REQUEST FOR COUNCIL/HOUSING AUTHORITY ACTION

CITY COUNCIL MEETING DATE:
DECEMBER 20, 2016

TITLE:

APPROVAL OF CONDITIONAL LOAN COMMITMENT AND AWARD OF $6,195,000 OF AFFORDABLE HOUSING FUNDS TO AMCAL MULTI-HOUSING, INC FOR THE FIRST STREET APARTMENTS PROJECT {STRATEGIC PLAN NO. 5, 3C}

CITY MANAGER EXECUTIVE DIRECTOR

RECOMMENDED ACTION

CITY COUNCIL ACTION

1. Authorize the City Manager to execute a conditional loan commitment letter for $2,600,000 of inclusionary housing in-lieu fees anticipated from the Heritage Village OC, LLC in order to reduce the $8,795,000 previously approved by City Council on April 19, 2016, that will be contingent on the City's actual receipt of an in-lieu fee payment of $2,600,000 from Heritage Village OC, LLC.

2. Authorize the City Manager/Executive Director and the City Attorney to draft loan agreements for future City Council consideration in an amount not to exceed $2,600,000 for the First Street Apartments Project.

HOUSING AUTHORITY ACTION

1. Award $6,195,000 in Housing Successor Agency funds to AMCAL Multi-Housing, Inc for the First Street Apartments Project located at 1440 East First Street in Santa Ana as provided in the pre-commitment letter.

2. Authorize the City Manager/Executive Director and the City Attorney to draft loan agreements for future Housing Authority consideration in an amount not to exceed $6,195,000 for the First Street Apartments Project.

80B-1
DISCUSSION

On April 19, 2016, City Council approved a conditional loan commitment of $8,795,000 of inclusionary housing in-lieu fees to AMCAL Multi-Housing, Inc. (AMCAL) for their First Street Apartments Project by a vote of 6:0. The $8,795,000 came as a request by Heritage Village IHC, LLC (Heritage Village) to allocate the in-lieu fees from their Heritage Village project to AMCAL.

On August 29, 2016, the City of Santa Ana received a second request from the Heritage Village to pledge City existing affordable housing funds to AMCAL for the First Street Apartments Project (Exhibit 1) resulting from the Heritage Village’s request to phase their total in-lieu fee payment. As such, the Heritage Village requests the City fund the difference between the $8,795,000 in-lieu fee and the initial Heritage Village project phase one payment, which will be approximately $2,600,000.

On November 14, 2016, AMCAL submitted a letter (Exhibit 2) to the City stating, “We request that any agreement to allow the deferral of the payment of in-lieu fees [from the Heritage Village] be conditioned upon a commitment from the City to use existing City housing funds to bridge the in-lieu fees payable in the future by the Heritage Village development. A commitment by the City to bridge the in-lieu fees would allow the First Street affordable project to proceed as currently scheduled and not suffer any further delays.”

The City’s past practice is to issue Request for Proposals (RFP) for affordable housing funds. The issuance of an RFP allows for transparency and open competition among multiple affordable housing developers throughout Orange County and Southern California who want to develop affordable housing in our community. Each year, developers rely on the City to allow for open competition for affordable housing funds.

On December 20, 2016, the City Council will consider a recommended action for the Heritage Village to amend the Development Agreement for their Heritage Village project to allow for phasing of their total in-lieu fee payment of $9,695,725.60 required under the City’s Housing Opportunity Ordinance. If the Development Agreement is approved, this would cause a delay in the development of AMCAL’s First Street Apartments Project. Therefore, staff recommends an award of $6,195,000 to AMCAL for the First Street Apartments Project (Exhibit 4) to bridge $2,600,000 of inclusionary housing in-lieu fees anticipated to be received from the Heritage Village (Exhibit 5) for the first phase of their project. This pre-commitment letter will provide an opportunity for AMCAL to move forward with the First Street Project to obtain their necessary tax credit financing. The remainder of the $7,095,725.60 of in-lieu fees anticipated from the Heritage Village will be deposited into the City’s Inclusionary Housing Fund after the second and third phase of their project, and these remaining funds would be issued through the RFP process.

The City currently has $3,448,697 in its Inclusionary Housing Fund and approximately $6,400,000 in Housing Successor Agency funds. The requests by the Heritage and AMCAL to use $6,195,000 in City existing housing funds contingent on receipt of $2,600,000 from the first phase of the Heritage Village project, will leave a balance of Inclusionary Housing Funds.
available to provide affordable housing in the City of Santa Ana in addition to the remainder of the in-lieu fees expected from the Heritage Village.

