SONOMA COUNTY COMMUNITY DEVELOPMENT COMMISSION

LOAN POLICIES

Affordable Housing Development
Affordable Housing Acquisition & Preservation
Multifamily Housing Rehabilitation
Community Facilities

October 2016

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I. INTRODUCTION

A. Purpose & Objectives:

1. The purpose of these Loan Policies is to create a standardized reference for origination, modification, and administration of real estate loans made by the Sonoma County Community Development Commission (Commission), either on its own behalf or on behalf of the County of Sonoma (collectively referred to herein as Commission loans), using federal, state, and/or local funds. These Policies govern the following real estate lending programs:

   a. Affordable housing development

   b. Affordable housing acquisition and preservation

   c. Housing rehabilitation of five units or more that are located in one or more buildings sited on one or more contiguous parcels under common ownership (projects of four units or less are governed by the policy document entitled HOUSING REHABILITATION LOAN PROGRAM DESIGN: OWNER-OCCUPANT AND RENTAL HOUSING).

   d. Community facilities sponsored or owned by community-based, 501 (c) (3) non-profit agencies (e.g. senior or teen centers or homeless services facilities).

2. The primary objective of these Loan Policies is to provide an efficient mechanism for providing public funds to the community for the purpose of developing and preserving affordable housing and financing community facilities.

B. Authority:

1. These Policies have been adopted concurrently by the Sonoma County Board of Supervisors and the Commissioners of the Sonoma County Community Development Commission, and apply exclusively to funds managed by the Community Development Commission. No revisions may be made hereto without the express action of the Board of Supervisors and Commissioners.

2. The Executive Director of the Commission is hereby authorized to accept and process loan applications per the provisions of these policies and applicable funding source rules, guidelines, and regulations, to interpret these policies, and to make policy exceptions pursuant to the criteria established in Section VII of these policies.

3. Where a funding source policy, regulation, rule or guideline conflicts with the policies described herein, the funding source policy, regulation, rule or guideline will prevail.

C. Conflict of Interest:

No member of the governing body of the County of Sonoma or the Commission and no other official or employee or agent of the County government, Commission, or any other local government agency who exercises any decision-making functions or responsibilities in connection with the planning and implementation of the real estate lending activities governed by these Loan Policies shall directly or indirectly be eligible to participate in or benefit from said lending programs governed.

II. DEFINITIONS

Affordable Housing Agreement - A contract with the Commission executed by the developer of a residential project, and recorded against the subject property, that limits the sales price and/or monthly rent of specified dwelling units within the project, limits the income level of the household occupying the specified units, establishes a time period during which the specified units shall continue to be sold and/or rented at affordable prices, and which may contain administrative, enforcement, or other provisions to ensure that the specified units are sold and/or rented to targeted households at affordable sales prices and/or monthly rent over the entire term of the agreement.

Amortized Payment Loan – A loan to be repaid, with interest and principal, by a series of regular payments that are equal or nearly equal, without any special balloon payment prior to maturity.

Covenant – An agreement or promise to do or not to do a particular act or to use or not use property in a certain way (See Affordable Housing Agreement).

Deferred Payment Loan - A loan that is due and payable, with principal and either accrued interest or a share of appreciation, upon sale or transfer of the property or upon maturity on the loan. No regular payments are required with the final payment being due upon maturity as a balloon payment.

Density Bonus - A density increase allowed pursuant to the Sonoma County Zoning Regulations (Density bonus programs) over the otherwise maximum allowable residential density permitted in the applicable zoning district.

Fair Market Value (FMV) - For purposes of the initial sale of affordable ownership units, the fair market value as defined in the Sonoma County Zoning Regulations. For purposes of resale of affordable ownership units, the fair market value as determined according to the procedure set forth in the Option Agreement.

Funding Agreement – A HOME Developer Agreement, CDBG Subrecipient Agreement, CFH Funding Agreement, Low & Moderate Income Housing Asset Fund Agreement, or other unrecorded document setting forth the terms and conditions imposed upon the borrower in order to receive Commission financing.

