

RESOLUTION NO. 2020- 412

RESOLUTION OF THE CITY OF VINELAND, IN THE COUNTY OF CUMBERLAND, NEW JERSEY, WITH RESPECT TO THE ISSUANCE AND SALE BY THE HOUSING AUTHORITY OF THE CITY OF VINELAND OF ONE SERIES OF A HOUSING REVENUE BOND (VINELAND HOUSING AUTHORITY RAD CONVERSION PROJECT), SERIES 2020

WHEREAS, the Housing Authority of the City of Vineland (the “Authority” or the “Housing Authority”) is a public body corporate and politic, constituting an agency and instrumentality of the City of Vineland (the “City”), County of Cumberland, State of New Jersey, created by the City pursuant to the provisions of the Housing Authorities Law, Chapter 67 of the Pamphlet Laws of 1950, codified at N.J.S.A. 55:14A-1 et seq., repealed and replaced by the Local Redevelopment and Housing Law, under Chapter 79 of the Pamphlet Laws of 1992, as amended and supplemented, and codified at N.J.S.A. 40A:12A-1 et seq. (the “Act”); and

WHEREAS, the Authority owns and operates 203 city residential affordable housing public housing units for which it has received approval from the United States Department of Housing and Urban Development (“HUD”) to convert 193 of such housing units (the “Housing Units”) to the Rental Assistance Demonstration Program, P.L. 112-55 (2012) (“RAD”) administered and funded by HUD and to convert the remaining 10 housing units with non RAD Section 8 Project Based Vouchers; and

WHEREAS, the Act authorizes the Authority to issue bonds, notes or other obligations to fulfill its purposes (N.J.S.A. 40A:12A-16(5) and -29); and

WHEREAS, in furtherance of the purposes of the Act, the Authority proposes to issue a revenue bond in an aggregate principal amount not to exceed \$3,600,000 (the “Bond”), and to apply the proceeds of the Bond, along with other funds of the Authority and a \$2,200,000 direct subsidy from the Federal Home Loan Bank of New York to, inter alia, finance capital improvements, fund replacement and operating reserves and operating deficit reserves for the Housing Units that will be subject to the RAD program, partially defease existing outstanding New Jersey Housing and Mortgage Finance Agency (“NJHMFA”) debt allocable to the Authority, and pay costs in connection therewith; and

WHEREAS, the Bond, when issued, will be a special and limited obligation of the Authority, and neither the City nor the County of Cumberland (the “County”), nor any political subdivision thereof (other than the Authority, but solely to the extent of the trust estate as defined in the Bond Resolution (as defined below)), will be obligated to pay the principal or redemption price of, or interest on, the Bond, and neither the faith and credit nor the taxing power of the City, the County or any political subdivision thereof will be pledged to the payment of the principal or redemption price of, or interest on, the Bond; and

WHEREAS, the Bond will be issued pursuant to the terms of the Act, other applicable law and agreements and a bond resolution adopted by the Authority on August 20, 2020 authorizing the issuance of the Bond (collectively, together with any amendments or supplements, the “Bond Resolution”); and

WHEREAS, N.J.S.A. 40A:12A-29(d) requires that the governing body which created a housing authority and which housing authority is financing a housing project determine that the rate of interest on any such financing undertaken by a housing authority be in the best interest of the municipality.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF VINELAND, in the County of Cumberland, State of New Jersey a majority of the membership thereof affirmatively concurring, as follows:

Section 1. The City acknowledges that the Housing Authority proposes to issue one series of a Bond in an aggregate principal amount not to exceed \$3,600,000 to (i) finance capital improvements to and fund capital replacement reserves for the Housing Units that are subject to conversion pursuant to the RAD program, (ii) fund operating reserves and operating deficit reserves, (iii) defease outstanding NJHMFA indebtedness allocated to the Authority with respect to the Housing Units and (iv) pay costs in connection therewith. The terms and conditions for the issuance of the Bond shall be as provided in the OceanFirst Bank, N.A. Commitment dated as of September 11, 2020, as the same may be updated, extended and amended from time to time and attached hereto as Exhibit A (the "Commitment"). The Bond shall be dated, shall bear interest at such rate of interest, and shall be payable as to principal, interest and premium, if any, all as specified in the Commitment from Ocean First Bank, N.A. (the "Bank") to the Authority.

The Authority may prepay, in whole, the outstanding principal amount due on the Bond, with redemption premium, plus accrued interest thereon, calculated and as provided in the Commitment.

Neither the faith and credit nor the taxing power of the City nor any political subdivision thereof will be pledged to the payment of the principal or redemption price of, or interest on, the Bond. Nothing in the Bond or the Bond Resolution will assign or pledge therefor any other funds or assets of the Authority, the County or the City.

Section 2. Subject to satisfaction of the condition upon the closing of the transaction set forth below in Section 3 hereof, the City hereby finds and determines, in accordance with the provisions of N.J.S.A. 40A:12A-29(d), that the rate of interest, as described above, is in the best interest of the City.

In the event the Commitment is subsequently extended by the Bank with similar terms, conditions and parameters as those contained in the Commitment (which determination shall be made by bond counsel to the Authority, which determination shall be conclusive), including the Initial Interest Rate, prepayment provisions, Change Date Provisions, maturity and amortization schedule, the provisions of this resolution shall remain in full force and effect and no further action by the City shall be required vis a vis the determination that the interest rate contained in the Commitment, as revised and extended, is in the best interest of the City and such determination shall be conclusively presumed to be approved by the adoption of this resolution.

Section 3. The Authority shall provide a copy of the closing transcript with respect to the Bond to the City.

Section 4. The Mayor, Clerk and Chief Financial Officer of the City of Vineland are each hereby authorized and directed to execute and deliver such certificates, agreements and documents for the Closing, and to take such other actions as may be necessary or appropriate to consummate the transactions contemplated hereby.

