

RECORDING REQUESTED PURSUANT  
AND WHEN RECORDED MAIL TO:

Contra Costa County  
Department of Conservation and Development  
30 Muir Road  
Martinez, CA 94553  
Attn: Assistant Deputy Director

No fee for recording pursuant to  
Government Code Section 27383 and 27388.1

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SUBORDINATION AND INTERCREDITOR AGREEMENT

**(Hacienda Heights)**

This Subordination and Intercreditor Agreement (the "Agreement") is dated May \_\_\_\_, 2021, and is among the Housing Authority of the City of Richmond, a public body corporate and politic (the "Housing Authority"), the County of Contra Costa, a political subdivision of the State of California (the "County"), and Richmond Hacienda, L.P., a California limited partnership ("Borrower"), with reference to the following facts:

RECITALS

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

B. The Housing Authority is the owner of that certain real property located at 1300 Roosevelt Avenue, in Richmond, California as more particularly described in Exhibit A (the "Property"). Concurrently herewith Borrower is entering into a ground lease with the Housing Authority, under which Borrower is leasing the Property from the Housing Authority for a term of ninety-nine (99) years pursuant to a ground lease dated May \_\_, 2021, (the "Ground Lease") and thereby acquiring a leasehold interest in the Property for ninety-nine (99) years (the "Leasehold Interest"). A memorandum of ground lease will be recorded against the Property in the Office of the Recorder of the County of Contra Costa that provides notice of the existence of the Ground Lease.

C. The Property has been improved with one hundred and fifty (150) units of housing and related improvements (the "Existing Improvements"). Borrower is buying the Existing Improvements from the Housing Authority pursuant to a purchase and sale agreement dated September 23, 2020 (the "Purchase and Sale Agreement"). Borrower intends to rehabilitate the Existing Improvements into an affordable housing development with one hundred forty-eight (148) units available for rental to extremely low-, very low-, and low-income senior households, two (2) manager's units, and attendant site improvements (collectively, the "Improvements"). Together, (i) the Leasehold Interest, (ii) Borrower's fee interest in the Existing Improvements, and (iii) and (ii) Borrower's fee interest in the Improvements, are the "Development."

D. The County has received Community Development Block Grant Program ("CDBG") funds from the United States Department of Housing and Urban Development ("HUD") under Title I of the Housing and Community Development Act of 1974, as amended ("CDBG Funds"). The County has agreed to provide a loan of CDBG Funds to Borrower in the amount of [up to One Million Eight Hundred Thousand Dollars (\$1,800,000)] (the "County Loan").

E. The County Loan is evidenced by the following documents: (i) a Development Loan Agreement between the County and Borrower of even date herewith (the "County Loan Agreement"), (ii) a promissory note executed by Borrower for the benefit of the County in the amount of the County Loan (the "County Note"), (iii) a Leasehold Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing of even date herewith among Borrower, as trustor, Old Republic Title Company, as trustee, and the County, as beneficiary, recorded against the Development concurrently herewith (the "County Deed of Trust"), and (iv) a Regulatory Agreement and Declaration of Restrictive Covenants of even date herewith, between the County and Borrower recorded against the Development concurrently herewith (the "County Regulatory Agreement"). The County Deed of Trust and the County Regulatory Agreement are collectively referred to as the "County Recorded Documents."

F. The Housing Authority has agreed to provide a seller carry-back loan to Borrower in the amount of [Three Million One Hundred Nineteen Thousand Two Hundred Seventy-Six Dollars (\$3,119,276)] (the "Housing Authority Loan").

G. The Housing Authority Loan is evidenced by the following documents (among others): (i) the Purchase and Sale Agreement; (ii) a Leasehold Deed of Trust with Assignment of Rents and Security Agreement executed by Borrower for the benefit of the Housing Authority recorded against the Development concurrently herewith (the "Housing Authority Deed of Trust"); and (iii) a Promissory Note executed by Borrower for the benefit of the Housing Authority in the amount of the Housing Authority Loan (the "Housing Authority Note"). In connection with the Ground Lease, the Housing Authority and Borrower have entered into a Regulatory Agreement and Declaration of Restrictive Covenants, recorded against the Development concurrently herewith (the "Housing Authority Regulatory Agreement"). The Housing Authority Deed of Trust and the Housing Authority Regulatory Agreement are collectively referred to as the "Housing Authority Recorded Documents."