Incentives - A modification of zoning code requirements (e.g., minimum open space, minimum lot size, setbacks, parking standards) or an allowance of other regulatory incentives or measures granted in exchange for the provision of affordable ownership housing or affordable rental housing pursuant to the Sonoma County Zoning Regulations.

Lien – A form of encumbrance that usually obligates specific property as security for the repayment of a debt.

Option Agreement – An agreement granting the Commission a first right either to purchase an affordable ownership unit for a price established through a formula under the Agreement, or to assign the Commission's first right to an eligible buyer to purchase the affordable ownership unit at that price.

Reconveyance –An instrument used to transfer title to real property from a trustee to the equitable owner, when title is held as collateral security for a debt.

Residual Receipts - Residual Receipts means, in a particular calendar year, the amount by which Gross Revenue exceeds Annual Operating Expenses, as more particularly defined in Section III. E.

Share of Appreciation - A specified share of the appreciation in value of a particular affordable ownership unit equal to the ratio of the principal amount of the deferred payment loan to the FMV of the affordable ownership unit that the loan financed, at the time the loan was made, multiplied by the difference between the FMV at the time of resale and the FMV of the affordable ownership unit at the time the loan was made. To the extent permitted by applicable law, regulations, and any senior mortgage lender(s), the promissory note evidencing the deferred payment loan, a recorded covenant between the buyer and Commission, or another instrument shall require the seller of an affordable ownership unit, at resale, to pay the Commission the Commission's share of appreciation due under the promissory note, notwithstanding any prior prepayment by the seller of any principal or interest due on the loan.

III. LOAN TERMS AND CONDITIONS

The Commission will use a variety of funding sources to offer deferred-payment loans with either a share of appreciation or below-market interest rates as prescribed by the approved guidelines for each specific funding source.

A. Maximum Loan Amount: Maximum loan amounts shall be determined per the approved guidelines for each specific funding source. In any event, the maximum loan shall not exceed the minimum amount of funding necessary to achieve project feasibility.

B. Term: The loan term shall be consistent with local, state and federal law and regulation and may correspond to the requirements of other financing sources. If a covenant is required (e.g., a housing affordability covenant) the term of said covenant may be longer than the term of the loan but the term of any covenant shall not be shorter than the term of the loan. All Commission loans can be paid in part or in full prior to the date of loan maturity without penalty; however, any such prepayment shall not reduce the term of any covenant on the property.

C. Interest Rate: Unless otherwise required by the regulations or policies of the funding source, the fixed interest rate for all Commission deferred-payment, interest-bearing loans subject to these policies is 3%, simple-interest. Interest shall accrue from the date on which funds are disbursed.

D. Share of Appreciation: If required by a particular affordable housing homeownership program, a Share of Appreciation shall be used in the place of an interest rate. Please see the Sonoma County Affordable Housing Program Homeownership Policies Share of Appreciation Approach.

E. Residual Receipts Payments: To the extent a multifamily project has residual receipts as defined below in any fiscal year, residual receipts shall be divided as follows:

1. the project sponsor shall be entitled to retain fifty percent 50%; and

2. the remaining fifty percent (50%) shall be divided proportionately between the Commission and other secured creditors with residual receipts rights based on their percentage of the total outstanding financing with residual receipts rights.

Residual Receipts means, in a particular calendar year, the amount by which Gross Revenue exceeds Annual Operating Expenses.

a. “Gross Revenue,” with respect to a particular calendar year, shall mean all revenue, income, receipts, and other consideration actually received from operation and leasing of the Development. “Gross Revenue” shall include, but not be limited to: all rents, fees and charges paid by tenants, Section 8 payments or other rental subsidy payments received for the dwelling units, deposits forfeited by tenants, all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; proceeds from vending and laundry room machines; the proceeds of business interruption or similar insurance; the proceeds of casualty insurance to the extent not utilized to repair or rebuild the Development (or applied toward the cost of recovering such proceeds); and condemnation awards for a taking of part or all of the Development for a temporary period. “Gross Revenue” shall also include the fair market value of any goods or services provided in consideration for the leasing or other use of any portion of the Development. "Gross Revenue" shall not include tenants' security deposits, loan proceeds, capital contributions or similar advances.

