

RECORDING REQUESTED PURSUANT
AND WHEN RECORDED MAIL TO:

Contra Costa County
Department of Conservation and Development
30 Muir Road
Martinez, CA 94553
Attn: Housing & Community Improvement Division

No fee for recording pursuant to
Government Code Section 27383

INTERCREDITOR AGREEMENT

(Esperanza Place)

This Intercreditor Agreement (the "Agreement") is dated November 16, 2021, and is among the City of Walnut Creek a municipal corporation (the "City"), the County of Contra Costa, a political subdivision of the State of California (the "County"), and HEBSV Esperanza Place, LLC, a California limited liability company ("Borrower"), with reference to the following facts:

RECITALS

A. Borrower is the owner of that certain real property located at 1250 Las Juntas Way, Walnut Creek, California, that is more particularly described in Exhibit A (the "Property").

B. Borrower intends to construct forty-two (42) condominium units on the Property in two phases of construction, for use as housing affordable to low- and moderate-income households. The first phase of construction (the "First Phase") will consist of twenty-three (23) condominium units (the "Development"). Together, the Development as well as any additional improvements constructed on the Property in the First Phase, including all landscaping, roads and parking spaces on the Property, are referred to as the "Improvements."

C. Habitat for Humanity East Bay/Silicon Valley, Inc., a California nonprofit public benefit corporation ("Habitat") and the City, are parties to a loan agreement dated December 9, 2016 as amended by a First Amendment to Loan Agreement dated July 31, 2019 (the "City Loan Agreement"), as assigned to Borrower concurrently herewith. Pursuant to the City Loan Agreement, the City loaned Habitat Five Million One Hundred Fifty Thousand Dollars (\$5,150,000) (the "City Loan"). The City Loan is evidenced by a promissory note dated December 9, 2016, as amended by that certain First Amendment to Promissory Note dated July 31, 2019, executed by Habitat in favor of the City (the "City Note"). Habitat's obligation to repay the City Loan, as evidenced by the City Note, is secured by a deed of trust on the Property dated December 9, 2016 and recorded against the Property on December 22, 2016 as instrument number 2016-279537, as amended by that certain First Amendment to Deed of

Trust dated July 31, 2019, recorded on November 13, 2019, in the in the Official Records of the County of Contra Costa as Document No. 2016-0201799 (the "City Deed of Trust").

D. Borrower and the County are parties to a loan agreement of even date herewith (the "County Loan Agreement"). Under the terms of the County Loan Agreement, the County is lending Borrower One Million Six Hundred Five Thousand Dollars (\$1,605,000) (the "County Loan") of HOME Investment Partnerships Act funds to finance the construction costs of the Improvements. The County Loan is evidenced by a promissory note of even date herewith executed by Borrower in favor of the County (the "County Note"). Borrower's obligation to repay the County Loan, as evidenced by the County Note, is secured by a deed of trust on the Property of even date herewith (the "County Deed of Trust").

E. The City and the County wish the City Deed of Trust, and the County Deed of Trust (collectively, the "Deeds of Trust") to be equal in lien priority and for the City and the County to share in any proceeds derived from a foreclosure of the County Deed of Trust, the City Deed of Trust, or both Deeds of Trust, in accordance with their respective Prorata Percentage (as defined below).

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

1. Definitions. The following definitions apply for purposes of this Agreement:

(a) "Adjusted City Loan" means, to the extent less than the full amount of the City Loan is funded, an amount equal to the actual principal amount loaned to Borrower by the City pursuant to the City Loan Agreement. If the full amount of the City Loan is funded, the Adjusted City Loan is equal to the City Loan.

(b) "Adjusted County Loan" means, to the extent less than the full amount of the County Loan is funded, an amount equal to the actual principal amount loaned to Borrower by the County pursuant to the County Loan Agreement. If the full amount of the County Loan is funded, the Adjusted County Loan is equal to the County Loan.

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

(d) "City" has the meaning set forth in the first paragraph of this Agreement.

(e) "City Deed of Trust" has the meaning set forth in Paragraph C of the Recitals.

(f) "City Loan" has the meaning set forth in Paragraph C of the Recitals.