Section 5. Certified copies of this Resolution shall be filed with the Clerk of the City and the Authority.

Section 6. This Resolution shall take effect immediately upon the adoption hereof.

Adopted:

President of Council

ATTEST:

City Clerk

CERTIFICATE OF CLERK

I, Keith Petrosky, the duly appointed and acting Municipal Clerk of the City of Vineland, in the County of Cumberland, New Jersey (the “City”), **DO HEREBY CERTIFY** as follows:

1. A true and complete copy of Resolution number _____ of the City duly adopted by the governing body of the City on _____, 2020, and entitled **“RESOLUTION OF THE CITY OF VINELAND, IN THE COUNTY OF CUMBERLAND, NEW JERSEY, WITH RESPECT TO THE ISSUANCE AND SALE BY THE HOUSING AUTHORITY OF THE CITY OF VINELAND OF ONE SERIES OF A HOUSING REVENUE BOND (VINELAND HOUSING AUTHORITY RAD CONVERSION PROJECT), SERIES 2020”** (“Resolution No. _____”) has been filed and available for review in the Municipal Clerk’s Office. Resolution No. _____ has not been amended, modified or repealed, and remains in full force and effect on and as of the date hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City as of the _____ day of _____, 2020.

Keith Petrosky, RMC, Municipal Clerk

(SEAL)



September 18, 2020

The Housing Authority of the City of Vineland
191 W. Chestnut Avenue
Vineland, NJ 08360
Attn: Jacqueline S. Jones, Executive Director

Re: Commitment for Financing

Dear Ms. Jones:

I am pleased to inform you that OceanFirst Bank N.A. (the “Bank”) has approved your application for a Construction Loan [converting to a Permanent Commercial Mortgage] in the amount of up to \$3,600,000.00 (the “Loan”). This commitment letter supersedes and replaces in its entirety the commitment letter dated September 17, 2020. The terms and conditions of this approval include the following:

1. Borrower and Guarantor:

The Loan will be made to The Housing Authority of the City of Vineland (“Borrower”).

Affordable Housing Corporation of Vineland will provide its unlimited and unconditional guaranty.

2. Type:

Community Development Loan/Tax Exempt Bond Financing – Construction to Permanent Mortgage Loan

3. Amount:

Up to \$3,600,000.00 subject to final HUD approval.

4. Purpose:

The proceeds of the Loan will be used to refinance existing debt of Borrower not to exceed \$732,000.00, provide capital improvements for the two (2) subject properties and pay all associated closing costs. As a result of the funding, Borrower will be converting the subject properties from Senior Housing Projects into Assistance Demonstration (RAD) Program.

5. **Interest Rate:**

A tax-exempt rate shall be fixed for the loan's entire term, priced at the 20-year Treasury bill rate then in effect, plus 2.50%, to be calculated by the Bank one week before the day of closing with a floor rate of 3.25%. On the Conversion date the loan will convert to its permanent mortgage status with the interest fixed at the calculated rate during the construction phase of the Loan.

6. **Advance Terms:**

The loan proceeds will be fully advanced at settlement into various accounts to be mutually agreed upon by the Borrower and Bank.

Disbursements of \$50,000 or greater from the construction escrow account (which shall be held with Lender) must be supported by invoices, contracts, and a payment schedule.

Disbursements from the construction escrow account (which shall be held with Lender) shall be requested by authorized officer(s) of the borrower and all advance submission information shall be true and accurate.

Annually, the borrower shall certify that all disbursements from the construction escrow account have been used in accordance with advance requests and all applicable local, state, and federal laws and regulations.

Also annually, the borrower shall provide a capital expenditure budget for the next year to including funding sources, and all capital expenditure requirements that are not identified on that budget shall require Lender approval.

7. **Term:**

Eighteen (18) month construction loan, followed by a permanent mortgage loan which will be repaid over a 20-year amortization.

8. **Terms of Repayment:**

From the date of the Loan until and including the Conversion Date, the Borrower shall pay to the Bank accrued interest only, in consecutive monthly payments on the same day of the month following the date of the Loan and continuing on the same day of each month thereafter. Following the Conversion Date, the Borrower shall make two hundred and forty (240) equal monthly payments of principal and interest based on a 20 year amortization schedule, commencing on the 1st day of the first month following the Conversion Date of the Note and continuing on the same day of each month thereafter until 240 months from the Conversion Date (the "**Maturity Date**"), when one (1) final payment of all outstanding principal, interest, fees and other charges shall be due and payable to the Bank. All payments shall be made at the Bank's office set forth above or such other place as the Bank may from time to time specify in writing, in lawful currency of the United States of America, without counterclaim or setoff and free and clear of, and without any

deduction or withholding for, any taxes or other payments. *The Borrower agrees that all payments due hereunder shall be made by automatic debit from Borrower's demand deposit account maintained with Bank.*

An interest reserve will not be required to be funded as a part of the construction period term of eighteen (18) months since the monthly interest only payments will be paid through the existing rental income generated from the properties.

As part of the HUD agreement, Borrower will be reimbursed a flat rate of \$338 per vacant unit during the construction period. Currently, there are three (3) vacant units.

Borrower will be required to establish and maintain with the Bank an operating account, an operating deficit escrow account, and a replacement reserve account, the operating account will not be held as collateral. The operating deficit escrow account and the replacement reserve account will be assigned as collateral for the Loan.

9. HUD Subsidy:

The RAD conversion commitment from HUD provides that 193 units (of the total 203 units) will convert to RAD and the remaining 10 units will convert to traditional PBV's Units.

Once converted to the RAD program, the rental income will be provided through a twenty (20) year RAD HAP and PBV HAP with HUD. There is a yearly OCAF (operational cost adjustment factor) which may result in an adjustment to the annual rentals.

