

**AGREEMENT TO DEVELOP AFFORDABLE HOUSING
(6853 COLLIER AVENUE, NICE, CALIFORNIA)**

This Agreement to Develop Affordable Housing (the "Agreement") is dated, for reference purposes as of _____, 2021 (the "Effective Date"), by and between the Housing Authority of the County of Lake, a public body, corporate and politic, hereinafter referred to as "HOUSING AUTHORITY", and Rural Communities Housing Development Corporation, a California nonprofit public benefit corporation, hereinafter referred to as "RCHDC". The HOUSING AUTHORITY, and RCHDC are each referred to as a "Party" and are collectively referred to as the "Parties".

RECITALS

WHEREAS, the sole purpose of this Agreement is to further detail and separate the distinct roles and responsibilities of each Party to develop vacant land located at 6853 Collier Avenue, Nice, California, as more particularly described in Exhibit A (the "Property"). The Property consists of approximately 3.33 acres of land situated in unincorporated Lake County, and is owned by RCHDC;

WHEREAS, as of February 1, 2012, the Lake County Redevelopment Agency (the "Former Agency") was dissolved pursuant to California Health & Safety Code Section 34172;

WHEREAS, in accordance with California Health & Safety Section 34177, the County of Lake, a political subdivision of the State of California (the "County") elected to serve as the successor agency to the Former Agency and to assume the responsibilities, rights and powers of the Former Agency, as more particularly set forth in the resolution attached as Exhibit B;

WHEREAS, the County elected not to retain the housing assets and functions previously performed by the Former Agency so that all rights, powers, assets, liabilities, duties and obligations associated with the housing activities of the Former Agency were transferred to the HOUSING AUTHORITY in accordance with Health and Safety Code Section 34176, as more particularly set forth in the resolution attached as Exhibit B;

WHEREAS, RCHDC has an extensive history of developing and managing decent affordable housing for low and moderate income persons, and, based on such history, the Former Agency had provided certain financial assistance to RCHDC and had entered into certain agreements with RCHDC regarding the development of the Property;

WHEREAS, the HOUSING AUTHORITY, is the successor-in-interest to the Former Agency under the documents previously entered into by RCHDC regarding the Property, and the HOUSING AUTHORITY is now a party to such documents and agreements;

WHEREAS, the HOUSING AUTHORITY recognizes the need for low to very low income housing for mental disorder and substance use disorder clients who are at risk of becoming homeless;

WHEREAS, the County Department of Behavioral Health Services ("BH") remains eligible for affordable funding through the Mental Health Services Act ("MHSA") and the No Place Like Home program ("NPLH");

WHEREAS, BH provides supportive services which are unique and specialized for these populations; and

WHEREAS, on April 6, 2021 the Lake County Board of Housing Commissioners adopted Resolution 2021-38 confirming the prior transfer from the former Lake County Redevelopment Agency to the Lake County Housing Authority of Certain Real Property Liens, and Authorizing Assignments of Deeds of Trust to Reflect that Transfer attached as Exhibit C;

WHEREAS, on April 6, 2021, the Lake County Board of Commissioners authorized the County Administrator or designee to draft a new Agreement for consideration for the Lake County Housing Commission to development Affordable Housing at 6853 Collier Avenue, Nice, California and the associated legal instruments required to divest Lake County's security interest and pre-existing development restrictions of said real property; and

WHEREAS, the parties desire to enter into this Agreement to set forth the parties' mutual agreements, understandings, and expectations regarding the proposed development of the Property for use as an affordable housing development (the "Project").

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED BY THE PARTIES, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. DEFINITIONS.

In addition to any other defined term used in this Agreement, the following capitalized terms have the meanings set forth in this Section wherever used in this Agreement, unless otherwise provided

1.1. "Low Income" is defined as households with incomes 80% of the median income for Lake County or less.

1.2. "Very Low Income" is defined as households with incomes 50% of the median income for Lake County or less.

1.3. "Mental Disorder" is defined as any clinically significant behavioral or psychological syndrome characterized by distressing symptoms, significant impairment of functioning, or significantly increased risk of death, pain, or other disability, or any similar definition utilized by MHSA or NPLH.

1.4. "Substance Use Disorder" is defined as a disorder involving problematic use of a drug, alcohol, or another substance, characterized by symptoms such as excessive use of the substance, difficulty limiting its use, craving, impaired social and interpersonal functioning, a need for increased amounts of the substance to achieve the same effects, and withdrawal symptoms upon discontinuance, or any similar definition utilized by MHSA or NPLH.

1.5. "At Risk of Homelessness" is defined as an individual or family who does not have sufficient resources or support networks immediately available to prevent them from moving into an emergency shelter or another place.