**Project Description**
AMCAL's proposed project, located at 1440 East First Street in Santa Ana (Exhibit 3), will provide 69 units of affordable workforce housing. The residential units will be located within six buildings. The rental units (less one manager's unit) are 100% affordable to family households earning between 30% and 60% of the Area Median Income (AMI). The unit mix currently consists of six four-bedroom units, 28 three-bedroom units and 35 two-bedroom units (one being a manager's unit). Eight of the units will be assisted by the Santa Ana Housing Authority's Project-Based Voucher Program. On-site amenities will include a community room and amenity space including tot lots/play areas for children, outdoor seating, BBQs, a flex play space and planters. The community room will be incorporated into the development, providing a computer laboratory, kitchen, activity room for resident activities, and office space for property management and social services staff. AMCAL will engage the non-profit organization LifeSTEPS to provide free on-site social services to project tenants. Services will be provided in the form of classes and workshops with the subject matter tailored by a social service coordinator to the specific needs of the community.

This pre-commitment of $6,195,000 in Housing Successor Agency funds will require deeper affordability (units affordable to lower-income households at 30% AMI) to ensure the City complies with regulatory requirements from the California Department of Housing and Community Development. The City's Housing Successor Agency funds will be provided by means of a 55-year City loan carrying a 3 percent interest rate and payable by residual receipts. The loan agreements for these funds will be conveyed to City Council for approval prior to execution in accordance with the funding requirement. Execution of these loan agreement documents will be contingent upon completion of the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) requirements.

**STRATEGIC PLAN ALIGNMENT**

Approval of this item supports the City's efforts to meet Goal #5 - Community Health, Livability, Engagement & Sustainability, Objective #3 (Facilitate diverse housing opportunities and support efforts to preserve and improve the livability of Santa Ana neighborhoods), Strategy C (Provide that Santa Ana residents, employees, artists and veterans receive priority for affordable housing created under the City's Housing Opportunity Ordinance or with City funding to the extent allowed under state law).

**FISCAL IMPACT**

Pre-Commitment Loan
As noted above the item is a funding commitment for which the City has available in the Low and Moderate Income Housing Asset fund balance $6,195,000.
Conditional Loan Commitment
Upon completion of contract covenants, the City may receive In-Lieu Fees totaling $2,600,000 and will be deposited for appropriation in the Inclusionary Housing Fund Inclusionary Housing Fees revenue account (no. 41718002-57896). Upon receipt of funds, an appropriation adjustment will be brought forth to the Mayor and City Council for consideration and subsequent approval.

Robert C. Cortez
Deputy City Manager
City Manager's Office

Francisco Gutierrez
Executive Director
Finance and Management Services Agency

Exhibits:
1. Letter from Heritage Village OC, LLC
2. Letter from AMCAL
3. 1440 East First Street Site Map
4. Pre-Commitment Letter
5. Conditional Loan Commitment Letter
August 19, 2016

Sonia R. Carvalho  
City Attorney  
City of Santa Ana  
20 Civic Center Plaza, M-29  
Santa Ana, CA 92701

Re: Heritage Village OC, LLC

Dear Ms. Carvalho:

I am writing on behalf of my client Heritage Village OC, LLC ("Developer") to propose a resolution of the matter relating to the timing of payment of the affordable housing in lieu fees that the Developer is obligated to pay in conjunction with development of the Heritage Village Project ("Project"). As you know the Project includes a number of buildings that will be developed in three phases, as detailed in the Development Agreement. Pursuant to Section 4-1904(c)(3) of the City Housing Opportunity Ordinance ("HOO") any applicable affordable housing in lieu fee is to be paid prior to issuance of the first building permit for any portion of a residential project. As we have discussed previously, Developer always interpreted the phrase "any portion" to have the same meaning as "each phase" since each phase was a portion of the Project. However, when discussing the phased payment of the in lieu fees with City Staff, City Staff took the position that the HOO required payment of 100% of the affordable housing in lieu fees prior to issuance of the first building permit for Phase 1 of the Project. Based on this interpretation by City Staff it was determined that the only way to resolve the matter was to pursue an amendment to the HOO that would specifically provide for phased payment of in lieu fees for a phased project. Following discussions with City Staff on this matter the Developer filed an application for such an amendment and began the amendment process. During the Planning Commission hearing regarding this matter some objections were raised regarding such amendment. Our understanding is that most of these objections were related to how it might impact the timing of development of the proposed Amcal Affordable Housing Project ("Amcal Project").