b. "Annual Operating Expenses," with respect to a particular calendar year shall mean the following costs reasonably and actually incurred for operation and maintenance of the Development to the extent that they are consistent with an annual independent audit performed by a certified public accountant using generally accepted accounting principles: property taxes and assessments imposed on the Development; debt service currently due on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Development) on loans associated with development of the Development and approved by the Commission; property management fees and reimbursements, not to exceed fees and reimbursements which are standard in the industry and pursuant to a management contract approved by the Commission; resident services fee, if any, with prior Commission approval of scope of services and amount of fee; partnership management fees (including any asset management fees), if any, not to exceed a total of Thirty-two Thousand Five Hundred Dollars ($32,500) per year, all as approved by the Commission at the time the tax credit syndication occurs, increasing annually at a rate not exceeding the lesser of the increase in the Consumer Price Index (as published for San Francisco by the Bureau of Labor Statistics) or 3%; any Tax Credit Adjuster Distributions to the Investor Limited Partner as permitted in the Partnership Agreement; all costs associated with organization, accounting, tax return preparation of the Borrower, including tax preparation fees, annual franchise tax fees of the Borrower, premiums for property damage and liability insurance; utility services not paid for directly by tenants, including water, sewer, and trash collection; maintenance and repair; any annual license or certificate of occupancy fees required for operation of the Development; security services; advertising and marketing; cash deposited into reserves for capital replacements of the Development in an amount not to exceed six tenths of one percent (.6%) of the construction costs of improvements in the Development; cash deposited into an operating reserve in an amount not to exceed 3% of Annual Operating Expenses or the amount required in connection with the permanent financing and the tax credit syndication, whichever is greater (or any greater amount approved by the Commission) but with the operating reserve capped at six (6) months gross rent from the Development (as such rent may vary from time to time); payment of any previously unpaid portion of the developer fee due Borrower (without interest) not exceeding a cumulative developer fee due Borrower in the maximum amount set forth in the Agreement; extraordinary operating costs specifically approved by the Commission; payments of deductibles in connection with casualty insurance claims not normally paid from reserves, the amount of uninsured losses actually replaced, repaired or restored, and not normally paid from reserves, and other ordinary and reasonable operating expenses approved by the Commission and not listed above. Annual Operating Expenses shall not include the following: depreciation, amortization, depletion or other non-cash expenses or any amount expended from a reserve account.

F. Loan Security: All loans shall be secured by a Deed of Trust.

1. Seniority: Commission loans shall be senior to all loans of lesser principal amounts, and to loans that recapture the value of a County Density Bonus or other regulatory incentives.

2. Appraisals: All appraisals must be prepared by a Certified General Appraiser or by a Certified Residential Appraiser if the project is exclusively residential. An appraisal is generally considered current if it not more than six months old.

3. Developer Loans:

a. Except when allowed under the guidelines of a specific funding source, loans for site acquisition, and any predevelopment, demolition, or relocation costs that will be incurred prior to commitment of all financing necessary to complete the development, require a current site appraisal that demonstrates that the “as is” value of the property will fully secure the loan.

b. Loans for construction and all other costs require a current post-completion appraisal that demonstrates that the value of the completed project, taking into account all projected permanent financing for the project.

c. Existing Commission loans that are being subordinated pursuant to Section IV.A must be secured by the “as is” value of the property at the time of subordination.

4. Homebuyer Loans:

a. The value of the unit must secure fully the principal amount of a long-term loan to a buyer of an assisted ownership unit. When the buyer borrows funds to pay any portion of the buyer’s reasonable and customary closing costs, the loan can be unsecured by the amount of the funds borrowed to pay those closing costs.

b. Option Agreements: In the same escrow in which an eligible homebuyer purchases a unit assisted with a Commission loan, the Commission will record an option agreement granting the Commission the first right to purchase the unit at resale for thirty (30) years. The option period may exceed 30 years if specified by the requirements of other federal, state, or local programs that assist the ownership project.