2. ROLES AND RESPONSIBILITIES.

2.1 HOUSING AUTHORITY Responsibilities

2.1.1. HOUSING AUTHORITY agrees to grant and convey unto the parties entitled thereto without warranty all the estate and interest derived to the Trustee under that certain Deed of Trust recorded against the Property as Instrument No. 2005009437 in the official records of the COUNTY (the "Official Records"), pursuant to the document attached as Exhibit D.

2.1.2. HOUSING AUTHORITY agrees to grant and convey unto the parties entitled thereto without warranty all the estate and interest derived to the Trustee under that certain Deed of Trust recorded against the Property as Instrument No. 2009009201 in the Official Records, pursuant to the document attached as Exhibit E.

2.1.3. HOUSING AUTHORITY agrees to terminate the Owner Participation Agreement dated March 7, 2005 and as amended dated June 2, 2009 governing the development of the Property, pursuant to the document attached as Exhibit F.

2.1.4. HOUSING AUTHORITY agrees to release and terminate Affordable Housing Covenant recorded against the Property on April 7, 2005 as Instrument No. 2005009438 in the Official Records, pursuant to the document attached as Exhibit G.

2.1.5. HOUSING AUTHORITY agrees to execute the Cancellation and Forgiveness Agreement involving the note dated November 1, 2004 for \$250,000 and a note dated June 5, 2005 for \$998,000, pursuant to the document attached as Exhibit H. The documents attached as Exhibit D through Exhibit H are collectively referred to as the "Termination Documents".

2.1.6. BH agrees to enter into an agreement with RCHDC to access funding amounts from MHSA, NPLH, or other programs implemented by California Department of Housing and Community Development, California Housing Finance Agency and any other applicable agencies to develop the Project.

2.1.7. BH will provide staff to act as consultants to the RCHDC project employees regarding the proposed development of the Project on the Property.

2.2. RCHDC Responsibilities

2.2.1 RCHDC agrees to execute the Termination Documents, and to the extent applicable, cause the recordation of the Termination Documents against the Property in the Official Records.

2.2.4. RCHDC agrees to enter into an agreement(s) with BH to access funding from California Department of Housing, the California Housing Finance Agency, and any other applicable agencies to develop the Project.

2.2.5. RCHDC agrees to use its good faith, commercially reasonable, efforts to secure and utilize federal and/or state Low-Income Housing Tax Credits or other applicable funding sources to construct, manage and fund long-term maintenance for the Project.

2.2.6. RCHDC agrees to repay, in full, the Rural Community Assistance Corporation loan as evidenced by the deed of trust recorded against the Property in the Official Records on August

25, 2005, as Instrument No. 2005025282 within ninety (90) days after a Default as set forth below.

2.2.7 RCHDC agrees to convey the Property to the HOUSING AUTHORITY for one dollar (\$1.00), following: (i) a Default, as set forth below; and (ii) written notice from the HOUSING AUTHORITY demanding such conveyance. 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.

2.2.8. Provided that RCHDC has secured the necessary funding for the Project, RCHDC agrees to use good faith, commercially reasonable, efforts to complete construction of the Project, and obtain a certificate of occupancy for the Project, on or before five (5) years after the Effective Date. RCHDC shall use good faith, commercially reasonable, efforts to develop the Project to serve Low Income or Very Low Income households meeting the definition of Mental Disorder, Substance Use Disorder, or At Risk of Homelessness; provided, however, the Parties agree and acknowledge that the targeted population of the Project (if any) shall be determined by the financing sources secured by RCHDC, and that the Project may be required to be made available to any Very Low Income or Low Income households without regard for any disability or existing housing status. Failure to meet the obligations of this provision shall be a Material Breach and default of this Agreement.

3. GENERAL TERMS. This Agreement will commence as of the Effective Date, and shall terminate upon the earliest of any of the following: (i) _____, 2026 (unless otherwise agreed to by the Parties); (ii) the closing of the financing for development of the Project; (iii) the delivery of the Quitclaim Deed; or (iv) upon mutual agreement of the Parties.

4. DEFAULT. Failure by a Party to duly perform, comply with, or observe any of the conditions, terms, or covenants of this Agreement, and such failure having continued uncured for ninety (90) days after receipt of written notice thereof from the non-defaulting Party to the defaulting Party shall constitute a default of this Agreement (a "Default"); provided, however, if the breach cannot be cured within ninety (90) days, the defaulting Party shall not be in breach, and no Default shall exist, so long as the defaulting Party shall provide a written statement describing the impossibility of curing the Breach within 90 days and presenting a plan and timeline for cure.

