

# **HOUSING SUCCESSOR LOAN AGREEMENT BETWEEN THE CITY OF VISALIA AND RHCB DEVELOPMENT, L.P.**

THIS AGREEMENT ("Agreement") dated as of \_\_\_\_\_, 2023, is entered into by and between the CITY OF VISALIA, in its capacity as Housing Successor to the former Community Redevelopment Agency of the City of Visalia ("City"), and RHCB Development, L.P., a California limited partnership (hereinafter "RHCB").

## **RECITALS**

The following recitals are a substantive part of this Agreement:

A. RHCB desires to develop a 42-unit multi-family affordable housing project, which will operate as permanent supportive housing, located at 4545 W. Noble Avenue in the City of Visalia, and more particularly described and identified in "Exhibit A," attached hereto and incorporated herein (the "Property"); and

B. RHCB is a limited partnership, the sole member of the general partner of which is a non-profit organization that, among other things, rehabilitates and develops affordable housing projects; and

C. Pursuant to Section 34176.1(a)(3) of the California Health and Safety Code, the City, as the housing successor to the Community Redevelopment Agency of the City of Visalia, has authority to utilize funding from its Successor Agency Housing Fund for the purpose of developing housing affordable to and occupied by households earning 80% or less of the area median income, including households earning 30% or less of the area median income; and

D. RHCB proposes to develop a multifamily affordable housing complex with 42 units, composed of one manager's unit and 41 units committed to low-income affordable permanent supportive housing on the Property (the "Project"). The Project will be rented to qualified low-income households as defined in the CRL and the terms and conditions set forth herein, to ensure the Property will be utilized for affordable housing for the longest feasible period; and

E. City and RHCB desire to enter into this Agreement to set the terms and conditions under which City can loan to RHCB a portion of the City's available Successor Agency Housing Fund for the Project.

**NOW, THEREFORE,** City and RHCB hereby agree as follows:

### **1. CITY LOAN**

a. Loan Terms. In consideration of RHCB's obligations hereunder, and to ensure the Project remains affordable in accordance with the Rental Restriction (provided for under Section 3 hereof), and subject to the terms and conditions of this Agreement, the City will provide financial assistance to RHCB for the Project in an amount up to Nine Hundred Thousand Dollars (\$900,00.00) to assist in acquisition and construction of the Project. As evidence of the City Loan, RHCB shall execute and deliver a promissory note to City in the form acceptable to City, which Note shall be in the initial principal amount of the City Loan. The Note shall be secured

by a standard form Deed of Trust from a title company acceptable to the City, and an Addendum to Deed of Trust in a form acceptable to the City, to be recorded against the Property.

b. Disbursement of City Loan. City shall provide to RHCB up to Nine Hundred Thousand Dollars (\$900,00.00) for the actual cost of acquisition and construction of the Project. Funding shall be disbursed on a reimbursement basis for Project costs actually incurred. RHCB shall submit invoices, as well as any other documentation required by the City necessary to support reimbursement for Project expenditures.

c. Requirements of RHCB The City loan shall be used for acquisition and construction of the dwelling units on the Property in substantial conformance with the line items identified in the "Project Budget," attached hereto as Exhibit "B" and incorporated herein by this reference. The City loan shall be a fifty-five (55) year, 0% interest principal only loan, payable by RHCB and its successors and assigns, in accord with the terms and conditions contained in this Agreement, and in the Note and the amortization schedule attached thereto. The City Loan shall be repayable to the City in fifty-five (55) annual payments commencing on the first-year anniversary of this Agreement, however each annual payment on the City Loan shall only be required to the extent there is cash flow available from the Project. In each year that RHCB demonstrates that no cash flow is available to pay such payments as determined in the order of priority set forth in Section 7.03 of RHCB Development LP Partnership Agreement, the principal balance of the loan shall accrue and be payable to the extent of Cash Flow for the following year. Cash Flow shall have the definition set forth in Borrower's Partnership Agreement. If the Project fails to generate Cash Flow sufficient to make payments for an annual period, no annual payment shall be due. If the Project generates Cash Flow in an amount less than the required annual payment, then only such amount shall be due, and the remainder shall accrue. Should RHCB, its successors, or assigns sell the Property or fail to satisfy any of the terms and conditions herein, and as stated in the Rental Restriction required in Section 3, which are not otherwise waived by the City, RHCB shall be obligated to repay the City Loan in full within 30 days of written notification by the City.

i. Subject to the expiration of any applicable cure period, RHCB shall not be in default of any of its obligations under the terms of this Agreement.

ii. Recordation of Resale Restriction. Prior to the initial disbursement of funds from City to RHCB, RHCB shall execute and record the Rental Restriction required herein.

iii. Within 30 days of the execution of this Agreement, RHCB shall have furnished City with evidence of the insurance coverage required under Section 2.

iv. RHCB shall assist City with and shall provide all documentation necessary for all reporting requirements and obligations required by the State and local law.

