

**AMENDED AND RESTATED CASH FLOW NOTE
(Taxable Seller Note)**

[\$10,800,000]

_____, 2021

FOR VALUE RECEIVED, Windsor Gardens Housing Associates, L.P., a California limited partnership ("**Borrower**"), promises to pay to the order of the City of Escondido, a municipal corporation organized under the laws of the State of California ("**Lender**"), the principal sum of [Ten Million Eight Hundred Thousand Dollars (\$10,800,000)], plus interest thereon from the date disbursed until paid in full at the rate of 2.15% per annum (the "**Interest Rate**").

1. **Obligation.** This Amended and Restated Cash Flow Note (Taxable Seller Note) (the "**Cash Flow Note**") evidences the Borrower's obligation to pay Lender the full amount of the Indebtedness. In addition, as of the date hereof, there is \$[_____] in accrued and unpaid interest on the Loan. The Borrower's obligations hereunder shall be secured with a Subordinate Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing made for the benefit of Lender and encumbering the Property (as amended from time to time, the "**Subordinate Deed of Trust**"). The Subordinate Deed of Trust shall be fully subordinated to the Security Instrument, as such term is defined in the Funding Loan Agreement (as defined below).

2. **Defined Terms.** Capitalized terms used but not otherwise defined herein shall have the meaning given them in the Funding Loan Agreement or the Borrower Loan Agreement, as such terms are defined below.

(a) "**Borrower Loan Agreement**" means the Construction and Permanent Loan Agreement (Multifamily Back to Back Housing Loan Program), dated as of February 1, 2020, by and among the California Municipal Finance Authority (the "**Issuer**"), MUFG Union Bank, N.A., and the Borrower.

(b) "**Funding Loan Agreement**" means the Funding Loan Agreement dated as of February 1, 2020, by and between the Issuer and MUFG Union Bank, N.A.

(c) "**Indebtedness**" means collectively, the principal of, interest on, and any other amounts due at any time under, this Cash Flow Note.

(d) "**Limited Partner**" means Merritt Community Capital Fund XXI, L.P., a California limited partnership, as nominee, and its successors and/or assigns, which is the limited partner of Borrower.

(e) "**Loan**" means the loan evidenced by this Cash Flow Note.

(f) "**Maturity Date**" means the earlier to occur of (i) February 1, 2065, (ii) the date of the sale of the entire Property (except pursuant to the option or right of first refusal granted to general partner or its affiliate under Borrower's partnership agreement), or (iii) any earlier date on which the unpaid principal balance of this Cash Flow Note becomes due and payable, by acceleration or otherwise

(g) "**Payment Date**" means May 15 of each year, commencing May 15, 2022, and the Maturity Date.

(h) **"Revenue"** shall mean all income derived from the Project, including, but not limited to, rent from the apartment units, laundry operations and park fees, if any. Interest earned on reserves shall not be deemed Revenue. The proceeds of any loans to Borrower or capital contributions made by any partner of Borrower shall not be considered Revenue.

(i) **"Senior Loan Documents"** means the Funding Loan Documents and Borrower Loan Documents, as such terms are defined in the Funding Loan Agreement.

(j) **"SHA Note"** means that certain Residual Receipts Promissory Note (Secured by Deed of Trust) SHA Loan, dated August 7, 2019, made by the Borrower in favor of the City of Escondido.

