



RESOLUTION No. 20-165

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

RESOLUTION AUTHORIZING THE COUNTY OF NEVADA HEALTH AND HUMAN SERVICES AGENCY TO ENTER INTO AN AGREEMENT WITH THE REGIONAL HOUSING AUTHORITY (RHA) TO PROVIDE RHA AN UNSECURED \$50,000 LOAN OF HOMELESS MENTALLY-ILL OUTREACH AND TREATMENT PROGRAM FUNDS TO SECURE PERMANENT AFFORDABLE HOUSING WITHIN THE PROPOSED CASHIN FIELDS DEVELOPMENT

WHEREAS, the Nevada County Board of Supervisors has prioritized the County's coordination with local jurisdictions, developers and other partners to maximize leveraging opportunities with new state funding for affordable and workforce housing development; and

WHEREAS, the Regional Housing Authority (RHA) is seeking to assist the developer of the proposed Cashin Fields Apartment project, an affordable housing project, containing approximately sixty-six units, located in Nevada City, CA ("Project"); and

WHEREAS, the County of Nevada has been approached by the RHA with a request to provide funding in furtherance of the development of the Project; and

WHEREAS, the County has determined that the requested funds are necessary to make the Development economically feasible and affordable to low and very low-income households, and which furthers an important public interest; and

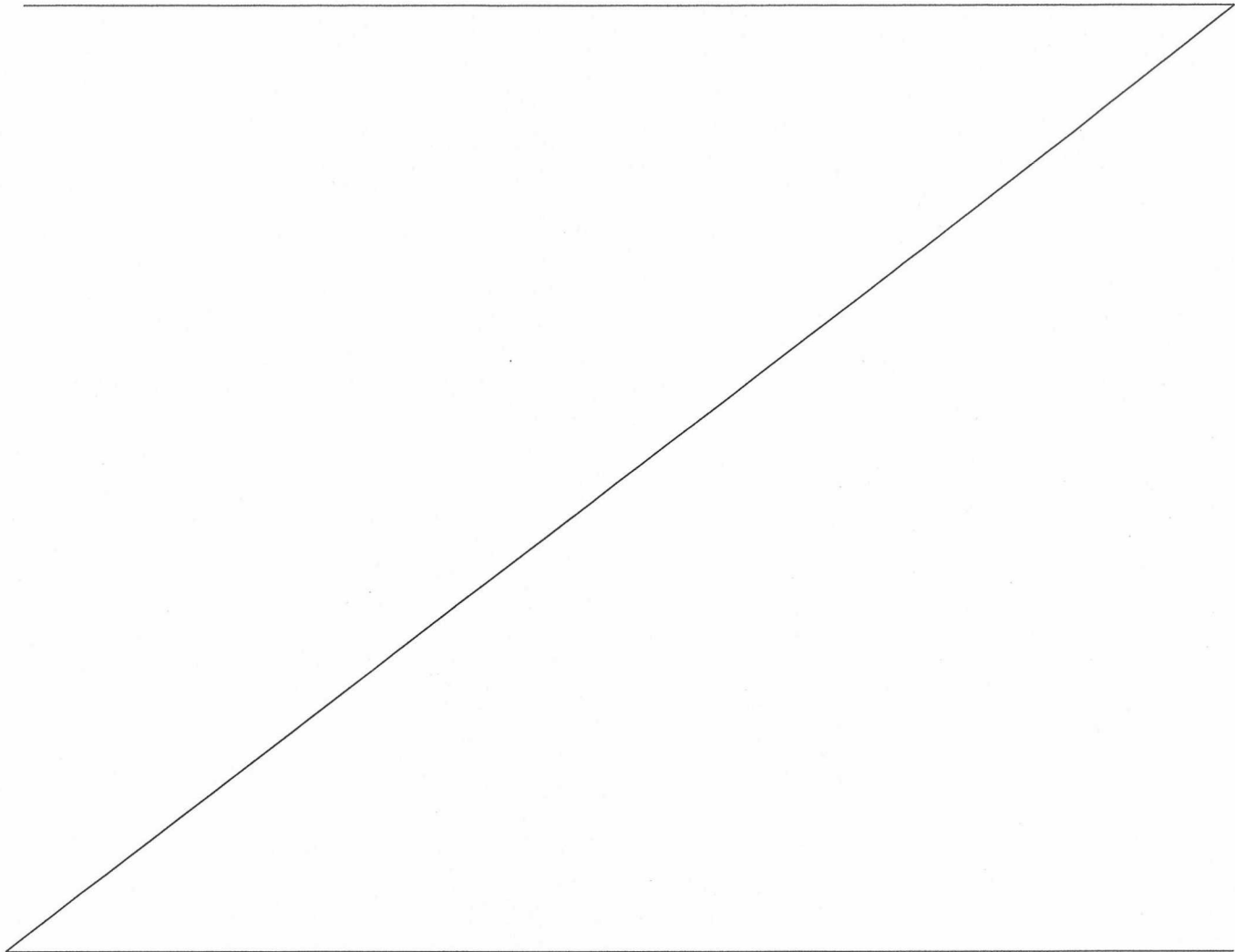
WHEREAS, on September 11, 2018, per Resolution 18-453, the Board of Supervisors authorized the Nevada County Health and Human Services Agency's (HHS) to submit an application to the California Department of Health Care Services (DHCS) for \$100,000 in funding to secure affordable permanent supportive housing through the Homeless Mentally-Ill Outreach and Treatment Program, which funding was awarded; and