## **2. DEVELOPMENT OF THE PROPERTY**

a. Scope of Development. RHCB shall acquire all of the parcels comprising the Property, and shall develop a 42-unit multifamily affordable housing complex, that will be

committed to permanent supportive housing on the Property in accordance with the Project Plans, Schedule and Budget attached hereto as "Exhibit B."

b. Insurance and Indemnification. RHCB shall at all times cause the Project to be insured against loss by fire, flood, and such other hazards, casualties, liabilities and contingencies, in an amount not less than the full insurable value of the Project on a replacement cost basis and shall furnish or cause to be furnished to the City evidence satisfactory to City that RHCB and any contractor with whom it has contracted for the performance of work on the Property or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law. All insurance policies and renewals thereof shall be issued by a carrier and in a form acceptable to the City. Property insurance policies shall name the City as an additional insured, as approved by the City.

RHCB and its successors in interest agree to indemnify, defend, and hold harmless the City and its agents, employees, volunteers and officers from any and all claims, losses, liabilities or causes of action (including reasonable attorney's fees) arising from or in connection with RHCB's development, management, maintenance or operation of the Project; provided, however, RHCB's obligations to indemnify and hold harmless shall not apply in the event and to the extent of the City's willful misconduct or gross negligence.

c. City and Other Governmental Agency Permits. RHCB shall secure and maintain, or cause to be secured and maintained, any and all permits or entitlements that may be required by City or any other governmental agency affected, or which has jurisdiction over the construction of the Project.

d. Antidiscrimination during Construction. RHCB, for itself, and its successors and assigns, agrees that in the construction of Project on the property, RHCB shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, ancestry, or national origin.

e. Compliance with Laws. RHCB shall carry out the construction and development of the Project in conformity with all applicable laws; City zoning and development standards; building, plumbing, mechanical and electrical codes; all other provisions of the City's Municipal Code; and all applicable disabled and handicapped access requirements, including the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 7260, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

f. Prevailing Wages. To the extent applicable, RHCB shall comply with all requirements of the Department of Industrial Relations in accordance with the California Labor Code, and all other applicable federal, state, and local laws and regulations pertaining to labor standards and payment of prevailing wages (collectively, "Prevailing Wage Laws"). As applicable, RHCB shall (i) require its contractors and subcontractors to submit certified copies of payroll records to RHCB; (ii) maintain complete copies of such certified payroll records; and (iii) make such records available to City and its designees for inspection and copying during regular business hours at the Property or at another location within the City of Visalia.

RHCB shall defend, indemnify and hold harmless City and its officers, employees, volunteers, agents and representatives from and against any and all present and future causes of action, claims, liabilities, obligations, damages, fines, penalties, judgments, actions or expenses (including attorney fees) (collectively, the "Claims"), arising out of or in any way connected with RHCB's obligation to comply with all governmental requirements, including all Claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code Sections 1726 and 1781, as amended and added by Senate Bill 966.

RHCB hereby waives, releases and discharges forever City, and its employees, officers, volunteers, agents and representatives, from any and all present and future Claims arising out of or in any way connected with RHCB's obligation to comply with all Prevailing Wage Laws in connection with the work of the Improvements.

RHCB is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

As such relates to this Section 2, RHCB hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

g. Taxes and Assessments. RHCB shall pay prior to delinquency all *ad valorem* real estate taxes and assessments on the Property, subject to RHCB's right to contest in good faith any such taxes. RHCB shall remove or have removed any levy or attachment made on the Property or any part thereof or assure the satisfaction thereof within thirty (30) days following the date of attachment or levy.

h. Condition of the Property. RHCB shall take all necessary precautions to prevent the release into the environment of any Hazardous Materials (as defined below) that are located in, on or under the Property. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, RHCB shall install and utilize such equipment and implement and adhere to such procedures as are consistent with the standards prevailing in the industry, to the extent such standards exceed applicable Governmental Requirements, as respects the disclosure, storage, use, removal, and disposal of Hazardous Materials. RHCB shall cause each release of Hazardous Materials in, on or under the Property to be remediated in accordance with all Governmental Requirements.