H. The Housing Authority and the County desire (i) that the Housing Authority Recorded Documents and the County Recorded Documents have the relative priority set forth below, and (iii) to divide the Lenders' Share of Residual Receipts, as described herein.

NOW, THEREFORE, the Parties agree as follows:

#### AGREEMENT

1. Definitions. The following terms have the following meanings:

(a) "Annual County Loan Payment" has the meaning in Section 2(a).

2(b). (b) "Annual Housing Authority Loan Payment" has the meaning in Section

(c) "Annual Operating Expenses" means for each calendar year, the following costs reasonably and actually incurred for operation and maintenance of the Development:

- i. ground rent payments in the amount set forth in the Ground Lease;
- ii. property taxes and assessments imposed on the Development;
- iii. debt service currently due on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Development) on the Permanent Bank Loan;
- iv. on-site service provider fees for tenant social services, provided the County and Housing Authority have approved, in writing, the plan and budget for such services before such services begin;
- v. fees paid to the Issuer with respect to the Bonds;
- vi. payment to HCD of a portion of the accrued interest on the HCD MHP Loan pursuant to California Code of Regulations, Title 25, Section 7308;
- vii. property management fees and reimbursements, on-site property management office expenses, and salaries of property management and maintenance personnel, not to exceed amounts that are standard in the industry and which are pursuant to a management contract approved by the County and the Housing Authority;
- viii. the Partnership/Asset Fee;
- ix. fees for accounting, audit, and legal services incurred by Borrower's general partner in the asset management of the Development, not to exceed amounts that are standard in the industry, to the extent such fees are not included in the Partnership/Asset Fee;
- x. premiums for insurance required for the Improvements to satisfy the requirements of any lender of Approved Financing;
- xi. utility services not paid for directly by tenants, including water, sewer, and trash collection;
- xii. maintenance and repair expenses and services;
- xiii. any annual license or certificate of occupancy fees required for operation of the Development;
- xiv. security services;

- xv. advertising and marketing;
- xvi. cash deposited into the Replacement Reserve Account in the amount set forth in Section 4.1(a) of the County Loan Agreement;
- xvii. cash deposited into the Operating Reserve Account to maintain the amount set forth in Section 4.1(b) of the County Loan Agreement (excluding amounts deposited to initially capitalize the account);
- xviii. extraordinary operating costs specifically approved in writing by the County and the Housing Authority;
- xix. payments of deductibles in connection with casualty insurance claims not normally paid from reserves, the amount of uninsured losses actually replaced, repaired or restored, and not normally paid from reserves, and other ordinary and reasonable operating expenses approved in writing by the County and the Housing Authority and not listed above.

Annual Operating Expenses do not include the following: depreciation, amortization, depletion or other non-cash expenses, initial deposits to capitalize a reserve account, any amount expended from a reserve account, and any capital cost associated with the Development.

(d) "Approved Development Budget" means the proforma development budget, including sources and uses of funds, as approved by the County, and attached as Exhibit B to the County Loan Agreement.

