

MHSA REVOCABLE GRANT AGREEMENT

Between

COUNTY OF CONTRA COSTA

and

WEST COUNTY MHSA, LLC

VIRGINIA APARTMENTS AND WEST RICHMOND APARTMENTS

_____, 2020

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MHSA REVOCABLE GRANT AGREEMENT

Virginia Apartments and West Richmond Apartments

This MHSA Revocable Grant Agreement (the “Agreement”) is dated _____, 2020, and is between the COUNTY OF CONTRA COSTA, a political subdivision of the State of California (the “County”), and WEST COUNTY MHSA, LLC, a California limited liability company (“Grantee”).

RECITALS

A. Defined terms used but not defined in these recitals are as defined in Article 1 of this Agreement.

B. The County receives funds from the Mental Health Services Act (the “MHSA”) (originally through the California Housing Finance Agency) for housing purposes, which MHSA funds (“MHSA Funds”) are disbursed for various projects in the County and are administered by the County’s Health Services Department.

C. Rubicon Programs Incorporated, a California nonprofit public benefit corporation (“Rubicon”) 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”). Rubicon 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”). Together, the Virginia Property and the West Richmond Property are the “Property.” Grantee and Housing Consortium of the East Bay are parties to a purchase and sale agreement dated October 18, 2019, as amended and assigned to Grantee, under which Grantee is acquiring the Property from Rubicon (the “Purchase and Sale Agreement”).

D. Pursuant to a MHSA Revocable Grant Agreement dated as of March 12, 2008 (the “Rubicon Grant Agreement”), and a Regulatory Agreement and Declaration of Restrictive Covenants dated as of March 12, 2008, recorded as Document Number 2008-0066594-00, in the official records of Contra Costa County (the “Rubicon Regulatory Agreement”), the County granted to Rubicon MHSA funds in the amount of \$564,332 (the “Rubicon Grant”) to finance the rehabilitation of the six-unit residential building located on the Virginia Property (the “Virginia Improvements”). 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”). Under the terms of the Rubicon Regulatory Agreement, Rubicon agreed to maintain all six residential units on the Virginia Property for occupancy by Very Low Income Tenants who are also MHSA Eligible Tenants through March 11, 2028.

E. The West Richmond Property is the site of a four-unit residential building (the “West Richmond Improvements”). All four units are occupied by tenants who qualify as Very

Low Income Tenants who are MHSA Eligible Tenants, despite the West Richmond Property not being subject to the Rubicon Regulatory Agreement.

F. Grantee desires to accept from the County and the County desires to extend to Grantee a grant in the amount of One Million One Hundred Seventy-Five Thousand Dollars (\$1,175,000) of MHSA funds to assist in Grantee's acquisition of the Property from Rubicon, including closing costs. Acquisition of the Property is intended to assist in maintaining the supply of permanent supportive housing for persons who are homeless or at risk of chronic homelessness and are eligible for services under the MHSA.

G. As consideration for the Grant, simultaneous with the acquisition of the Property, Grantee is entering into (i) this Agreement, (ii) the Regulatory Agreement, which has a term of fifty-five (55) years and supersedes the Rubicon Regulatory Agreement, (iii) the Deed of Trust, which secures Grantee's obligations under this Agreement, the Rubicon Grant Agreement, and the Regulatory Agreement, and (iv) an Assignment, Assumption, and Consent Agreement of even date herewith with respect to the Rubicon Grant Agreement (the "Assignment and Assumption Agreement"), under which Grantee is assuming the Rubicon Grant and Rubicon's rights and obligations under the Rubicon Grant Agreement.

H. Simultaneously with the acquisition of the Property by Grantee, the County will reconvey the Rubicon Deed of Trust and terminate the Rubicon Regulatory Agreement.

The parties therefore agree as follows:

ARTICLE 1 DEFINITIONS AND EXHIBITS

Section 1.1 Definitions.

The following capitalized terms have the meanings set forth in this Section 1.1 wherever used in this Agreement, unless otherwise provided:

(a) "Agreement" has the meaning set forth in the first paragraph of this agreement.

(b) "County" has the meaning set forth in the first paragraph of this Agreement.