Our understanding is that the developers of the Amcal Project plan to seek tax credit financing for their project in the first quarter of 2017. We also understand that in order to obtain the tax credit financing Amcal will need a letter from the City pledging up to $8.75 million toward the cost of development of the Amcal Project. We understand that Amcal is looking for a pledge of $8.75 million from the City toward Amcal's cost of development of their project. We also understand that the City has approximately $2.9 million in its in lieu affordable housing fee fund.
and, as successor agency to the City's Redevelopment Agency, has approximately $3.5 million in its Low and Moderate Income Housing Fund ("Housing Fund"). It is anticipated that the first phase of the Heritage Village Project will obtain its first building permit toward the end of 2016. At that time the affordable housing in lieu fee that would be owed by the Developer for just the first phase of the Project would be approximately $2.6 million. Thus, following payment by the Developer of its in lieu fees for the first phase of development, the City will have on hand a total of about $9 million that it can utilize for affordable housing development. At that time the City would be able to provide the pledge letter needed by Amcal for purposes of obtaining its tax credit financing. Subsequent to that, the Developer will make additional affordable housing in lieu fee payments in conjunction with phases 2 and 3 of the Project. This will help replenish the City's in lieu fee fund.

We are aware that some questions have arisen regarding the ability of the City to utilize the $3.5 million in its Housing Fund for the purpose described above. We have reviewed California's Community Development and Housing laws regarding the dissolution of redevelopment agencies and the use by successor agencies of funds taken over from dissolved redevelopment agencies. Based on our review it seems clear that the City can use these funds for the purposes described above. Assembly Bill 1793 was adopted in 2014 and amended section 34176.1 of the Health & Safety Code relating to redevelopment and, in particular, relating to funds received from successor agencies and how those funds may be used. Under existing law a city that authorizes the creation of a redevelopment agency, such as Santa Ana, may elect to retain the housing assets and functions previously performed by the redevelopment agency. The City has elected to do so. Existing law requires that any funds transferred to a city assuming the housing functions of the former redevelopment agency, together with any funds generated from housing assets, be maintained in a separate Housing Fund to be used in accordance with applicable housing related provisions of state law. Section 34176.1 creates an exception to use of Housing Funds. Instead of being subject to the provisions of the Community Redevelopment Law, Section, 34176.1 specifically provides for how those funds may be used. In particular, Section 34176.1(a)(3)(A) states that the housing successor shall expend all funds remaining in the Housing Fund, with the exception of certain minimal amounts for administrative expenditures and homeless prevention, for the development of housing affordable to and occupied by households earning 80% or less of the area median income. In addition, pursuant to Section 34176.1(d), if a housing successor has an excess surplus, the housing successor shall encumber the excess surplus for the development of affordable housing or transfer the funds to an adjacent successor agency. If the housing successor fails to do either one of these then the excess funds will need to be transferred to the Department of Housing and Community Development.

Based on all the above we feel that the concerns of the City, the Developer and Amcal can be met by taking the following steps: First, Amcal request that the City use both its in lieu fee fund and its Housing Fund toward the proposed Amcal project. Second, the City agrees that it can utilize both its in lieu fee fund and its Housing Fund, along with the Developer's payment of the first phase affordable housing in lieu fees, to provide a pledge letter on behalf of Amcal in support of its tax credit financing request. Third, the City and Developer enter into an agreement whereby both
parties agree that the Heritage Village affordable housing in lieu fees may be paid in phases consistent with the development phases of the Project.

We are confident that the above proposal will resolve the concerns of the City, the Developer, and Amcal. We look forward to working out the terms of the necessary agreements to implement this proposed resolution.