Notwithstanding any provision set forth in the guaranty to the contrary, the Bank recognizes (except as otherwise authorized pursuant to the Annual Consolidated Contract between the U.S. Department of Housing and Urban Development ("HUD"), as amended (the "ACC") that Borrower may not transfer, convey, assign, lease, mortgage, pledge or otherwise encumber any "project," as such term is defined in the ACC (each a "Project"), or any investment assets, rent, revenues, income or receipts, operating subsidies, or any other type of tangible or intangible personal property that is directly attributable to a Project, or any of the benefits or contributions granted to such Project pursuant to the ACC, or any interest in the foregoing (collectively, the "Project Interests"). The Project cannot be cross-collateralized with any other RAD properties of Borrower and for the purposes of the guaranty RAD properties will be treated in the same manner as ACC Properties. Therefore, the Bank shall have no right of recourse under this Guaranty against any Project Interests including, without limitation:

(a) any of the Vineland Housing Authority's property which is part of a project that is subject to the ACC;

(b) any operating receipts of the Vineland Housing Authority (as the term "operating receipts" is defined in the ACC) that are subject to the ACC; or

(c) any public housing operating reserve of the Vineland Housing Authority reflected in the Housing Authority's annual operating budget and required under the ACC.

The Bank's interest in Kidston Towers and Olivio Towers shall be unconditional and unlimited, subject to the RAD use agreement.

10. Collateral:

The Loan will be secured by the following:

- (a) A title insured first mortgage lien and UCC-1 fixture filing and an absolute assignment of any leases and rents encumbering certain real property and improvements located at
 - (1) Kidston Towers, 1040 E. Landis Avenue, City of Vineland, Cumberland County, New Jersey ("Kidston Towers"); and
 - (2) Olivio Towers, 1044 E. Landis Avenue, City of Vineland, Cumberland County, New Jersey ("Olivio Towers") (the "Property").
- (b) A first lien security interest in and UCC-1 filings on all business assets of Borrower , including all assets, accounts, deposit accounts, accounts receivable, chattel paper, electronic chattel paper, commercial tort claims, equipment, furniture, fixtures, general intangibles, software, goods, instruments, inventory, investment property, letter-of-credit rights, healthcare insurance receivables, manufactured homes, as-extracted collateral, payment intangibles, all accessions, additions, attachments, parts, tools, supplies, increases, replacements, substitutions, all records, products and proceeds, including insurance proceeds, of all of the foregoing, supporting obligations and all after-acquired property. Any term which is defined in the Uniform Commercial Code has the meaning set forth therein.
- (c) An assignment of all contracts, permits and approvals in connection with the Project being funded with the proceeds of the Loan, including, but not limited all items set forth on Schedule A attached and incorporated into this Commitment Letter and such other such items included as part of the transaction being funded with the proceeds of the Loan. Both Borrower and Guarantor will assign any contracts, permits and approvals in connection with the Project in which they are a party.
- (d) An Assignment of the following required accounts which must be maintained with Bank throughout the term of the Loan:
 - (i) an operating deficit escrow account; and
 - (ii) a replacement reserve account

Borrower will contribute \$137,000.00 per year into the replacement reserve account. An initial deposit of \$203,000.00 will be funded by the time construction is completed.

The operating deficit escrow account will be maintained with a minimum balance of \$50,000.00.

Borrower must also maintain an operating account with an initial minimum balance of \$113,000.00 which will not be part of the collateral.

- (e) No substitution of collateral under the Loan will be permitted without the prior written consent of the Bank.

11. **No Subordinate Financing:**

Unless the Bank agrees in writing, there shall be no subordinate financing encumbering the Property and Borrower shall not incur any debt outside of the Loan related to the Property without Bank's consent except as provided in the Loan documents. In the event of a violation of this covenant, the Bank may at its option declare the unpaid principal amount and accrued interest due under the Loan to be immediately due and payable.

The Bank has approved a subordinate mortgage loan in the amount of up to \$2,200,000.00 from the Federal Home Loan Board ("FHLB Loan"). All terms of this loan must be acceptable to the Bank and authorized as part of the RAD conversion.

During the construction phase of the Loan, Borrower will make an unsecured equity contribution in the amount of \$900,000.00 to the Project. The \$900,000.00 construction phase equity contribution will be repaid will be repaid from the proceeds of the FHLB Loan. In addition, the Borrower will make a \$911,020.00 permanent equity contribution to the Project.

In addition, Borrower shall agree to subordinate all present and future officer and related party debt.

12. **Fees:**

The Borrower will be required to pay to the Bank a nonrefundable commitment fee of 1.0% of the loan amount not to exceed \$36,000.00 of which the Bank acknowledges receipt of an initial deposit of \$10,000.00 with the balance payable upon acceptance of this commitment letter by the Borrower, and Bank's counsel fee, which is estimated to be \$20,000.00. This fee estimate includes one round of document negotiations. This estimate is subject to increase in the event that unforeseen difficulties arise in connection with the Loan or the closing of the Loan, including additional rounds of document negotiation. The Bank's counsel fee is due at closing.

13. **Prepayment:**

Prepayment of the Loan will be permitted in whole or in part at any time upon thirty (30) days prior written notice, if accompanied with a prepayment penalty calculated as follows:

The greater of:

- (i) The remainder of (a) minus (b), where (a) is the present value of all unpaid installments of principal and interest due under this loan from the date of prepayment to and

including the Maturity Date (which is defined as 20 years after the Conversion Date), plus the present value of the outstanding principal balance at the Maturity Date, discounted at the Prevailing Interest Rate (defined below) and (b) is the outstanding principal balance due under this loan as of the prepayment date. All of the above shall be calculated at Bank's sole discretion; or

- (ii) One percent of the then outstanding principal balance.