(e) "Approved Financing" means all of the following loans, grants, equity, and operating subsidy obtained by Borrower and approved by the County and the Housing Authority for the purpose of financing the acquisition of the Leasehold Interest and construction of the Improvements in addition to the County Loan and the Housing Authority Loan:

- i. multi-family housing revenue tax exempt bonds in the approximate amount of Thirty-Seven Million Four Hundred Fifty-Two Thousand Six Hundred Five Dollars (\$37,452,605) issued by the California Municipal Finance Authority that are purchased by the Bank and the sale proceeds of which are loaned to Borrower (the "Bank Tax-Exempt Construction Loan") which will convert to a permanent loan in the amount of Fourteen Million Three Hundred Sixty-Seven Thousand Dollars (\$14,367,000) (the "Permanent Bank Loan");

- ii. a taxable construction loan from the Bank in the approximate amount of Eighteen Million Four Hundred Thirty-Two Thousand Two Hundred Sixty Dollars (\$18,432,260) (the "Bank Taxable Construction Loan");

- iii. permanent loan of Multifamily Housing Program funds from the California Department of Housing and Community Development ("HCD") in the approximate amount of Sixteen Million Nine Hundred Forty-Nine Thousand Eight Hundred Five Dollars (\$16,949,805) (the "MHP HCD Loan");

iv. construction/permanent loan from Mercy in the approximate amount of Seven Million Dollars (\$7,000,000) (the "Sponsor Loan");

v. Low Income Housing Tax Credit investor equity funds in the approximate amount of Thirty-Three Million Two Hundred Eighty-Seven Thousand Five Hundred Forty-Five Dollars (\$33,287,545) (the "Tax Credit Investor Equity") provided by the Investor Limited Partner; and

vi. capital contribution from Borrower's general partner in the approximate amount of One Hundred Dollars (\$100) (the "GP Capital Contribution").

(f) "Bank" means JP Morgan Chase Bank, N.A., and its successors and assigns.

(e)(ii). (g) "Bank Taxable Construction Loan" has the meaning set forth in Section 1

(h) "Bank Tax-Exempt Construction Loan" has the meaning set forth in Section 1(e)(i).

(i) "Borrower" has the meaning set forth in the first paragraph of this Agreement.

(j) "CDBG" has the meaning set forth in Paragraph D of the Recitals.

(k) "CDBG Funds" has the meaning set forth in Paragraph D of the Recitals.

(l) "City" means the City of Richmond, California, a municipal corporation.

(m) "County Loan" has the meaning set forth in Paragraph D of the Recitals.

(n) "Completion Date" means the date a final certificate of occupancy, or equivalent document is issued by the City to certify that the Development may be legally occupied.

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

(p) "County Additional Prorata Share" means the result obtained by dividing County Loan by the sum of the County Loan and the Housing Authority Loan.

(q) "County Deed of Trust" has the meaning set forth in Paragraph E of the Recitals.

(r) "County Loan Agreement" has the meaning set forth in Paragraph E of the Recitals.

(s) "County Loan Prorata Percentage" means the result, expressed as a percentage, obtained by dividing the County Loan, by the sum of the County Loan, the Housing Authority Loan, and the MHP HCD Loan, to the extent such loan funds are disbursed.

- (t) "County Note" has the meaning set forth in Paragraph E of the Recitals.
- (u) "County Recorded Documents" has the meaning set forth in Paragraph E of the Recitals.
- (v) "County Regulatory Agreement" has the meaning set forth in Paragraph E of the Recitals.
- (w) "Default Rate" means a rate of interest equal to the lesser of the maximum rate permitted by law and ten percent (10%) per annum.
- (x) "Development" has the meaning set forth in Paragraph C of the Recitals.
- (y) "Enforcing Party" has the meaning set forth in Section 7 below.
- (z) "Existing Improvements" has the meaning set forth in Paragraph C of the Recitals.
- (aa) "Fifteen Year Compliance Period" means the fifteen (15)-year compliance period as described in Section 42(i)(1) of the Internal Revenue Code of 1986, as amended.
- (bb) "Final Cost Certification" means the Final Cost Certification Sources and Uses of Funds prepared by Borrower for the Development that (1) Borrower submits to the California Tax Credit Allocation Committee, and (2) has been prepared using generally accepted accounting standards in effect in the United States of America from time to time, consistently applied.
- (cc) "Final Development Cost" means the total of the cost of acquisition of the Leasehold Interest and construction of the Improvements as shown on the Final Cost Certification.
- (dd) "Foreclosure Net Proceeds" means the proceeds that result from a foreclosure, or any other action, whether judicial or non-judicial, less (i) all amounts paid to any senior lien holder, and (ii) expenses incurred by a lender that is a Party to this Agreement in connection with such foreclosure or other action.
- (ee) "GP Capital Contribution" has the meaning set forth in Section 1(e)(vi).
- (ff) "Gross Revenue" means for each calendar year, all revenue, income, receipts, and other consideration actually received from the operation and leasing of the Development. Gross Revenue includes, but is not limited to:
  - i. all rents, fees and charges paid by tenants;
  - ii. Section 8 payments and other rental or operating subsidy payments received for the dwelling units;

