude the exercise of any other or further rights or remedies for the same or any other default or breach. No waiver with respect to the performance of any of Owner's obligations shall be effective except to the extent the particular obligation is expressly waived by Monitoring Entity, nor shall it be a waiver with respect to any other rights or remedies of any other of Owner's obligations.

12.5 Integration. This Use and Resale Covenant constitutes an integration of the entire understanding and agreement of Caltrans, Owner, and Monitoring Entity with respect to the subject matter hereof. Any representations, warranties, promises, or conditions, whether written or oral, not specifically and expressly incorporated in this Use and Resale Covenant, shall not be binding on any of the parties, and Owner and Monitoring Entity each acknowledge that in entering into this Use and Resale Covenant they have not relied on any representation, warranty, promise or condition, not specifically and expressly set forth in this Use and Resale Covenant. All prior discussions and writings have been, and are, merged and integrated into, and are superseded by, this Use and Resale Covenant.

12.6 Severability. In the event that any provision of this Use and Resale Covenant is determined to be illegal or unenforceable, such determination shall not affect the validity or enforceability of the remaining provisions hereof, all of which shall remain in full force and effect.

12.7 Successors and Assigns. This Use and Resale Covenant shall be binding upon and inure to the benefit of the successors and assigns of Monitoring Entity. Monitoring Entity may assign or transfer its rights under this Use and Resale Covenant upon thirty (30) days written notice to Owner. It is expressly agreed by Owner that Owner may assign his or her rights to this Use and Resale Covenant only by Transfer pursuant to Section 4.

12.8 Headings. The headings within this Use and Resale Covenant are for the purpose of reference only and shall not limit or otherwise affect any of the terms of this Use and Resale Covenant.

12.9 Time for Performance. Time is of the essence in the performance of the

terms of this Use and Resale Covenant. All dates for performance or cure shall expire at 5:00 p.m. on the performance or cure date. Any performance date which falls on a Saturday, Sunday, or a holiday specified in California Code of Civil Procedure section 135 is automatically extended to the next day that is not a Saturday, Sunday, or holiday.

12.10 Amendments. Any modification or waiver of any provision of this Use and Resale Covenant or any amendment thereto shall be in writing and signed by the authorized representatives of both Monitoring Entity and the Owner.

12.11 Controlling Use and Resale Covenant. Owner covenants that Owner has not executed and will not execute any other agreement with provisions contradictory to or in opposition to the provisions of this Use and Resale Covenant. Owner understands and agrees that this Use and Resale Covenant shall control the rights and obligations between Owner and Monitoring Entity with respect to the subject matter contained herein.

12.12 Exhibits. The Exhibits and Attachments attached hereto are material parts of this Use and Resale Covenant and are incorporated herein by this reference.

12.13 Governing Law. This Use and Resale Covenant shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

12.14 Counterparts. This Use and Resale Covenant may be signed in counterparts, each of which shall constitute an original.

12.15 Recordation. Upon any Transfer authorized by Section 4, Monitoring Entity shall ensure this Use and Resale Covenant is recorded in the Official Records and recordation shall be a requirement of conveyance of the Property from Caltrans to Owner.

12.16 Interpretation. Each party hereto acknowledges and agrees that each has had independent counsel review and participated in the negotiation and drafting of this Use and Resale Covenant, and each hereby fully waives the application of any law, statute or rule of construction or interpretation, including without limitation California Civil Code section 1654, to the effect that any ambiguities are to be construed against the drafting party.

12.17 Assignment by Caltrans to Monitoring Entity. Upon this Use and Resale Covenant being recorded in the Official Records at the time of the initial transfer from Caltrans to Owner, Caltrans assigns all the rights, duties, and benefits granted to it by this Use and Resale Covenant to Monitoring Entity, and Monitoring Entity accepts such assignment.

12.18 Limitation on Liability. Provided that Owner has exercised reasonable due diligence in the performance of its obligations and duties herein, Owner shall not be liable in the event any third party submits falsified documentation, commits fraud, or breaches any representation or warranty contained in this Covenant. Notwithstanding the foregoing, Owner shall be liable if Owner has knowledge, or should have knowledge, that a third party submitted falsified documentation, committed fraud, or breached any representation or warranty contained in this Use and Resale Covenant. Except as provided in this paragraph, no Owner shall be liable for the failure of any predecessor or successor Owner's compliance with this Use and Resale Covenant.

12.19 No Third-Party Beneficiary. Except as expressly set forth in this Use and Resale Covenant or Government Code section 54239.3, there are no intended third-party beneficiaries of this Use and Resale Covenant, and no person other than Monitoring Entity shall have standing to bring an action for breach of or to enforce the provisions of this Use and Resale Covenant.

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