RHCB agrees to indemnify, defend and hold City, City and their officers, employees, volunteers, agents and representatives harmless from and against any and all Claims, resulting from, arising out of, or based upon (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Property, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on,

under, in or about, to or from, the Property, caused by RHCBC or any of RHCBC's predecessors in interest. This indemnity shall include any damage, liability, fine, penalty, parallel indemnity, cost, or expense arising from or out of any claim, action, suit or proceeding for bodily injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic or consequential loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effects on the environment but shall exclude any claims resulting from the gross negligence and/or willful misconduct of the City.

"Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government, including, but not limited to, any material or substance which is: (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) friable asbestos; (vii) polychlorinated biphenyls; (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20; (ix) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317); (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.* (42 U.S.C. §6903); or (xi) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, *et seq.*, as the foregoing statutes and regulations now exist or may hereafter be amended.

### **3. COVENANTS, RESTRICTIONS AND AGREEMENTS**

a. Use Covenants; Rental Restrictions. RHCBC covenants and agrees for itself, its successors, its assigns and every successor in interest that, the Property shall be used for affordable housing purposes and that the Project to be constructed on the Property shall be rented to qualified low-income households ("Qualified Household"), in accordance with the terms of the Rental Restriction Agreement to be provided by City (the "Rental Restriction"). The foregoing covenant shall run with the land. Failure to maintain the use of the Property and the Project in accordance with this Section shall be a material default of this Agreement.

b. Maintenance Covenants. RHCBC shall maintain the Project in accordance with the custom and practice generally applicable to multifamily residential units in the City of Visalia, the Project and associated landscaping on the Property. Said maintenance shall include, but not be limited to, the building, sidewalks, lighting, landscaping, irrigation of landscaping, and any and all other improvements on the Property.

c. Obligation to Refrain from Discrimination. RHCB covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual preference, source of income, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall RHCB itself or any person claiming under or through them 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 of the Property. The foregoing covenants shall run with the land.

d. Form of Nondiscrimination and Nonsegregation Covenants. All deeds, leases or contracts for the rental, sale or lease of the Property shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

i. In deeds. "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual preference, source of income, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee or any person claiming under or through him or her, 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 land herein conveyed. The foregoing covenants shall run with the land."

ii. In leases. "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: that there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, sexual preference, source of income, marital status, national origin, or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, 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, sublessees, subtenants, or vendees in the premises herein leased."

iii. In contracts. "There shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, creed, religion, sex, sexual preference, source of income, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself or any person claiming under or through him or her, 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 of the premises."

e. Rights of Access. For purposes of assuring compliance with this Agreement, representatives of the City shall have the right of access to the Property, without charges or fees,

at normal business hours. The City (or its representatives) shall, except in emergency situations, notify RHCBC prior to exercising its rights pursuant to this Section. Nothing herein shall be deemed to limit the ability of the City to conduct code enforcement and other administrative inspections of the Property in accordance with applicable law.

f. Effect of Violation of the Terms and Provisions of this Agreement after Completion of Rehabilitation. City is deemed to be the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided, without regard to whether the City has been, remains or is an owner of any land or interest therein in the Property. City shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled. Unless otherwise specifically provided, the covenants contained in this Agreement shall remain in effect until the issuance by the City of a certificate of occupancy for the Project, except for the following:

- i. The covenants pertaining to use and maintenance of the Property and all improvements thereon, shall remain in effect for fifty-five (55) years from the date of recordation of the Rental Restriction.
- ii. The covenants against discrimination shall remain in effect in perpetuity.