Very truly yours,

William R. Devine

WRD:nc
November 14, 2016

Chairman Lynnette Verino and Santa Ana Planning Commission
City of Santa Ana
20 Civic Center Plaza
P.O. Box 1988, M31
Santa Ana, CA 92701

RE: Heritage Village Mixed-Use Development
Proposed First Amendment to Development Agreement No 2015-03
Planning Commission Meeting, November 14, 2016

Dear Lynnette Verino and Members of the Planning Commission:

As you know, AMCAL Multi-Housing, Inc. (AMCAL) has been working in partnership with the City of Santa Ana for approximately the past two years to develop First Street Apartments — 69 units of high quality affordable housing for working families located at 1440 East First Street. As part of the City approved entitlements, we worked closely with members of the community and the Planning Commission to incorporate design feedback and thoughtful preferences, including 4 bedroom units for large families. As you also know, the proposed development is dependent on receipt of approximately $8.795 million of in-lieu fees from that Heritage Village Mixed-Use Development. The proposed amendment to the Heritage Village Development Agreement, allowing the payment of in-lieu fees over time will result in a significant delay in the commencement of construction of the First Street affordable housing project. While we fully understand and appreciate the Heritage Village developer’s desire to pay the in-lieu fees over time, we believe it is critical that any action of the Planning Commission not jeopardize the viability of the East First Street affordable development. As such, we request that any agreement to allow the deferral of the payment of in-lieu fees be conditioned upon a commitment from the City to use existing City housing funds to bridge the in-lieu fees payable in the future by the Heritage Village development. A commitment by the City to bridge the in-lieu fees would allow the First Street affordable project to proceed as currently scheduled and not suffer any further delays. The need for affordable housing in the City of Santa Ana remains at crisis levels and we believe the Commission should not take any action which would delay the production of the 69 units of affordable housing produced by the First Street project.

Thank you for your consideration.

Sincerely,

[Signature]

Gustavo De Haro
Project Manager
AMCAL Multi-Housing Inc.
GPA 2016-1 & AA 2016-1
AMCAL FIRST STREET FAMILY APARTMENTS
1440 EAST FIRST STREET

PLANNING AND BUILDING AGENCY

EXHIBIT 3

80B-11
Pre-Commitment Letter for $6,195,000

December 20, 2016

AMCAL 1440 Santa Ana Fund, L.P.
AMCAL Multi-Housing, Inc.
2082 Michelson Drive, Suite 306
Irvine, CA 92612
Attention: Mario Turner

SUBJECT: 69 Unit Multi-Family Housing Project
1440 East First Street, Santa Ana, California

Dear Mr. Turner,

AMCAL 1440 Santa Ana Fund, L.P., a California limited partnership (“Developer”) requested financial assistance in connection with the proposed development of a 69 unit affordable housing complex to be located at 1440 East First Street, Santa Ana, California (“Project”). The City of Santa Ana (“City”) and the Housing Authority of the City of Santa Ana (“Housing Authority”) has reviewed the Developer's request for assistance and at the City Council/Housing Authority meeting on December 20, 2016, the Housing Authority Board authorized and approved issuance of this pre-commitment letter evidencing the preliminary award of $6,195,000 of funds to the Project (the “Agency Assistance”), which Agency Assistance shall be funded exclusively from the Low and Moderate Income Housing Asset Fund (the “LMIHF”) held by the Housing Authority of the City of Santa Ana acting as the Housing Successor Agency (the “Agency”). The City, Agency and the Developer have mutually agreed upon the pre-commitment of Agency Assistance in the maximum amount of $6,195,000.

The purpose of this letter is to provide a pre-commitment from the Agency for a loan of up to $6,195,000 (“Agency Loan”) from the LMIHF held by the Housing Successor Agency. The Agency intends that this letter evidence the Agency’s pre-commitment of the Agency Assistance to the Developer for the Project subject to the conditions described below. The loan agreements for these funds require City Council/Housing Authority approval prior to execution by the Developer and the Agency.

The amount of the proposed Agency Loan has been determined based upon the City and Agency’s review of the Developer's request for the receipt of the Agency Assistance and the development proforma and projected cash flows for the Project submitted by the Developer to the City/Agency as of March 18, 2016 (“Proforma”). The Housing Authority’s Executive Director has authority to approve revised development proformas and projected cash flows for the Project; provided, however, that the Agency Assistance is not materially increased or extended.

In relation to this Agency Loan, the City Council approved a conditional, pre-commitment loan of up to $8,795,000 on April 19, 2016 funded exclusively from inclusionary housing in-lieu fee payments made pursuant to the City's Housing Opportunity Ordinance (Article XVIII.I of Chapter 41 of the Santa Ana Municipal Code) by the market rate developer of that certain mixed-use
development to be located at 2001 East Dyer Road, Santa Ana, California (the “In-Lieu Fee”). The Developer and the City agree that this pre-commitment from the Agency for a loan of up to $6,195,000 from the LMIHAF held by the Housing Successor Agency releases the City of its commitment of the same amount in the conditional, pre-commitment loan approved by City Council on April 19, 2016 from funds to be received by the City from the In-Lieu Fee at a future date. As such, the conditional, pre-commitment loan of up to $8,795,000 approved by City Council on April 19, 2016 will be reduced to a conditional, pre-commitment loan of $2,600,000, subject to the conditions described in the conditional, pre-commitment letter issued to the Developer on May 31, 2016.