Prevailing Interest Rate shall mean the yield to maturity on a United States Treasury Bond or Treasury Note selected by Bank having a maturity date as near as possible to the Maturity Date of this loan, and if there is more than one such Treasury Bond or Note, that which has an "ask" price during the week prior to prepayments as close as possible to par (as published in The Wall Street Journal, or similar publication).

Notwithstanding the above, if the Loan is prepaid as the result of being refinanced with the Bank, no prepayment penalty fee shall be assessed.

In addition to any prepaid amount, the Borrower shall also pay to the Bank any accrued and unpaid interest and all other sums due under the terms of this Note at the time of such prepayment. No partial prepayments shall be permitted.

14. Items to be Furnished to Bank Prior to Closing:

The approval contained herein is conditioned on receipt by the Bank of the following:

- (a) With respect to the Property, an appraisal ordered by and in form and substance satisfactory to the Bank, in its sole discretion, prepared by an appraiser or appraisers satisfactory to the Bank, in its sole discretion, revealing a minimum fair market value of \$4,800,000.00. The cost of the appraisal shall be paid by the Borrower.
- (b) With respect to the Property, a title insurance policy insuring the Bank's interest as a first lien in the amount of the Loan, issued by a title insurance company acceptable to the Bank. The title insurance commitment must include satisfactory title, tax and assessment searches and 20-year upper court, county judgment, pending litigation and lien searches, and a franchise tax search, if applicable.
- (c) Satisfactory Certified UCC lien searches as to the Borrower's assets in the records of the Department of Treasury and appropriate County offices, which shall be satisfactory to the Bank in its sole discretion.
- (d) USA Patriot Act searches against the Borrower.
- (e) A copy of a certified current survey of the Property acceptable to the Bank and its legal counsel and insurable by the title company issuing the title insurance policy.
- (f) An Affidavit of Title for the Property, in customary form, acceptable to the Bank.

- (g) A filed copy of a Notice of Settlement for the proposed Mortgage, bearing the filing stamp, which is effective on the Closing Date.
- (h) Certification from a private flood hazard search company, satisfactory to the Bank, confirming whether or not the Property is located in a flood hazard area. (Document will be ordered by the Bank).
- (i) Receipt and satisfactory review of revised projections and development budget to incorporate the proposed financing and the project documents and information, including a current rent roll.
- (j) Evidence satisfactory to the Bank that the Property is in compliance with the AMERICANS WITH DISABILITIES ACT (ADA), 42 U.S.C. 12111 et seq. and all regulations promulgated thereunder. (This document will be supplied by the Bank.)
- (k) Certification to Bank that there is no litigation pending or threatened against or in any way related to the Property. If there is any litigation pending or threatened against the Borrower unrelated to the Property, Borrower shall provide Bank with a list of any such litigation and such information as Bank may request.
- (l) Evidence of required insurance on the Property naming the Bank as a First Mortgagee, additional insured and Loss Payee.
- (m) Certification that ISRA is not applicable to the subject transaction.
- (n) Filed copies of the Certificate of Incorporation and By-Laws of the Borrower and resolutions authorizing the borrowing and execution of all loan documents.
- (o) Satisfactory good standing certificate(s) for the Borrower.
- (p) Receipt and satisfactory review of a Phase I Environmental Audit of the Property, certified and acceptable to the Bank in its sole discretion as to both methodology and conclusions, and prepared by an engineering or consulting firm or firms satisfactory to the Bank, and paid for by Borrower.
- (q) An opinion of Counsel, with respect to the formation of the Borrower and the authority of the Borrower to execute the Loan documents (in a form to be provided by the Bank).
- (r) Receipt and satisfactory review of final RAD approval for the Property including but not limited to the RAD HAP Agreement from HUD.
- (s) Receipt and satisfactory review of proof that Borrower has obtained approval from the local finance board to issue a tax-exempt bond to the Bank.
- (t) Receipt and satisfactory review of all necessary documents for the RAD conversion,

include, but not limited to an executed HAP contract and RAD use agreement.

- (u) Receipt and satisfactory review of all documents determined necessary by the Bank's counsel in order to meet the conditions of the Loan, HUD approval and the bond financing.
- (v) Receipt and satisfactory review of all Bond Documents necessary for the tax-exempt financing.
- (w) Receipt and satisfactory review of a tax opinion of Bond Counsel, the cost of which is to be borne by Borrower.
- (x) Receipt and satisfactory review of documentation indicating the Property will no longer be encumbered by existing bond debt.
- (y) Such other instruments, documents, terms, conditions, and opinions as the Bank and its counsel will reasonably require to evidence and secure the Loan. Bank reserves the right to impose additional requirements and request further documentation upon its review of the above information.

15. USA Patriot Act:

As of October 1, 2003, the Bank is required by the USA Patriot Act to obtain documentary verification of any individual Borrower identity (and that of any business, if business is conducted in the name of a separate legal entity). If not provided prior to closing, the Borrower will be required to supply a copy of the Borrower's business organizational documents and any individual (Borrower) driver's license or other personal identification at the time of closing. This documentation must be provided to avoid any delay in the funding of the Loan.

15. Covenants:

During the term of the Loan, the Borrower shall:

- (a) Within 120 days after the end of each fiscal year of the Borrower, supply Bank with financial statements of Borrower prepared in accordance with generally accepted accounting principles and practices of accounting consistently applied, audited by and with the opinion of an independent public accountant satisfactory to the Bank, such opinion not being adverse, limited or qualified because of such accountant's restricted or limited examination of the records and including management letters.
- (b) Within 120 days after the end of each calendar year, supply Bank with **yearly** budgets for reviewed and approval by the Bank, which approval will not be reasonably withheld. The purpose of this review is to ensure that expenses and management fees charged to the project will be within industry standards.
- (c) Within 120 days after the end of each fiscal year of the Borrower, supply Bank with an

annual rent roll with respect to the Property.