WHEREAS, the RHA has agreed that one unit within the Project will provide affordable housing for individuals with serious mental illness and who are homeless or at risk of becoming homeless; and

WHEREAS, these funds will be provided in the form of an unsecured loan and promissory note, at an interest rate of 3% per annum, which will be forgiven, principle and interest, upon the Project fulfilling the above commitment for at least five years from the date of occupancy.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Board of Supervisors of the County of Nevada, State of California authorizes the Director of Housing and Community Services to sign the Loan Agreement and Promissory Note in substantially the same form attached hereto between the County of Nevada and the Regional Housing Authority (RHA) in the amount of \$50,000, with an interest rate of 3% per annum, forgivable upon providing one unit within the Project as affordable housing for individuals with serious mental illness and who are homeless or at risk of becoming homeless for at least 5 years, and authorizing non-material changes to the attached documents to be made, as may be required and as approved by County Counsel and/or the County Executive Officer.

Funds to be disbursed from account: 1589-40110-493-8301/521520.



PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a special meeting of said Board, held on the 12th day of May, 2020, by the following vote of said Board:

- Ayes: Supervisors Heidi Hall, Edward Scofield, Dan Miller, Susan K. Hoek and Richard Anderson
- Noes: None.
- Absent: None.
- Abstain: None.

ATTEST:

JULIE PATTERSON HUNTER
Clerk of the Board of Supervisors

By: 


Heidi Hall, Chair

**PROMISSORY NOTE
UNSECURED**

\$50,000.00

_____, 2020
Nevada City, California

FOR VALUE RECEIVED and pursuant to that certain HMIOT Loan Agreement (“HMIOT Loan Agreement”) dated as of even date herewith entered by Regional Housing Authority, a public body corporate and politic (“Borrower”) and the County of Nevada, a public entity of the State of California (“Lender”), Borrower promises to pay Lender the sum of Fifty Thousand Dollars (\$50,000.00) (the “Loan”) or so much thereof as may be advanced by Lender pursuant to the HMIOT Loan Agreement, together with interest on the outstanding principal balance in accordance with and on the terms set forth herein below. Capitalized terms used but not defined herein shall have the same meaning as set forth in the HMIOT Loan Agreement.

1. Purpose. This Promissory Note (“Note”) is associated with the lending of money by Lender to Borrower in connection with the development and construction of the proposed Cashin’s Fields Apartment project, an approximate 57-unit affordable housing project (“Project”) located in Nevada City, California (APN 005-290-026-000), and owned by a to-be-created California limited partnership (“Owner”). This Note shall be unsecured.

2. Interest. Commencing on the date of initial disbursement of all or a portion of the Loan proceeds and continuing through the date that all indebtedness and other amounts payable under the HMIOT Loan Agreement and the Note are paid in full, the interest on the Loan shall bear interest at a simple rate of three percent (3%) per year.

3. Term. The term of this Note (“Term”) shall commence upon the initial date of issuance of certificates of occupancy for the Project and shall expire upon the fifth anniversary of such date (the “Maturity Date”).

