



Board Report

File #: 2017-0630, File Type: Program

Agenda Number: 5.

EXECUTIVE MANAGEMENT COMMITTEE NOVEMBER 16, 2017

SUBJECT: CESAR E. CHAVEZ AND SOTO JOINT DEVELOPMENT

**ACTION: AUTHORIZE EXECUTION OF A JOINT DEVELOPMENT AGREEMENT AND
GROUND LEASE WITH LA VERANDA, L.P.**

RECOMMENDATION

CONSIDER:

- A. AUTHORIZING the Chief Executive Officer to execute and enter into a joint development agreement ("JDA"), ground lease ("Ground Lease") and other related documents with La Veranda, L.P. (the "Developer"), an affiliate of Abode Communities, for the construction and operation of a mixed-use, affordable housing project (the "Project") on 85,378 square feet of Metro-owned property located near the corner of Cesar E. Chavez Avenue and Soto Street in Boyle Heights (the "Site") in accordance with the Summary of Key Terms and Conditions attached hereto as Attachment A;
- B. AUTHORIZING an exception to the Joint Development Policy, to allow for a 42% discount to the fair market rent for the Site under the Ground Lease (above the current policy limit of 30%) to allow the Project to be financially feasible while meeting the community's desire for deeper affordability of the housing units; and
- C. FINDING that the Project is exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 21080(b)(9) of the California Public Resources Code and Section 15332 (In-Fill Development Projects) of the CEQA Guidelines in accordance with the Qualifying Criteria set forth on Attachment C and authorize the Chief Executive Officer to file a Notice of Exemption for the Project consistent with such exemption.

ISSUE

In November 2015, the Board authorized execution of an Exclusive Negotiation Agreement and Planning Document ("ENA") with Abode Communities for the Site. The ENA has allowed staff and Abode to explore the feasibility of the proposed Project, conduct additional, project-specific community outreach, undertake CEQA clearance for the Project and negotiate the key terms and conditions of the JDA and Ground Lease that will ultimately provide for the Project's construction and operation on the Site. Since all of these efforts have been concluded favorably, it is time to move to

the next step of the development process, execution of the JDA. The Ground Lease will be executed thereafter upon satisfaction of the JDA's conditions. Attachment A summarizes the key terms and conditions of the proposed JDA and Ground Lease. Included in these terms is a negotiated capitalized rent under the Ground Lease that has been discounted 42% from the fair market capitalized rent for the Site. This discount is above the Joint Development Policy's discount cap of 30%.

DISCUSSION

The Project and the Site

The Site is comprised of approximately 85,378 square feet of Metro-owned property bounded by Cesar E. Chavez Avenue to the north, Soto Street to the west, Mathews Street to the east, and a residential neighborhood to the south. The Metro Gold Line Soto Station is located about one-quarter mile south of the Site. This property was originally purchased for extension of the Metro Red/Purple Line subway into Boyle Heights, but with the construction of the Metro Gold Line's Eastside Extension, it is no longer needed for this purpose.

The Project contemplates 76 affordable rental apartments, one unrestricted property manager's apartment, approximately 8,000 square feet of retail space, 40 residential parking spaces, and 16 commercial parking spaces. Attachment B provides a conceptual site plan and renderings for the Project. The affordable rental apartments are made up of two and three bedroom units with affordability levels ranging from 30% of area median income ("AMI") to 50% of AMI.

The Developer intends to include Affordable Housing and Sustainable Communities (AHSC) funding as part of its capital stack for the Project. The AHSC Program is a competitive funding program that uses State Cap and Trade funds to finance infill and compact development projects that reduce greenhouse gas emissions. In an effort to provide a competitive AHSC application, the Developer intends to allocate approximately \$3,000,000 of its award to transportation improvements that will further reduce such emissions. Metro and the Developer are currently scoping potential transportation improvements to include in the Developer's AHSC application.

Community Engagement

The recommended actions follow extensive stakeholder outreach by Metro and Abode. This effort started under a Short Term ENA, which was executed by the parties in March 2015 for the sole purpose of conducting project-specific community outreach. Outreach continued throughout the term of the ENA, which was executed in December 2015. Thus far, these efforts have resulted in approval of the proposed Project by the Boyle Heights Neighborhood Council in October 2015, approval of the Project's conceptual plan by the Boyle Heights Design Review Advisory Committee in June 2016, and Metro and the Developer's agreement on the terms and conditions regarding deeper Project affordability noted above. Outreach efforts will continue throughout the term of the JDA to keep the community informed of the Project's progress through the development process.

The JDA and Ground Lease Terms

Attachment A provides the summary of key terms and conditions for the JDA and Ground Lease. The terms of the JDA are focused on the Developer bringing the Project through full financing and construction readiness. The JDA:

- Identifies specific rounds of affordable housing financing to which the Developer must apply;
- Provides Metro with a Holding Rent of \$7,690/month during the JDA term, which will be applied to the capitalized rent due under the Ground Lease in the event that the Ground Lease is executed;
- Provides Metro with the right to review and approve the design of the Project as it progresses to completion;
- Recovers Metro's transaction-related and other support costs, including the cost of in-house staff time (except for Joint Development staff) and fees related to consultants and other third parties (except for in-house and outside legal counsel with respect to negotiation and preparation of the JDA and Ground Lease); and
- Sets forth the conditions for execution of the Ground Lease.

The Ground Lease will be executed once the conditions set forth in the JDA are met. Key terms of the Ground Lease include:

- A term of 65 years;
- Metro's receipt of a one-time capitalized rent payment of \$3,691,277 upon execution of the Ground Lease, which provides the bulk of Metro's compensation; and
- Metro's receipt of 25% of all gross rent paid or credited to Developer for use of the Project's 8,000 square feet of commercial space.