- (d) Within 120 days after the end of each calendar year, supply Bank with all necessary documentation indicating the Property is in compliance with the HAP contract. The Bank will have the ability to review tenant files to extent allowable by Federal Law.
- (e) Permit no financing junior to the Bank's during the life of the Loan without the prior written consent of the Bank.
- (f) Maintain existing improvements and construct any additional improvements, including but not limited to the Project, in a first-class quality condition and free from encroachment upon building lines, easements and Property lines.
- (g) Not permit any change in control of Borrower or the transfer of the assets of Borrower.
- (h) Indemnify, defend, hold harmless and reimburse the Bank from and against any and all claims, losses, judgments, costs and/or expenses, including attorney fees, arising out of the Borrower's ownership, control, development and use of the Property, including, but not limited to, any environmental matters.
- (i) Maintain a deposit balance with the Bank for the duration of the Loan with a minimum balance of \$1,000,000.00.
- (j) Agree to waive a jury trial in any proceeding against the Bank.
- (k) Borrower will supply such reasonable information as required by the Bank from time to time regarding compliance with HUD requirements, the RAD Agreement, the HAP Agreement and updated, new and modified leases.
- (l) The Borrower shall maintain a Debt Service Coverage Ratio of not less than 1.15 to 1.00 before distributions. This covenant shall be measured annually at the Borrower's fiscal year end, commencing as of fiscal year end September 30, 2022. "Debt Service Coverage Ratio" shall mean (i) the ratio of net operating income** defined as the annual income generated by an income-producing property after taking into account all income collected from operations, and deducting all expenses incurred from operations divided by (ii) the sum of current maturities of long-term debt and capital lease obligations plus interest expense.

17. Insurance Requirements:

The Borrower shall comply with the following requirements regarding insurance:

- (a) Commercial property insurance policy insuring against "Special Perils" on a special cause of loss form (including flood if the Property is located in a special flood hazard zone), covering all real property, improvements, fixtures or other personal property comprising the collateral, including 100% replacement cost coverage and inflation adjustment

endorsements, a utility service interruption and off premise power failure endorsement, and such other insurance policies as the Bank shall require, including, without limitation, loss of rents insurance (one year's gross rental income), boiler and machinery insurance and business interruption coverage. All such policies are to be written for the full insurable replacement cost of all the real property (without deduction for depreciation or obsolescence) or other assets securing the Loan and shall name the Bank as First Mortgagee under a Standard Mortgagee Clause with respect to the improvements and Loss Payee under a Lender's Loss Payable Clause with respect to personal property or other assets securing the Loan. If a blanket policy is issued, a certified copy of said policy shall be furnished together with an endorsement indicating that the Bank is the insured under said policy in the properly designated amount. The Borrower shall also carry such other insurance as may reasonably be required by the Bank upon ten (10) days written demand by Bank.

- (b) Prepaid "Special Perils" and Comprehensive Business Insurance Program, including but not limited to, multi-peril package, workers' compensation, commercial automobile, business interruption, extra expense, loss of rents, employee dishonesty, umbrella liability and professional liability policies. These policies shall cover all personal property and other assets comprising the collateral and shall name the Bank as Loss Payee under a Lender's Loss Payable Clause. All such policies shall be written for the full insurable value of the collateral (without deduction for depreciation or obsolescence). If a blanket policy is issued, a certified copy of said policy shall be furnished together with an endorsement indicating that the Bank is the insured under said policy in the properly designated amount. The Borrower shall also carry such other insurance as may reasonably be required by the Bank.
- (c) During the Construction Phase of the Loan, the Borrower shall keep in effect upon the Property a "Special Perils Builder's Risk" insurance policy against loss or damage by fire or such other hazards, including theft of construction materials and contents from the site, in such amounts, in such types and containing such provisions as Bank may reasonably specify. The policy must be written on a Builder's Risk Completed Value form, for the full insurable replacement value of the improvements to be constructed. Such insurance shall name the Bank as First Mortgagee under a Standard Mortgagee Clause.
- (d) The Borrower and General Contractor shall also keep in effect Commercial General Liability insurance with contractual liability coverage insuring the Borrower and naming the Bank, its successors and assigns as an additional insured, protecting the Bank against liability for bodily injury and property damage occurring in, on, or adjacent to the Property. This policy shall cover any accident occurring in, on, or adjacent to the Property. Such liability coverage shall be in the minimum amount of One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate. For Loans in excess of Five Million Dollars (\$5,000,000.00), Two Million Dollars (\$2,000,000.00) per occurrence and Five Million Dollars (\$5,000,000.00) in the aggregate minimum limits of liability are required.
- (e) If the Property is required to be insured pursuant to the Flood Disaster Protection Act of

1973 or the National Flood Insurance Act of 1968, and the regulations promulgated thereunder, because it is located in an area which has been identified by the Secretary of Housing and Urban Development as a Flood Hazard Area, then the Borrower shall obtain a flood insurance policy covering the Property in an amount not less than the outstanding principal balance of the Loan or the maximum limit of coverage available, whichever is less. Such policy shall name the Bank as First Mortgagee under a Standard Mortgagee clause with respect to the improvements and Loss Payee with respect to personal property or other assets securing the Loan.