(c) "County Designee" means a service provider designated by the County in writing as the person or entity qualified to determine if prospective tenants for the Units are MHSA Eligible.

(d) "Deed of Trust" means the Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing of even date herewith among Grantee, as trustor, Old Republic Title Company, as trustee, and the County, as beneficiary, that will encumber the Development to secure Grantee's obligations and covenants under this Agreement, the Rubicon Grant Agreement, and the Regulatory Agreement.

- (e) “Default” has the meaning set forth in Section 5.1 below.
- (f) “Default Rate” means the lesser of the maximum rate permitted by law and ten percent (10%) per annum.
- (g) “Development” means the Improvements and the Property.
- (h) “Grant” has the meaning set forth in Section 2.1 below.
- (i) “Grant Documents” means this Agreement, the Regulatory Agreement and the Deed of Trust.
- (j) “Grantee” has the meaning set forth in the first paragraph of this Agreement.
- (k) “Hazardous Materials” has the meaning set forth in Section 3.5 below.
- (l) “Hazardous Materials Claim” has the meaning set forth in Section 3.5 below.
- (m) “Hazardous Materials Law” has the meaning set forth in Section 3.5 below.
- (n) “Improvements” means collectively, the Virginia Improvements and the West Richmond Improvements.
- (o) “MHSA” has the meaning set forth in paragraph B of the Recitals.
- (p) “MHSA Eligible” means a person certified by the County or the County Designee as having a serious mental disorder as defined in Welfare and Institutions Code Section 5600.3(a)(b) and (c), Unserved or Underserved (as defined in the Regulatory Agreement), and eligible to occupy a Unit financed with MHSA Funds or MHSA Funds.
- (q) “MHSA Eligible Tenant” means a Tenant that has at least one household member who is MHSA Eligible.
- (r) “MHSA Funds” has the meaning set forth in paragraph B of the Recitals.
- (s) “Parties” means the County and Grantee.
- (t) “Property” has the meaning set forth in paragraph C of the Recitals.
- (u) “Regulatory Agreement” means the Regulatory Agreement and Declaration of Restrictive Covenants of even date herewith, between the County and Grantee, evidencing County requirements applicable to the Grant and the Rubicon Grant to be recorded against the Property.
- (v) “Rubicon Deed of Trust” has the meaning set forth in paragraph D of the Recitals.

- (w) “Rubicon Grant” has the meaning set forth in paragraph D of the Recitals.
- (x) “Rubicon Grant Agreement” has the meaning set forth in paragraph D of the Recitals.
- (y) “Rubicon Regulatory Agreement” has the meaning set forth in paragraph D of the Recitals.
- (z) “Tenant” means the tenant household occupying a Unit.
- (aa) “Term” has the meaning set forth in Section 2.6 below.
- (bb) “Transfer” has the meaning set forth in Section 3.11 below.
- (cc) “Unit” means a residential unit on the Property.

Section 1.2 Exhibits.

The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

- Exhibit A: Legal Description of the Virginia Property
- Exhibit B: Legal Description of the West Richmond Property

ARTICLE 2 GRANT PROVISIONS

Section 2.1 Grant.

The County hereby grants to Grantee the Grant in the amount of up to One Million One Hundred Seventy-Five Thousand Dollars (\$1,175,000) (the “Grant”) consisting of MHSA Funds for the purposes set forth in Section 2.3 of this Agreement.

Section 2.2 Interest.

In the event of a Default, interest on the Grant will accrue at the Default Rate, beginning on the date the Default occurs and continuing until (i) the Grant is repaid in full or (ii) the Default is cured.

Section 2.3 Use of Grant Funds.

- (a) Grantee shall use the Grant to fund the acquisition of the Property, including closing costs.
- (b) Grantee may not use the Grant for any other purpose without the prior written consent of the County.

Section 2.4 Security.

Grantee shall secure its obligation to repay the Grant and the Rubicon Grant in the event of a default under this Agreement or the Rubicon Grant Agreement (as applicable) by executing the Deed of Trust and causing, or permitting, it to be recorded as a lien against the Property. All obligations of Grantee regarding the Rubicon Grant will terminate on March 11, 2028.