- iii. deposits forfeited by tenants;
- iv. all cancellation fees;
- v. price index adjustments and any other rental adjustments to leases or rental agreements;
- vi. net proceeds from vending and laundry room machines;
- vii. the proceeds of business interruption or similar insurance not paid to senior lenders;
- viii. the proceeds of casualty insurance not used to rebuild the Development and not paid to senior lenders; and
- ix. condemnation awards for a taking of part or all of the Development for a temporary period.

Gross Revenue does not include tenants' security deposits, loan proceeds, unexpended amounts (including interest) in any reserve account, required deposits to reserve accounts, capital contributions or similar advances.

- (gg) "Ground Lease" has the meaning set forth in Paragraph B of the Recitals.
- (hh) "HCD" has the meaning set forth in Section 1(e)(iii).
- (ii) "Housing Authority" has the meaning set forth in the first paragraph of this Agreement.
- (jj) "Housing Authority Additional Prorata Share" means the result obtained by dividing Housing Authority Loan by the sum of the County Loan and the Housing Authority Loan.
- (kk) "Housing Authority Deed of Trust" has the meaning set forth in Paragraph G of the Recitals.
- (ll) "Housing Authority Loan" has the meaning set forth in Paragraph F of the Recitals.
- (mm) "Housing Authority Note" has the meaning set forth in Paragraph G of the Recitals.
- (nn) "Housing Authority Loan Prorata Percentage" means the result, expressed as a percentage, obtained by dividing the Housing Authority Loan by the sum of the Housing Authority Loan, the County Loan, and the MHP HCD Loan, to the extent such loan funds are disbursed.
- (oo) "Housing Authority Recorded Documents" has the meaning set forth in

Paragraph G of the Recitals.

(pp) "Housing Authority Regulatory Agreement" has the meaning set forth in Paragraph G of the Recitals.

(qq) "HUD" has the meaning set forth in Paragraph D of the Recitals.

(rr) "Improvements" has the meaning set forth in Paragraph C of the Recitals.

(ss) "Investor Limited Partner" means, Wincopin Circle LLLP, and its permitted successors and assigns.

(tt) "Leasehold Interest" has the meaning set forth in Paragraph B of the Recitals.

(uu) "Lenders' Share of Residual Receipts" means fifty percent (50%) of Residual Receipts.

(vv) "Mercy" means Mercy Housing California, a California nonprofit public benefit corporation.

(ww) "MHP HCD Loan" has the meaning set forth in Section 1.1(e)(v).

(xx) "Net Proceeds of Permanent Financing" means the amount by which Permanent Financing exceeds the Final Development Costs.

(yy) "Party(ies)" means the Housing Authority, the County, and/or Borrower.

(zz) "Partnership Agreement" means the agreement between Borrower's general partner and the Investor Limited Partner that governs the operation and organization of Borrower as a California limited partnership.

(aaa) "Partnership/Asset Fee" means (i) partnership management fees (including any asset management fees) payable pursuant to the Partnership Agreement to any partner of Borrower, if any, during the Fifteen Year Compliance Period, and (ii) after the expiration of the Fifteen Year Compliance Period asset management fees payable to Borrower or any partner of Borrower, in the amounts approved by the County as set forth in Section 3.19 of the County Loan Agreement.

