

ASSIGNMENT, ASSUMPTION AND CONSENT AGREEMENT
(Virginia Avenue Apartments MHSA Grant)

This Assignment, Assumption and Consent Agreement (“Agreement”) is dated _____, 2020, and is by and among the County of Contra Costa, a political subdivision of the State of California (the “County”), Rubicon Programs Incorporated, a California nonprofit public benefit corporation (“Seller”), and West County MHSA, LLC, a California limited liability company (“Buyer”).

RECITALS

- A. Seller is the owner of certain real property located at 903-919 Virginia Avenue in the City of Richmond, County of Contra Costa, State of California, as more particularly described in Exhibit A (the “Virginia Property”). The Virginia Property has been improved with a six-unit multifamily housing structure, together with a separate building containing an office and a community room. Seller is also the owner of certain real property located at 360-366 South 9th Street in the City of Richmond, County of Contra Costa, State of California, as more particularly described in Exhibit B (the “West Richmond Property”). The West Richmond Property has been improved with a four-unit multifamily housing structure. Together, the Virginia Property and the West Richmond Property are the “Property.”
- B. On March 12, 2008, the County made a revocable grant to Seller in the amount of Five Hundred Sixty-Four Thousand Three Hundred Thirty-Two Dollars (\$564,332) (the “Rubicon Grant”) in Proposition 63 (2004) Mental Health Services Act (“MHSA”) funds to enable Seller to rehabilitate the six-unit multifamily housing structure on the Virginia Property. The Rubicon Grant is evidenced by a MHSA Revocable Grant Agreement dated as of March 12, 2008 (the “Rubicon Grant Agreement”).
- C. As consideration for the Rubicon Grant, in addition to the Rubicon Grant Agreement, Seller entered into a Regulatory Agreement and Declaration of Restrictive Covenants dated as of March 12, 2008, which was recorded as Document Number 2008-0066594-00, in the official records of Contra Costa County (the “Rubicon Regulatory Agreement”). The term of the Rubicon Regulatory Agreement expires March 11, 2028.
- D. Seller’s obligations under the Rubicon Grant Agreement and the Rubicon Regulatory Agreement are secured by a Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing dated as of March 12, 2008, recorded as Document Number 2008-0066593-00, in the official records of Contra Costa County (the “Rubicon Deed of Trust”).
- E. Seller and Housing Consortium of the East Bay are parties to a Purchase and Sale Agreement dated as of October 18, 2019, as amended and assigned to Buyer, under which Buyer is acquiring the Property from Seller. To facilitate Buyer’s purchase of the Property from Seller, the County is making a revocable grant to Buyer in the amount of

One Million One Hundred Seventy-Five Thousand Dollars (\$1,175,000) (the “Grant”) pursuant to a MHSA Revocable Grant Agreement between the County and Buyer of even date herewith (the “West County Grant Agreement”).

- F. As consideration for the Grant and the County’s consent to Buyer’s acquisition of the Virginia Property, Buyer is entering into, among other agreements, (i) this Agreement, under which Buyer is assuming Seller’s rights and obligations under the Rubicon Grant Agreement, (ii) a Regulatory Agreement and Declaration of Restrictive Covenants of even date herewith, between the County and Buyer, evidencing County requirements applicable to the Grant and the Rubicon Grant, to be recorded against the Property (the “Regulatory Agreement”), and (iii) a Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing of even date herewith among Buyer, as trustor, Old Republic Title Company, as trustee, and the County, as beneficiary, that will encumber the Property to secure Grantee’s obligations and covenants under the West County Grant Agreement, the Rubicon Grant Agreement, and the Regulatory Agreement (the “Deed of Trust”).
- G. Simultaneously with the acquisition of the Virginia Property by Buyer, the County will reconvey the Rubicon Deed of Trust and terminate the Rubicon Regulatory Agreement.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. Representations of Seller. Seller represents and warrants that:
 - a. It has not previously assigned, pledged, hypothecated or otherwise transferred any of its rights, title, or interest in the Virginia Property, or its rights, title, or interest in the Rubicon Grant Agreement.
 - b. It has received the consent of all other existing lenders on the Virginia Property to the transfer of the Virginia Property, and the assignment and assumptions contemplated by this Agreement and that such actions will not constitute a default under any of such lenders’ loan documents.
 - c. No event has occurred and is continuing that would constitute a default and no event has occurred and is continuing that, with notice or the passage of time or both, would be an event of default under any of the documents evidencing the Rubicon Grant.
2. Consent to Transfer of Property. Subject to Buyer’s execution of this Agreement, the Regulatory Agreement, and the Deed of Trust, the County consents to the Assignment.

3. Assignment of Rubicon Grant.
 - a. Assignment. Seller hereby assigns to Buyer all of Seller's rights, title, and interest in and obligations under the Rubicon Grant Agreement effective upon the closing of Buyer's acquisition of the Virginia Property (the "Assignment").
 - b. Assumption. Buyer hereby accepts the Assignment and assumes Seller's obligation to repay the Rubicon Grant in accordance with the terms of the Rubicon Grant Agreement.
4. No Change. Except for the Assignment, the terms of the Rubicon Grant Agreement are unchanged.
5. Title of Parts and Sections. The titles of the sections and subsections of this Agreement are inserted for convenience of reference only and are to be disregarded in interpreting any part of the Agreement's provisions.
6. Attorneys' Fees Enforcement. If any attorney is engaged by any party hereto to enforce or defend any provision of this Agreement, the prevailing party or parties are entitled to costs and reasonable attorneys' fees.
7. Successors and Assigns. This Agreement binds and inures to the benefit of the legal representatives, heirs, successors and assigns of the parties.
8. California Law. The laws of the State of California govern all matters arising out of this Agreement.
9. Counterparts. This Agreement may be signed by the different parties hereto in counterpart, each of which is deemed an original but all of which together constitute one and the same agreement.

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IN WITNESS WHEREOF, the parties are executing this Agreement as of the day first above written.

Rubicon Programs Incorporated, a California nonprofit public benefit corporation

By: _____

Name: _____

Its: _____

BUYER:

WEST COUNTY MHSA, LLC,
a California limited liability company

By: Housing Consortium of the East Bay,
a California nonprofit public benefit corporation, its sole member and manager

By: _____
Darin Lounds, Executive Director

COUNTY:

COUNTY OF CONTRA COSTA, a political
subdivision of the State of California

By: _____
Anna Roth
Director, Contra Costa County Health
Services

APPROVED AS TO FORM:

SHARON L. ANDERSON
County Counsel

By: _____
Kathleen Andrus
Deputy County Counsel

EXHIBIT A

LEGAL DESCRIPTION OF THE VIRGINIA PROPERTY

The land is situated in the State of California, County of Contra Costa, and is described as follows:

Lots 23, 24 and 25 in Block 46, as shown on the map of "Santa Fe", filed March 17, 1900, Map Book E, Page 102, Contra Costa County Records.

APN: 550-310-013

EXHIBIT B

LEGAL DESCRIPTION OF THE WEST RICHMOND PROPERTY

The land is situated in the State of California, County of Contra Costa, and is described as follows:

Lots 21 and 22 in Block 46, as shown on the Map of Santa Fe, filed March 17, 1900 in Book E of Maps, Page 102, in the Office of the County Recorder of Contra Costa County.

APN: 550-310-012