Section 2.5 Conditions Precedent to Disbursement of Grant Funds.

The County is not obligated to disburse the Grant, or to take any other action under the Grant Documents unless the following conditions precedent are satisfied prior to the disbursement:

(a) There exists no Default nor any act, failure, omission or condition that would constitute an event of Default under the Grant Documents.

(b) Grantee has executed and delivered the Grant Documents to the County and any other instruments and policies required under the Grant Documents.

(c) Grantee has delivered to the County a copy of a corporate authorizing resolution authorizing Grantee's execution of the Grant Documents.

(d) A title insurer reasonably acceptable to the County is unconditionally and irrevocably committed to issuing an ALTA Lender's Policy of title insurance insuring the priority of the Deed of Trust in the amount of the Grant and the Rubicon Grant, subject only to such exceptions and exclusions as may be reasonably acceptable to the County, and containing such endorsements as the County may reasonably require.

(e) The Deed of Trust and the Regulatory Agreement have been recorded against the Property in the Office of the Recorder of the County of Contra Costa.

(f) Grantee has furnished the County with evidence of the insurance coverage meeting the requirements of Section 3.12 below.

(g) The County has received a written draw request from Grantee, including certification that the condition set forth in Section 2.5(a) continues to be satisfied, and setting forth the amount of funds needed, and, where applicable, a copy of the bill or invoice covering a cost incurred.

Section 2.6 Repayment Schedule.

No repayment of the Grant is required if Grantee complies with the requirements of the Grant Documents for a term commencing on the date of this Agreement and continuing for fifty-five (55) years (the "Term"). The Regulatory Agreement will remain in effect for the entire Term, regardless of any repayment of the Grant.

Section 2.7 Non-Recourse.

Except as provided below, Grantee does not have any direct or indirect personal liability

for payment of the principal of, and interest on, the Grant and/or the Rubicon Grant, or the performance of the covenants of Grantee under the Deed of Trust. Following recordation of the Deed of Trust, the sole recourse of the County with respect to the amount of the Grant and the Rubicon Grant, interest on the Grant and the Rubicon Grant, and defaults by Grantee in the performance of its covenants under the Deed of Trust is to the property described in the Deed of Trust; provided, however, that nothing contained in the foregoing limitation of liability (a) limits or impairs enforcement against all such security for the Grant Agreement and Rubicon Grant Agreement of all the rights and remedies of the County thereunder, or (b) may be deemed in any way to impair the right of the County to assert the unpaid principal amount of the Grant and/or the Rubicon Grant as demand for money within the meaning and intendment of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the Grant and the Rubicon Grant, and payment of interest on the Grant and the Rubicon Grant and the performance of Grantee's obligations under the Deed of Trust, except as hereafter set forth; nothing contained herein is intended to relieve Grantee of its obligation to indemnify the County under Sections 3.5, and 6.4 of this Agreement, or liability for (i) fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges that may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by Grantee, other than in accordance with the Deed of Trust; and (iv) the misappropriation of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property.

ARTICLE 3 GRANT REQUIREMENTS

Section 3.1 Annual Operating Budget.

At least ninety (90) days prior to the close of each calendar year, Grantee shall provide to the County an annual budget for the operation of the Units as rental housing on the Property. The County shall review and approve or reject such budget provided by Grantee. If rejected by the County in whole or in part, Grantee shall submit a new or corrected budget within thirty (30) calendar days of notification of the County's rejection and the reasons therefor. The provisions of this Section 3.1 relating to time periods for resubmission of new or corrected budgets will continue to apply until the budget is approved by the County.

Section 3.2 Information.

Grantee shall provide any information reasonably requested by the County in connection with the Property and compliance with the Grant Documents, including (but not limited to) information related to Grantee's use of the Grant funds.

Section 3.3 Records.