(bbb) "Permanent Bank Loan" has the meaning set forth in Section 1(e)(ii).

(ccc) "Permanent Conversion" means the date the Bank Tax-Exempt Construction Loan converts to the Bank Permanent Loan and the MHP HCD Loan closes.

(ddd) "Permanent Financing" means the sum of the following amounts: (i) the County Loan; (ii) the Housing Authority Loan; (iii) the Permanent Bank Loan; (iv) the MHP HCD Loan; (v) the Sponsor Loan; (vi) the Tax Credit Investor Equity; and (vii) the GP Capital Contribution.



(eee) "Prepayment Amount" means the amount of funds Borrower intends to use to prepay the Housing Authority Loan and the County Loan.

(fff) "Property" has the meaning set forth in Paragraph B of the Recitals.

(ggg) "Purchase and Sale Agreement" has the meaning set forth in Paragraph C of the Recitals.

(hhh) "Residual Receipts" means for each calendar year, the amount by which Gross Revenue exceeds Annual Operating Expenses.

(iii) "Sponsor Loan" has the meaning set forth in Section 1(e)(iv).

(jjj) "Statement of Residual Receipts" means an itemized statement of Residual Receipts.

(kkk) "Tax Credit Investor Equity" has the meaning set forth in Section 1(e)(v).

(lll) "Term" means the period of time that commences on the date of this Agreement, and expires, unless sooner terminated in accordance with this Agreement, on the fifty-fifth (55<sup>th</sup>) anniversary of the Permanent Conversion; provided, however, if a record of the Permanent Conversion cannot be located or established, the Term will expire on the fifty-seventh (57<sup>th</sup>) anniversary of this Agreement.

2. Annual Payments to County and Housing Authority.

(a) County Loan.

i. Commencing on June 1, 2024, and on June 1 of each year thereafter during the Term, Borrower shall make a loan payment to the County in an amount equal to the County Loan Prorata Percentage of the Lenders' Share of Residual Receipts (each such payment, an "Annual County Loan Payment"). The County shall apply all Annual County Loan Payments to the County Loan as follows: (1) first, to accrued interest, and (2) second, to principal.

ii. Borrower shall repay the County Loan pursuant to the terms of the County Loan Agreement and the County Note. In the event of any conflict between the repayment terms and provisions of the County Loan Agreement and this Agreement, the provisions of this Agreement apply. The County may not consent to any amendment or waiver of the terms of the County Loan Agreement or the County Note if such amendment or waiver could reasonably be deemed to materially adversely affect the Housing Authority, without the Housing Authority's prior written approval, which the Housing Authority may withhold in its sole discretion.

(b) Housing Authority Loan.

i. Commencing on June 1, 2024, and on June 1 of each year

thereafter during the Term, Borrower shall make a loan payment to the Housing Authority in an amount equal to the Housing Authority Loan Prorata Percentage of the Lenders' Share of Residual Receipts (each such payment, an "Annual Housing Authority Loan Payment"). The Housing Authority shall apply all Annual Housing Authority Loan Payments to the Housing Authority Loan as follows: (1) first, to accrued interest, and (2) second, to principal for the Housing Authority Loan.

ii. Borrower shall repay the Housing Authority Loan pursuant to the terms of the Housing Authority Note. In the event of any conflict between the repayment terms of the Housing Authority Note and this Agreement, the provisions of this Agreement apply. The Housing Authority may not consent to any amendment or waiver of the terms of the Housing Authority Note, if such amendment or waiver could reasonably be deemed to materially adversely affect the County, without the County's prior written approval, which the County may withhold in its sole discretion.

3. Special Repayment from Net Proceeds of Permanent Financing.

(a) No later than ten (10) days after the date Borrower receives its final capital contribution from the Investor Limited Partner, subject to any HCD requirements, Borrower shall pay to the County as a special repayment of the County Loan, an amount equal to the result obtained by multiplying the County Additional Prorata Share by the Net Proceeds of Permanent Financing.