#### **4. DEFAULTS AND REMEDIES**

a. Default Remedies. Subject to the permitted extensions of time as provided in Section 5 of this Agreement, failure by any party to perform any action or covenant required by this Agreement within the time periods provided herein following Notice and expiration of any applicable cure period, shall constitute a "Default" under this Agreement. A party claiming a Default shall give written Notice of Default to the defaulting party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other party, and no other party shall be in Default if such party within thirty (30) days following receipt of such Notice of Default immediately, with due diligence, commences to cure, correct, or remedy such failure or delay and completes such cure, correction, or remedy with diligence.

b. Institution of Legal Actions. Except as otherwise specifically provided herein, upon the occurrence of a Default, the party or parties claiming a Default shall have the right, in addition to any other rights or remedies, to institute any action at law or in equity to cure, correct, prevent, or remedy any Default, or to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Tulare, State of California, in an appropriate superior court in that County or in the Federal District Court for the Central District of the State of California. Notwithstanding anything herein to the contrary, RHCBC's right to recover damages in the event of a Default by City shall be limited to recovery of actual damages and shall exclude consequential damages.

c. Acceptance of Service of Process. In the event that any legal action is commenced by RHCB against the City, service of process on the City shall be made by personal service upon the City Clerk of the City or in such other manner as may be provided by law. In the event that any legal action is commenced by the City against RHCB, service of process on RHCB shall be made by personal service upon a Director of RHCB, or in such other manner as may be provided by law.

d. Rights and Remedies Are Cumulative. The rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party, except as otherwise expressly provided herein or in the limited recourse provisions in the Note.

e. Inaction Not a Waiver of Default. Any failures or delays by any party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

## **5. GENERAL PROVISIONS**

a. Notices, Demands and Communications between the Parties. Any approval, disapproval, demand, document or other notice ("Notice") which any party may desire to give to the other parties under this Agreement must be in writing and may be given by any commercially acceptable means, including, but not limited to, via overnight courier, to the party to whom the Notice is directed at the address of the party as set forth below, or at any other address as that party may later designate by Notice.

To City: City of Visalia  
Attention: Finance Department - Housing  
707 W. Acequia Avenue  
Visalia, CA 93291  
Email: [margie.perez@visalia.city](mailto:margie.perez@visalia.city)  
Phone: (559) 713-4460

To RHCB: c/o RHCB Development LP  
Attention: Wayne Rutledge, CEO  
352 W. Bedford Ave., Ste. 110  
Fresno, CA 93711  
Email: [wayne@uhbagels.com](mailto:wayne@uhbagels.com)  
Phone: (559) 213-7373



Any written notice, demand or communication shall be deemed received immediately if delivered by hand, on the third day from the date it is postmarked if delivered by first-class mail, postage prepaid, upon receipt of verification of transmission if sent via facsimile provided a copy is sent the same day via first-class mail, and on the next business day if sent via nationally recognized overnight courier. Notices sent by a party's attorney on behalf of such party shall be deemed delivered by such party.

b. Enforced Delay; Extension of Times of Performance. Subject to the limitations set forth below, performance by any party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays or Defaults are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation; unusually severe weather; acts or omissions of the other party; or acts or failures to act of the City or any other public or governmental City or entity (other than the acts or failures to act of the City under this Agreement which shall not excuse performance by the City). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause (but in any event shall not exceed a cumulative total of one hundred twenty (120) days), if Notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of City and RHCBC. RHCBC expressly agrees that adverse changes in economic conditions, either of RHCBC specifically or the economy generally, changes in market conditions or demand, and/or RHCBC's inability to obtain financing or other lack of funding to complete the Project shall not constitute grounds of enforced delay pursuant to this Section 5. RHCBC expressly assumes the risk of such adverse economic or market changes and/or inability to obtain financing, whether or not foreseeable as of the date of this Agreement.

c. Successors and Assigns. All of the terms, covenants and conditions of this Agreement shall be binding upon RHCBC and its permitted successors and assigns. Whenever the term "RHCBC" is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

d. Relationship between City and RHCBC It is hereby acknowledged that the relationship between City and RHCBC is not that of a partnership or joint venture and that the City and RHCBC shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein or in the Attachments hereto, the City shall have no rights, powers, duties, or obligations with respect to the development, operation, maintenance or management of the Property or the Project. RHCBC agrees to indemnify, hold harmless and defend the City from any claim made against the City arising from a claimed relationship of partnership or joint venture between the City and RHCBC with respect to the development, operation, maintenance or management of the Property or the Project unless due to the gross negligence or willful misconduct of City.

e. City Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by the City, the City Manager of the City or his or her designee is authorized to act on behalf of the City unless specifically provided otherwise or the context should require otherwise.

f. Counterparts. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement.

g. Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe, or limit the scope or the intent of this Agreement or of any of its terms. References to section numbers are to sections in this Agreement, unless expressly stated otherwise.