Proposed Ground Lease Rent Discount

The Capitalized Rent under the Ground Lease has been discounted approximately 42% from the fair market capitalized rent for the Site. In exchange for the portion of the discount that exceeds 30%, the Developer has agreed to adjust the unit mix of the Project to include additional units with deeper affordability levels than were originally proposed. The agreed upon unit mix and the changes from the originally proposed unit mix are outlined in Exhibit C to the Key Terms and Conditions attached hereto as Attachment A.

The recommended discount is in excess of the maximum 30% discount for affordable housing projects allowed under the Joint Development Policy. The 42% discount was negotiated by staff after an extensive analysis of the Project's financial feasibility with the support of a financial consultant. This analysis uncovered two main drivers of the need for the 42% discount. They are:

- (1) Community stakeholder desire for deeper affordability. During the community engagement process for the Project, stakeholders expressed a strong desire for deeper Project affordability; specifically requesting that units targeting families earning 60% of AMI be eliminated and exchanged for more units serving families at 30% - 50% of AMI. Metro and the Developer analyzed the cost of deepening the Project's affordability, looking at both the resultant reduction of available loan financing for the Project and increased operational costs.

- (2) Increase in land values and static Project revenue. During the two years between staff's receipt of the Developer's original proposal in April 2014 and the completion of an appraisal for the Site in June 2016, land values (and, thus, ground lease rents) in Boyle Heights increased significantly. (Staff estimates that land values nearly doubled.) During this same period, Developer's revenue sources, such as HUD-specified rental income and available subsidies, stayed relatively constant. Metro worked with the Developer to identify cost savings that they could employ at the Project, but in the end found that a capitalized rent discount was needed for the Project to be financially feasible.

While this site is technically an "excess property" pursuant to the Federal Transit Administration ("FTA") definitions, Metro has submitted the terms of the JDA and Ground Lease to FTA through their Joint Development Preliminary Review process, in particular because we are offering the proposed rental discount for affordable housing for the first time.

CEQA Actions

The City of Los Angeles, as the lead agency under CEQA, has determined that the Project is exempt from CEQA pursuant to Section 21080(b)(9) of the California Public Resources Code and Section 15332 (In-Fill Development Projects) of the CEQA Guidelines because it is in compliance with all requirements for exemption thereunder. Staff is requesting that the Metro Board, as a potentially responsible agency, make a similar determination consistent with the requirements for exemption set forth on Attachment C. Staff is also requesting authorization to file a Notice of Exemption for the Project consistent with such determination.

DETERMINATION OF SAFETY IMPACT

Approval of this item will have no impact on safety. Staff will continue to oversee the development and construction of the Project on the Site to ensure that it does not adversely impact Metro property or the continued safety of staff, contractors and the public.

FINANCIAL IMPACT

Funding for joint development activities related to this Project is included in the FY18 Budget under Project 401003, Task 01, Cost Center 2210. Metro's financial compensation under the JDA and the Ground Lease is fair and reasonable and is detailed in Attachment A.

Impact to Budget

Metro costs related to the proposed Project that are not reimbursed by the Developer will be funded from General Fund local right-of-way lease revenues, which are eligible for bus and rail operating and capital expenses. Execution of the JDA and the Ground Lease will not impact the ongoing bus and rail operating or capital budgets, the Proposition A and C and TDA administration budgets or the Measure R administration budget. Revenues received under the Ground Lease and JDA must be used to fund eligible rail capital and operating expenses allowed under the original FTA grant providing funds to purchase the Site. Deposits from the Ground Lease and JDA will be used to offset

certain staff and consultant costs related to the Project.

ALTERNATIVES CONSIDERED

The Board could choose not to authorize execution of the JDA and Ground Lease. Staff is not recommending this option because the proposed Project is the product of a competitive solicitation and extensive community engagement, and, except as noted above, is consistent with the goals of Metro's Joint Development Policy. Further, the terms of the proposed JDA and Ground Lease are fair and reasonable. Electing not to authorize execution of the JDA and Ground Lease would unnecessarily delay development of the Site.

NEXT STEPS

Upon approval of the recommended actions, staff will complete and execute the JDA in substantial accordance with the terms and conditions set forth in Attachment A. Upon execution of the JDA, staff and the Developer will work to satisfy the conditions under the JDA necessary to execute the Ground Lease and commence construction of the Project. The Ground Lease and related documents will be executed thereafter in substantial accordance with the terms and conditions set forth in the JDA and Attachment A. In particular, the Developer will diligently attempt to secure all financing necessary for construction of the Project in accordance with Attachment A and staff and the Developer will work to advance the design of the Project to completion.

ATTACHMENTS

Attachment A - Summary of Key Terms and Conditions

Attachment B - Conceptual Site Plan and Renderings

Attachment C - Qualifying Criteria for CEQA Exemption

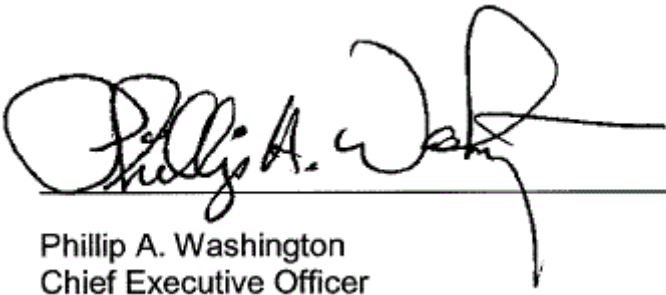
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ATTACHMENT A

**SUMMARY OF KEY TERMS AND CONDITIONS
OF
JOINT DEVELOPMENT AGREEMENT AND GROUND LEASE
FOR
THE LA VERANDA PROJECT AT
LACMTA'S CHAVEZ/SOTO JOINT DEVELOPMENT SITE
(DATED: NOVEMBER 15, 2017)**