(a) Grantee shall keep and maintain at the Property, or elsewhere with the County's written consent, full, complete and appropriate books, records and accounts relating to

the operation of the Units as rental housing at the Property, including all such books, records and accounts necessary or prudent to evidence and substantiate in full detail Grantee's compliance with the terms and provisions of the Grant Documents. Books, records and accounts relating to Grantee's compliance with the terms, provisions, covenants and conditions of the Grant Documents are to be kept and maintained in accordance with generally accepted accounting principles consistently applied, and are to be consistent with the requirements of this Agreement. All such books, records, and accounts are to be open to and available for inspection and copying by the County, its auditors or other authorized representatives at reasonable intervals during normal business hours. Copies of all tax returns and other reports that Grantee may be required to furnish to any government agency are to be open for inspection by the County at all reasonable times at the place that the books, records and accounts of Grantee are kept. Grantee shall preserve such records for a period of not less than five (5) years after the creation of such records. If any litigation, claim, negotiation, audit exception, monitoring, inspection or other action relating to the use of the Grant is pending at the end of the record retention period stated herein, then Grantee shall retain the records until the action and all related issues are resolved. Records must be kept accurate and current. Required records include but are not limited to Records documenting compliance with the fair housing and equal opportunity requirements, as applicable.

(b) The County shall notify Grantee of any records it deems insufficient. Grantee will have fifteen (15) calendar days after the receipt of such notice to correct any deficiency in the records specified by the County in the notice, or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then Grantee shall begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

Section 3.4 Audits.

Each year, Grantee shall provide the County with a copy of Grantee's annual audit, which must include information on all of Grantee's activities and not just those pertaining to the Property. In addition, the County or any designated agent or employee of the County at any time is entitled to audit all of Grantee's books, records, and accounts pertaining thereto. The audit will be conducted during normal business hours at the principal place of business of Grantee and other places where records are kept. Immediately after the completion of an audit, the County will deliver a copy of the results of the audit to Grantee.

Section 3.5 Hazardous Materials.

(a) Grantee shall keep and maintain the Property in compliance with, and may not cause or permit the Property to be in violation of, federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under or about the Property including, but not limited to, soil and ground water conditions. Grantee may not use, generate, manufacture, store or dispose of on, under, or about the Property or transport to or from the Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials") except as may be customarily kept and used in and about residential property of this type.

(b) Grantee shall immediately advise the County in writing if at any time it receives written notice of (i) an enforcement, cleanup, removal or other government or regulatory action instituted, completed or threatened against Grantee or the Property pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, ("Hazardous Materials Law"); (ii) all claims made or threatened by any third party against Grantee or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to as "Hazardous Materials Claims"); and (iii) Grantee's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be classified as "border-zone property" (as defined in California Health and Safety Code Section 25117.4) under the provision of California Health and Safety Code, Sections 25220 et seq., or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law.

(c) The County has the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Grantee. Grantee shall indemnify and hold harmless the County and its board members, supervisors, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under, or about the Property including without limitation: (a) all foreseeable consequential damages; (b) the costs of any required or necessary repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (c) all reasonable costs and expenses incurred by the County in connection with clauses (a) and (b), including but not limited to reasonable attorneys' fees and consultant's fees. This indemnification applies whether or not any government agency has issued a cleanup order. Losses, claims, costs, suits, liability, and expenses covered by this indemnification provision include, but are not limited to: (1) losses attributable to diminution in the value of the Property; (2) loss or restriction of use of rentable space on the Property; (3) adverse effect on the marketing of any rental space on the Property; and (4) penalties and fines levied by, and remedial or enforcement actions of any kind issued by any regulatory agency (including but not limited to the costs of any required testing, remediation, repair, removal, cleanup or detoxification of the Property and surrounding properties). This obligation to indemnify shall survive termination of this Agreement.

(d) Without the County's prior written consent, Grantee may not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Property, and may not enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in the County's reasonable judgment, impair the value of the County's security hereunder; provided, however, that the County's prior consent is not necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain the County's consent before taking such action, provided that in such event Grantee shall notify the County as

soon as practicable of any action so taken. The County agrees not to withhold its consent, where such consent is required hereunder, if (i) a particular remedial action is ordered by a court of competent jurisdiction, (ii) Grantee will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; or (iii) Grantee establishes to the reasonable satisfaction of the County that there is no reasonable alternative to such remedial action that would result in less impairment of the County's security hereunder.

