

CALIFORNIA HOUSING FINANCE AGENCY

**MIXED-INCOME PREFERRED LENDER AGREEMENT**

This CalHFA Mixed-Income Preferred Lender Agreement (“Agreement”) is entered into as of \_\_\_\_\_, 20\_\_ (the “*Effective Date*”), by and between, \_\_\_\_\_, a \_\_\_\_\_ banking corporation (the “*Mixed-Income Preferred Lender*” or “[*Construction*] [*and*] [*Permanent*] *Lender*”), and the California Housing Finance Agency, a public instrumentality and political subdivision of the State of California (“*CalHFA*”), in connection with the CalHFA’s Mixed-Income Loan Program (the “*Mixed-Income Program*”).

WHEREAS, pursuant to the Building Homes and Jobs Acts (the “*Act*”), at California Health and Safety Code (“*H&S Code*”) section 50470(b)(2)(C)(iii), the State of California has allocated funds to CalHFA for the purpose of creating mixed income multifamily residential housing for lower to moderate income households.

WHEREAS, in accordance with the Act, CalHFA has created the Mixed-Income Program for the purpose of providing subordinate long-term financing to subsidize the new construction of multifamily housing developments restricting units between 30% and 120% of county Area Median Income as defined in Section 50093 of the H&S Code.

WHEREAS, financing under the Mixed-Income Program must be paired with CalHFA’s Conduit Bond Issuance Program (the “*Conduit Program*”), construction financing from a Mixed-Income Preferred Lender, and either CalHFA’s Permanent Loan product or a CalHFA Mixed-Income Preferred Lender product for the permanent financing of a multifamily rental housing development (a “*Development*”).

WHEREAS, the Mixed-Income Preferred Lender desires to participate in the Mixed-Income Program as a [*Construction Lender providing first-lien construction financing for a related conduit bond issuance under the Conduit Program (the “Mixed-Income Preferred Construction Lender”)*] [*and a*] [*Permanent Lender providing long-term first-lien financing in connection with a conduit bond issuance under the Conduit Program (the “Mixed-Income Preferred Permanent Lender”)*] for a Development receiving Mixed-Income Program financing.

NOW, THEREFORE, in consideration of the promises set forth herein, the parties mutually agree as follows:

**1. Mixed-Income Preferred Lender Approval: No Binding Obligation.** CalHFA hereby approves the Mixed-Income Preferred Lender as a [*Construction*] [*and*] [*Permanent*] *Lender* subject to this Agreement and the CalHFA Term Sheet for the Mixed-Income Program attached hereto as **Exhibit A** (the “*CalHFA Term Sheet*”). Mixed-Income Preferred Lender acknowledges that CalHFA may enter into Mixed-Income Preferred Lender Agreements with other financial institutions in connection with the Mixed-Income Program. This Agreement does not represent a binding commitment by CalHFA to provide Mixed-Income Program financing for any development financed by Mixed-Income Preferred Lender.

**2. Mixed-Income Preferred Lender’s Performance.** CalHFA shall periodically review Lender’s performance under this Agreement, including but not limited to the number of loans originated, loan performance, and types of loans made. In the event CalHFA determines that Mixed-Income Preferred Lender has not satisfactorily performed its obligations under this Agreement, CalHFA shall provide written notice of that fact to Mixed-Income Preferred Lender. If, in CalHFA's reasonable judgment, Mixed-Income Preferred Lender has not remedied this situation within thirty (30) days of the CalHFA’s notice, CalHFA may automatically terminate this Agreement as to Lender by written notice to Mixed-Income Preferred Lender.

**3. Term.**

a. This Agreement shall be effective upon execution by all parties hereto until the later of: (1) closing of all construction and/or permanent loans made pursuant to the CalHFA Term Sheet and this Agreement by Mixed-Income Preferred Lender for Mixed-Income Program financing from Act funds allocated for the 2019 calendar year, or (2) five years, subject to extension by mutual agreement in writing by the parties hereto. Mixed-Income Preferred Lender approval status correlates only to the year of Mixed-Income Preferred Lender qualification and Act fund allocation. Eligibility for future years’ funding requires a new Mixed-Income Preferred Lender Agreement for each new calendar year. Either party may terminate this Agreement for any reason upon five (5) business days prior written notice to the other party. In addition, CalHFA may immediately terminate this Agreement upon written notice from CalHFA upon Mixed-Income Preferred Lender’s failure to comply with any provision of this Agreement, including Mixed-Income Preferred Lender’s breach of any of the representations and warranties contained in this Agreement. In the event of any termination, Mixed-Income Preferred Lender may no longer participate in or make loans in connection with the Mixed-Income Program.

b. CalHFA may, in its discretion, require Mixed-Income Preferred Lender to submit and comply with periodic re-certification requirements established by CalHFA from time to time.