(b) No later than ten (10) days after the date Borrower receives its final capital contribution from the Investor Limited Partner, subject to any HCD requirements, Borrower shall pay to the Housing Authority as a special repayment of the Housing Authority Loan, an amount equal to the result obtained by multiplying the Housing Authority Additional Prorata Share by the Net Proceeds of Permanent Financing.

(c) No later than one hundred eighty (180) days following completion of construction of the Development, Borrower shall submit to the County and the Housing Authority a preliminary calculation of the Net Proceeds of Permanent Financing and a draft of the Final Cost Certification. The County and the Housing Authority shall approve or disapprove Borrower's determination of the amount of the Net Proceeds of Permanent Financing in writing within thirty (30) days of receipt. If Borrower's determination is disapproved by the County or the Housing Authority, Borrower shall re-submit documentation to the County and the Housing Authority until approval of the County and the Housing Authority is obtained.

4. Prepayment. Borrower may prepay the County Loan and the Housing Authority Loan at any time without premium or penalty, provided that Borrower shall prepay both the County Loan and the Housing Authority Loan concurrently. The prepayment of the Housing Authority Loan must be equal to the result obtained by multiplying the Housing Authority Additional Prorata Share by the Prepayment Amount, and prepayment of the County Loan must be equal to the result obtained by multiplying the County Additional Prorata Share by the Prepayment Amount.

5. Reports and Accounting of Residual Receipts.

(a) Annual Reports. In connection with the Annual County Loan Payment and the Annual Housing Authority Loan Payment, Borrower shall furnish to the Housing Authority and the County:

i. The Statement of Residual Receipts for the relevant period. The first Statement of Residual Receipts will cover the period that begins on January 1, 2023 and ends on December 31 of that same year. Subsequent statements of Residual Receipts will cover the twelve-month period that ends on December 31 of each year;

ii. A statement from the independent public accountant that audited Borrower's financial records for the relevant period, which statement must confirm that Borrower's calculation of the Lender's Share of Residual Receipts is accurate based on Operating Income and Annual Operating Expenses; and

iii. Any additional documentation reasonably required by the County or the Housing Authority to substantiate Borrower's calculation of Lender's Share of Residual Receipts.

(b) Books and Records. Borrower shall keep and maintain at the principal place of business of Borrower set forth in Section 12 below, or elsewhere with the written consent of the County and the Housing Authority, full, complete and appropriate books, record and accounts relating to the Development, including all books, records and accounts necessary or prudent to evidence and substantiate in full detail Borrower's calculation of Residual Receipts and disbursements of Residual Receipts. Borrower shall cause all books, records and accounts relating to its compliance with the terms, provisions, covenants and conditions of this Agreement to be kept and maintained in accordance with generally accepted accounting principles consistently applied, and to be consistent with requirements of this Agreement, which provide for the calculation of Residual Receipts on a cash basis. Borrower shall cause all books, records, and accounts to be open to and available for inspection by the County and the Housing Authority, their auditors or other authorized representatives at reasonable intervals during normal business hours. Borrower shall cause copies of all tax returns and other reports that Borrower may be required to furnish to any government agency to be open for inspection by the County and the Housing Authority at all reasonable times at the place that the books, records and accounts of Borrower are kept. Borrower shall preserve records on which any statement of Residual Receipts is based for a period of not less than five (5) years after such statement is rendered, and for any period during which there is an audit undertaken pursuant to subsection (c) below then pending.