GENERAL DESCRIPTION

- DEVELOPER:** La Veranda, L.P. ("**Developer**"), a California Limited Partnership, which is a development entity controlled by Abode Communities and was created for purposes of the La Veranda Project.
- DEVELOPMENT SITE:** The Los Angeles County Metropolitan Transportation Authority ("**LACMTA**") is the fee owner of approximately 85,378¹ square feet of real property situated in the City of Los Angeles and depicted on Exhibit A (the "**LACMTA Property**"). The LACMTA Property is bounded by Cesar E. Chavez Avenue to the north, Soto Street to the west, Mathews Street to the east and a residential neighborhood to the south. The proposed development site (the "**Site**") comprises the entirety of the LACMTA Property.
- PROPOSED PROJECT:** The proposed development project (the "**Project**") will be constructed on the Premises (defined below) by Developer at Developer's sole cost and expense in accordance with the plans and specifications generally known as the JDA Package, dated October 16, 2017, as detailed and referenced in Exhibit B (the "**Conceptual Plan**"), as such Conceptual Plan logically evolves and is modified and revised as set forth herein. The Project will include, without limitation, seventy six (76) affordable rental apartments and one (1) unrestricted property manager's apartment at the affordability levels detailed on Exhibit C, 8,000 square feet of retail space, 40 residential parking spaces and 16

¹ As calculated from information provided on that certain ALTA/NSPS Land Title and Design Survey of the Site prepared by Psomas, dated April 4, 2016 and included as part of the Conceptual Plan.

commercial parking spaces. Additional Project details are set forth on the Project Summary attached as Exhibit D.

PHASED DEVELOPMENT: The Project will be constructed in a single phase.

GENERAL CONDITIONS

DEDICATIONS: LACMTA will consider any dedications and grants of LACMTA real property rights to the City of Los Angeles or other public or quasi-public entities as are reasonably necessary to support the development, construction, and operation of the Project, subject to acceptable compensation to LACMTA. Developer has informed LACMTA that, as of the date of this Summary of Key Terms and Conditions: (a) the City of Los Angeles is contemplating a dedication for public right-of-way purposes at the corner of Cesar E. Chavez Avenue and Mathews Street, at the Site's northeast corner; (b) the subject dedication will be either a 15 foot by 15 foot corner cut or a 20 foot curved corner; and (c) Developer does not know of any other dedications that will be required for purposes of the Project. Subject to LACMTA Board approval, LACMTA does not take exception to the subject dedication at the corner of Cesar E. Chavez Avenue and Mathews Street; provided that LACMTA receives the full amount of Capitalized Rent under the Ground Lease in the manner specified in the Capitalized Rent section of this Summary of Key Terms and Conditions, which payment shall be deemed acceptable compensation to LACMTA for such dedication. Dedications and grants approved by LACMTA shall be referred to herein as ("**Dedications**").

**FEDERAL TRANSIT
ADMINISTRATION, STATE
AND LOCAL FUNDING
SOURCE APPROVAL:**

The parcels comprising the Site were acquired by LACMTA using Federal Transit Administration ("**FTA**"), State and local funds. Therefore, the construction and operation of the Project, and the Ground Lease transaction, Dedications and other development-related matters contemplated in this Summary of Key Terms and Conditions are subject to: (a) applicable FTA, State and bond holder approval/concurrence, and (b) LACMTA confirmation that such actions will not violate any bond funding related requirements or restrictions imposed on LACMTA or the LACMTA Property.

**DEVELOPMENT
ENTITLEMENTS AND OTHER
LEGAL REQUIREMENTS:**

Developer has or will have, at its sole cost and expense obtained all required entitlements for the Project, including adoption of California Environmental Quality Act (“**CEQA**”) findings, and shall comply with all applicable City of Los Angeles zoning and planning requirements and other legal requirements related to the development, construction and operation of the Project. Prior to entering into the JDA, the Ground Lease or any other transaction documents, the LACMTA Board will need to make the requisite findings as a responsible agency pursuant to CEQA requirements.

AS-IS CONDITION:

The Site is being offered to Developer in its as-is condition, without any warranty by LACMTA.

SITE REMEDIATION:

None needed per Developer’s due diligence performed under that certain Exclusive Negotiation Agreement and Planning Document between LACMTA and Developer’s affiliate, Abode Communities, dated December 3, 2015, as amended (the “**ENA**”).

KEY JOINT DEVELOPMENT AGREEMENT (“JDA”) TERMS:

JDA - GENERALLY:

After (i) the LACMTA Board has approved and Developer has accepted this Summary of Key Terms and Conditions, (ii) Developer has met all CEQA requirements for the Project (as further described below in the Closing Conditions), and (iii) the LACMTA Board has made the requisite findings as a responsible agency pursuant to the CEQA requirements for the Project, then LACMTA and Developer will enter into a Joint Development Agreement (“**JDA**”) containing terms and conditions that are substantially consistent with those set forth in this Summary of Key Terms and Conditions, subject to any modifications as directed by the LACMTA Board. The JDA will address matters between Developer and LACMTA regarding the Project and the Site during the JDA term (defined below).

ESCROW:

Within fifteen (15) days after the JDA Effective Date (defined below), Developer and LACMTA shall enter into an escrow

("Escrow") with Commonwealth Land Title ("Escrow Holder") to complete the Ground Lease transaction contemplated in the JDA.