**4. Mixed-Income Preferred Lender’s Representations.** Mixed-Income Preferred Lender hereby represents, warrants, and covenants to CalHFA as follows:

a. Mixed-Income Preferred Lender acknowledges that it has read and understands the CalHFA Term Sheet for the Mixed-Income Loan Program, published at <https://www.calhfa.ca.gov/multifamily/programs/index.htm>; (the “*CalHFA Term Sheet*”);

b. Mixed-Income Preferred Lender is eligible to participate in the Mixed-Income Program as required by the CalHFA Term Sheet, and shall remain so, as it may be amended from time to time;

c. Mixed-Income Preferred Lender is duly organized, validly existing and in good standing under the laws of the state of its organization and has the power and authority to own its properties and carry on its business as now being conducted and is duly qualified to do such business wherever such qualification is required;

d. Mixed-Income Preferred Lender and its agents, officers, employees and

other personnel acting on its behalf have full legal authority to engage in the transactions contemplated by this Agreement and to obligate Mixed-Income Preferred Lender to comply with the terms, conditions, and provisions of this Agreement. Mixed-Income Preferred Lender's compliance with the terms, conditions, and provisions of this Agreement will not conflict with or result in a breach or default of any of the terms, conditions or provisions of the charter or bylaws of the Mixed-Income Preferred Lender or any agreement or instrument to which the Mixed-Income Preferred Lender is now a party or by which it is bound;

e. Mixed-Income Preferred Lender is authorized, licensed and in good standing to make Loans in California;

f. No action, suit, proceeding, inquiry or investigation pending or threatened against Mixed-Income Preferred Lender that would be likely to result in any material adverse change in business, operations, financial condition, properties, or assets of Mixed-Income Preferred Lender, or in any material liability on the part of the Mixed-Income Preferred Lender, or which would draw into question the validity of this Agreement or of any action taken or to be taken in connection with the obligations of Mixed-Income Preferred Lender contemplated herein, or which would be likely to impair materially the ability of Mixed-Income Preferred Lender to perform under the terms of this Agreement; and

g. All representations and warranties made by Mixed-Income Preferred Lender in its application to CalHFA to participate in CalHFA's programs are true and correct.

**5. Amendments.** This Agreement may be amended only by a written amendment executed by CalHFA and Mixed-Income Preferred Lender.

**6. Assignment.** This Agreement nor any duties or obligations hereunder may be assigned or delegated by Mixed-Income Preferred Lender unless first approved by CalHFA by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void and cause for immediate termination of this Agreement by CalHFA.

**7. Headings Descriptive.** Paragraph headings have been inserted for convenience only and shall not be construed to be a part thereof.

**8. Severability.** If any term, covenant, condition or provision of this Agreement is determined, at any time or to any extent, by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each term, covenant, condition and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**9. Consent to Jurisdiction.** The parties hereby irrevocably submit to the jurisdiction of any California State courts or any Federal court sitting in California over any suit, action or proceeding arising out of or relating to this Agreement. The parties hereby irrevocably waive, to the fullest extent permitted or not prohibited by law, any objection which

it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in such a court and any claim that any such suit, action or proceeding brought in such a court has been brought in an inconvenient forum.

**10. Attorney Fees & Costs.** If any party shall take any action to enforce or otherwise relating to this Agreement, the prevailing party or parties shall be entitled to recover reasonable attorney fees and costs from the other party or parties.

**11. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be considered an original.

*(Remainder of page intentionally left blank; signature page(s) follow(s).)*

**IN WITNESS WHEREOF**, the parties have duly executed this CalHFA Mixed-Income Preferred Lender Agreement as of the day and year first above written.

**CALHFA:**

**CALIFORNIA HOUSING FINANCE AGENCY,**  
a public instrumentality and political subdivision  
of the State of California

By: \_\_\_\_\_

Name:

Title:

*DRAFT – DO NOT EXECUTE*

**[MIXED-INCOME PREFERRED LENDER:] [If Both]**  
**[MIXED-INCOME PREFERRED CONSTRUCTION LENDER:]**  
**[MIXED-INCOME PREFERRED PERMANENT LENDER:]**

By:   *DO NOT EXECUTE*    
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

***DRAFT – DO NOT EXECUTE***