(c) County and Housing Authority Audits.

i. The receipt by the County or the Housing Authority of any statement pursuant to subsection (a) above or any payment by Borrower or acceptance by the County or the Housing Authority of any loan repayment for any period does not bind the County or the Housing Authority as to the correctness of such statement or such payment. The County or the Housing Authority or any designated agent or employee of the County or the Housing Authority is entitled at any time to audit the Residual Receipts and all books, records, and

accounts pertaining thereto. The County and/or the Housing Authority may conduct such audit during normal business hours at the principal place of business of Borrower and other places where records are kept. Immediately after the completion of an audit, the County or the Housing Authority, as the case may be, shall deliver a copy of the results of the audit to Borrower.

ii. If it is determined as a result of an audit that there has been a deficiency in a loan repayment to the County and/or the Housing Authority, then such deficiency will become immediately due and payable, with interest at the Default Rate from the date the deficient amount should have been paid. In addition, if the audit determines that Residual Receipts have been understated for any year by the greater of (i) \$2,500, and (ii) an amount that exceeds five percent (5%) of the Residual Receipts, then, in addition to paying the deficiency with interest, Borrower shall pay all of the costs and expenses connected with the audit and review of Borrower's accounts and records incurred by the County and/or the Housing Authority.

6. Lien Priority.

(a) The County and the Housing Authority agree that the County Recorded Documents and Housing Authority Recorded Documents will be recorded against the Development in the official records of Contra Costa County in the following order:

- i. Housing Authority Regulatory Agreement
- ii. County Regulatory Agreement
- iii. Housing Authority Deed of Trust
- iv. County Deed of Trust

(b) Notwithstanding the fact that the Housing Authority Deed of Trust is recorded prior to the County Deed of Trust, the Housing Authority and the County agree that the Housing Authority Deed of Trust and the County Deed of Trust are equal in lien priority.

7. Notice of Default.

(a) The County and the Housing Authority shall each notify the other promptly upon declaring a default or learning of the occurrence of any event of default, or any event which with the lapse of time would become an event of default, under its respective loan documents for the Housing Authority Loan and the County Loan.

(b) The Housing Authority and the County agree not to make a demand for payment from Borrower or accelerate the Housing Authority Note or the County Note, as the case may be, or commence enforcement of any of the rights and remedies under the Housing Authority Deed of Trust or the County Deed of Trust, as the case may be, until the date that is five (5) business days following delivery of written notice by the Party enforcing its rights (the "Enforcing Party") to the other Party stating that a "default" (as defined in the relevant Deed of Trust) has occurred and is continuing and that the Enforcing Party is requesting the other Party's assistance in foreclosure pursuant to Section 8.

8. Cooperation in Foreclosure.

(a) If there is a default under the Housing Authority Loan and/or the County

Loan, after expiration of any applicable cure periods, the Party who is the lender on the defaulted loan shall cooperate with the other lender that is a Party to this Agreement to coordinate any foreclosure proceedings or other appropriate remedies.

(b) Neither the County nor the Housing Authority may contest the validity, perfection, priority, or enforceability of the lien granted to the other Party by a deed of trust secured by the Development. Notwithstanding any failure of a Party to perfect its lien on the Development or any other defect in the security interests or obligations owing to such Party, the priority and rights as between the lenders that are Parties to this Agreement are as set forth in this Agreement.

9. Foreclosure Proceeds. If there is a foreclosure, or any other action, whether judicial or nonjudicial, under any or both of the Housing Authority Deed of Trust and the County Deed of Trust (including the giving of a deed in lieu of foreclosure), the proceeds resulting from such foreclosure or action will be first used to pay (i) all amounts paid to any senior lien holder, and (ii) expenses incurred by the County, the Housing Authority, or both, in connection with such foreclosure or other action. After such payments (i) the Housing Authority is entitled to the result obtained by multiplying the Housing Authority Additional Prorata Share by the Foreclosure Net Proceeds, and (ii) the County is entitled to the result obtained by multiplying the County Additional Prorata Share by the Foreclosure Net Proceeds.

10. Insurance and Condemnation Proceeds. If, as a result of having made the Housing Authority Loan and the County Loan, the Housing Authority and County are entitled to insurance or condemnation proceeds, they will share such proceeds as follows: (i) the Housing Authority is entitled to the result obtained by multiplying the Housing Authority Additional Prorata Share by the available proceeds, and (ii) the County is entitled to the result obtained by multiplying the County Additional Prorata Share by the available proceeds.