4. Repayment. Should the Project comply with Sections “A” through “C” of the HMIOT Loan Agreement for at least five (5) consecutive years commencing from the date of the initial certificate of occupancy, all unpaid principal, accrued and unpaid interest shall be forgiven by the Lender. Should the Project fail to comply with Sections “A” through “C” of the Loan Agreement for at least five (5) consecutive years commencing from the date of the initial certificate of occupancy, the Borrower shall make annual payments on the outstanding principal and accrued interest, starting from the date of non-compliance with Sections “A” through “C”, equal to 90% of eligible Residual Receipts received from Owner, as defined in the “Appendix A” attached hereto and incorporated herein. All remaining principal balance and all accrued interest shall be immediately due and payable five (5) years from the date the first annual payment is due, as outlined below, unless forgiven per the terms specified herein. Borrower shall retain 10% of each payment as an administrative fee. Payments are expected to be made out of a portion of Residual Receipts from the calendar year preceding such relevant payment (and specifically, without limitation, not from proceeds of any sale or refinancing transaction). “Residual Receipts” means for each calendar year during Term, the amount by which gross revenue exceeds annual operating expenses for the Project (see Appendix A for full definition). To the extent any payment otherwise required hereunder exceeds 90% of any payment, any unpaid amounts shall accrue and be paid from

future year(s) Owner Payment until paid. All annual payments shall be made in arrears no later than the later of: 1) May 1st of each year with respect to the previous calendar year; or 2) a date falling ten business days after receipt of the relevant Owner Payment by Borrower. All payments made shall be credited first to any accrued but unpaid interest, then to current interest due and owing, and lastly to principal. Interest not paid current shall accrue.

Borrower shall have the right to make full or partial prepayments under this Note without premium or penalty. Any prepayments shall be applied to reduce the principal balance of the Note.

Unless Lender agrees otherwise in writing, the entire unpaid principal balance and all interest and other sums accrued under the HMIOT Loan Agreement shall be due and payable upon the transfer, refinance or sale (each a "Transfer") of all or any part of, or interest in, the Project, except any Transfer after which the Project is subject to deed restrictions requiring the Project to continue to be operated as an affordable rental housing development. Notwithstanding the foregoing, following the admission of the limited partner of Borrower, the transfer of a limited partners' limited partnership interest shall not constitute an accelerating Transfer and shall not require the consent of Lender. Moreover, notwithstanding the foregoing, a limited partner of Borrower shall be permitted to remove and replace a general partner thereof for cause in accordance with the Partnership Agreement without the consent of Lender.

Audited Financial Statement. In connection with the annual repayment of the Note, no later than the later of: 1) May 1st of each year with respect to the previous calendar year; or 2) a date falling ten business days after receipt of the relevant Owner Payment by Borrower. Borrower shall furnish to Lender an audited statement of the Owner's records, duly certified by an independent firm of certified public accountants, setting forth in reasonable detail the computation and amount of Residual Receipts during the preceding calendar year.

5. Waiver. Borrower and each surety, endorser, and guarantor waive all demands for payment, presentations for payment, notices of intention to accelerate maturity, notices of acceleration of maturity, protests, and notices of protest. If this note or any instrument securing or collateral to it is given to an attorney for collection or enforcement, or if suit is brought for collection or enforcement, or if it is collected or enforced through probate, bankruptcy or other judicial proceeding, then Borrower shall pay Lender all costs of collection and enforcement, including reasonable attorney's fees and court costs, in addition to other amounts due.

6. Acceleration. On default in the payment of this note or in the performance of any obligation in any instrument securing or collateral to it, the unpaid principal balance and earned interest on this note shall become immediately due at the election of Lender. In the event of any default by Borrower under this Note, Borrower shall pay, in addition to all principal and interest, all reasonable costs and attorneys' fees necessary to collect the obligation evidenced by this Note, whether or not suit be filed. Failure of Lender to assert any right under this Note shall not be deemed a waiver of such right.

7. Lender's Rights. Failure of Lender to assert any right under this Note shall not be deemed a waiver of such right.

8. Binding Obligation. This Note shall be binding upon Borrower and Borrower's heirs, legal representatives, successors, and assigns.

