



COUNTY OF LAKE

COUNTY COUNSEL

TO: OVERSIGHT BOARD OF SUCCESSOR AGENCY TO
 LAKE COUNTY REDEVELOPMENT AGENCY

FROM ANITA L. GRANT
 COUNTY COUNSEL

SUBJECT: OVERSIGHT BOARD AUTHORITY TO FORGIVE A LOAN

DATE: MARCH 4, 2022

The Oversight Board has asked me to make suggestions to strengthen the default provisions of the Agreement entered into by and between the Rural Communities Housing Development Corporation (“RCHDC”) and the Lake County Housing Authority (the “Agreement”). Further, there was discussion about including a provision comparable to the provision in an earlier agreement for this same affordable housing project which allowed for the forgiveness of monies loaned by Lake County Redevelopment Agency to RCHDC after a term of fifty-five (55) years.

Affordable housing was given considerable importance under the Community Redevelopment Law:

The Community Redevelopment Law (Health and Safety Code Division 24, §§ 33000 - 37964; “CRL”) was for decades the primary vehicle for tax increment financing in California. The CRL depended upon authority in California Constitution Article XVI, Section 16. . . . Redevelopment proved to be very popular with California cities and counties, in large part because the tax increment allocated to redevelopment agencies included the tax increment generated by other taxing agencies’ AB 8 portion. Because 20% of the tax increment was committed to affordable housing, redevelopment was also a major source of affordable housing in the State. (League of California Cities, Redevelopment 2.0: Existing Laws, Pending Legislation and Legal Theory (2019)

The importance of affordable housing continued to be recognized and protected when redevelopment agencies were dissolved. As you are aware, there are statutory requirements to effectuate the transfer of housing functions and assets to a successor housing entity.

The Lake County Housing Authority became the successor agency of the former RDA’s

housing obligations, assets, loan receivables, and all other assets meeting the definition in Health and Safety Code section 34176(e) when the Board of Supervisors approved that transfer in January of 2012.

While employing methods to protect the taxing entities is important, at issue here are housing assets which were duly transferred to the Lake County Housing Authority. For purposes of the agreement with RCHDC, that shifts the focus to now protecting the housing assets - and achieving the goal of developing affordable housing. If the loan forgiveness provisions are reinstated, that goal cannot be reached. However, there are alternatives to the reinstatement of those provisions which will strengthen the protection of these assets.

I suggest that the following provisions be modified and/or added to the Agreement to Develop Affordable Housing.

PROPOSED LANGUAGE:

1. The addition of Section 2.1.8.[to be added to Section 2.1 Housing Authority Responsibilities]:

“2.1.8. In the event the HOUSING AUTHORITY should obtain ownership of the Property due to default pursuant to Section 4 herein, the HOUSING AUTHORITY hereby covenants and agrees that it shall use the Property solely for residential occupancy by low income and very low income households which shall include persons suffering from mental disorders or substance abuse disorders who are at risk of becoming homeless in compliance with the requirements set forth in this Agreement. If for any reason the HOUSING AUTHORITY should sell the Property, any monies it realizes from that sale shall be returned to the Successor Agency for the Lake County Redevelopment Agency for distribution by the Lake County Successor Agencies Oversight Board to the taxing entities.”

2. The modification of Section 2.2.7 [Section 2.2 RCHDC Responsibilities]:

“2.2.7 In the event of default by RCHDC and a demand by the HOUSING AUTHORITY as described in Section 4.2(a) herein, RCHDC agrees to convey the Property to the HOUSING AUTHORITY for one dollar (\$1.00) In such event, RCHDC shall execute a quitclaim deed in favor of the HOUSING AUTHORITY (the "Quitclaim Deed"), and the HOUSING AUTHORITY shall accept the Property in its "as is" condition without any representation or warranty from RCHDC pursuant to the Quitclaim Deed.”

3. The addition of Section 2.2.9. [to be added to Section 2.2 RCHDC Responsibilities]:

“2.2.9. Use and Affordability Restrictions. RCHDC hereby covenants and agrees that throughout the Term of this Agreement, (as defined in Section 3 herein) the Property shall be used solely for residential occupancy by low income and very low income households

which shall include persons suffering from mental disorders or substance abuse disorders who are at risk of becoming homeless in compliance with the requirements set forth in this Agreement. RCHDC represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the occupancy and affordability restrictions set forth in this Agreement and covenants that it shall not enter into any agreement that is inconsistent with such restrictions without the express written consent of the HOUSING AUTHORITY.”