11. Title to Development. If, as a result of having made the Housing Authority Loan and the County Loan, either the Housing Authority or the County is entitled to title to the Development as a consequence of Borrower's default, the Housing Authority shall not terminate the Ground Lease and the fee interest in the Property and the Leasehold Estate must not merge. Title to the Leasehold Estate and to the Improvements will be held in tenancy in common by the Housing Authority and the County in accordance with their respective prorata share of the Foreclosure Net Proceeds. Subsequent decisions to hold or sell the Improvements will be made by joint decision of the Housing Authority and the County.

12. Notices. All notices required or permitted by any provision of this Agreement must be in writing and sent 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:

Housing Authority:	Housing Authority of the City of Richmond 330 24 <sup>th</sup> Street, Richmond California 94804 Attn: Executive Director
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County: County of Contra Costa  
Department of Conservation and Development  
30 Muir Road  
Martinez, California 94553  
Attention: Assistant Deputy Director

Borrower: Richmond Hacienda, L.P.  
c/o Mercy Housing California  
1256 Market Street  
San Francisco, CA 94102  
Attn: Director of Real Estate Development

and

c/o Community Housing Development  
Corporation of North Richmond  
1535-A Third Street  
Richmond, CA 94801

Investor Limited  
Partner:

Wincopin Circle LLLP  
c/o Enterprise Community Asset Management  
70 Corporate Center  
11000 Broken Land Parkway, Suite 700  
Columbia, MD 21044  
Attention: General Counsel

with a copy to:

Gallagher, Evelius & Jones LLP  
218 N. Charles Street, Suite 400  
Baltimore, Maryland 21201  
Facsimile: (410) 468-2786  
Attention: Kenneth S. Gross, Esq.

Such written notices, demands, and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate as provided in this Section. Receipt will be deemed to have occurred on the date marked on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

13. Titles. 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.

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

15. 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.

16. Legal Actions. If any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach of this Agreement, then the Party prevailing in any such action shall be entitled to recover against the Party not prevailing all reasonable attorneys' fees and costs incurred in such action.

17. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties with respect to: (i) the order of recordation of the Housing Authority Recorded Documents and the County Recorded Documents, (ii) the co-equal lien priority of the County Deed of Trust and the Housing Authority Deed of Trust, (iii) the distribution of proceeds upon foreclosure of or other remedies under the County Deed of Trust and the Housing Authority Deed of Trust, and (iv), the division of the Lenders' Share of Residual Receipts between the Housing Authority and the County.

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

19. Amendments. This Agreement may not be modified except by written instrument executed by and amongst the Parties.

*[Remainder of Page Left Intentionally Blank]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

**APPROVED AS TO FORM:**

SHARON L. ANDERSON  
County Counsel

By: \_\_\_\_\_  
Kathleen Andrus  
Deputy County Counsel

**COUNTY:**

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

By: \_\_\_\_\_  
John Kopchik  
Director, Department of Conservation and  
Development

**HOUSING AUTHORITY:**

HOUSING AUTHORITY OF THE CITY OF  
RICHMOND, a public body corporate and politic

By: \_\_\_\_\_  
Nannette J. Beacham, Executive Director

*[signatures continue on following page]*



**BORROWER:**

RICHMOND HACIENDA, L.P.,  
a California limited partnership

By: Richmond Hacienda GP LLC,  
a California limited liability company,  
its managing general partner

By: Mercy Housing Calwest,  
a California nonprofit public benefit corporation,  
its sole member/manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: CHDC, Richmond Hacienda LLC,  
a California limited liability company  
its co-general partner

By: Community Housing Development Corporation of North Richmond,  
a California nonprofit public benefit corporation,  
its sole member/manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public

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STATE OF CALIFORNIA )

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

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

Parcel 1 of that certain Map entitled "Parcel Map MS 755-19", recorded August 7<sup>th</sup> 2020, in Book 216 of Parcel Maps, at Pages 26 and 27, Contra Costa County Official Records.

APN: 534-370-028