JDA TERM:

The JDA shall be effective upon execution by LACMTA and Developer (the "**JDA Effective Date**"), and will expire on January 31, 2021. During the term of the JDA, LACMTA and Developer shall endeavor to close Escrow (the "**Closing**"), subject to satisfaction or waiver of certain conditions precedent to execution of the Ground Lease, as set forth in the JDA (the "**Closing Conditions**"). Notwithstanding the forgoing, LACMTA shall have the right to terminate the JDA upon 30 days written notice to Developer:

- A. If Developer fails to timely submit full, complete and reasonable applications (as reasonably determined by LACMTA) to the appropriate agencies in accordance with the schedule attached as Exhibit E, as necessary to adequately fund construction and operation of the Project pursuant to a pro forma budget prepared by Developer, and reasonably approved in writing by LACMTA ("**Approved Budget**") using the following permanent funding (the "**4% LIHTC Sources**"): (1) 4% low income housing tax credit equity ("**4% LIHTC Equity**"); (2) Affordable Housing and Sustainable Communities funds ("**AHSC Funds**"); (3) funds to be provided by or through the Housing & Community Investment Department of Los Angeles ("**HCID**") and (4) other funding sources, including tax exempt bond funds. As of the date of this Summary of Key Terms and Conditions, the Approved Budget for the Project using 4% LIHTC Sources indicates a total Project cost of \$44,098,644 and breaks down as follows:
1. 4% LIHTC Equity totaling \$14,715,012;
 2. AHSC Funds totaling \$17,037,969;
 3. Funds to be provided by or through HCID totaling \$3,000,000;
 4. Other funding totaling \$5,885,263, including tax exempt bond funds totaling \$3,460,400.
- B. Or, if Developer does not receive total 4% LIHTC Sources that are adequate to construct and operate the Project, including 4% LIHTC Equity, AHSC Funds or funds through HCID in the approximate amounts noted in Subsection A, above (or such other amounts as set forth on a

subsequent Approved Budget), by the dates noted in the schedule attached as Exhibit E, and fails to timely submit full, complete and reasonable applications (as reasonably determined by LACMTA) to the appropriate agencies in accordance with the schedule attached as Exhibit F, as necessary to adequately fund construction and operation of the Project pursuant to an Approved Budget using the following permanent funding (the “**9% LIHTC Sources**”): (1) 9% low income housing tax credit equity (“**9% LIHTC Equity**”); (2) Federal Home Loan Bank – Affordable Housing Program funds (“**AHP Funds**”); (3) funds to be provided by or through HCID and (4) other funding sources, including a conventional bank loan. As of the date of this Summary of Key Terms and Conditions, the Approved Budget for the Project using 9% LIHTC Sources indicates a total Project cost of \$42,457,453 and breaks down as follows:

1. 9% LIHTC Equity totaling \$27,497,250;
2. AHP Funds totaling \$1,155,000;
3. Funds to be provided by or through HCID via the managed pipeline totaling \$7,611,720; and
4. Other sources totaling \$6,193,483, including a conventional bank loan totaling \$3,484,600.

- C. Or, if Developer does not receive total 4% LIHTC Sources that are adequate to construct and operate the Project, including the 4% LIHTC Equity, the AHSC Funds or funds through HCID in the approximate amounts noted in Subsection A, above (or such other amounts as set forth on a subsequent Approved Budget), by the dates noted in the schedule attached as Exhibit E, and subsequently does not receive total 9% LIHTC Sources that are adequate to construct and operate the Project, including the 9% LIHTC Equity, AHP Funds and funds through the HCID pipeline in the approximate amounts noted in Subsection B, above (or such other amounts as set forth on a subsequent Approved Budget), by the dates noted in the schedule attached as Exhibit F.

**JDA CONSIDERATION/
HOLDING RENT:**

As consideration for the rights granted to Developer during the JDA term, commencing with the JDA Effective Date and continuing throughout the JDA term, Developer will pay LACMTA

a monthly, non-refundable holding rent (“**Holding Rent**”) at the commencement of each month of the JDA term in an amount equal to \$7,690. The Holding Rent has been discounted from the \$13,333 Holding Rent that would be indicated (i.e.; 25% of the fair market monthly rent that would be due under the Ground Lease, if Capitalized Rent were not being paid thereunder) based on the fair market value of the Site, which has been determined to be \$6,400,000 as of June 20, 2016 pursuant to that certain June 22, 2016 appraisal of the Site performed by Riggs & Riggs, Inc. The discount is 42.32% and is consistent with the discount of the Capitalized Rent under the Ground Lease. All Holding Rent due LACMTA shall be non-refundable, but all Holding Rent received by LACMTA shall be applied at Closing as a credit to the Capitalized Rent due under the Ground Lease, in the event the Ground Lease is executed by the parties.

CONDITIONS TO CLOSING:

The Closing Conditions will require, among other things, that Developer has (a) obtained financing sufficient to fund the construction and operation of the Project; (b) delivered to LACMTA evidence and assurances demonstrating that Developer has the financial resources in place to construct and operate the Project and that such resources are fully committed without reservation to the reasonable satisfaction of LACMTA; (c) applied for and received all governmental approvals necessary (including all LACMTA and City of Los Angeles approvals and entitlements) for the development, construction, and operation of the Project (including LACMTA approval of the final construction documents for the Project (the “**Approved Construction Documents**”)); (d) received all approvals/certifications in accordance with CEQA of all CEQA documents for the Project from the applicable governmental authorities, and all applicable statutes of limitation have run without a lawsuit having been timely filed or, if such a lawsuit has been filed, then such lawsuit has been finally adjudicated or dismissed with prejudice, upholding such approvals/certifications; (e) received a “ready to issue” letter from the City of Los Angeles for all building permits necessary for the construction of the Project; (f) executed and delivered all Closing Documents to Escrow; and (g) provided LACMTA with Payment and Performance Bonds and a Completion Guaranty from Abode Communities guaranteeing and securing completion of the Project, each in a form satisfactory to LACMTA.