- (f) The Borrower and General Contractor for the Project shall maintain Workers' Compensation/Employers' Liability coverage as required by applicable law.
- (g) All insurance policies required by this letter shall be (i) issued by companies which shall have an A.M. Best Rating Guide Stability Rating of A- or better, and a Financial Rating of VI or better, (ii) on forms, in amounts and with deductibles, all of which are acceptable to the Bank and (iii) maintained throughout the term of the Loan, without cost to the Bank. All policies shall be deposited with the Bank (if required by the Bank), and shall contain such provisions as the Bank deems necessary or desirable to protect its interest, including, without limitation, a provision that such policy shall not be cancelled, altered or in any way limited in coverage or reduced in amount unless the Bank is given thirty (30) days prior written notice. All insurance policies provided for herein shall be fully paid and non-assessable.

18. Construction Covenants:

- (a) Construction of the improvements to be erected on the Property shall commence no later than ninety (90) days after the Closing Date of the Loan and be completed prior to the Conversion Date and shall conform to plans and specifications submitted to and approved by the Bank.
- (b) The Bank shall advance funds from the construction escrow account as work is verified as completed by Borrower's inspector and supported by invoice and for major items AIA G702 and G703 forms and such other information as the Bank may request.
- (c) Advances during the construction phase shall be made pursuant to the provisions of a construction provision in the Bond Agreement to be executed at closing.
- (d) Each construction advance shall require an updated title bring down
- (e) The Bank shall have the right to enter onto the Property and undertake and complete construction of the Project in the event that there is an abandonment of construction for thirty (30) days or if construction is not completed within the period required in this commitment letter. All building contracts will be assigned to the Bank and this assignment will be exercised, at the Bank's option, in the case of default.
- (f) No substantial revision of the approved plans and specifications may be made without the

prior written approval of the Bank.

- (g) The Borrower will deliver to the Bank, an Agreement by each architect or engineer doing work on the Project:
 - i. Authorizing the Bank, in the event of default on the Loan, to use the plans and specifications without liability of the Bank to the architect.
 - ii. To continue supervision services, if any, upon completion of construction, without cost to the Bank, except for services and expenses directly authorized by the Bank.
 - iii. Certifying that the Project, as shown on the approved plans and specifications, is in compliance with all applicable governmental requirements.

The Borrower and Bank acknowledge that a different Architect or Engineer may be working on different parts of the Project. An agreement will be required from each architect and engineer.

- (h) The Borrower and Bank acknowledge that different contractors will be working on different parts of the Project. The Bank will be provided with an AIA Format Fixed Price Contract (AIA Document A101) Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum (otherwise known as a Maximum Fixed Price Construction Contract) for all major construction items (i.e. windows, roofs, risers and bathrooms). These Contracts between the Borrower and each licensed Contractor shall contain details for the complete and full construction and equipping of the Project, a fixed or guaranteed maximum price, and a guarantee of completion. Each Contract shall include a Construction Budget with a line item breakdown and a Construction Draw Schedule. Each contract will be assigned to the Bank and the contractor shall acknowledge the assignment and agree to continue work on the Project in event the Bank exercises its rights under the assignment.
- (i) If there are any excess funds available and additional work is approved, this work will be bid and awarded post-closing, the Bank will require receipt and review of the bids before funds are released.
- (j) As a condition of an advance, the Borrower must provide evidence, satisfactory to Bank that all governmental permits have been issued and are in accordance with the requirements of the Project for the work for which payment is being requested.
- (k) Each advance will require Certification by the architect or engineer acceptable to Bank that the construction of the Project has complied and will continue to comply with all applicable statutes, ordinances, codes, regulations and similar requirements.
- (l) Each advance will required receipt and satisfactory review of a physical need's assessment and final engineering report, and all plans, specs, approval and permits for the

work for which payment is being sought. Depending upon the physical needs' assessment, a Pre-construction review of all costs may be required.

18. Disbursements:

The Loan will be disbursed from the construction escrow account on an "as-needed" basis. All requests for payment are to be submitted with invoices and other supporting documentation except for major items which will require submission on AIA forms G702 and G703 at least three (3) business days prior to the requested advance date and signed by the Borrower certifying:

- (1) The "in-place" value of the completed construction portion of the Project;
- (2) That the Project is being completed in accordance with the plans and specifications approved by the Bank.

The Borrower will be required to execute a Borrower's Certificate and Request for Loan Advance which addresses the following general issues:

- (1) The proceeds of the Loan Advance will be used for purposes of completing construction and improvements to the Property.
- (2) The improvements will be completed as specified in the Construction Loan Agreement. All proceeds of all prior Loan Advances have been expended solely for the purposes for which they were requisitioned and no proceeds of the current or any prior Loan Advances have been or will be returned to the Borrower as a rebate, refund or otherwise.
- (3) The Borrower has paid all obligations incurred in connection with all work and materials supplied for the Project through the date of the last requisition.
- (4) The Borrower has not authorized nor does the Borrower contemplate any change orders or other modifications to any contracts over \$50,000.00 entered into in connection with the Project's development costs that have not been authorized in writing by the Bank.
- (5) The cost to complete the Project (including financing and other soft costs) is reasonably projected and the amount of the undisbursed portion of the Loan is therefore sufficient to complete the Project.
- (6) The projected completion date of the Project.
- (7) The Borrower has no knowledge or notice of any construction liens, notices of intention, contracts, stop notices, liens or claims for liens having been filed or threatened to be filed against the Project.
- (8) All required licenses, approvals and permits covering or required for the development of the Project have been issued and are in force and there are no actions pending or threatened to revoke, rescind, alter or declare invalid any laws, ordinances, regulations, permits,

variances, certificates or Agreements for or relating to the Project.

- (9) No event of default or potential default under the terms of the Note, Mortgage, Construction Loan Agreement or any other document evidencing the Loan has occurred.
- (10) The Borrower is not in default on any obligation to the Bank or any other party.
- (11) The Borrower is not a party to any lawsuit.
- (12) There have been no adverse changes in the financial condition of the Borrower.