The Developer’s Project is intended to serve, in part, a target population of Very-Low and Extremely-Low Income persons using LMIHAF from the Agency, pursuant to California Health and Safety Code Section 34176.1. Section 34176.1(a)(3)(B) requires that the Agency must require at least 30% of the LMIHAF to be expended for development of rental housing affordable to and occupied by households earning 30% or less of the Area Median Income (“AMI”). If the Agency fails to comply with the Extremely-Low Income requirement in any five-year report, then the Agency must ensure that at least 50% of the funds remaining in the LMIHAF be expended in each fiscal year following the latest fiscal year following the report on households earning 30% or less of the AMI until the Agency demonstrates compliance with the Extremely-Low Income requirement. In order for the Agency to meet this five-year Extremely-Low Income Test, the Agency and the Developer have mutually agreed that at least 50% of the units in the project will be affordable to and occupied by households earning 30% or less of the AMI.

The Agency Loan, should it be issued, will have the following terms:

- $6,195,000 principal amount, or as much thereof as is disbursed for acquisition costs and hard and soft costs in constructing the Project;
- 3% simple interest per annum;
- Repayment from 50% of Residual Receipts (pro-rata with payments due in connection with other financing provided by the City) (after payment of operating expenses, debt service, any deferred developer fee, and partnership fees to be described in the Agreement) with the remaining 50% to be disbursed to the Developer;
- Remaining principal and accrued interest due upon the 55th anniversary of the issuance of Certificate of Occupancy and/or final building permits or earlier upon sale, refinancing or default. Additionally, the Agency will receive 50% of the net proceeds received from any sale or refinancing of the Project, after payment of outstanding debt and payment in full of any deferred developer fee and establishment of any reserves and transaction costs; and
- Cost savings from the Project, if any, will be applied first to pay down the Loan, subject to compliance with the Tax Credit Allocation Committee (“TCAC”) Regulations and California Health and Safety Code.

80B-14
The Agency's obligation to provide the Agency Loan to the Project are subject to each of the following conditions:

1. Review and approval of the documents evidencing the Loan by the Housing Authority of the City of Santa Ana acting as the Housing Successor Agency.

2. Compliance with California Health and Safety Code and applicable regulations set forth in Section 34176.

3. Compliance with and completion of an environmental review of the Project pursuant to the California Environmental Quality Act (“CEQA”) and approval thereof.

4. The funding of $6,195,000 is from the Low and Moderate Income Housing Asset Fund which requires legal restrictions which the Agency cannot amend or repeal. 68 of the 69 “Housing Units” at the Project shall and will be restricted to “Affordable Rent” as defined by the TCAC Regulations for a period not less than 55 years pursuant to conditions, covenants and restrictions recorded against the Project in the Official Records, County of Orange, California. 34 of the 68 Housing Units at the Project shall and will be restricted to households earning 30% or less of the AMI. In the event that the Agency uses funds that are not so restricted, the Agency and the Developer may reasonably determine that a lesser number of Housing Units at the Project should be restricted to household earning 30% or less of AMI is necessary to cause the Project to be competitive for tax credit financing and/or to be financially viable. One (1) Housing Unit will be rented to an on-site property manager; the manager’s unit will not be rent-restricted.

5. The Loan Agreement shall provide that each of the following conditions shall be met prior to the disbursement of any portion of the Loan:

   a. All grading permits shall have been issued and the City shall have issued a letter stating that building permits are ready to issue, subject only to payment of fees and the completion of grading of the Project site.

   b. Developer shall have secured all necessary financing and funding for the construction and operation of the Project. Such financing and funding shall be sufficient to pay all Project development costs, through lease-up, as set forth in a final budget consistent with the approved Proforma (or as otherwise approved by the City/Agency).

   c. The Developer shall have provided evidence to the City/Agency that the Developer has obtained insurance policies and certificates or endorsements acceptable to the City/Agency, as described in the Loan Agreement.

   d. The Developer shall have provided construction security in favor of the Agency, which may include a completion guarantee from AMCAL Multi-Housing, Inc. and/or a letter of credit and/or performance & payment bonds from the general contractor for the Project (or some combination of these), in an amount sufficient to ensure the Project will be completed and
placed in service within the time set forth in the Project schedule approved by the City/Agency.

e. Developer shall submit and obtain Executive Director of the Housing Authority's approval of the construction contract, Developer's limited partnership agreement for the limited partnership entity to be formed to own and operate the Project, and management, marketing and tenant selection plans for the Project.