DESIGN REVIEW/SEQUENCE:

During the JDA term and the Construction Period (defined below) under the Ground Lease, LACMTA will review and have the right

to approve the design of the Project, including: (1) any design elements of the Project that affect (a) the operations of LACMTA, (b) LACMTA's exercise of its Retained Rights (defined below), and (c) public health and safety (collectively, the "**LACMTA Development-Related Concerns**"). LACMTA's approval of Project plans that **are not** related to LACMTA Development-Related Concerns will be at LACMTA's reasonable discretion, except to the extent that the design of the Project depicted, described and specified on such plans does not represent a logical evolution of the design depicted, described and specified on plans approved by LACMTA at the preceding level of design development (a "**Logical Evolution**"). Approval of Project's plans that **are** related to LACMTA Development-Related Concerns or **are not** a Logical Evolution will be at LACMTA's sole and absolute discretion. LACMTA's design approval rights as set forth herein are, in part, intended to ensure that the Project meets LACMTA's Satisfactory Continuing Control Requirement (as defined in the *Retained Rights* subsection of the *Ground Lease – Other Terms and Conditions* section of this Summary of Key Terms and Conditions).

Except as otherwise approved in writing by LACMTA, Developer shall not proceed with preparation of: (a) the Project's Design Development Drawings until it has received LACMTA's written approval of the Project's Schematic Design Drawings; or (b) the Project's Final Construction Documents until it has received LACMTA's written approval of the Project's Design Development Drawings and Schematic Design Drawings.

**JDA/GROUND LEASE
CLOSING:**

The Closing will occur when Developer and LACMTA have entered into the Ground Lease and other transaction documents necessary to complete the Closing as contemplated in the JDA (the "**Closing Documents**") after the Closing Conditions have been satisfied or waived by the applicable party. The JDA will contemplate a single Closing. At Closing, LACMTA will lease the Premises (defined below) to Developer, subject to the Retained Rights (defined below), in exchange for the payment of the Capitalized Rent and initial Deposit to be paid under the Ground Lease. The Closing Documents, including, without limitation, the Ground Lease, will be executed by the parties as is necessary to properly effectuate the Closing.

**TRANSFERS, ASSIGNMENT
AND SUBLETTING:**

Except as otherwise approved in writing by LACMTA in its sole and absolute discretion, Developer shall not transfer or assign its rights or obligations under the JDA or any portion thereof.

KEY GROUND LEASE TERMS:

GROUND LESSEE:

La Veranda, L.P. ("**Ground Lessee**"), a California Limited Partnership, which is a development entity controlled by Abode Communities and was created for purposes of the La Veranda Project.

**GROUND LEASE –
GENERALLY:**

At Closing, LACMTA, as ground lessor, and Ground Lessee, as ground lessee, will enter into a ground lease (the "**Ground Lease**"), which will provide for the construction and operation of the Project on the Premises (defined below). The Ground Lease will contain terms and conditions that are substantially consistent with those set forth in this Summary of Key Terms and Conditions, subject to any modifications as directed by the LACMTA Board.

**UNSUBORDINATED
GROUND LEASE:**

Neither LACMTA's interests under the Ground Lease (including the FTA's interest as a provider of funds for the Site's initial acquisition) nor LACMTA's Satisfactory Continuing Control Requirement (as defined in the *Retained Rights* subsection of the *Ground Lease – Other Terms and Conditions* section of this Summary of Key Terms and Conditions) shall be subordinated to any interest that Ground Lessee or its lenders or investors will have in the Premises.

**GROUND LEASE
PREMISES:**

The premises under the Ground Lease (the "**Premises**") will consist of the Site, less any Dedications.

GROUND LEASE TERM:

The Ground Lease will commence on the date of the Closing in accordance with the terms of the JDA (such date being the "**Commencement Date**"). The term of the Ground Lease will be 65 years (the "**Ground Lease Term**"), expiring on the day prior to the 65th anniversary of the Commencement Date.

GROUND LEASE RENT & OTHER COMPENSATION

CAPITALIZED RENT:

Upon execution of the Ground Lease, Ground Lessee shall pay LACMTA a capitalized rent payment (the "Capitalized Rent") of \$3,691,277 for the entire Ground Lease Term. The Capitalized Rent has been discounted 42.31% from the fair market value of the Site, which has been determined to be \$6,400,000 as of June 20, 2016 pursuant to that certain June 22, 2016 appraisal of the Site performed by Riggs & Riggs, Inc. The discount is in exchange for Developer agreeing to adjust the unit mix of the Project to include deeper affordability levels than were originally proposed. The agreed upon unit mix and the changes from the originally proposed unit mix are outlined in Exhibit C. Notwithstanding the forgoing, all Holding Rent received by LACMTA under the JDA shall be applied as a credit to the Capitalized Rent due under the Ground Lease upon execution of the Ground Lease by the parties.

PERCENTAGE RENT:

Ground Lessee shall pay LACMTA percentage rent in an amount equal to 25% of all gross rent paid or credited to Ground Lessee for commercial uses of the Project or the Premises ("**Percentage Rent**"), including without limitation, commercial uses in the Project's 8,000 square feet of commercial space. Percentage Rent shall be calculated on a calendar year basis and shall be due to LACMTA from Ground Lessee annually, in arrears, on March 1st of the calendar year following the subject calendar year, with a full accounting of the amount due.

SALE/REFINANCING PROCEEDS:

Ground Lessee shall pay LACMTA an amount equal to 20% of all Net Proceeds received by Ground Lessee for the sale or refinancing of the Project, where "**Net Proceeds**" shall mean the gross sales price or the gross principal amount of the refinancing (as applicable), less the following transaction costs and expenses paid by Ground Lessee to any non-affiliate of Ground Lessee in connection with the consummation of any such sale or refinancing, to the extent such costs are commercially reasonable: escrow fees, title charges, lender fees or charges, recording costs, brokerage commissions and attorneys' fees.