G. Loan Fees: The Commission may collect loan origination and modification fees as established by these Policies and as subsequently amended by the Sonoma County Board of Supervisors from time to time.

1. Developer Loans: Except as prohibited by the primary funding source, as amended by the Board, and/or as provided in Section VI. F. of these Policies, the current fees are:

a. The loan origination fee is 1% of the Commission's principal loan amount.

b. The fee for modifications, subordinations, assignments and assumptions - is the greater of (i) $500 or (ii) 0.5% of the then outstanding balance of the loan principal plus accrued interest calculated as of the date on which the application for change is submitted to Commission, to a maximum of $2,500.

2. Homeownership Loans:

a. Initial Sale Administrative Fee. Upon close of escrow of the sale of an affordable homeownership unit to the initial buyer, the Commission shall receive an administrative fee equal to 1.0% of the Commission's principal loan amount(s).

b. Resale Administrative Fee. When the Commission, its agent or assignee exercises the Commission's option to purchase an affordable homeownership unit and completes the purchase, the seller shall pay the Commission an administrative fee equal to 3% of the Fair Market Value of the property.

H. Use of Funds: Funds shall only be used in accordance with the approved regulations, policies, and guidelines for each specific funding source.

I. Loan Approval: Commission staff shall exercise sound underwriting practices in all loan evaluations.

1. In all instances, the Commission's underwriting standards will be employed in a consistent, equitable manner. The Commission will at all times utilize sound judgment in making loans to ensure that the public funds are adequately protected. The Commission's underwriting standards will normally follow private lending practices but may in some cases be more lenient if in doing so, public policy objectives will be achieved.

2. Loan applications shall be subject to normal commercial underwriting criteria by the Commission. Such criteria may include, but are not limited

to: credit reports, risk analyses, appraisals, title reports, cash-flow analyses, review of loan documentation from other project lenders, etc.

J. Discretion of Commission Staff: It shall be within the purview of the Commission Executive Director, or designee, to disapprove any loan application at any stage of processing through any formal or informal action which is consistent with sound underwriting practices and fair housing lending procedures.

K. Insurance/Property Taxes: Borrower shall maintain adequate hazard, liability, and automobile insurance, as required by County policy. Property Taxes and all assessments must be paid current throughout the life of the loan.

L. Environmental Assessment and Clearance: All projects must complete the appropriate level(s) of state and/or federal environmental review before funds may be released. If federal funds are involved in the project through a Commission loan or from some other source, no construction activities may take place after application submittal and prior to the completion of the federal environmental clearance process and associated public notification requirements.

M. Prevailing Wages and Related:

1. Federal: Where the source of Commission loan proceeds is from a federal government source, the project must comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon and Related Acts as amended, the provisions of Contract Work Hours and Safety Standards Act, and the Copeland "Anti-Kickback" Act (40 USC 276a-276a-5; 40 USC 327 and 40 USC 276c). The project shall also comply with the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices to journey workers.

2. State: For all projects, regardless of funding source, project sponsor shall adhere to all State of California laws and regulations regarding payment of prevailing wages, as applicable, and shall certify to the Commission, in writing, said compliance.

N. Relocation Requirements: Borrowers must agree to comply with all applicable federal, state, and local relocation laws and regulations, as applicable.

O. Affordability and Use Restrictions: All projects receiving Commission loans are subject to the affordability and/or facility or land use restrictions as required by the funding source or local policy. An Affordable Housing Agreement or Regulatory Covenant will be recorded against the assisted property restricting the continued occupancy or use of the property per the laws and regulations of the particular funding source and approved local policy, and shall run with the land.

P. <u>Financial Feasibility</u>: The project must demonstrate that due to market location, prevailing economic conditions, the proposed use, or property operating cost, that the development would be economically infeasible but for some degree of public financial assistance. The Commission may provide assistance to projects in the *least amount* required to create financial feasibility.