9. California Law. This Note and the legality, validity and performance of the terms hereof shall be governed by, enforced, determined, and construed in accordance with the laws of the State of California.

10. Severability. If any provision of this Note shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

11. Amendment or Modification. The terms of this Note may only be amended or modified by a written agreement executed by Borrower and Lender.

12. Notices. All notices given under this Note shall be made in writing and shall be deemed received when delivered in accordance with the Loan Agreement.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Borrower has executed this Note as of the date first written hereinabove.

COUNTY:

County of Nevada,

By: _____
Mike Dent,
Director Housing and Community Services

BORROWER:

Regional Housing Authority

By: _____
Name: Gustavo Becerra,
Title: Executive Director

Appendix A
Residual Receipts Definitions

1.1. “Annual Operating Expenses” means for each calendar year during the term of the Loans, the following costs reasonably and actually incurred for operation and maintenance of the Development to the extent that they are consistent with an annual independent audit performed by a certified public accountant using generally accepted accounting principles: all state and local property and other taxes and annual assessments imposed on the Development; premiums for property damage and liability insurance; debt service currently due and payable on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Development) on loans that have been approved by Borrower and Owner and which are secured by deeds of trust; utility services not paid for directly by tenants, including but not limited to water, sewer, trash collection, gas and electricity; maintenance and repair including but not limited to pest control, landscaping and grounds maintenance, painting and decorating, cleaning, common systems repairs, general repairs, janitorial, supplies, and others; any annual license or certificate of occupancy fees required for operation of the Development; general administrative expenses including but not limited to advertising and marketing, security services and systems, and professional fees for legal, audit and accounting; property management fees and reimbursements including on-site manager expenses, not to exceed fees and reimbursements which are standard in the industry. Expenses do not include depreciation.

1.2. “Gross Revenue” means for each calendar year during the term of the Loans, all revenue, income, receipts and other consideration actually received by Owner from operation and leasing of the Project development. Gross Revenue includes, but is not limited to: all rents, fees and charges paid by tenants; Section 8 payments or other rental subsidy payments received for the dwelling units, deposits forfeited by tenants, all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; proceeds from vending and laundry room machines; the proceeds of business interruption or similar insurance; the proceeds of casualty insurance to the extent not utilized to repair or rebuild the Development; and condemnation awards for a taking of part or all of the Development for a temporary period. Gross Revenue shall also include the fair market value of any goods or services provided in consideration for the leasing or other use of any portion of the Development and the release of funds from replacement and other reserve accounts to Borrower other than for costs associated with the Development. Gross Revenue shall not include tenants’ security deposits, loan proceeds, capital contributions or similar advances.

1.3. “Residual Receipts” means for each calendar year during the Term, the amount by which Gross Revenue (as defined above) exceeds Annual Operating Expenses (as defined above) for the Development. Residual Receipts shall also include, unless otherwise provided herein and subject to the rights of senior lenders, condemnation awards for a permanent lender taking part or all of the Property or the Project to the extent not utilized to repair or rebuild the Project development.

1.1. "Annual Operating Expenses" means for each calendar year during the term of the loans, the following costs reasonably and actually incurred for operation and maintenance of the Development to the extent that they are consistent with an annual independent audit performed by a certified public accountant using generally accepted accounting principles: all state and local property and other taxes and annual assessments imposed on the Development; premiums for property damage and liability insurance; debt service; and other expenses. "Annual Operating Expenses" shall also include the following: (a) all costs of construction, including but not limited to water, sewer, trash collection, gas and electricity, maintenance and repair including but not limited to painting, cleaning, common system repairs, janitorial supplies and painting and decorating; (b) all costs of occupancy, including but not limited to janitorial, security, general administrative expenses including but not limited to advertising and marketing, security services and systems, and professional fees; (c) all costs of operation, including but not limited to property management fees and reimbursements including on-site manager expenses, not to exceed fees and reimbursements which are standard in the industry. Expenses do not include depreciation.