(g) "City Loan Agreement" has the meaning set forth in Paragraph C of the Recitals.

(h) "City Note" has the meaning set forth in Paragraph C of the Recitals.

(i) "City Prorata Percentage" means the result, expressed as a percentage, of the Adjusted City Loan divided by the sum of the Adjusted City Loan and the Adjusted County Loan.

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

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

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

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

(n) "County Note" has the meaning set forth in Paragraph E of the Recitals.

(o) "County Prorata Percentage" means the result, expressed as a percentage, of the Adjusted County Loan divided by the sum of the Adjusted City Loan and the Adjusted County Loan.

(p) "Deeds of Trust" has the meaning set forth in Paragraph F of the Recitals.

(q) "Enforcing Party" has the meaning set forth in Section 6 below.

(r) "Development" has the meaning set forth in Paragraph B of the Recitals.

(s) "First Phase" has the meaning set forth in Paragraph B of the Recitals.

(t) "Improvements" has the meaning set forth in Paragraph B of the Recitals.

(u) "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 the County, the City, or both, in connection with such foreclosure or other action.

(v) "Parties" means the City, the County, and Borrower.

(w) "Property" has the meaning set forth in Paragraph A of the Recitals.

(x) "Prorata Percentages" means, with respect to the City, the City Prorata Percentage and with respect to the County, the County Prorata Percentage.

2. City Loan and County Loan. The City Loan was made to Borrower pursuant to the City Loan Agreement. The County Loan is being made to Borrower pursuant to the County Loan Agreement.

3. Payments to County and City.

(a) Borrower shall repay the City Loan pursuant to the terms of the City Loan Agreement and the City Note. The City may not consent to any amendment or waiver of the terms of the City Loan Agreement or the City Note, if such amendment or waiver could reasonably be deemed to impair the County's security under the County Deed of Trust, without the County's prior written approval, which the County may withhold in its sole discretion.

(b) Borrower shall repay the County Loan pursuant to the terms of the County Loan Agreement and the County Note. 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 impair the City's security under the City Deed of Trust, without the City's prior written approval, which the City may withhold in its sole discretion.

4. Reports.

(a) 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 County's and City's written consent, full, complete and appropriate books, record and accounts relating to the Development. Books, records and accounts relating to Borrower's compliance with the terms, provisions, covenants and conditions of this Agreement are to be kept and maintained in accordance with generally accepted accounting principles consistently applied, and are to be consistent with requirements of this Agreement. All such books, records, and accounts are to be open to and available for inspection by the County and the City, their auditors or other authorized representatives at reasonable intervals during normal business hours. Copies of all tax returns and other reports that Borrower may be required to furnish any governmental agency are to be open for inspection by the County and the City at all reasonable times at the place that the books, records and accounts of Borrower are kept.

(b) County and City Audits. The County or the City or any designated agent or employee of the County and/or the City is entitled at any time to audit all books, records, and accounts pertaining to the Development. The County and/or City shall 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 City shall deliver a copy of the results of such audit to Borrower.

5. Deeds of Trust. The City Loan is secured by the City Deed of Trust. The County Loan is secured by the County Deed of Trust. Notwithstanding the fact that the City Deed of Trust is recorded prior to the County Deed of Trust, the City and the County agree that the City Deed of Trust and the County Deed of Trust are equal in lien priority.

6. Notice of Default.

(a) The County and the City 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 City Loan and the County Loan.

(b) The City and the County agree not to make a demand for payment from Borrower or accelerate the County Note or the City Note, as the case may be, or commence enforcement of any of the rights and remedies under the City 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 7.

7. Cooperation in Foreclosure.

(a) In the event of a default under the City 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 City may contest the validity, perfection, priority, or enforceability of the lien granted by the respective Deed of Trust to the other Party. Notwithstanding any failure of the City or the County to perfect its lien on the Property or any other defect in the security interests or obligations owing to such Party, the priority and rights as between the City and the County are as set forth in this Agreement.

8. Foreclosure Proceeds. If there is a foreclosure, or any other action, whether judicial or nonjudicial, under either or both of the Deeds 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 City, or both, in connection with such foreclosure or other action. After such payments (i) the City is entitled to the result obtained by multiplying the City Prorata Percentage by the Net Proceeds, and (ii) the County is entitled to the result obtained by multiplying the County Prorata Percentage by the Net Proceeds.