Q. <u>Leverage Objective</u>: Project sponsors shall demonstrate efforts to effectively leverage the use of public and private funds for the proposed project by identifying other available private and public financing programs and designing the project to qualify for those sources of assistance.

R. <u>Contingency Requirements</u>: Proposed new construction projects must demonstrate that a minimum soft cost contingency of 3% and a hard cost contingency of 5% are included by providing the Commission a Development Budget including a Sources and Uses Table. For facility or housing rehabilitation or renovation loans, or for projects with an unusual degree of risk or uncertainty, a minimum soft cost contingency of 5% and a hard cost contingency of 10% must be included in the Development Budget. The amount of the required contingency budget may be higher as reasonably established by the Commission Executive Director.

S. <u>Conditions to Enter into Funding Agreements, to Convey Loan Documents to Escrow, to Permit Recordation of Documents, and to Release Loan Funds</u>:

1. Conditions to Enter into Funding Agreements: Before Commission staff can offer a Funding Agreement to an applicant, the applicant must provide Commission with documentary evidence that the following conditions have been met:

    a. The applicant has site control through the projected acquisition date or start date of the project.

    b. Whenever required by funding source policies or regulations, the project has received all required environmental clearance.

    c. For HOME Developer Agreements, the applicant must meet all requirements in the HOME Final Rule [24 CFR Part 92, Section 92.504(c)(3)].

    d. The applicant has satisfied any additional conditions attached to loan approval by the Board of Supervisors.

2. Conditions to Convey Loan Documents to Escrow: The Commission may submit loan documents to escrow only after receiving and approving the following:

    a. Acceptable current appraisal demonstrating that the Commission loan will be fully secured as required under Section III.F.

b. Proof of current property tax payments.

c. Proof of insurance meeting Commission insurance requirements.

d. Proof of required environmental clearance and compliance, as applicable.

e. For loans to pay for site acquisition and any predevelopment, demolition, or relocation costs that will be incurred prior to commitment of all financing necessary to complete the development, written commitment of all funds necessary to complete the acquisition.

f. For loans to pay for site improvements, development soft costs, construction, and other such purposes, written commitment of all construction and permanent financing necessary to complete development.

g. For loans to pay for site improvements, development soft costs, construction, and other such purposes, documentation of all required land use approvals.

h. Proof of compliance with any other loan conditions.

3. Conditions to Permit Recordation of Documents: The Commission may authorize the recordation of its documents and the close of escrow only after receiving and approving the following:

   a. Execution of the Commission's escrow instructions by the Escrow Officer.

   b. Title insurance meeting Commission standards.

   c. Original, certified or conformed copies of executed Commission loan documents, including but not limited to Promissory Notes, Deeds of Trust, Grant Deeds, Affordable Housing Agreements and other required covenants.

   d. Certification by the Title or Escrow Officer that the documents from all other parties to the transaction have been executed and will be recorded as appropriate.

4. Conditions to Release Loan Funds: The Commission may disburse loan funds through escrow, or after close of escrow, only upon receipt of the additional following items, as applicable:

   a. All of the items listed above in Section III S. 1 and 2.

b. Proof of compliance with prevailing wage requirements, as applicable.

IV. LOAN ADMINISTRATION

A. Subordination: The Commission's Executive Director is authorized to subordinate Commission loans and options, with County Counsel review and approval as to form, provided that the loan or the option remains in a secure position as required by Section III F. and as demonstrated by appraisal or by other means satisfactory to Commission.

1. Developer Loans: The Commission will accept a subordinate position to a new senior mortgage only if the ongoing public purpose of the development is protected and the transaction will not adversely affect the security of the Commission's loan in any way.