6. The Agency's obligation to provide the Loan is and shall remain subject to all covenants, conditions, and restrictions set forth in the Loan Agreement, and in particular Agency's analysis of the available funding sources and development and operating costs of the Project and the overall economic feasibility of the Project.

This pre-commitment letter for the project will expire two (2) years from issuance of the letter to the Developer. The Developer and the Agency agree in the Loan Agreement that the provision of any funds to the Project is and shall be conditioned on the Agency's determination to proceed with, modify or cancel the Agency Assistance based on the results of a subsequent CEQA environmental review and the outcome of a Subsidy Layering Review.

If you have any questions or require additional information regarding this letter, please contact Judson Brown, Housing Division Manager, by telephone at (714) 667-2241 or by e-mail at jbrown@santa-ana.org.

Sincerely,

David Cavazos
City Manager
City of Santa Ana/
Housing Authority of the City of Santa Ana
Conditional Pre-Commitment Letter for $2,600,000

December 20, 2016

AMCAL 1440 Santa Ana Fund, L.P.
AMCAL Multi-Housing, Inc.
2082 Michelson Drive, Suite 306
Irvine, CA 92612
Attention: Mario Turner

SUBJECT: 69 Unit Multi-Family Housing Project
1440 East First Street, Santa Ana, California

Dear Mr. Turner,

AMCAL 1440 Santa Ana Fund, L.P., a California limited partnership ("Developer") requested financial assistance in connection with the proposed development of a 69 unit affordable housing complex to be located at 1440 East First Street, Santa Ana, California ("Project"). The City has reviewed the Developer's request for assistance and at a City Council meeting on December 20, 2016 the City Council authorized and approved issuance of this conditional, pre-commitment letter evidencing the preliminary award of $2,600,000 of funds to the Project (the "City Assistance"), which City Assistance shall be funded exclusively from inclusionary housing in-lieu fee payments made pursuant to the City's Housing Opportunity Ordinance (Article XVIII.I of Chapter 41 of the Santa Ana Municipal Code) by the developer (the "Market Rate Developer") of that certain mixed-use development to be located at 2001 East Dyer Road, Santa Ana, California (the "In-Lieu Fee").

The purpose of this letter is to provide a conditional, pre-commitment from the City of Santa Ana for a loan of $2,600,000.00 ("City Loan") from funds received by the City from the In-Lieu Fee. The City intends that this letter evidence the City's award of the City Assistance to the Developer for the Project subject to the conditions described below. The loan agreements for these funds require City Council approval prior to execution by the Developer and the City of Santa Ana.

The amount of the proposed Loan has been determined based upon the City's review of the Developer's request for the receipt of the City Assistance and the development proforma and projected cash flows for the Project submitted by the Developer to the City as of March 18, 2016 ("Proforma"). The City Manager has authority to approve revised development proformas and projected cash flows for the Project; provided, however, that the Santa Ana Assistance is not materially increased or extended.

On April 19, 2016, the City Council approved a conditional, pre-commitment loan of up to $8,795,000 funded exclusively from inclusionary housing in-lieu fee payments made pursuant to the City's Housing Opportunity Ordinance (Article XVIII.I of Chapter 41 of the Santa Ana Municipal Code) by the market rate developer of that certain mixed-use development to be located at 2001 East Dyer Road, Santa Ana, California. The Developer and the City agree that this conditional, pre-commitment from the City for a loan of $2,600,000 releases the City of its original commitment of
the balance of $6,195,000 from the conditional, pre-commitment loan approved by City Council on April 19, 2016. As such, the conditional, pre-commitment loan of up to $8,795,000 approved by City Council on April 19, 2016 is hereby reduced to a conditional, pre-commitment loan of $2,600,000, subject to the conditions below.

