

REVISED AND RESTATED
COUNTY LOAN PROMISSORY NOTE

Santa Barbara, California

December 7, 2021

\$450,000

This Revised and Restated Promissory Note supersedes and replaces in its entirety that certain Promissory Note executed by West Cox Cottages, L.P., a California Limited Partnership for the benefit of the County of Santa Barbara, a political subdivision of the State of California (the "Lender") dated as of September 14, 2021 in the principal amount of Four Hundred Fifty Thousand Dollars (\$450,000) for the acquisition and construction of certain real property as defined below.

FOR VALUE RECEIVED, West Cox Cottages, L.P., a California limited partnership, ("Borrower"), whose address 815 W Ocean Ave., Lompoc, CA 93436, hereby promises to pay to the order of the County of Santa Barbara, a political subdivision of the State of California ("Lender"), whose address is 123 E. Anapamu Street, 2nd Floor, Santa Barbara, California 93101, the principal amount equal to Four Hundred Fifty Thousand Dollars (\$450,000), or so much thereof as may be advanced by Lender to Borrower, together with interest thereon, as set forth below.

1. **PURPOSE.** On January 17, 2019, the Board of Supervisors of the County of Santa Barbara executed a County HEAP Loan Agreement to provide Borrower with One Million, Three Hundred Fifty Thousand Dollars (\$1,350,000) in Homeless Emergency Aid Program ("HEAP") funds to assist Borrower constructing and installing fourteen (14) pre-fabricated buildings providing thirty (30) one-bedroom rental units, including one manager's unit, on permanent foundations (the "Project") on the property located at 1141 West Cox Lane, Santa Maria, California (the "Property"). In the course of construction, a \$971,593.00 deficiency of funds prompted the Borrower's request for additional funds for the Project.

2. In order to assist Borrower constructing and installing fourteen (14) pre-fabricated buildings providing thirty (30) one-bedroom rental units, including one manager's unit, on permanent foundations (the "Project") on the property located at 1141 West Cox Lane, Santa Maria, California (the "Property"), Lender has agreed to loan an additional amount of Four Hundred Fifty Thousand Dollars (\$450,000) to Borrower, comprised of County Inclusionary Housing Ordinance In-Lieu Funds.

3. A County Loan Agreement, dated September 14, 2021, included an additional \$450,000 of County Inclusionary Housing Ordinance funds for the Project, which funds are the subject of this promissory note. On December 7, 2021 the Board of Supervisors of the County of Santa Barbara executed a First Amendment to the County Loan Agreement, which amended the terms as described in this Revised and Restated Promissory Note, which is secured by the Deed of Trust recorded against the Property on September 28, 2021 as Document Number 2021-0068199.

4. BORROWER'S OBLIGATION. This promissory note ("County Loan Promissory Note") evidences Borrower's obligation to pay Lender the principal amount of Four Hundred Fifty Thousand Dollars (\$450,000) loaned to Borrower by Lender ("County Loan"), plus any current or accumulated interest thereon, for the specific uses designated in a loan agreement between Borrower and Lender dated September 14, 2021, as amended by that certain first amendment to loan agreement dated December 7, 2021, and as may be further amended from time to time ("County Loan Agreement").

5. INTEREST. Subject to Section 6, this Note shall bear three percent interest (3%) per annum. Interest is not compounding.

6. DEFAULT INTEREST. In the event of a default by Borrower of any of its obligations under this Note, Borrower shall pay to Lender interest on the outstanding principal of this Note, at an annual rate equal to the lesser of (i) ten percent (10%) compounded annually or (ii) the highest interest allowed by law, from the date of the default until the date that the default is cured or the Loan is repaid in full. The default interest shall be paid monthly and is due to the County on the first day of each month.

