

BUTTE COUNTY AFFORDABLE HOUSING  
DEVELOPMENT CORPORATION

**Board of Directors Meeting**

2039 Forest Avenue  
Chico, CA 95928

**SPECIAL MEETING AGENDA**

December 15, 2022  
2:00 p.m.

*Due to COVID-19 and California State Assembly Bill 361 that amends the Ralph M. Brown Act to include new authorization for remote meetings, including remote public comment for all local agencies. California State Assembly Bill 361 extends the provision of Governor Newsom's Executive Order N-29-20 and N-35-20 until January 2024. The meeting will be a hybrid meeting both in person at this Housing Authority office and remotely. Members of the Board of Commissioners and HACB staff will be participating either in person or remotely. The Board of Commissioners welcomes and encourages public participation in the Board meetings either in person or remotely from a safe location.*

Members of the public may be heard on any items on the Commissioners' agenda. A person addressing the Commissioners will be limited to 5 minutes unless the Chairperson grants a longer period of time. Comments by members of the public on any item on the agenda will only be allowed during consideration of the item by the Commissioners. Members of the public desiring to be heard on matters under jurisdiction of the Directors, but not on the agenda, may address the Commissioners during agenda item 6.

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**Please join my meeting from your computer, tablet or smartphone.**

<https://meet.goto.com/649625581>

**You can also dial in using your phone.**

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United States: [+1 \(571\) 317-3116](tel:+15713173116)

**Access Code:** 649-625-581

If you have any trouble accessing the meeting agenda, or attachments; or if you are disabled and need special assistance to participate in this meeting, please email [marysolp@butte-housing.com](mailto:marysolp@butte-housing.com) or call 530-895-4474 x.210.

Notification at least 24 hours prior to the meeting will enable the Housing Authority to make a reasonable attempt to assist you.

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NEXT RESOLUTION NO. 22-20C

ITEMS OF BUSINESS

1. ROLL CALL
2. AGENDA AMENDMENTS

3. CONSENT CALENDAR

4. CORRESPONDENCE

5. REPORTS FROM PRESIDENT

5.1 Lincoln Family Apartments, Oroville – Development MOA with the Richman Group.

Recommendation:

Resolution No. 22-20C

6. MEETING OPEN FOR PUBLIC DISCUSSION

7. MATTERS CONTINUED FOR DISCUSSION

8. SPECIAL REPORTS

9. REPORTS FROM DIRECTORS

10. MATTERS INITIATED BY DIRECTORS

11. EXECUTIVE SESSION

12. DIRECTORS' CALENDAR

**Next meeting – February 16, 2023**

13. ADJOURNMENT

BUTTE COUNTY AFFORDABLE HOUSING DEVELOPMENT CORPORATION

RESOLUTION NO. 22-20C

MEMORANDUM OF AGREEMENT WITH THE RICHMAN GROUP FOR DEVELOPMENT AND OPERATION OF LINCOLN FAMILY APARTMENTS, OROVILLE

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WHEREAS, the Butte County Affordable Housing Development Corporation (BCAHDC), in response to need, seeks to increase the availability of affordable housing in the communities and jurisdiction it serves; and

WHEREAS, The Richman Group of California (TRG) has approached the Butte County Affordable Housing Development Corporation (BCAHDC) to participate in development of a 61-unit affordable low-income housing development serving families in Oroville, CA, such development known as Lincoln Family Apartments, to be located on an approximately 13.5 acre site identified in Assessor's Book 35, Page 4, Parcel 56, Oroville, CA (Project); and

WHEREAS, such development is proposed to be accomplished by means of corporate partnership, such partnership structured and suitable for access to affordable housing subsidy sources, such as, but not limited to, the federal IRS Low Income Housing Tax Credit program as administered by the State of California Tax Credit Allocation Committee; and

WHEREAS, BCAHDC, seeks to act as Managing General Partner in the Limited Partnership (Partnership) that will own and operate the Project, in materially participating in the development and operation of the Property, and ensuring its ongoing affordability to the community; and

WHEREAS, a Memorandum of Agreement (MOA) has been drafted which substantially identifies the roles of the parties to the MOA; and,

WHEREAS, time is of the essence in proceeding with development of the Project; and