GROUND LEASE – OTHER TERMS AND CONDITIONS

DESIGN REVIEW:

Developer shall not make any changes to the Approved Construction Documents without the prior consent of LACMTA. During the Construction Period, LACMTA will have design review rights with respect to any changes to the Approved Construction Documents desired by Ground Lessee as set forth in the *Design Review/Sequence* subsection of the *Key Joint Development Agreement (“JDA”) Terms* section of this Summary of Key Terms and Conditions. Approval of such changes that represent Logical Evolutions of the design and are not related to LACMTA Development-Related Concerns will be at LACMTA’s reasonable discretion. Approval of such changes that are related to LACMTA Development-Related Concerns or are not a Logical Evolution of the design will be at LACMTA’s sole and absolute discretion. LACMTA will retain the same design approval rights for any substantive Project changes or improvements later sought by Ground Lessee at any time during the Ground Lease Term. LACMTA’s design approval rights as set forth herein are, in part, intended to ensure that the Project meets LACMTA’s Satisfactory Continuing Control Requirement (as defined in the Retained Rights subsection of the Ground Lease – Other Terms and Conditions section of this Summary of Key Terms and Conditions).

CONSTRUCTION COMPLETION:

The Ground Lease will require commencement of construction within 30 days after the Commencement Date. The Project’s construction period (“**Construction Period**”) will commence on the Commencement Date and terminate upon the earlier of: (1) substantial completion of construction of the Project improvements as described in the Ground Lease, which shall be evidenced by a temporary certificate of occupancy for substantially all of the Project improvements described in the Ground Lease or (b) the day preceding the second (2nd) anniversary of the Commencement Date.

MAINTENANCE AND OPERATIONS:

During the Ground Lease Term, Ground Lessee shall maintain and operate all portions of the Project and the Premises at its sole cost and expense pursuant to maintenance and operations standards that shall be mutually agreed between the parties and set forth in the Ground Lease.

**DEMOLITION/DEMOLITION
SECURITY:**

At the expiration or earlier termination of the Ground Lease (“**Expiration Date**”), at LACMTA’s option as specified in writing by LACMTA up to 90 days after the Expiration Date, Developer shall (a) demolish and remove the Project and any improvements then located on the Premises (or such portion thereof as indicated by LACMTA in writing), exclusive of any LACMTA improvements and/or transportation-related amenities and facilities then located on the Premises, and (b) return the Premises to LACMTA in its otherwise original condition (the “**Demolition**”). The Demolition shall be performed at Ground Lessee’s sole cost and expense. Ground Lessee shall have no right to demolish or remove any portion of the Project or any improvements that LACMTA does not instruct Ground Lessee to demolish or remove in writing.

On the 55th anniversary of the Commencement Date, Ground Lessee shall deliver to LACMTA a report for LACMTA’s review and approval prepared by a construction and demolition expert reasonably approved by LACMTA that details the means and methods needed/desired to complete the full Demolition of the Project (“**Demolition Report**”). The Demolition Report shall be prepared at Ground Lessee’s sole cost and expense and shall include a detailed cost estimate for such full Demolition. The Demolition Report shall detail (a) a form of security proposed by Ground Lessee to secure, for the benefit of LACMTA, the funding necessary to complete the full Demolition (the “**Demolition Security**”), and (b) a schedule reasonably satisfactory to LACMTA for the funding of the Demolition Security by Ground Lessee, which schedule shall in all events provide for a full funding of the Demolition and delivery of the Demolition Security to LACMTA no later than five (5) years prior to the Expiration Date. The Demolition Report shall be subject to LACMTA’s reasonable approval. The form of Demolition Security can be a deposit of funds, a letter of credit, a bond or other form of security, each in form and amount, and from an issuer, reasonably satisfactory to LACMTA in accordance with the LACMTA-approved Demolition Report. Upon the completion of the Demolition, if any, by Ground Lessee and performance of any other obligations of Ground Lessee under the Ground Lease, subject to set off by LACMTA for any amounts payable by Ground Lessee to LACMTA pursuant to the Ground Lease, LACMTA shall return/release the Demolition Security to Ground Lessee.

The Ground Lease shall set forth further details regarding the specifics and procedures related to the Demolition, the Demolition Report and the Demolition Security.

**FINANCING AND
ENCUMBRANCES:**

Subject to LACMTA's reasonable approval, Ground Lessee may encumber its leasehold estate with mortgages, deeds of trust or other financing instruments; provided, however, in no event shall LACMTA's Satisfactory Continuing Control Requirement (as defined in the *Retained Rights* subsection of the *Ground Lease – Other Terms and Conditions* section of this Summary of Key Terms and Conditions), LACMTA's fee title interest or rent payable to LACMTA under the Ground Lease be subordinated or subject to Ground Lessee's financing or other claims or liens (except as set forth below for certain affordable housing and other covenants). Such encumbrances and financings shall be subject to LACMTA's reasonable approval, except with respect to certain "permitted financing events" meeting specific criteria to be set forth in the Ground Lease, which shall not require LACMTA's approval.

COVENANTS:

Ground Lessee may encumber its leasehold estate with affordable housing and other covenants reasonably required by Ground Lessee's affordable housing funding sources or the City of Los Angeles as a condition to granting Project approvals, entitlements and building permits, which covenants shall be subject to LACMTA's review and reasonable approval. LACMTA will reasonably consider the encumbrance of its fee title interest with certain restrictive covenants, if required by Ground Lessee's affordable housing funding sources or the City of Los Angeles as a condition to granting Project approvals, entitlements and building permits; provided that Ground Lessee agrees to perform all obligations under said covenants during the Ground Lease Term and to indemnify LACMTA for all claims and losses resulting from Ground Lessee's failure to do the same.

**FEDERAL CIVIL RIGHTS
COVENANTS:**

Ground Lessee shall comply with all applicable Federal nondiscrimination requirements, including applicable sections of Title 49 of the Code of Federal Regulations.

**TRANSFERS, ASSIGNMENT,
AND SUBLETTING:**

Except for limited permitted exceptions to be set forth in the Ground Lease, Ground Lessee shall not transfer, assign or sublet

(except for the typical subleasing of the apartments and retail space within the Project) its rights or obligations under the Ground Lease, or beneficial interests in Ground Lessee (each, a “**Transfer**”):

- a. Prior to completion of construction of the Project; and
- b. After completion of construction of the Project, other than in accordance with reasonable transfer criteria to be set forth in the Ground Lease, including, without limitation, criteria regarding (a) applicable FTA approval, (b) the creditworthiness, history and experience of any proposed transferee and its affiliates, and (c) FTA and State requirements, as applicable, concerning debarment, suspension, etc. stemming from FTA and State funding related to acquisition of the LACMTA Property.