(e) Grantee hereby acknowledges and agrees that (i) this Section 3.5 is intended as the County's written request for information (and Grantee's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5, and (ii) each representation and warranty in this Agreement (together with any indemnity obligation applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by the Parties to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

(f) In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the County's or the trustee's rights and remedies under the Deed of Trust, the County may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Property and (2) exercise (i) the rights and remedies of an unsecured creditor, including reduction of its claim against Grantee to judgment, and (ii) any other rights and remedies permitted by law. For purposes of determining the County's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), Grantee will be deemed to have willfully permitted or acquiesced in a release or threatened release of Hazardous Materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of Hazardous Materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and Grantee knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) attorneys' fees, incurred by the County in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the lesser of ten percent (10%) and the maximum rate permitted by law, until paid, will be added to the indebtedness secured by the Deed of Trust and will be due and payable to the County upon its demand made at any time following the conclusion of such action.

Section 3.6 Maintenance and Damage.

(a) During the operation of the rental housing on the Property, Grantee shall maintain the Development and the Property in good repair and in a neat, clean and orderly condition. If there arises a condition in contravention of this requirement, and if Grantee has not cured the condition within thirty (30) days after receiving a County notice of the condition, then in addition to any other rights available to the County, the County has the right to perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Property.

(b) If economically feasible in the County's reasonable judgment after consultation with Grantee, if any improvement now or in the future on the Property is damaged or destroyed, then Grantee shall, at its cost and expense, diligently undertake to repair or restore such improvement consistent with the plans and specifications approved by the County with such changes as have been approved by the County. Such work or repair is to be commenced no later than the later of one hundred twenty (120) days, or such longer period approved by the County in writing, after the damage or loss occurs or thirty (30) days following receipt of the insurance proceeds, and is to be completed within one year thereafter. Any insurance proceeds collected for such damage or destruction are to be applied to the cost of repairs or restoration and, if the insurance proceeds are insufficient for such purpose, then Grantee is to make up the deficiency.

Section 3.7 Fees and Taxes.

Grantee is solely responsible for the payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property or the Development to the extent owned by Grantee, and shall pay such charges prior to delinquency. However, Grantee is not required to pay and discharge any such charge so long as (a) the legality of the charge is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by the County, Grantee deposits with the County any funds or other forms of assurance that the County in good faith from time to time determines appropriate to protect the County from the consequences of the contest being unsuccessful.

Section 3.8 Notice of Litigation.

Grantee shall promptly notify the County in writing of any litigation that has the potential to materially affect Grantee or the Property and of any claims or disputes that involve a material risk of such litigation.

Section 3.9 Operation of Units as MHSA Eligible Housing.

Grantee shall operate the Units as permanent affordable housing for MHSA Eligible Tenants consistent with (i) any State of California requirements for use of the MHSA Funds, and (ii) the Regulatory Agreement.

Section 3.10 Nondiscrimination.

Grantee covenants by and for itself and its successors and assigns that there will be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age, disability, sex, sexual orientation, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor may Grantee or any person claiming under or through Grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property. The foregoing covenant shall run with the land.

Section 3.11 Transfer.

(a) For purposes of this Agreement, "Transfer" means any sale, assignment,

or transfer, whether voluntary or involuntary, of (i) any rights and/or duties under this Agreement, and/or (ii) any interest in the Development, including (but not limited to) a fee simple interest, a joint tenancy interest, a life estate, a partnership interest, a leasehold interest, a security interest, or an interest evidenced by a land contract by which possession of the Development is transferred and Grantee retains title. The term "Transfer" excludes the leasing of any single Unit to an occupant in compliance with the Regulatory Agreement.

(b) No Transfer is permitted without the prior written consent of the County, which the County may withhold in its sole discretion. The Grant is automatically due in full upon any Transfer made without the prior written consent of the County.

Section 3.12 Insurance Requirements.

Grantee shall maintain the following insurance coverage throughout the Term of the Grant:

(a) Worker's Compensation insurance to the extent required by law, including Employer's Liability coverage, with limits not less than One Million Dollars (\$1,000,000) each accident.

(b) Commercial General Liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations.

(c) Automobile Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable.

(d) Property insurance covering the Development, in form appropriate for the nature of such property, covering all risks of loss, excluding earthquake, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the County, naming the County as a Loss Payee, as its interests may appear.