5. REMEDIES; TERMINATION. Following a Default by either Party, the non-defaulting Party may pursue any remedies available at law or at equity. In addition, following a Default by RCHDC, HOUSING AUTHORITY may, in addition to any other remedies it may have, immediately suspend or terminate this Agreement in full or in part, or require RCHDC to execute the Quitclaim Deed.

6. CONFIDENTIALITY. The Parties agree that by virtue of entering into this Agreement they will have access to certain confidential information regarding the other Party's operations related to the Project. The Parties agree that they will not at any time disclose confidential information and/or materials without the consent of that Party unless such disclosure is authorized by this Agreement or required by law. Unauthorized disclosure of confidential information shall be considered a materials breach of this Agreement. Where appropriate, releases from potential

tenants of the Project will be secured before confidential information is exchanged. Confidential information will be handled with the utmost discretion and judgment.

7. NONDISCRIMINATION. There shall be no discrimination of any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation, age, handicap (other than as necessary to comply with MHSA, NPLH, or any other Project funding source), ancestry or national origin in the planning, construction and operations of the Project.

8. SEVERABILITY. In the event any provision of this Agreement shall be found to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the validity, legality and enforceability of the remainder of the Agreement.

9. AMENDMENTS. This Agreement may be amended only in writing and authorized by the designated representatives of the HOUSING AUTHORITY and RCHDC.

10. NOTICES. All notices between the Parties shall be in writing addressed as follows:

County of Lake	Rural Communities Housing Development Corporation
Administrative Office	499 Leslie Street
255 N. Forbes Street	Ukiah, CA 95482
Lakeport, CA 95453	Attn. Ryan LaRue
Attn. Carol J. Huchingson	

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

11. EXHIBITS. Each of the following exhibits, as listed below, are incorporated herein by this reference:

Exhibit A – Legal Description

Exhibit B – County of Lake Resolution No. 2012-10

Exhibit C – County of Lake Resolution No. 2021-38

Exhibit D – 2005 Substitution of Trustee and Reconveyance

Exhibit E – 2009 Substitution of Trustee and Reconveyance

Exhibit F – Termination of Owner Participation Agreement

Exhibit G – Release and Termination of Affordable Housing Covenant

Exhibit H – Note Cancellation and Forgiveness of Debt Agreement

12. INTEGRATION. This Agreement, including the exhibits, constitutes the entire agreement between the Parties regarding its subject matter and supersedes all prior agreements, related

proposals, oral and written, and all negotiations, conversations or discussions heretofore and between the Parties.

13. FORCE MAJEURE. Notwithstanding any provision of this Agreement to the contrary, performance by either Party shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; quarantine restrictions; court order; or any other similar causes beyond the control or without the fault of the Party claiming an extension of time to perform (including, but not limited to the inability of RCHDC to obtain financing for the Project despite the utilization of good faith, commercially reasonable, efforts to obtain financing). An extension of time for any cause will be deemed granted if notice by the Party claiming such extension is sent to the other within ten (10) days from the commencement of the cause and such extension of time is not rejected in writing by the other Party within ten (10) days of receipt of the notice. In no event shall a Party be required to agree to cumulative delays in excess of one hundred eighty (180) days.

14. COUNTERPARTS; MULTIPLE ORIGINALS. This Agreement may be executed in counterparts, and multiple originals, each of which shall be deemed to be one and the same instrument.

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Executed at Lakeport, California on _____, 2021.

RCHDC:

RURAL COMMUNITIES HOUSING DEVELOPMENT
CORPORATION, a California nonprofit public benefit
corporation

By: _____

Name: _____

Its: _____

HOUSING AUTHORITY:

THE LAKE COUNTY HOUSING COMMISSION

By: _____

CHAIR, Board of Commissioners

ATTEST:

CAROL J. HUCHINGSON

Clerk of the Board of Supervisors

APPROVED AS TO FORM:

ANITA L. GRANT

County Counsel

By: _____


anita grant (Sep 22, 2021 14:38 PDT)

By: _____

EXHIBIT A
Legal Description of the Property

EXHIBIT B

County of Lake Resolution No. 2012-10

EXHIBIT C
Lake County Resolution 2021-38

EXHIBIT D

2005 Substitution of Trustee and Reconveyance

EXHIBIT E

2009 Substitution of Trustee and Reconveyance

EXHIBIT F

Termination of Owner Participation Agreement

EXHIBIT G

Release and Termination of Affordable Housing Covenant

EXHIBIT H

Note Cancellation of Forgiveness of Debt Agreement

Collier Avenue Agreement to Develop Affordable Housing

Final Audit Report

2021-09-22

Created:	2021-09-20
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"Collier Avenue Agreement to Develop Affordable Housing" History

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