WHEREAS, the MOA has been determined sufficient for purposes of identifying roles and advancing project interests until such time as the formal Partnership Agreement is determined, based on the best interests of BCAHDC, and TRG;

THEREFORE BE IT RESOLVED by the Board of Directors of the Butte County Affordable Housing Development Corporation (BCAHDC) to authorize its President to execute the Memorandum of Agreement (MOA) between BCAHDC and The Richman Group (TRG) for purposes of participation in the 61-unit affordable housing development project known as Lincoln Family Apartments, Oroville, Paradise, to be located on an approximately 13.5 acre site identified in Assessor's Book 35, Page 4, Parcel 56, Oroville, CA, such participation to be in accordance with the MOA, attached to and made a part of this Resolution Number 22-20C,

Dated: December 15, 2022.

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Edward S. Mayer President

ATTEST:

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Marysol Perez, Secretary

## MEMORANDUM OF AGREEMENT

THIS AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_, 2022 by and between ***The Richman Group of California Development Company LLC***, a California limited liability company (hereafter “TRG”), and ***Butte County Affordable Housing Development Corporation***, a California nonprofit public benefit corporation (hereafter “BCAHDC”).

### RECITALS

WHEREAS, TRG and its affiliates have the experience and expertise necessary to prepare Tax Credit applications, obtain construction and permanent financing, syndicate tax credits and engage the necessary professionals to prepare architectural designs and plans and construct the Project; and

WHEREAS, TRG, or related party, has secured site control of an approximately 6.47 +/- acre property located West of Lincoln Boulevard and South of Wyandotte Avenue, Oroville, CA, and desires to develop 61 units of family affordable housing on the site (“Project”) as described in the attached Exhibit A; and

WHEREAS, BCAHDC provides affordable housing opportunity to households in Butte County, including the City of Oroville; and

WHEREAS, TRG has approached BCAHDC to seek BCAHDC’s participation as non-profit Managing General Partner in the low-income housing tax credit (“LIHTC”) partnership (the “Limited Partnership”), that would develop, own and operate such affordable family housing development in Oroville; and

WHEREAS, BCAHDC has determined it in the best interest of BCAHDC, their clients, and the community they serve to work with TRG in seeking to create affordable housing opportunity through construction of new residential units meeting the needs of low-income families in Oroville;

IT IS, THEREFORE, AGREED AS FOLLOWS:

1. TRG shall seek financing in an amount sufficient for the construction of the Project. TRG shall also use commercially reasonable efforts to obtain a commitment to purchase LIHTC on market terms. BCAHDC understands that the tax credit investor (the “Limited Partner”) may be an affiliate of TRG. TRG shall also perform any and all procedures and advance all expenses necessary to syndicate said LIHTC prior to closing. This agreement is conditional upon securing an allocation of LIHTC that TRG deems sufficient for financing of the Project.
2. TRG and BCAHDC shall work jointly to prepare and submit any financing applications required for the development of the Project. BCAHDC shall be given an opportunity to review any tax credit or other financing applications submitted for the Project. TRG shall advance any and all predevelopment funds required for the applications and will also pay any other costs incurred prior to the start of construction.