(e) The required insurance is to be provided under an occurrence form, and Grantee shall maintain the coverage described in subsections (a) through (d) continuously throughout the Term. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs is included in the annual aggregate limit, the annual aggregate limit must be three times the occurrence limits specified above.

(f) Commercial General Liability, Automobile Liability and Property insurance policies must be endorsed to name as an additional insured the County and its officers, agents, employees and members of the County Board of Supervisors.

(g) All policies must contain (a) an agreement that the policies are primary and non-contributing with any insurance that may be carried by the County; (b) a provision that no act or omission of Grantee affects or limits the obligation of the insurance carrier to pay the

amount of any loss sustained; and (c) a waiver by the insurer of all rights of subrogation against the County and its authorized parties in connection with any loss or damage thereby insured against.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF GRANTEE

Section 4.1 Representations and Warranties.

Grantee hereby represents and warrants to the County as follows:

(a) Organization. Grantee is duly organized, validly existing and in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted.

(b) Authority of Grantee. Grantee has full power and authority to execute and deliver this Agreement and to accept the Grant, to execute and deliver the Grant Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Authority of Persons Executing Documents. This Agreement and the Grant Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement are being executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Grantee, and all actions required under Grantee's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and the Grant Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

(d) Valid Binding Agreements. This Agreement and the Grant Documents and all other documents or instruments being executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered, constitute, legal, valid and binding obligations of Grantee enforceable against it in accordance with their respective terms.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement and the Grant Documents or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, conflicts with or will result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on Grantee, or any provision of the organizational documents of Grantee, or constitute a breach of or a default under any agreement to which Grantee is a party, or result in the creation or imposition of any lien upon any assets or property of Grantee, other than liens established pursuant hereto.

(f) Pending Proceedings. Grantee is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there

are no claims, actions, suits or proceedings pending or, to the knowledge of Grantee, threatened against or affecting Grantee, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Grantee, materially impair the security to be given to the County pursuant hereto.

(g) Title to Land. At the time of recordation of the Deed of Trust, Grantee will have good and marketable fee title to the Development and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than liens for current real property taxes and liens in favor of the County or approved in writing by the County.

(h) Financial Statements. The financial statements of Grantee and other financial data and information furnished by Grantee to the County fairly and accurately present the information contained therein. As of the date of this Agreement, there has not been any adverse, material change in the financial condition of Grantee from that shown by such financial statements and other data and information.

(i) Sufficient Funds. Grantee holds sufficient funds and/or binding commitments for sufficient funds to complete the acquisition of the Property.

(j) Taxes. Grantee and its subsidiaries have filed all federal and other material tax returns and reports required to be filed, and have paid all federal and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their income or the Property otherwise due and payable, except those that are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with generally accepted accounting principles. There is no proposed tax assessment against Grantee or any of its subsidiaries that could, if made, be reasonably expected to have a material adverse effect upon the Property, liabilities (actual or contingent), operations, condition (financial or otherwise) or prospects of Grantee and its subsidiaries, taken as a whole, that would be expected to result in a material impairment of the ability of Grantee to perform under any Grant Document to which it is a party, or a material adverse effect upon the legality, validity, binding effect or enforceability against Grantee of any Grant Document.

ARTICLE 5 DEFAULT AND REMEDIES

Section 5.1 Events of Default.

Each of the following shall constitute a “Default” by Grantee under this Agreement:

(a) Breach of Covenants. Failure by Grantee to duly perform, comply with, or observe any of the conditions, terms, or covenants of any of the Grant Documents, and such failure having continued uncured for thirty (30) days after receipt of written notice thereof from the County to Grantee or, if the breach cannot be cured within thirty (30) days, Grantee will not be in breach so long as Grantee is diligently undertaking to cure such breach and such breach is cured within ninety (90) days; provided, however, that if a different period or notice requirement is specified under any other section of this Article 5, the specific provisions control.

(b) Default Under Loans. A default is declared under any other financing for the Property by the lender of such financing.