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

10. Title to Property. If, as a result of having made the City Loan and the County Loan, either the City or the County is entitled to title to the Property as a consequence of Borrower's default, then title is to be held in tenancy in common by the City and the County in accordance with their respective Prorata Percentages. Subsequent decisions to hold or sell the Property will be made by joint decision of the City and the County.

11. Remedies. The City and the County hereby acknowledge that the other has no adequate remedy at law if either the City or the County violates any of the terms or provisions of this Agreement. In such event, the City and the County each have the right, in addition to any and all other rights and remedies as may be available under applicable law, to obtain in any court of competent jurisdiction injunctive relief to restrain the other from any breach or threatened

breach of this Agreement or otherwise to specifically enforce any of the terms or provisions of this Agreement.

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:

City: City of Walnut Creek
1666 North Main Street
Walnut Creek, CA 94596
Attention: Housing Program Manager

County: County of Contra Costa
Department of Conservation and Development
30 Muir Road
Martinez, CA 94553
Attn: Housing & Community Improvement Division/C. Louie

Borrower: HEBSV Esperanza Place, LLC
c/o Habitat for Humanity East Bay/Silicon Valley, Inc.,
2619 Broadway
Oakland, CA 94612
Attention: President and Chief Executive Officer

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 the distribution of proceeds upon foreclosure of or other remedies under the Deeds of Trust, and the entire understanding and agreement of the Parties with respect to the equal lien priority of the City Deed of Trust and County Deed of Trust.

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.

20. Term. This Agreement will terminate and be removed as an encumbrance against individual housing units within the Property upon the occurrence of both of the following: (a) the County has executed a partial reconveyance of the County Deed of Trust with respect to such unit in accordance with the provisions of Section 2.9 of the County Loan Agreement, and (b) the City has executed a partial reconveyance of the City Deed of Trust with respect to such unit in accordance with Section 3.4(a)(ii) of the City Loan Agreement. This Agreement will terminate and be removed as an encumbrance against the entirety of the Property when both the County Deed of Trust and City Deed of Trust have been fully reconveyed.

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

BORROWER:

HEBSV ESPERANZA PLACE, LLC, a California limited liability company

By: _____
Janice Jensen, Manager

CITY:

CITY OF WALNUT CREEK, a municipal corporation

By: _____

Name: _____

Its: _____

COUNTY:

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

By: _____

John Kopchik, Director
Department of Conservation and Development

APPROVED AS TO FORM:

MARY ANN McNETT MASON
County Counsel

By: _____
Kathleen Andrus
Deputy County Counsel

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

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

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

PARCEL ONE:

Lots 1 through 4, inclusive, as shown on the map of Subdivision 9470, filed October 18, 2021, in Map Book 549, Pages 13 through 17, inclusive, Contra Costa County Records.

PARCEL TWO:

The right of way granted in the Deed from Dorothy Marion Hunt to C.L. Greenwell, et ux, dated August 7, 1952 and recorded August 20, 1952 in Volume 1979 of Official Records, at Page 11, as follows:

A right of way (not to be exclusive) as an appurtenance to a portion of Parcel One, above, for use as roadway for vehicles of all kinds; pedestrians and animals, for water, gas, oil and sewer pipe line, and for telephone, electric light and power lines, together with the necessary poles or conduits to carry said lines, over a portion of the Rancho Las Juntas being a strip of land 20 feet in width the South line of which is parallel with and 20 feet Southerly at right angles from the North line thereof and which North line is described as follows: Beginning on the North line of the Parcel of Land described in the Deed from John W. Cuthbertson, et ux, to Dorothy Marion Hunt, dated March 18, 1952 and recorded March 26, 1952 in Volume 1910 of Official Records, at Page 311, distant thereon North 61°26'40" East, 340.75 feet from the Northwest corner thereof; thence from said point of beginning North 61°26'40" East along said North line 502.20 feet to the center line of the County Road known as Las Juntas Way.

APN'S 148-180-050, 051 & 052