The Loan, should it be issued, will have the following terms:

- $2,600,000.00 principal amount, or as much thereof as is disbursed for acquisition costs and hard and soft costs in constructing the Project;

- 3% simple interest per annum;

- Repayment from 50% of Residual Receipts: (pro-rata with payments due in connection with other financing provided by the City) (after payment of operating expenses, debt service, any deferred developer fee, and partnership fees to be described in the Agreement) with the remaining 50% to be disbursed to the Developer;

- Remaining principal and accrued interest due upon the 55th anniversary of the issuance of Certificate of Occupancy and/or final building permits or earlier upon sale, refinancing or default. Additionally, Santa Ana will receive 50% of the net proceeds received from any sale or refinancing of the Project, after payment of outstanding debt and payment in full of any deferred developer fee and establishment of any reserves and transaction costs; and

- Cost savings from the Project, if any, will be applied first to pay down the Loan, subject to compliance with the TCAC Regulations.

The City's obligation to provide the Loan to the Project are subject to each of the following conditions:

1. Receipt by the City of the In-Lieu Fee. On October 6, 2015 the City received a letter indicating a Market Rate Developer’s preference that their In-Lieu Fees be applied towards the Project. The Developer agrees and acknowledges that while a preference has been stated and the City has agreed to honor the preference, the City has not yet received the In-Lieu Fee. The City shall notify the Developer if and when it receives the In-Lieu Fee. Notwithstanding anything to the contrary set forth herein, the City shall have no obligation to fund the Loan unless the In-Lieu Fee has been received by the City.

2. Review and approval of the documents evidencing the Loan by the City Council.

3. Compliance with and completion of environmental review of the Project pursuant to the California Environmental Quality Act (“CEQA”) and approval thereof.

4. 68 of the 69 “Housing Units” at the Project shall and will be restricted to “Affordable Rent” as defined by the TCAC Regulations for a period not less than 55 years pursuant to conditions, covenants and restrictions recorded against the Project.
in the Official Records, County of Orange, California. 34 of the 68 Housing Units at the Project shall and will be restricted to households earning 30% or less of the AMI unless the City and the Developer may reasonably determine that a lesser number of Housing Units at the Project should be restricted to household earning 30% or less of AMI is necessary to cause the Project to be competitive for tax credit financing and/or to be financially viable. One (1) Housing Unit will be rented to an on-site property manager; the manager’s unit will not be rent-restricted.

5. The Loan Agreement shall provide that each of the following conditions shall be met prior to the disbursement of any portion of the Loan:

a. All grading permits shall have been issued and the City shall have issued a letter stating that building permits are ready to issue, subject only to payment of fees and the completion of grading of the Project site.

b. Developer shall have secured all necessary financing and funding for the construction and operation of the Project. Such financing and funding shall be sufficient to pay all Project development costs, through lease-up, as set forth in a final budget consistent with the approved Proforma (or as otherwise approved by the City).

c. The Developer shall have provided evidence to the City that the Developer has obtained insurance policies and certificates or endorsements acceptable to the City, as described in the Loan Agreement.

d. The Developer shall have provided construction security in favor of the City, which may include a completion guarantee from AMCAL Multi-Housing, Inc. and/or a letter of credit and/or performance & payment bonds from the general contractor for the Project (or some combination of these), in an amount sufficient to ensure the Project will be completed and placed in service within the time set forth in the Project schedule approved by Santa Ana.

e. Developer shall submit and obtain Executive Director of the Community Development Agency’s approval of the construction contract, Developer’s limited partnership agreement for the limited partnership entity to be formed to own and operate the Project, and management, marketing and tenant selection plans for the Project.

6. The City’s obligation to provide the Loan is and shall remain subject to all covenants, conditions, and restrictions set forth in the Loan Agreement, and in particular City’s analysis of the available funding sources and development and operating costs of the Project and the overall economic feasibility of the Project.

This conditional, pre-commitment letter for the project will expire two (2) years from issuance of the letter to the Developer. The Developer and the City agree in the Loan Agreement that the provision of any funds to the Project is and shall be conditioned on the City’s determination to
proceed with, modify or cancel the City Assistance based on the results of a subsequent CEQA environmental review and the outcome of a Subsidy Layering Review.

If you have any questions or require additional information regarding this letter, please contact Judson Brown, Housing Division Manager, by telephone at (714) 667-2241 or by e-mail at jbrown@santa-ana.org.

Sincerely,

David Cavazos
City Manager
City of Santa Ana