3. Provided financing sufficient for development of the Project is awarded, TRG and BCAHDC shall work jointly together to obtain all federal, state and local approvals necessary to develop the Project, and shall further execute any and all documents and/or agreements, subject to appropriate review, as may be necessary to move the Project forward.
4. TRG shall be responsible for obtaining the services of design professionals for the design of the site plan and design of the Project. BCAHDC will be provided copies of the final plans and specifications for the Project, including all construction contracts. BCAHDC will have the right to promptly review, comment and approve such plans, specifications and contracts prior to the execution of the contracts, such approval not to be unreasonably withheld, conditioned or delayed and provided that TRG shall have the final consent right to any such documents.
5. At the initial closing of the construction loan, TRG shall be reimbursed from funding proceeds all project development expenses previously paid relating to the Project, including interest at the rate of twelve percent (12%) per annum. While it is anticipated that TRG shall advance all predevelopment costs, to the extent BCAHDC incurs any predevelopment expenses, such costs up to an aggregate of \$25,000 shall likewise be reimbursed from funding proceeds (but not in duplication of the overhead and start-up costs described below), provided BCAHDC provides TRG with reasonable back-up so that TRG can include such reimbursement request with its closing draw. Any predevelopment expenses in excess of \$25,000 shall require the written approval of TRG prior to making the expenditure. BCAHDC shall also be entitled to reimbursement in the amount of \$10,000 for overhead expenses and start up costs incurred by BCAHDC. TRG shall be paid a fee equal to 90% of the developer fee for the Project, and BCAHDC shall be paid a fee equal to 10% of the developer fee for the Project; such allocation shall be used for each installment or payment of the developer fee. If total financing sources are not sufficient to pay all or a portion of the developer fee earned, proceeds from cash flow shall be used until the entire fee is paid in full. Payments of any developer fees shall follow closing of the permanent loan and final tax credit syndication payments from the investor, unless sufficient financing proceeds are available at an earlier date at which time a partial payment may be made. All cost overruns shall be borne by TRG, after full deferral of the developer fee and any other fees then due to TRG and BCAHDC. BCAHDC shall be entitled to reimbursement of up to \$15,000 in legal fees at construction loan closing (if a non-profit Welfare Tax Opinion is not required), or up to \$25,000 in the event a non-profit Welfare Tax Opinion is required. TRG's or the Limited Partnership's counsel shall issue all enforceability opinions on behalf of the Limited Partnership and its general partners. Cost overruns, operating deficits and amounts needed to convert to permanent financing, all to the extent funded by TRG, shall be repaid to TRG on a priority basis (prior to developer fee and other fees due to TRG and BCAHDC), including interest at the rate of twelve percent (12%) per annum.
6. BCAHDC shall have the following substantial management duties, unless prohibited by a funding source, in which case the parties shall mutually agree on alternative substantial management duties:
  - (A) participates in hiring and overseeing the work of all persons necessary to provide services for the management and operation of the limited partnership business;
  - (B) executes and enforces all contracts executed by the limited partnership;

- (C) executes and delivers all partnership documents on behalf of the limited partnership; and
- (D) monitors compliance with all governmental regulations and files or supervises the filing of all required documents with governmental agencies;
- (E) ensures that charitable services or benefits, such as vocational training, educational programs, childcare and afterschool programs, cultural activities, family counseling, transportation, meals and linkages to health and/or social services are provided or information regarding charitable services or benefits are made available to the low-income housing tenants.

7. Upon completion of construction and passing of all inspections, the Limited Partnership established by an affiliate of TRG and BCAHDC during the predevelopment period, along with the Limited Partner under an amended and restated partnership agreement (together with all equity documents to be attached thereto, the “LPA”), shall thereafter own and operate the Project as an affordable housing project subject to the requirements set forth by the tax credit program and other financing agreements. All cash flow and ownership benefits, including the sale of the property shall be 100% owned by TRG. The Managing General Partner of the Project shall also receive an annual partnership administrative fee of \$6,100 (\$100 per unit per year, subject to an annual 3% escalator thereafter), subject to cash flow, commencing with the calendar year in which the Project is placed in service, to the extent the Managing General Partner has and continues to take care of the customary Manager General Partner duties. TRG, in its capacity as Administrative General Partner, shall also earn an annual partnership administrative fee of \$ \_\_\_\_\_, subject to cash flow.

Because the success of the Partnership is dependent on the timely uninterrupted closing of the construction and equity financing, completion and lease-up of the Project, and closing on permanent financing, and because TRG will be providing all of the guarantees required for same, BCAHDC will agree not to seek or obtain legal or equitable relief prior to closing of the permanent financing for the Project and release of TRG's guarantees. The foregoing shall not constitute a waiver by BCAHDC of any cause of action it may have for events rising prior to permanent financing and release of TRG's guarantees, only a waiver by BCAHDC of its right to seek relief for such causes of action until such events have occurred.

8. Managing General Partner – BCAHDC will serve as a Managing General Partner to the Limited Partnership to be formed to own and operate the Project. Upon admittance, BCAHDC shall have all rights and obligations of a Managing General Partner under California law. Notwithstanding, the assignment, delegation or reservation of any duty or obligation under the Partnership or the Property Management Agreement, BCAHDC shall at all times be considered to be continuously and substantially involved in the management and operation of the Limited Partnership and the Project. BCAHDC shall:
  - a) Advise the Limited Partnership concerning particular requirements of low income housing rules and regulations and monitor compliance with all government regulations and file or supervise the filing of all required documents with government agencies.
  - b) Facilitate development and operation of the Project by appearance or correspondence with lenders and government bodies.
  - c) In conjunction with the Administrative General Partner execute and deliver all partnership documents on behalf of the Limited Partnership.