2. Homeownership Loans: The Commission will accept a subordinate position to a new senior mortgage if all of the following conditions are met:

a. The owner will not take cash out of the transaction. On a case by case basis, the Executive Director may approve a cash out transaction for home improvements if no other loan from any funding source secured against the property expressly prohibits a cash out refinance. The request will be considered if funds are used to correct health, safety, and code problems, or to preserve or enhance the value of the property. The owner must obtain written Commission approval for the scope of work and cost of the improvements before the Commission will consent to a subordination request. Failure to do so may make a property ineligible for consideration.

b. The refinancing objective is to obtain a new senior mortgage with a fixed interest rate lower than the interest rate of the current senior mortgage. A fixed interest rate higher than the current mortgage will be allowed only where "cash out" funds are required to correct health, safety, and code problems of the property, subject to prior Commission approval of the scope of work and cost of improvements.

c. The principal amount of the new senior mortgage will not exceed the sum of the original principal amount of the senior mortgages when the property was first purchased plus the owner's share of the closing costs to refinance the new senior mortgages. Provided that Commission's loan remains in a secure position, and with the Commission's prior written approval, the owner may borrow a higher loan amount for the sole purpose of correcting health, safety, and code problems of the property.

d. Cash proceeds from a refinance transaction will be disbursed from escrow for payment to vendors on a draw basis, with written consent from the Commission.

B. Loan Modification, Assignment and Assumption: The Commission's Executive Director is authorized to modify, assign and approve assumption of Commission loans, in compliance with funding source regulations and with County Counsel review and approval as to form, provided that the loan remains in a secure position as required by Section III F. and as demonstrated by appraisal or by other means that is satisfactory to Commission, and provided that the ongoing public purpose of the development is protected.

C. Due at Maturity: Commission loans shall be due and payable in full at the time of loan maturity. See Section VI for guidelines specific to mature loans.

D. Prepayments: Borrower may make prepayments on existing loans to repay the outstanding balance, or any portion thereof, at any time without penalty. Payments will first be credited towards any outstanding fees or penalties due, then to the interest due, and then to reduce the original principal amount of the loan.

E. Conversion: Upon written approval of the Commission's Executive Director or her/his designee, a borrower may choose to have a deferred payment loan converted to a fully amortized loan for the remainder of the loan term or 15 years, whichever is less. The borrower will be required to make pre-determined monthly payments of principal and interest each month for the balance of the loan term. The Commission will use underwriting standards detailed in Section III.I. in determining whether to approve a borrower's request to convert a deferred-payment loan to an amortized loan.

F. Reporting Requirements: Reporting requirements shall be determined per the approved regulations, policies, and guidelines for each specific funding source.

G. Loan Consolidation: Where a project receives multiple Commission loan awards, the Commission may consolidate loans, at the discretion of the Executive Director or his/her designee.

H. Rental of Homeownership Units: The purchaser of a homeownership unit must reside in the unit as their principal residence and may not rent the unit in its entirety to another party.

1. Notwithstanding the owner occupancy requirement stated above, unless prohibited by the requirements of the funding source or local policy, the Commission Executive Director may, in his or her sole discretion, approve

temporary rental of an ownership unit in its entirety to another party under the following conditions.

a. The owner cannot reside in the unit for a specified period of time, after which they plan to return to the unit, because they are either receiving medical care in a residential facility, working at a temporary job assignment outside of Sonoma County, or attending an educational institution that is located outside of Sonoma County; or

b. The owner plans to sell and move from the unit permanently but, due to market or other conditions beyond the owner's control, they cannot sell the unit for an amount sufficient to repay all senior liens.

2. The owner of a homeownership unit may rent the unit in its entirety only upon receipt of express written approval of the Commission's Executive Director. Such approval will be for a term of up to one year, with additional one year terms available upon review and approval by the Commission's Executive Director, in his or her sole discretion.

3. A homeownership unit that is rented in its entirety pursuant to the terms of this section shall be rented to low-income households (at or below 80% of area median income) at rent levels that are considered affordable to households with incomes at 60% of area median income. The owner must have Commission staff review proposed rental applications and rental agreements to ensure the rent does not exceed permitted rent levels and to approve the income eligibility of each proposed renter household.