7. AMOUNT AND TIME OF PAYMENT. The principal and all current and accrued interest of the County Loan shall be due and payable on the earlier of: (a) fifty-five (55) years after the date of Project completion in conformance with 24 CFR 400, 24 CFR 576, and State regulations (Chapter 5 (commencing with Section 50210 of Part 1 Division 31 of the Health and Safety Code) and evidenced by a written notice of completion provided to the Borrower by the County of Santa Barbara, or (b) the date the Property is sold or otherwise transferred, or (c) Borrower has failed to commence construction as set forth in Section 4.1 of the County Loan Agreement, or (d) an event of default by Borrower, as defined in Section 8.1 of the County Loan Agreement, which has not been cured as provided for in Section 8.2 of the County Loan Agreement. In the event of default by Borrower, as defined in Section 8.1 of the County Loan Agreement, which has not been cured as provided for in Section 8.2 of the County Loan Agreement, the principal and all accrued or due interest shall be due and payable in accordance with Section 9 of this County Loan Promissory Note. To the extent that Borrower receives judgments or awards either through or outside court proceedings, or is otherwise reimbursed by any means for the cost overruns, all funds collected shall be immediately paid to the County toward the repayment of the \$450,000 Inclusionary Housing Ordinance In-Lieu funds provided by the County.

8. DEFINITIONS. All initially capitalized terms in this County Loan Promissory Note shall have the definition ascribed to such terms in the County Loan Agreement. The following terms are defined in the County Loan Agreement and repeated here for convenience of reference:

- a. "Annual Financial Statement" means the financial statement of Operating Expenses and Revenue, prepared at the Borrower's expense, by an independent certified accountant reasonably acceptable to Lender, which shall be provided as part of Borrower's annual reporting to Lender.
- b. "County Loan Deed of Trust" means that deed of trust, assignment of rents, and security agreement placed on the Property and the improvements to be

constructed thereon as security for the County Loan by Borrower as trustor with Lender as beneficiary, as well as any amendments to, modifications of, and restatements of said County Loan Deed of Trust.

- c. "County HEAP Loan Regulatory Agreement" means the agreement executed by Borrower and Lender and recorded against the Property which regulates the use of the 14 one-bedroom HEAP-Assisted Units in the Project.
- d. "County Loan Documents" are collectively the County Loan Agreement, the County Loan Promissory Note, the County Loan Deed of Trust, and the County HEAP Loan Regulatory Agreement, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.
- e. "Operating Expenses" means, actual, reasonable and customary costs, fees and expenses directly attributable to the operation, maintenance, and management of the Property, including without limitation painting, cleaning, repairs and alterations, landscaping, utilities, rubbish removal, certificates, permits and licenses, sewer charges, real and personal property taxes and assessments, insurance, security, advertising, promotion and publicity, office, janitorial, cleaning and building supplies, lease payments if any, cash deposited into reserves for capital replacements with respect to the Property in an amount not to exceed reserve requirements reasonably imposed by any lender,, purchase, repair, servicing and installation of appliances, equipment, fixtures and furnishings, fees and expenses of accountants, attorneys, consultants and other professionals, payment in lieu of property taxes, repayment of any deferred development fees and any required debt service under Senior Loans. Operating Expenses may include the payment to Borrower of a reasonable partnership management fee and a reasonable asset management fee. Operating Expenses may also include a deferred developer fee. Operating Expenses may also include a deferred developer fee. The Operating Expenses shall be reported in the Annual Financial Statement.
- f. "Project" means the construction, operation and management of the Property and the improvements to be constructed thereon according to the terms of the County Loan Agreement and as defined in 24 CFR 578.
- g. "Property" means the property located at 1141 West Cox Lane, Santa Maria, California, as described in Exhibit A to the County Loan Agreement.
- h. "Residual Receipts" shall mean Revenues reduced by Operating Expenses, as defined in the County Loan Documents.
- i. "Revenue" means all income derived from the Project, including, but not limited to, rents from the units and income from laundry operations, vending machines, meeting space rental, storage, and parking. Revenue shall be reported in the Annual Financial Statement.