RETAINED RIGHTS:

LACMTA shall retain from the Ground Lease and the Premises certain rights as shall be further described in detail in the Ground Lease, relating to the following: (1) the right to install, construct, inspect, operate, maintain, repair, expand and replace public transit facilities under and adjacent to the Premises as LACMTA may deem necessary, provided that such installation, construction, inspection, operation, maintenance, repair, expansion and replacement does not interfere with the quiet use and enjoyment of the Project or its construction by Ground Lessee or its subtenants; (2) the right to enter upon and inspect the Premises, with reasonable notice to Ground Lessee, and anytime during normal business hours, for purposes of conducting normal and periodic inspections of the Premises and the Project and to confirm Ground Lessee’s compliance with the terms and conditions of the Ground Lease; (3) the right to install, use, repair, maintain, and replace along the perimeter of the Premises abutting the public streets, sidewalks or rights-of-way (including, without limitation, on the exterior of the Project) informational, directional and way-finding signs for the purpose of directing the public to, from and between LACMTA and other public transit options in the area; provided, however, LACMTA shall not install any such signage on the Premises or the Project without Ground Lessee’s prior written approval, which shall not be unreasonably withheld, conditioned or delayed; and (4) all rights not explicitly granted to Ground Lessee in the Ground Lease (the “**Retained Rights**”). The Retained Rights shall, among other things, ensure that the Site remains available for the transit purposes originally

authorized by the FTA (“**LACMTA’s Satisfactory Continuing Control Requirement**”).

SUPERSEDURE: This Summary of Key Terms and Conditions supersedes and replaces any and all term sheets or summaries of key terms and conditions relating to the Site, the Project or any joint development agreement or ground lease dated prior to November 15, 2017.

OTHER: Other provisions will be included in the Ground Lease, including, without limitation, provisions relating to (a) Ground Lessee’s assumption of risk related to the Project’s proximity to transit operations, (b) insurance, and (c) indemnity.

LACMTA TRANSACTION COSTS

LACMTA TRANSACTION COSTS:

Developer and Ground Lessee acknowledge and agree that LACMTA will incur certain actual costs (the “**LACMTA Transaction Costs**”) related to (a) the design, development, planning, and construction of the Project (including costs related to construction methods and logistics), and (b) negotiation of the terms and conditions of the transactions contemplated under the JDA and the Ground Lease. The LACMTA Transaction Costs shall include, without limitation, the actual cost of in-house staff time (including LACMTA overhead and administrative costs) and third party consultation fees (including, but not limited to, fees related to consultants, engineers, architects, and advisors) for financial analyses, design review (including reviewing plans and specifications for the Project), negotiations, appraisals, document preparation, services related to development, planning, engineering, construction safety, construction management, construction support, and construction logistics and inspection, and other reasonable services related to the Project and the transactions contemplated under the JDA and Ground Lease, *but shall exclude* the cost of LACMTA Joint Development staff, and LACMTA’s in-house and outside legal counsel with respect to negotiation and preparation of the JDA, Ground Lease and related transaction documents.

JDA DEPOSIT: Developer shall provide a deposit to LACMTA for LACMTA to apply to LACMTA Transaction Costs (whether accruing prior to or after the JDA Effective Date) (the “**Deposit**”). Developer shall pay LACMTA an initial Deposit amount of \$50,000 on the JDA

Effective Date. Any unspent Deposit funds provided by Developer under the ENA shall be carried over and applied towards the \$50,000 initial Deposit due under the JDA. If the Deposit is not fully utilized by LACMTA in connection with the Project during the term of the JDA, then the remaining balance of the Deposit shall be allocated as follows: (a) all amounts up to \$25,000 will be carried over and credited towards the Deposit due under the Ground Lease; and (b) all amounts in excess of \$25,000 will be returned to Developer. LACMTA shall provide documentation of LACMTA Transaction Costs to Developer upon Developer's request, provided that the form of documentation will be such that is available to LACMTA and in its possession.

GROUND LEASE DEPOSIT: Developer shall pay LACMTA an initial Deposit amount of \$25,000 under the Ground Lease on the Commencement Date. To the extent that the Deposit under the Ground Lease is not utilized by LACMTA in connection with the Project, any remaining balance will be returned to Ground Lessee upon completion of the Project. Ground Lessee will provide LACMTA with additional Deposit funds, in an amount to be determined at the time, for LACMTA Transaction Costs accruing during the Ground Lease Term in connection with future Ground Lessee improvements requiring LACMTA review/approval.

DEPOSIT REPLENISHMENT: During the term of the JDA and the Ground Lease Term, whenever the Deposit balance reaches Ten Thousand Dollars (\$10,000.00) or less, Developer or Ground Lessee (as applicable) will replenish the Deposit to \$50,000 (under the JDA) and \$25,000 (under the Ground Lease), upon written notice from LACMTA. If Developer or Ground Lessee (as applicable) does not replenish the Deposit at the applicable times as set forth herein, LACMTA may decline to provide the services that are to be covered by the Deposit and/or terminate the JDA or Ground Lease (as applicable).