4. Failure to reoccupy the unit at the expiration of the term of approval, or failure to comply with the affordability terms of this section, shall constitute a default under the Commission's Deed of Trust and/or Option.

I. Compliance Monitoring: If a Commission-assisted development is subject to monitoring by another agency, such as the California Department of Housing and Community Development, the California Tax Credit Allocation Committee, the California Housing Finance Agency, the U.S. Department of Housing and Urban Development, and other federal, state or local public agencies, and the other agency's affordability requirements are the same or more restrictive than the Commission's affordability requirements, the borrower may be able to reduce Commission monitoring fees. Annually on or before June 1st, during the term of the affordability period, the borrower will submit evidence of the other agency's affordability requirements and monitoring of the development's compliance with those requirements. The submitted documentation must be sufficiently detailed for the Commission to confirm whether the other agency's requirements for the development or units are in compliance with the Commission's affordability requirements.

For all Commission units not subject to the same or more restrictive requirements, or if evidence of another agency's monitoring is not submitted by the date due to the Commission or is not sufficient for the Commission to monitor compliance with the Commission's Program affordability requirements, the Commission shall charge the borrower an annual monitoring fee. The Commission has established an annual fee of $75 per monitored unit, or $100 per monitored emergency shelter, transitional housing, group home or other congregate facility, with said fees subject to periodic cost of living adjustments. Developer shall pay the fee to Commission on or before June 1st of each year of the term described in Section III. B. of these Loan Policies or otherwise set in specific loan financing source Funding Policies. The developer shall submit annual compliance reports and tenant rosters on forms that the Commission shall provide. The annual compliance report that the borrower submits to the Commission will include a tenant roster listing household size, income and rent for each tenant in a Commission-assisted unit. The Commission shall review reports for compliance with the Commission's Program requirements, shall require the developer to correct violations of those requirements, and may request additional documentation from the borrower, as the situation dictates.

The Commission may conduct periodic site visits to Commission-assisted developments. During the visits, Commission representatives may interview the resident manager, review a sample of the on-site tenant files, inspect a sample of the units of varying size and affordability, and tour the common areas and grounds of the development. The Commission will prepare a written report of each site visit.

V. COLLECTIONS

A. <u>Amortized Loan Collections</u>: The borrower shall make regular monthly payments directly to the loan-servicing agent as specified by the Commission. The Commission Executive Director shall have the authority to select an outside loan-servicing agent or to collect loan payments in-house.

B. <u>Deferred-Payment Loan Collections:</u> When due, the borrower shall make full repayment of the loan directly to the Commission.

C. <u>Loan Defaults</u>

1. If a borrower appears to be in default of one or more of the loan terms contained in the Promissory Note, Deed of Trust, or any other loan document, the Commission Executive Director shall consult with the Office of the Sonoma County Counsel.

2. Upon default in any loan terms, fraud or misrepresentation in any loan application, or transfer of the underlying real property or security interest without the written approval of the Commission, or for any other reason specified in the borrower's Promissory Note, the principal balance may be

accelerated and made immediately due and payable at any time without further notice.

3. If the Commission Executive Director determines that the borrower is in material default of one or more of the loan terms and is not reasonably likely to cure the default, the Commission Executive Director, with the advice of County Counsel, shall initiate foreclosure proceedings.

   a. The Commission may contract with a trust deed service company to carry out a Notice of Default and Sale on behalf of the Commission or may carry out the foreclosure process in-house.

   b. The Commission may disburse funds for all costs necessary to enforce its lien and complete the foreclosure sale process, including but not limited to: legal fees, trust deed service fees, past-due property taxes, utility charges, property hazard and liability insurance, needed maintenance and repair, and real estate agent fees.

   c. If the loan is reinstated, any collection or foreclosure expenses will be the responsibility of the owner as a condition of reinstatement, if permitted by the terms of the loan documents.