4. The modification and strengthening of Section 4:

“4. DEFAULT.

4.1. Event of Default. Each of the following shall constitute a “Default” by RCHDC under this Agreement:

a) Breach of Covenants. Failure of RCHDC to duly perform, comply with, or observe any of the conditions, terms, or covenants of the Agreement and/or any Addenda thereto, and such failure having continued uncured for ninety (90) days after receipt of written notice thereof from the HOUSING AUTHORITY TO RCHDC.

(b) Insolvency. A court having jurisdiction shall have made or entered any decree or order: (i) adjudging RCHDC to be bankrupt or insolvent; (ii) approving as properly filed a petition seeking reorganization of RCHDC or seeking any arrangement for RCHDC under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction; (iii) appointing a receiver, trustee, liquidator, or assignee of RCHDC in bankruptcy or insolvency or for any of their properties; (iv) directing the winding up or liquidation of RCHDC, if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days; or (v) RCHDC shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive.

© Assignment or Attachment. RCHDC shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event or, if sooner, prior to sale pursuant to such sequestration, attachment, or execution.

(d) Suspension; Dissolution. RCHDC shall have voluntarily suspended its business or the dissolution of RCHDC.

(e) Liens on Property and the Development. There shall be filed any claim of

lien (other than liens approved in writing by the HOUSING AUTHORITY) against the Development, or any part thereof, or any interest or right made appurtenant thereto, for a period of twenty (20) days without discharge or satisfaction thereof or provision therefore (including, without limitation, the posting of bonds) satisfactory to the HOUSING AUTHORITY.

(f) Failure of RCHDC to meet its obligations pursuant to Section 2.2.8 and/or 2.2.9 of the Agreement.

4.2. Remedies. The occurrence of any Default hereunder following the expiration of all applicable notice and cure periods will, either at the option of the HOUSING AUTHORITY or automatically where so specified, shall give the HOUSING AUTHORITY the right to proceed with any and all remedies set forth in this Agreement and any Addenda thereto. The occurrence of any of the events of Default in Section 4.1 shall act to accelerate automatically, without the need for any action by the HOUSING AUTHORITY.

(a) Surrender of the Property. RCHDC acknowledges and agrees that should it for any reason default as defined herein, the affordable housing project described in this Agreement will be imperiled, requiring immediate action to be taken by the HOUSING AUTHORITY to secure this housing asset. RCHDC acknowledges and agrees that the HOUSING AUTHORITY has undertaken significant responsibilities, including divesting itself of certain rights and entitlements, pursuant to Section 2.1 of this Agreement as consideration in effectuating the goals of the Agreement and the fruition of this affordable housing project. In light of the foregoing, RCHDC agrees that following its default, it shall convey the Property to the HOUSING AUTHORITY in the manner more particularly described in Section 2.2.7 herein for the sum of one dollar \$1.00 and shall do so within ten (10) days of its receipt of written notice from the HOUSING AUTHORITY demanding such conveyance.

(b) Specific Performance. The HOUSING AUTHORITY shall have the right to mandamus or other suit, action or proceeding at law or in equity to require RCHDC to perform its obligations and covenants under the Agreement and any Addenda thereto or to enjoin acts or things which may be unlawful or in violation of the provisions of the Agreement and any Addenda thereto.

4.3. Right to Contest. RCHDC shall have the right to contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute a Default hereunder. Any such contest shall be prosecuted diligently and in a manner unprejudicial to the HOUSING AUTHORITY or the rights of the HOUSING AUTHORITY hereunder.

4.4. Remedies Cumulative. No right, power, or remedy given to the HOUSING AUTHORITY by the terms of this Agreement and any Addenda thereto is intended to be

exclusive of any other right, power, or remedy; each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the HOUSING AUTHORITY by the terms of this Agreement and any Addenda thereto, or by any statute or otherwise against RCHDC and any other person. Neither the failure nor any delay on the part of the HOUSING AUTHORITY to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the HOUSING AUTHORITY of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.”

Thank you.