- j. "Senior Loans" means (i) that certain construction loan to be made by a to be determined lender with a principal amount not to exceed seven million four hundred fifty thousand dollars (\$7,450,000), which will convert to a permanent loan not to exceed three million three hundred fifty thousand dollars (\$3,350,000); (ii) that certain Affordable Housing Collateral Loan in the principal amount not to exceed one million three hundred fifty thousand dollars (\$1,350,000), (iii) that certain NPLH loan in the principal amount not to exceed one million five hundred thousand dollars (\$1,500,000), and (iv) any other financing to be made to West Cox Cottages, L.P. in accordance with Section 9.22 of the County Loan Agreement, which financing shall be senior in priority to the County Loan.
- k. "Term" means the period of time commencing with the date of the County Loan Note and terminating fifty-five (55) years from the date of this Loan Promissory Note.

9. **PAYMENTS.** All accrued interest and principal shall be due and payable in accordance with the terms set forth in Sections 5 and 7. No repayment is due under the County Loan until construction of the Project is complete. Borrower shall make annual payments to Lender from the Residual Receipts, one hundred-percent (100%) to the Loan pursuant to the County Loan Agreement and the Note, ninety (90) days following the end of each calendar year of the Project commencing with the year following the issuance of the first Certificate of Occupancy for the Project, and each year thereafter up to the fully amortized annual payment on the Loan. In the event Lender fails to provide a written determination to Borrower within ten (10) days following the receipt of Borrower's request for determination, the Annual Financial Statement shall be deemed approved. In the event that Lender determines that there is an understatement in the amount and payment of Residual Receipts due to Lender, Borrower shall promptly pay to Lender such understatement, but in any event, within twenty (20) days of notice of such understatement. In the event that Lender determines that there is an overpayment in the amount and payment of Residual Receipts due to Lender, Lender shall promptly pay to Borrower the amount of overpayment, but in any event, within twenty (20) days of such determination. If contested, Borrower has the right to pay under protest. Any payments made by Borrower pursuant to this Section shall be applied first to pay current annual interest due, if any, then the cumulative interest owed, if any, then to reduce the principal amount of the Loan. In any event all principal owed and all current and accrued interest of the Loan shall be due and payable as provided in Section 7 above.

10. **PLACE AND MANNER OF PAYMENT.** All amounts due and payable under this County Loan Promissory Note are payable at the office of Lender at the address set forth above, or at such other place as Lender may designate to Borrower in writing from time to time, in any coin or currency of the United States which on the respective payment dates thereof shall be legal tender for the payment of public and private debts.

11. **DEFAULT AND ACCELERATION.** This County Loan Promissory Note is secured by a County Loan Deed of Trust. All covenants, conditions and agreements contained in the County Loan Deed of Trust and the County Loan Agreement are hereby made a part of this County Loan Promissory Note. Borrower agrees that the principal, and any default interest as set forth in Section 6, shall, at the option of Lender, be immediately due and payable upon any event of default as defined in the County Loan Agreement which has not been cured pursuant to that

County Loan Agreement, including without limitation the failure of Borrower to make any payment when due. Upon any event of default, Lender may exercise any other right or remedy permitted under this County Loan Promissory Note and the County Loan Documents. Notwithstanding anything to the contrary contained in the Loan Documents, Lender hereby agrees that any cure of any event of default made or tendered by the limited partner(s) of West Cox Cottages, L.P., a California limited partnership, shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower.

12. **PREPAYMENT OF COUNTY LOAN.** No prepayment penalty will be charged to Borrower for payment of all or any portion of the County Loan amounts prior to the end of the term described herein. However, prepayment of the County Loan shall not affect Borrower's obligations under the County HEAP Loan Regulatory Agreement.

13. **NO OFFSET.** Borrower hereby waives any rights of offset it now has or may hereafter have against Lender, its successors and assigns, and agrees to make the payments called for herein in accordance with the terms of this County Loan Promissory Note.

14. **WAIVERS.** All presentments, notices of dishonor, and protests are waived by all makers, sureties, guarantors, and endorsers of this County Loan Promissory Note, if any.

15. **CONSENTS AND APPROVALS.** Any consent or approval of Lender required under this County Loan Promissory Note shall not be unreasonably withheld or delayed.