HMIOT LOAN AGREEMENT

by and between

COUNTY OF NEVADA

and

Regional Housing Authority

1.2. "Gross Revenue" means for each calendar year during the term of the loans, all revenue, income, receipts and other consideration actually received by Owner from operation and leasing of the Project development. Gross Revenue includes, but is not limited to all rents, fees and charges paid by tenants; Section 8 payments or other rental subsidy payments received for the dwelling units; deposits forfeited by tenants; all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; proceeds from vending and laundry troop machines; the proceeds of business interruption or similar insurance; the proceeds of casualty insurance to the extent not utilized to repair or rebuild the Development; and condemnation awards for a taking of part or all of the Development for a temporary period. Gross Revenue shall also include the fair market value of any goods or services provided in consideration for the leasing or other use of any portion of the Development and the release of funds from replacement and other reserve accounts to borrower or other than for costs associated with the Development. Gross Revenue shall not include tenants' security deposits, loan proceeds, capital contributions or similar advances.

1.3. "Residual Receipts" means for each calendar year during the term, the amount by which Gross Revenue (as defined above) exceeds Annual Operating Expenses (as defined above) for the Development. Residual Receipts shall also include, unless otherwise provided herein and subject to the rights of senior lenders, condemnation awards for a permanent lender taking part or all of the Property or the Project to the extent not utilized to repair or rebuild the Project development.

LOAN AGREEMENT

THIS LOAN AGREEMENT (this "Agreement") is entered into as of May 12, 2020 ("Effective Date"), between County of Nevada ("Lender") and Regional Housing Authority ("Borrower"). Borrower and Lender are hereinafter collectively referred to as the "Parties."

A. The Borrower agrees to commit the herewith in funds to the development of the Cashin's Field Apartment Development ("Project"), located within Nevada City, as outlined in Section E below and in conjunction with the Unsecured Promissory Note.

B. The Project will be required to work with local service providers and resources to market one (1) one-bedroom unit towards potential residents with severe mental illness that are homeless or at risk of homelessness.

C. The Borrower agrees to provide the above unit in accordance with those income and rent limitations set forth in the HUD Section 8 Voucher standards.

D. Should marketing efforts fail to find a potential severely mentally ill resident who is homeless or at risk of homelessness the Borrower shall have the ability to lease the unit to the next income qualified resident with County approval.

E. Borrower has agreed to assist with the purchase and development of an affordable housing project consisting of approximately 57 units on a certain parcel of real property identified as Assessor Parcel Number 005-290-026-000.

F. County has agreed to provide Homeless Mentally Ill Outreach and Treatment Program ("HMIOT Loan") funding to Borrower in a total amount not to exceed Fifty Thousand dollars (\$50,000.00). County represents that no portion of the principal of the HMIOT Loan are derived from proceeds of issuance of tax-exempt bonds.

G. Concurrently herewith, Borrower shall execute an unsecured Promissory Note ("Note") in the amount of Fifty Thousand dollars (\$50,000.00) to evidence the HMIOT Loan.

H. Commencing on the date of initial disbursement of all or a portion of HMIOT Loan proceeds and continuing through the date that all indebtedness and other amounts payable under this Agreement and the Note are paid in full, the interest on the HMIOT Loan shall bear interest at a simple rate of three percent (3%) per year.

I. All unpaid principal accrued and unpaid interest, and any other amounts payable under this Agreement shall be deferred for five (5) consecutive years commencing from the date the certificate of occupancy is issued for the Project. At the end of this time period all unpaid principal, accrued and unpaid interest, and any other amounts payable under this Agreement is due and payable

J. Upon the Borrower fulfilling the requirements of sections "A" through "C", above, for at least five (5) consecutive years commencing from the date of initial occupancy all unpaid principal, accrued and unpaid interest on the HMIOT Loan will be forgiven. Should the HMIOT Loan not be forgiven, repayment of the HMIOT Loan shall be made in accordance with the terms of the Unsecured Promissory Note, which is incorporated herein and made part of this Agreement by this reference.

K. Should a certificate of occupancy not be issued on or before December 31, 2023, the HMIOT Loan funds shall be returned to the County of Nevada. This clause may be extended by mutual written amendment to this agreement by the Parties.

SIGNATURES ON NEXT PAGE

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

COUNTY:

County of Nevada,

By: _____
Mike Dent,
Director Housing and Community Services

BORROWER:

Regional Housing Authority

By: _____
Name: Gustavo Becerra,
Title: Executive Director