In conjunction with each construction disbursement, (a) there shall be delivered to the Bank a certificate of the title insurance company to the effect that such advance is secured by the mortgage and constitutes a valid first lien on the Project, without exception; and (b) the receipt of a certification from the architect or engineer that the work has been completed in accordance with the approved plans and permits.

19. Conditions to Closing:

The Loan will be closed on the following conditions:

- (a) No information, representation, exhibit or other material submitted with or in support of the application for the Loan is determined by the Bank, in its sole discretion, to be inaccurate or to have materially and adversely changed.
- (b) The Bank's determination, in its sole discretion, that the financial operations and condition of the Borrower has remained materially unchanged from the time of application and that no event has occurred or information has become known that makes the Bank deem itself insecure in the making of the Loan.

20. Environmental Matters:

The environmental condition of the Property must be satisfactory to the Bank and based upon the Bank's satisfactory receipt and review of a Phase 1 Environmental Report, the cost of which will be paid for by Borrower. The Borrower will, at all times, remain in compliance with all environmental laws, rules and regulations applicable to the Property. The Borrower shall provide the Bank with such representations, warranties and Agreements of indemnity as the Bank's counsel may require with respect to the Property.

- (a) **Environmental Affidavit.** Prior to closing, the Borrower shall furnish an Affidavit stating that:
 - (1) There have been no claims, litigation, administrative proceedings, whether actual or threatened, or judgments or orders relating to any hazardous substances, hazardous wastes, discharges, emissions, or other forms of pollution relating to the Property or any other property or activities of the Borrower in the State of New Jersey.

- (2) To the best of the Borrower's knowledge, there have been no hazardous substances or hazardous wastes, as defined by ISRA, the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 et seq.), CERCLA as amended (42 U.S.C. Subsection 9601 et seq.), or any other applicable environmental law, generated, manufactured, refined, transported, treated, stored, handled, discharged, spilled or disposed of on the Property or any other property owned or used by the Borrower in the State of New Jersey.
- (3) There are no underground storage tanks located on the Property. If the Borrower is unable to sign such an Affidavit due to the existence of underground storage tanks at the Property, the Borrower must show compliance with the New Jersey Underground Storage Tank Act, N.J.S.A. 58:10A-21 et seq., and any applicable federal law and submit to the Bank copies of all related registration forms and other proof of compliance as a condition of closing.
- (b) **Testing.** At any time during the term of the Loan, the Bank shall retain the right to enter onto the Property and cause such tests, inspections, and/or procedures to be conducted by a professional engineering firm or others for the purpose of ensuring compliance with all environmental laws, rules, and having the Property certified to the Bank as such. Without limitation of the Bank's rights, while any amount under the Loan is outstanding, the Bank shall have the right, but not the obligation, to enter onto the Property or any other facility operated by the Borrower or to take such other actions as it deems necessary or advisable to test, cleanup, remove, resolve, or minimize the impact of, or otherwise deal with, any environmental condition which, in the sole opinion of the Bank, could jeopardize or affect its collateral security. All costs and expenses incurred by the Bank in the exercise of any such rights shall be secured by the Mortgage and shall be payable on demand.
- (c) **Asbestos.** In the event that asbestos exists on the Property or is found by the Borrower or any other person or entity during the construction of the project or at any other time, the Borrower shall (1) immediately notify the Bank that the asbestos exists or has been discovered, (2) obtain a written estimate and report from an environmental firm acceptable to the Bank of the cost of the removal of the asbestos and the manner in which it should be removed, which removal procedure shall be satisfactory to the Bank, (3) deposit with the Bank in escrow an amount equal to the cost of such removal, and (4) diligently pursue the removal of the asbestos. The amount held in escrow will be released by the Bank upon (a) delivery to the Bank of evidence satisfactory to the Bank that the applicable laws, rules and regulations have been complied with in connection with such removal and disposal, and (b) inspection of the completed work by the Bank's engineer (at Borrower's expense) and a determination by said engineer that the removal has been handled in a satisfactory manner.
- (e) **Indemnification.** The Borrower shall agree to defend, indemnify, and hold the Bank harmless from and against any and all claims, losses, liabilities, damages, and expenses (including, without limitation, cleanup costs, and reasonable attorney's fees and consultant's fees, including those arising by reason of any action against the Borrower under this indemnity) arising directly or indirectly from, out of, or by reason of any

hazardous discharge, environmental complaint, environmental problem or condition, or out of the violation of any environmental law governing the Property, the Borrower or any of its other properties. This indemnity shall apply notwithstanding any negligent or other contributory conduct by or on the part of the Bank or any one or more other parties or third parties. The provisions of this paragraph shall be in addition to any and all other obligations and liabilities of the Borrower to the Bank at common law, and shall survive: (i) repayment of the Loan and the full release of the lien of the subject mortgage; (ii) the extinguishment of the lien by foreclosure, power of sale or any other action; and (iii) the delivery of any deed in lieu of foreclosure.

21. Miscellaneous:

- (a) The Borrower shall pay all costs incidental to the Loan, including, but not limited to, the commitment fee, loan documentation fee, title insurance charges, search fees, appraisal fees, environmental testing and report fees, real estate tax tracking fee, inspection fees, search and premium fees, survey charges, recording and filing fees, attorney's fees, brokerage fees, and agrees to indemnify the Bank for any such expense incurred by it.
- (b) No change in the provisions of this commitment letter shall be valid and binding unless in writing, and executed in the name of and by an officer of the Bank.
- (c) Neither this commitment nor the Loan proceeds shall be assignable without the written consent of the Bank.
- (d) All notices to the Bank, to be effective hereunder, must be given in writing and addressed to OceanFirst Bank N.A., 975 Hooper Avenue, Toms River, New Jersey 08753 to the attention of the undersigned.
- (e) Notwithstanding the place of acceptance of this commitment letter or the place of closing of the Loan, this commitment letter and the Loan shall be governed by the laws of the State of New Jersey.
- (f) The Loan shall not be assumable.