16. **NOTICES.** Except as may be otherwise specifically provided herein, any approval, notice, direction, consent request or other action by Lender shall be in writing and may be communicated to Borrower at the principal office of Borrower set forth below, or at such other place or places as Borrower shall designate in writing, from time to time, for the receipt of communications from Lender. Copies of all notices which are sent to Borrower under the terms of the County Loan Documents shall also be sent to Borrower's address below.

BORROWER:

West Cox Cottages L.P.
815 W. Ocean Ave.
Lompoc, CA 93436-6526
Attn: Executive Director,
Housing Authority of the County of Santa Barbara

With copy to:

Price, Postel & Parma LLP
200 E. Carrillo St., Suite 400
Santa Barbara, CA 93101
Attn: Mark S. Manion

17. **BINDING UPON SUCCESSORS.** All provisions of this Loan Promissory Note shall be binding upon and inure to the benefit of the successors-in-interest, transferees, and assigns of Borrower and Lender.

18. **GOVERNING LAW.** This County Loan Promissory Note shall be interpreted under and governed by the laws of the State of California, except for those provisions relating to choice of law and those provisions preempted by federal law.

19. **SEVERABILITY.** Every provision of this County Loan Promissory Note is intended to be severable. If any provision of this County Loan Promissory Note shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

20. **TIME.** Time is of the essence in this County Loan Promissory Note.

21. **WAIVER.** Any waiver by Lender of any obligation in the County Loan Documents must be in writing. No waiver will be implied from any delay or failure by Lender to take action on any breach or default of Borrower or to pursue any remedy allowed under the County Loan Documents or applicable law. Any extension of time granted to Borrower to perform any obligation under the County Loan Documents shall not operate as a waiver or release from any of the Borrower's obligations under the County Loan Documents. Consent by Lender to any act or omission by Borrower shall not be construed to be consent to any other or subsequent act or omission or to waive the requirement for Lender's written consent to future waivers.

22. **AMENDMENTS AND MODIFICATIONS.** Any amendments or modifications to this County Loan Promissory Note must be in writing, and shall be made only if executed by both Borrower and Lender.

23. **NONRECOURSE.** Except as expressly provided in the second paragraph of this Section 23, the Borrower, and the Borrower's officers, directors, employees and agents shall not have any direct or indirect personal liability for payment of the principal of, or interest on this County Loan Promissory Note. The sole recourse of the Lender with respect to the principal of, or interest on the County Loan Promissory Note shall be to the Property securing the indebtedness evidenced by the County Loan Promissory Note. However, nothing contained in the foregoing limitation of liability shall (i) limit or impair the enforcement against all such security for the County Loan Promissory Note of all the rights and remedies of the Lender, or (ii) be deemed in any way to impair the right of the Lender to assert the unpaid principal amount of the County Loan Promissory Note as demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto.

The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the County Loan Promissory Note, except as hereafter set forth; nothing contained herein is intended to relieve the Borrower of personal liability to the extent of actual damages for (i) Borrower's fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges (which are not contested by the Borrower in good faith) which may create liens on the Property that are payable or applicable prior to any foreclosure under the County Loan Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by the Borrower other than in accordance with the County Loan Deed of Trust; (iv) the material misapplication of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property; (v) the Borrower's indemnification obligations under the County Loan Agreement; and (vi) payment to the Lender of any rental income or other income arising with respect to the Property received by the Borrower after the Lender has given notice to the Borrower of the occurrence of an Event of

Default and after the expiration of all applicable notice and cure periods, subject to the rights of any lender providing a loan secured by the Property to which the Lender has subordinated the County Loan Deed of Trust.

24. **COUNTY LOAN AGREEMENT CONTROLS.** In the event that any provisions of this County Loan Promissory Note and the County Loan Agreement conflict, the terms of the County Loan Agreement shall control.

Signature appears on following page. No further text appears here.

BORROWER:

West Cox Cottages, L.P.,
a California limited partnership

By: WCC MGP, LLC, a California limited
liability company, its managing general partner

By: Surf Development Company, a California nonprofit
public benefit corporation, its sole member

By: *Robert P. Havlicek Jr.*
Robert P. Havlicek Jr., CEO