(c) Insolvency. A court having jurisdiction makes or enters any decree or order (i) adjudging Grantee to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of Grantee or seeking any arrangement for Grantee under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of Grantee in bankruptcy or insolvency or for any of their properties, (iv) directing the winding up or liquidation of Grantee if any such decree or order described in clauses (i) to (iv), inclusive, continues unstayed or undischarged for a period of ninety (90) days; or (v) Grantee admits in writing its inability to pay its debts as they fall due or voluntarily submits to or files a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive. The occurrence of any of the events of Default in this paragraph will automatically trigger, without the need for any action by the County, Grantee's obligation to repay the Grant in accordance with the terms of the Grant Documents.

(d) Assignment; Attachment. Grantee assigns its assets for the benefit of its creditors or suffers a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon is returned or released within ninety (90) calendar days after such event or, if sooner, prior to sale pursuant to such sequestration, attachment, or execution. The occurrence of any of the events of Default in this paragraph will automatically trigger, without the need for any action by the County, Grantee's obligation to repay the Grant in accordance with the terms of the Grant Documents.

(e) Suspension; Termination. Grantee voluntarily suspends its business or commences termination or dissolution.

(f) Liens on Property and the Project. Any claim of lien (other than liens approved in writing by the County) is filed against the Property or any part thereof, or any interest or right made appurtenant thereto, or the service of any notice to withhold proceeds of the Grant and the continued maintenance of the claim of lien or notice to withhold for a period of twenty (20) days, without discharge or satisfaction thereof or provision therefor (including, without limitation, the posting of bonds) satisfactory to the County.

(g) Condemnation. The condemnation, seizure, or appropriation of all or the substantial part of the Property.

(h) Unauthorized Transfer. Any Transfer other than as permitted by Section 3.11.

(i) Representation or Warranty Incorrect. Any Grantee representation or warranty contained in this Agreement, or in any application, financial statement, certificate, or report submitted to the County in connection with any of the Grant Documents, proving to have been incorrect in any material respect when made. Default may be declared under this subsection only if the failure of representation or warranty has a material adverse effect on the rental of the Units in compliance with the Grant Documents.

If Grantee is a limited partnership or limited liability company, then the occurrence of any of the events set forth in subsections (c), (d), or (e) by Grantee's general partner or managing member, as applicable, shall also constitute a Default under this Agreement.

Section 5.2 Remedies.

The occurrence of any Default hereunder following the expiration of all applicable notice and cure periods will, either at the option of the County or automatically where so specified, relieve the County of any obligation to make or continue the Grant and give the County the right to proceed with any and all remedies set forth in this Agreement and the Grant Documents, including but not limited to the following:

(a) Repayment of Grant. The right to cause the Grant, together with any accrued interest thereon as described in Section 2.2, to become immediately due and payable. Grantee waives all right to presentment, demand, protest or notice of protest or dishonor. The County may proceed to enforce repayment of the Grant and to exercise any or all rights afforded to the County as a creditor and secured party under the law including the Uniform Commercial Code, including foreclosure under the Deed of Trust. Grantee will be liable to pay the County on demand all reasonable expenses, costs and fees (including, without limitation, reasonable attorney's fees) paid or incurred by the County in connection with the collection of the Grant and the preservation, maintenance, protection, sale, or other disposition of the security given for the Grant.

(b) Specific Performance. The right to mandamus or other suit, action or proceeding at law or in equity to require Grantee to perform its obligations and covenants under the Grant Documents or to enjoin acts on things that may be unlawful or in violation of the provisions of the Grant Documents.

(c) Right to Cure at Grantee's Expense. The right (but not the obligation) to cure any monetary default by Grantee under a grant or loan secured by the Development. Grantee agrees to reimburse the County for any funds advanced by the County to cure a monetary default by Grantee upon demand therefor, together with interest thereon at the Default Rate from the date of expenditure until the date of reimbursement.

Section 5.3 Right of Contest.

Grantee has the right to contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute a Default hereunder. Any such contest must be prosecuted diligently and in a manner unprejudicial to the County or the rights of the County hereunder.

Section 5.4 Remedies Cumulative.