Bank will be represented by CAPIZOLA, PANCARI, LAPHAM & FRALINGER, PA., BARBARA R. LAPHAM, ESQ., 100 NORTH MAIN ROAD, VINELAND, NEW JERSEY 08360, (856) 692-6900; FACSIMILE (856) 692- 7802; e-mail: barbaral@southjerseycounsel.com. **THE INTERESTS OF THE BORROWER AND BANK ARE OR MAY BE DIFFERENT AND MAY CONFLICT. THE BANK'S ATTORNEY REPRESENTS ONLY THE BANK AND NOT THE BORROWER AND THE BORROWER IS, THEREFORE, ADVISED TO EMPLOY AN ATTORNEY OF THE BORROWER'S CHOICE LICENSED TO PRACTICE LAW IN THE STATE OF NEW JERSEY TO REPRESENT THE INTERESTS OF THE BORROWER.**

If the above terms and conditions are acceptable to you, please sign this letter and return it to my attention along with your check in the amount of \$23,750.00 representing the balance of the commitment fee.

This commitment will expire if it is not accepted and payment of the above fees are not made by September 30, 2020. This commitment will also expire if the Loan does not close within ninety (90) days after the date of your acceptance.

Thank you for your confidence in OceanFirst Bank N.A., and I look forward to working with you in the future.

Very truly yours,

Cosmo A. Giovinazzi, IV
Vice President

DocuSigned by:
Cosmo Giovinazzi

Accepted and agreed to
this 18th day of September, 2020.

BORROWER:

**THE HOUSING AUTHORITY OF THE CITY
OF VINELAND, a public body corporate and politic
and a political subdivision of the State of New
Jersey, organized and existing under Local
Redevelopment and Housing Law, as amended
and supplemented (N.J.S.A. 40A:12A-1 et seq.)**

By: _____
JACQUELINE S. JONES, Executive Director
Dated: _____

GUARANTOR:

**AFFORDABLE HOUSING CORPORATION OF
VINELAND, a New Jersey Non-Profit Corporation**

By: _____
JACQUELINE S. JONES, Secretary/Treasurer
Dated: _____

Please provide the following:

Attorney:

Address:

Phone:

Fax:

E-Mail:

SCHEDULE A

1. RAD Section 8 Project–Based Voucher (PBV) Program Housing Assistance Payment (HAP) Contract by and between The Vineland Housing Authority of the City of Vineland as Contract Administrator and the Affordable Housing Corporation of Vineland as Owner/Manager of the Project for 193 units in Kidston Towers (“RAD HAP Contract”);
2. Section 8 Project–Based Voucher (PBV) Program Housing Assistance Payment (HAP) Contract by and between The Vineland Housing Authority of the City of Vineland as Contract Administrator and the Affordable Housing Corporation of Vineland as Owner/Manager of the Project for 10 units Olivio Towers (the “ Non RAD HAP Contract”);
3. Project Leasing and Management Agreement by and between The Housing Authority of the City of Vineland and the Affordable Housing Corporation of Vineland;
4. All contracts, instruments, documents, licenses, permits, approvals, certificates, and applications including, but not limited to, building permits, water and sewer permits, allocations, zoning and planning approvals, environmental approvals and permits;
5. All plans, specifications, surveys, drawings, including but not limited to all engineering and architectural plans, specifications, blueprints and data, all environmental studies, reports and data, and all reports, studies and/or data of any kind relating to the remediation, repair, renovation, development and construction of the Project or the marketing, sale, leasing, financing, use, occupancy or operation of all or any part of the Mortgaged Property or the Project, now owned or hereafter acquired;
6. All contracts and agreements with any contractor, subcontractor, materialman, material supplier, architect and engineer supplying labor or materials or performing work or services for or with respect to the Project pursuant to an agreement with Borrower, including but not limited to all construction contracts and the contract with any engineers, management agents, leasing agents, sales agents, service or maintenance agents, contractors, environmental consultants, experts, governmental authorities or other persons relating, directly or indirectly, to the use, occupancy, management, operation, ownership, leasing, marketing, financing, sale, maintenance, development, construction, renovation, remediation and/or repair of the all or any part of the Mortgaged Property and/or Project, whether now or hereafter existing or executed, including, without limitation, management agreements, equipment leases, construction contracts, municipal agreements, development agreements, environmental agreements, agreements of sale and personal property leases; and

together with all renewals, extensions and amendments thereto and thereof and together with all deposits, proceeds and other payments, including any franchise or hotel/motel agreements with respect to all of the foregoing, all whether now owned or hereafter acquired or existing and wheresoever located together with all books and records relating thereto, all present and future business records and information, including computer tapes and other storage media containing the same and computer programs and software (including, without limitation, source code, object code and related manuals and documentation and all licenses to use such software) for accessing and manipulating such information and, supporting obligations, accessories to, substitutions of, replacement of, parts to and accessions to the above property, all proceeds, products thereof and whatever may be received upon the sale, exchange, collection, redemption or other disposition thereof such as receipts or proceeds in whatever form, and whether original collateral or proceeds including without limitation cash proceeds and non cash proceeds, including without limitation all trade-ins, accounts, including contract rights, instruments, documents, goods, including but not limited to all furniture, fixtures, equipment, farm products, and inventory, vehicles, investment property, intellectual property, chattel paper, letter of credit rights, letters of credits, general intangibles, money, cash, bank accounts and deposits and all insurance proceeds payable by reason of loss or damage (collectively called the “Contracts”).

This Collateral is within the scope of the New Jersey Uniform Commercial Code pursuant to N.J.S.A. §12A:9-102 and N.J.S.A. §12A:9-109.