h. Interpretation. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by all parties.

i. No Waiver. A waiver by any party of a breach of any of the covenants, conditions, or agreements under this Agreement to be performed by another party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions, or conditions of this Agreement.

j. Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

k. Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

l. Computation of Time. The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Sections 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

m. Legal Advice. Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

n. Time of Essence. Time is of the essence with respect to the performance by City and RHCBC of each and every obligation and condition of this Agreement.

o. Cooperation. Each party agrees to cooperate with the other parties in this transaction and, in that regard, shall execute any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

p. Conflicts of Interest. No member, official or employee of the City or RHCB shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

q. RHCB's Indemnity. RHCB shall defend (with counsel reasonably acceptable to the City), indemnify, assume all responsibility for, and hold the City and its officers, employees, volunteers, agents and representatives, harmless from any and all Claims of any kind or nature relating to the subject matter of this Agreement or the implementation hereof and for any damages to property or injuries to persons, including accidental death (including reasonable attorneys fees and costs), which may be caused by any of RHCB's activities under this Agreement, whether such activities or performance thereof be by RHCB or by anyone directly or indirectly employed or contracted with by RHCB and whether such damage shall accrue or be discovered before or after termination of this Agreement. RHCB's indemnity obligations under this Section 618 shall not extend to Claims occasioned by the sole negligence or willful misconduct of City or its designated agents or employees.

r. Nonliability of Officials and Employees of City and RHCB No member, official or employee of City shall be personally liable to RHCB, or any successor in interest, in the event of any Default or breach by City or for any amount which may become due to RHCB or its successors, or on any obligations under the terms of this Agreement. No member, official or employee of RHCB shall be personally liable to City, or any successor in interest, in the event of any Default or breach by RHCB or for any amount which may become due to City or its successors, or on any obligations under the terms of this Agreement. City and RHCB each hereby waive and releases any claim it may have against the members, officials, or employees of the other with respect to any Default or breach by the other or for any amount which may become due to it or its successors, or on any obligations under the terms of this Agreement. City and RHCB each make such release with full knowledge of Civil Code Section 1542 and hereby waives any and all rights thereunder to the extent of this release, if such Section 1542 is applicable. Section 1542 of the Civil Code provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

As such relates to this Section, City and RHCB each hereby waives and relinquishes all rights and benefits that it may have under Section 1542 of the California Civil Code.

s. Assignment by City. City may assign or transfer any of its rights or obligations under this Agreement with the approval of RHCB, which approval shall not be unreasonably

withheld; provided, however, that the City may assign or transfer any of its interests hereunder to the City, or any public or private entity controlled by the City at any time without the consent of RHCB.

t. Assignment by RHCB. RHCB shall not transfer or assign this Agreement, the Note, the Deed of Trust, or its interest in the Property or the Project or any portion thereof without prior written approval by the City. Approval of any such transfer or assignment shall be at the sole discretion of the City. Notwithstanding anything to the contrary contained herein, City hereby expressly approves of a transfer of the Project to RHCB Development LP or an affiliate thereof following the expiration of the tax credit compliance period in accordance with the terms of a purchase option and/or right of first refusal. Further notwithstanding anything to the contrary contained herein or in the Loan Documents, the City expressly approves the transfer of partnership interests in Owner as permitted under Owner's Amended and Restated Partnership Agreement.

u. Applicable Law. The laws of the State of California, without regard to conflict of laws principles, shall govern the interpretation and enforcement of this Agreement.

**IN WITNESS WHEREOF**, City and RHCB have executed this Agreement on the respective dates set forth below.

THE CITY OF VISALIA, a public body,  
corporate and politic

Dated: \_\_\_\_\_, 2023

By: \_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Attorney for City

RHCB Development LP, a California limited partnership

By: WRBH LLC, a California limited liability company, its General Partner

\_\_\_\_\_  
By: Wayne Rutledge, its Manager

By: AHBH LLC, a California limited liability company, its Co-Limited Partner

\_\_\_\_\_  
By: Brad Hardie, its Manager

By: Wayne and Rena Rutledge Revocable Trust, its Co-Limited Partner

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By: Wayne Rutledge, its Trustee

DRAFT

**Exhibit “A”**

**Legal Description of the Property**

To be added.

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**Exhibit “B”**

**Project Budget**

To be added.

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