- d) Participate in hiring and overseeing the work of all persons necessary to provide services for the management and operation of the Limited Partnership business.
  - e) BCAHDC shall use its best efforts to obtain and maintain the “Welfare Tax Exemption” available to qualified low-income projects through California State Revenue & Taxation Code §§ 214(g), et seq. and related State Board of Equalization (BOE) administrative rules and rules of procedure.
  - f) BCAHDC shall also have any and all necessary authority to ensure compliance with BOE’s rulings and policies, as well as federal and state tax statutes and court rulings relating directly to the above-mentioned obligations.
9. An affiliate of TRG, Richman Property Services, Inc., a Connecticut corporation, or such other management company selected by TRG with input from BCAHDC, shall be engaged to manage the Project in accordance with commercially reasonable terms and in compliance with IRC Section 42 guidelines. BCAHDC or its affiliates may desire to provide certain management operations such as maintenance and landscaping, also on commercially reasonable terms, and in such event will discuss such services with TRG, but TRG shall have the final decision as to whether to hire BCAHDC or its affiliates for such services.
10. TRG, BCAHDC and the Limited Partnership’s Administrative General Partner (“AGP”), being an affiliate of TRG, hereby agree that if AGP has any right, option or opportunity (including under a put option by the limited partner) to acquire all or any portion of the limited partner interests in the Limited Partnership (collectively, the “AGP Interest Rights”), then immediately following the conveyance of the Limited Partner interests in the Limited Partnership to an affiliate of AGP (but on the same day), the LPA will be amended so that BCAHDC will own a 10% interest in the Partnership at no cost to BCAHDC (including, without limitation, in Net Cash Flow and proceeds from Capital Transactions).

If the AGP has the right, option or opportunity (including under a put option by the limited partner) to acquire the Project (together with the “AGP Interest Rights”, the “AGP Rights”), then immediately following the acquisition of the Project by the AGP or its assignee (“New Owner”) (but on the same day), BCAHDC will be admitted to new Owner such that BCAHDC will own a 10% interest in the New Owner (including, without limitation, in Net Cash Flow and proceeds from Capital Transactions).

BCAHDC agrees that it will not exercise any right, option or opportunity (including under a put option by the limited partner) to acquire all or any portion of the limited partner interests in the Limited Partnership or the Project (collectively, the “MGP Rights”) under the LPA without providing not less than five (5) business days advance written notice thereof to the AGP. In the event that AGP exercises any of its Limited Partnership Interest Options or Project Option following receipt of such notice, then BCAHDC shall not exercise its Refusal Right (or if exercised, then TRG and AGP shall have the remedies herein).

Neither BCAHDC nor AGP shall transfer or assign its rights or options under the LPA except to an affiliate assignee that acknowledges and agrees to the terms of this Section 10 in writing reasonably satisfactory to the non-transferring party. AGP and TRG shall be jointly and

severally liable for their obligations under this Section 10. Notices to the AGP hereunder shall be made at the same address as TRG.

BCAHDC shall not be required to contribute capital or otherwise provide funds in connection with the purchase of the Limited Partnership interest in the LIHTC Partnership with respect to the Partnership Interest Options or the Purchase Option under the LPA.

BCAHDC, TRG and AGP shall each have all remedies available at law and equity, including specific performance, to enforce its rights under this Section 10. In the event of any dispute among any of TRG, AGP and BCAHDC, the prevailing party/ies shall be entitled to reimbursement of reasonable attorney's fees from the non-prevailing party/ies.

The continued ownership and development of the Project by the Limited Partnership or New Owner shall be pursuant to the same terms and conditions as provided herein, including with respect to the developer and partnership management fees.