No right, power, or remedy given to the County by the this Agreement or the Grant Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the County by the terms of any such instrument, or by any statute or otherwise against Grantee and any other person. The failure or delay on the part of the County to exercise any such rights and remedies does not operate as a waiver thereof, and any single or partial

exercise by the County of any such right or remedy does not preclude any other or further exercise of such right or remedy, or any other right or remedy.

ARTICLE 6 GENERAL PROVISIONS

Section 6.1 Relationship of Parties.

Nothing contained in this Agreement may be interpreted or understood by any of the Parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the County and Grantee or its agents, employees or contractors, and Grantee will at all times be deemed an independent contractor and to be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement. Grantee has and retains the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the performance of services under the Agreement. With respect to the operation of the Units as rental housing, Grantee is solely responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding, and all other laws and regulations governing such matters, and is to include requirements in each contract that contractors are solely responsible for similar matters relating to their employees. Grantee is solely responsible for its own acts and those of its agents and employees.

Section 6.2 No Claims.

Nothing contained in this Agreement creates or justifies any claim against the County by any person that Grantee may have employed or with whom Grantee may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the purchase of the Property, the operation of the Units as rental housing, and Grantee shall include similar requirements in any contracts entered into for the operation of the Units.

Section 6.3 Amendments.

No alteration or variation of the terms of this Agreement is valid unless made in writing by the Parties.

Section 6.4 Indemnification.

Grantee shall indemnify, defend and hold the County harmless against any and all claims, suits, actions, losses and liability of every kind, nature and description made against it and expenses (including reasonable attorneys' fees) that arise out of or in connection with this Agreement, including but not limited to the purchase of the Property, and operation of the Units as rental housing, except to the extent such claim arises from the grossly negligent or willful misconduct of the County, its agents, and its employees. The provisions of this Section shall survive the expiration of the Term and the reconveyance of the Deed of Trust.

Section 6.5 Non-Liability of County Officials, Employees and Agents.

No member, official, employee or agent of the County is personally liable to Grantee in the event of any default or breach by the County under the terms of this Agreement.

Section 6.6 No Third-Party Beneficiaries.

There shall be no third-party beneficiaries to this Agreement.

Section 6.7 Notices, Demands and Communications.

Formal notices, demands, and communications between the Parties shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the Parties as follows:

County: County of Contra Costa
Department of Conservation and Development
30 Muir Road
Martinez, CA 94553
Attention: Affordable Housing Program Manager

Grantee: West County MHSA, LLC
c/o Housing Consortium of the East Bay
410 7th Street, Suite 203
Oakland, CA 94607
Attn: Executive Director

Notices, demands and communications may be sent in the same manner to any other address the affected Party may from time to time designate by mail, as provided in this Section 6.7. Receipt will be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

Section 6.8 Applicable Law.

This Agreement is governed by the laws of the State of California.

Section 6.9 Parties Bound.

Except as otherwise limited herein, the provisions of this Agreement bind and inure to the benefit of the Parties and their heirs, executors, administrators, legal representatives, successors, and assigns. This Agreement is intended to run with the land and binds Grantee and its successors and assigns in the Property for the entire Term, and the benefit hereof inures to the benefit of the County and its successors and assigns.

Section 6.10 Attorneys' Fees.

If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing

Party has the right to recover its reasonable attorneys' fees and costs of suit from the other Party.

Section 6.11 Severability.

If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions will continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 6.12 Waivers.

Any waiver by the County of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the County to act on any breach or default of Grantee or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Grantee to perform any obligation under this Agreement does not operate as a waiver or release from any of its obligations under this Agreement. Consent by the County to any act or omission by Grantee may not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the County's written consent to future waivers.

Section 6.13 Title of Parts and Sections.

Any titles of the sections or 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.

Section 6.14 Entire Understanding of the Parties.

This Agreement, the Regulatory Agreement and the Deed of Trust constitute the entire understanding and agreement of the Parties with respect to the Grant.

Section 6.15 Multiple Originals; Counterpart.

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Remainder of Page Intentionally Left Blank

The Parties are signing this Agreement as of the first above written.

COUNTY:

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

By: _____
Anna Roth
Health Services Director

GRANTEE:

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

APPROVED AS TO FORM:

SHARON L. ANDERSON,
County Counsel

By: _____
Kathleen M. 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