4. If permitted under the terms of the loan documents and California law, if trustee's sale proceeds minus the amount of any senior liens and the Commission's foreclosure costs are less than the amount of the outstanding loan balance, and the Commission's Executive Director concludes, after consultation with County Counsel, that there is a reasonable likelihood that the amount likely to be recovered will exceed litigation costs, the Commission shall seek a deficiency judgment for the difference.

VI. MATURE LOANS (Non-profit Agencies Only)

When an existing Commission loan is at or nearing maturity and a request for a loan term extension, restructuring, or forgiveness is received, the following guidelines shall dictate the Commission's response to such a request. Loan extensions, restructuring or forgiveness will only be approved if all the following criteria are met:

A. <u>Loan Compliance and Property Status</u>:

The borrower has demonstrated material compliance with conditions of the loan over the life of the loan and is in good status with the Commission and all other public entities with regards to the underlying financing and the use and operation of the property.

B. <u>Condition of Property</u>:

The subject property must be in good condition. If significant amounts of maintenance have been deferred, the loan extension, restructuring or forgiveness request will be denied.

C. Project Income and Financial Structure:

The borrower must reasonably demonstrate that projected operating income and reserves are sufficient to finance ongoing operating expenses, including debt service, and capital replacement and maintenance for the period of any proposed loan term extension.

D. Loan Security

The borrower must demonstrate through an appraisal or other means acceptable to Commission staff that the value of the property is adequate to continue to fully secure any extended-term Commission debt.

E. Loan Terms

1. Loans for Housing:

a. Existing deferred payment loans for housing projects shall be restructured as fully amortized loans unless the borrower presents compelling evidence that the borrower lacks adequate resources to service an amortized loan. In that case, an extended deferred-payment loan term may be approved. The Commission shall not forgive loans for permanent housing projects.

b. The annual interest rate for all restructured and extended loans shall be 3%. The maximum loan term extension is 15 years.

c. For existing deferred payment loans that are extended but restructured as fully amortized loans, the debt to be fully amortized is the principal as of the maturity date. The interest accrued, as of the maturity date, will also be repaid in equal installments over the term of the loan extension. That is, if the loan is extended for 180 months, the amount of accrued interest due at loan maturity will be divided by 180 and that amount will be paid monthly in addition to the amount derived from fully amortizing, at 3%, the loan principal amount at the time of loan maturity.

d. For loans that are extended as deferred payment loans, interest is accrued at 3% simple interest calculated upon the principal balance as of the date of maturity. The interest accrued up to the maturity date will be repayable upon the new maturity date of the extended loan.

2. Loans for Public Facilities:

a. If all criteria detailed in this Section VI. A. through D. are met, the Commission shall forgive loans for public facilities such as, but not limited to, fire stations, transitional housing and emergency shelters for the homeless, teen centers, senior centers, and similar community facilities.

b. For loans made with CDBG funds: If the loan is forgiven, a subsequent deed restriction will be recorded against title to the property stipulating that the real property must be used to meet one of the national objectives in 24 CFR Part 570.208 until twenty five (25) years after expiration of the CDBG Subrecipient Agreement and that if the property is not used to meet one of the national objectives during this period, the borrower shall pay to the Commission an amount equal to the then-current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property. The property owner shall also continue to abide by all other applicable CDBG regulations.

F. Loan Modification Fee

The borrower shall pay a loan modification fee for any mature loan that the Commission modifies through granting a loan term extension, refinancing or other modification of existing terms. The fee shall be equal to 0.5% of the sum of the outstanding loan principal and accrued interest calculated on the maturity date. Fee payment is required prior to recordation of any loan modification. Payment of the fee is also required if a loan is forgiven.

VII. ALTERNATIVE LOAN TERMS

Where the Commission's Executive Director determines, after consultation with County Counsel, that one or more federal, state and/or local financing programs available to a project will achieve results that are equivalent to, or more effective than, the affordability or other public purpose of the relevant Commission program, and that such financing programs are otherwise compatible with the Commission program and County and Commission policies and objectives, the Commission's Executive Director is authorized to modify Commission loan terms and policies to the degree necessary for the project to utilize those financing sources.