11. TRG or BCAHDC may terminate this Agreement without liability upon written notice to the other party if either party determines, in its sole discretion, that (i) the Project or the Limited Partnership is infeasible or is not in such party's best interests or (ii) that sufficient financing to develop the Project will not be awarded by December 31, 2024. In the event the Project becomes infeasible and does not close, all predevelopment costs of the Project incurred by TRG shall be the responsibility of TRG, except those costs described above incurred by BCAHDC prior to admittance of BCAHDC to the Limited Partnership.
12. BCAHDC shall not be responsible for Project "guaranties" or indemnities" to the tax credit investor, lenders and any other financial participant to the Project financing. To the extent TRG or its affiliated guarantor (for purposes of this Section 12, the "Guarantor") is required to make a payment under a guaranty for any reason, funds which would have otherwise been distributed by the Partnership to TRG, BCAHDC, or their affiliates, as part of the distributions set forth in the Partnership Agreement, shall instead be paid to the Guarantor, to reimburse such payments, with interest at a rate equal to 12% per annum, prior to the TRG, BCAHDC, or their affiliates, receiving any further funds from the Partnership, including, without limitation, any sale and refinancing proceeds; provided, however, the foregoing shall not apply to the annual partnership administrative fee due to BCAHDC, which shall be paid prior to any such reimbursements to the extent cash flow is available. The parties acknowledge that neither TRG, nor its affiliates, will be required to guarantee any items or indemnify for any items over which such entities are not given control. TRG shall also indemnify BCAHDC for its role and participating in the Limited Partnership, unless resulting from the gross negligence or willful misconduct of BCAHDC. TRG, for itself, its subsidiaries, and affiliates agrees that BCAHDC's liability for failure to perform any duty or obligation under this MOA, the Limited Partnership or any financing or security agreement entered into by the Limited Partnership shall be limited to BCAHDC's interest in the Limited Partnership.
13. The Parties realize that although it is the sincere desire of each of them for the proposed Project to come completely to fruition, that there is always a degree of risk in pre-development activities and that the Parties each acknowledge that there may be certain circumstances, the



occurrence of which may result in the decision that the best course of action is to terminate this Memorandum of Agreement. Such circumstances might include the inability of the Project to secure sufficient funds, LIHTC's, or bond cap authority; the inability of the Project despite the best efforts of the Parties to obtain other necessary portions of the Project's financing package (such as loans, or other city funding) or other causes which are not within the control of the parties to this agreement.

14. In the event such a termination is necessary for any reason by either Party, TRG and BCAHDC hereto agree that each of them shall indemnify and hold harmless the other party from any and all claims, causes of action or alleged injuries other than those caused by the gross negligence of the party seeking indemnification.
15. The Parties agree and understand that in all other respects each of them shall move forward and negotiate in good faith all issues necessary to plan the structure and financing of the above-mentioned affordable housing apartment complex.
16. Formal notices, demands, and communications among the Parties shall not be deemed given unless dispatched by certified mail, return receipt requested, by facsimile delivery with correct answerback received, by electronic mail or by reputable delivery service with a delivery receipt, to the Parties' principal offices as follows:

BCAHDC:                             Butte County Affordable Housing Development Corporation  
2039 Forest Avenue  
Chico, CA 95928  
Attention: Edward S. Mayer, President  
Telephone: 530-895-4474 x 215  
Fax: (530) 895-4459  
Email: [edm@butte-housing.com](mailto:edm@butte-housing.com)

TRG:                                     The Richman Group of California Development Company LLC  
777 West Putnam Avenue  
Greenwich, CT 06830  
Attn: Kristin M. Miller  
Telephone: (203) 869-0900  
Email: [millerk@richmancapital.com](mailto:millerk@richmancapital.com);

The Richman Group of California Development Company LLC  
2727 Newport Blvd., Suite 203  
Newport Beach, CA 92663  
Attn: Rick Westberg  
Telephone: (949) 612-7293  
Email: [westbergr@richmancapital.com](mailto:westbergr@richmancapital.com)

**[Remainder of Page Intentionally Left Blank – Signatures Contained on Following Page]**

IN WITNESS WHEREOF, the parties hereto executed this Agreement as of the date first written above.

THE RICHMAN GROUP OF CALIFORNIA  
DEVELOPMENT COMPANY LLC, a California  
limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Butte County Affordable Housing Development Corporation

By: Edward S. Mayer  
Its: President

**Exhibit A**