Exhibit B

List of Plans and Specifications Comprising the Conceptual Plan

<u>Sheet No.</u>	<u>Sheet Title</u>	<u>Initial Date</u>	<u>Latest Revision Date</u>
G0.00	Cover Sheet	06-30-2016	10-16-2017
A1.01	Plot Plan	06-30-2016	10-16-2017
A1.01B	Plot Plan Information	06-30-2016	10-16-2017
A1.02	Open Area Diagram	06-30-2016	10-16-2017
1 of 2	ALTA/NSPS Land Title and Design Survey for Abode Communities La Veranda Apartments	04-04-2016	N/A
2 of 2	ALTA/NSPS Land Title and Design Survey for Abode Communities La Veranda Apartments	04-04-2016	N/A
C-2.01	Horizontal Control Plan	12-06-2016	10-16-2017
L1.00	Landscape Concept Diagrams	12-05-2016	10-16-2017
L1.01	First Floor Landscape Plan	12-05-2016	10-16-2017
L1.02	Second Floor Landscape Plan	12-05-2016	10-16-2017
L1.11	Reference Images	12-05-2016	10-16-2017
L3.00	Planting Legend & Notes	12-05-2016	10-16-2017
L3.01	Tree Removal Plan	12-05-2016	10-16-2017
L3.51	Planting Images	12-05-2016	10-16-2017
A2.01	First Floor Plan	06-30-2016	10-16-2017
A2.02	Second Floor Plan	06-30-2016	10-16-2017
A2.03	Third Floor Plan	06-30-2016	10-16-2017
A2.04	Fourth Floor Plan	06-30-2016	10-16-2017
A2.05	Roof Plan	06-30-2016	10-16-2017
A3.01	Elevations North	06-30-2016	10-16-2017
A3.02	Elevations East	06-30-2016	10-16-2017
A3.03	Elevations West	06-30-2016	10-16-2017
A3.04	Elevations South	06-30-2016	10-16-2017
A3.05	Elevations Alley West	06-30-2016	10-16-2017
A3.06	Elevations Alley East	06-30-2016	10-16-2017
N/A	La Veranda Material Board	February 2017	N/A
A4.01	Section View East	06-30-2016	10-16-2017
A4.02	Section View North	06-30-2016	10-16-2017
A4.03	Section View West	06-30-2016	10-16-2017
E1.01	Parking Lot Photometric	06-30-2016	10-16-2017
E1.02	Bridge and Courtyard Photometric	06-30-2016	10-16-2017

Exhibit C

Affordability/Unit Mix Matrix

Bedrooms	Unit AMI	Originally Proposed # of Units	Agreed Upon # of Units	Change
2 BD	30% AMI	5	11	+6
3 BD	30% AMI	3	5	+2
2 BD	40% AMI	11	15	+4
3 BD	40% AMI	5	7	+2
2 BD	50% AMI	21	27	+6
3 BD	50% AMI	10	11	+1
2 BD	60% AMI	16	0	-16
3 BD	60% AMI	5	0	-5
2 BD	Manager	1	1	None

Exhibit D

Project Summary

Area Type	Square Feet
2 bedroom units	44,118
3 bedroom units	25,139
Circulation Space	20,269
Commercial Parking	8,455
Commercial Space	8,000
Residential Parking	13,731
Community Room	2,455
Laundry Room	810
Property Management Office	245
Resident Services Offices	245
Open Space	<u>21,062</u>
TOTAL	144,259

Exhibit E

Financing Schedule for 4% LIHTC/AHSC Funded Transaction

Apply to HCID	January 2018
HCID Award	March 2018
Apply for AHSC funding	January 2018
AHSC Award	March 2018
Apply for Tax Credits	May 2018
Tax Credits Award	July 2018
Secure Investor / Bank	October 2018
Execute Ground Lease / Close Construction Loan	January 2019

Exhibit F

Financing Schedule for 9% LIHTC/ AHP Funded Transaction

Apply for Managed Pipeline	January 2019
Managed Pipeline Award	March 2019
Additional funding source to increase tie breaker (State Housing and Community Development Infill Infrastructure Grant program funding or National Housing Trust Fund funding)	March 2019
Apply for 9% Tax Credits	March 2020
Tax Credit Award	June 2020
Apply for AHP funds	March 2020
AHP Award	June 2020
Secure Investor/Bank	August 2020
Execute Ground Lease / Close Construction Loan	November 2020



Qualifying Criteria for CEQA Exemption

La Veranda L.P. ("Developer"), an affiliate of Abode Communities, desires to proceed with the La Veranda development project (the "Project") on approximately 85,378 square feet of Los Angeles County Metropolitan Transportation Authority ("LACMTA") owned property located near the corner of Cesar E. Chavez Avenue and Soto Street in Boyle Heights (the "Site"). The Site is bounded by Cesar E. Chavez Avenue to the north, Soto Street to the west, Mathews Street to the east, and a residential neighborhood to the south. The Project will include approximately 76 affordable apartments, one property manager's apartment, approximately 8,000 square feet of retail space and related parking.

Staff has determined that the Project qualifies for an exemption from the California Environmental Quality Act ("CEQA") pursuant to Section 21080(b)(9) of the California Public Resources Code and Section 15332 (In-Fill Development Projects) of the CEQA Guidelines, as follows:

Section 15332 (In-Fill Development Projects)

- (a) The Project is consistent with the City of Los Angeles General Plan designation for the Site and all applicable general plan policies, as well as with the applicable zoning designation and regulations applicable to the Site.
- (b) The Project is within Los Angeles city limits and the Site is less than five acres and is surrounded by urban uses.
- (c) The Site has no value as habitat for endangered, rare or threatened species.
- (d) Approval of the Project will not result in any significant effects relating to traffic, noise, air quality or water quality.
- (e) The Site can be adequately served by all required utilities and public services.

Staff has also determined that the Project is not included in any of the exceptions to the forgoing exemption under Section 15300.2 (Exceptions) of the CEQA Guidelines, which are as follows:

Section 15300.2 (Exceptions)

- (a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located --- a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.
- (b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.
- (c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.
- (d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.
- (e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.
- (f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

Staff's determinations are based on a review of a Categorical Exemption Analysis prepared by Developer's licensed environmental consultant, EcoTierra Consulting, which was included in its Findings Supporting a Categorical Exemption report, dated August 2017.