(k) **"Surplus Cash"** means with respect to any period that any amounts are owing under the Borrower Note, the Borrower Loan Agreement or the Funding Loan Agreement, any Revenues of the Borrower remaining after paying, or setting aside funds for paying, the following: (i) all sums due or currently required to be paid under the Borrower Loan Agreement and the Borrower Note; (ii) all sums due or currently required to be paid under the other Borrower Loan Documents (including but not limited to any required reserve deposits) and any tax credit adjusters under the Borrower Partnership Agreement (defined below); (iii) all deposits to any operating reserve, replacement reserve, completion/repair reserve or other reserve or escrow required by the Borrower Partnership Agreement (defined below) and the Borrower Loan Documents that are due or currently payable; (iv) all fees due or currently payable by the Borrower in connection with the Funding Loan, including but not limited to fees and expenses of the Funding Lender, the Governmental Lender, the Fiscal Agent, and any rebate analyst; (v) all reasonable operating expenses of the Property, including but not limited to real estate taxes, insurance premiums, utilities, building maintenance and repairs, management fees, payroll, administrative expenses, legal expenses and audit expenses (excluding any developer fees payable with respect to the Property); (vi) fees paid to the Limited Partner and general partners, pursuant to the Borrower Partnership Agreement (as defined below); (vii) the fee payable to Borrower or to any entity providing resident support services and programs offered to and made available to the tenants of the Project, in an initial amount of up to \$56,000 per year, adjusted annually, and (viii) Deferred Developer Fee (including any interest thereon), but only after interest on this Note has been paid on a current basis, all as set forth in Section 5.1.1 of the First Amended and Restated Agreement of Limited Partnership of the Borrower, dated as of February 1, 2020 (as amended, the **"Borrower Partnership Agreement"**). Operating expenses shall be determined on a cash basis.

3. **Method of Payment.** All payments due under this Cash Flow Note shall be payable to Lender, or its successor. Each such payment shall be made by check or wire transfer of immediately available funds in accordance with wire transfer instructions that the Lender shall supply by written notice to the Borrower from time to time.

4. **Repayment of Loan.**

Interest shall accrue on this Note commencing on the date hereof. Commencing on each Payment Date, Borrower shall make annual payments of principal and interest on the Indebtedness not to exceed the amounts shown on the amortization schedule attached hereto as Schedule 1, subject to availability of Surplus Cash. Annual payments shall be made to the extent

of 50% of 50% of all Surplus Cash available; provided, however, from and after repayment in full of the SHA Note, annual payments shall be made to the extent of 50% of all Surplus Cash available. In the event sufficient Surplus Cash is not available to make each payment in full, interest accrued and unpaid shall be added to the outstanding principal balance hereof, and shall thereafter bear interest at the Interest Rate until paid. Any failure to make payments due to Surplus Cash being insufficient to make any such payment in full shall not be a default hereunder. Borrower shall repay any outstanding Indebtedness to Lender on the Maturity Date.

5. **Application of Payments.** All payments hereunder shall be applied first to accrued and unpaid interest and then the remainder to principal.

6. **Acceleration.** Subject to the Senior Loan Documents, if an Event of Default (as defined in the Subordinate Deed of Trust) has occurred and is continuing following expiration of applicable notice and cure periods, the entire unpaid principal balance, any accrued interest, and all other amounts payable under this Cash Flow Note shall at once become due and payable, at the option of Lender, without any prior notice to Borrower (except if notice is required by applicable law, then after such notice). Lender may exercise this option to accelerate regardless of any prior forbearance.

7. **Prepayment.** Borrower may pay any part or all of the principal of this Cash Flow Note on any interest payment date, without penalty, provided that such prepayment is made from funds of Borrower that are not pledged under the Senior Loan Documents or otherwise encumbered by the Senior Loan Documents.

8. **Limitation of Liability.** This Cash Flow Note is non-recourse to Borrower, its partners, and any of the members, managers, partners, directors, officers, or employees of Borrower's partners. Lender's only recourse for the satisfaction of the Indebtedness and the performance of obligations under this Cash Flow Note and the Subordinate Deed of Trust shall be Lender's exercise of its rights and remedies with respect to the Property and any other collateral held by Lender as security for the Indebtedness.

9. **Waivers.** Presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace, and diligence in collecting the Indebtedness are waived by Borrower and all endorsers and guarantors of this Cash Flow Note and all other third party obligors.

10. **Notices.** All notices, demands and other communications required or permitted to be given by Lender to Borrower at the address set forth in the Borrower Loan Agreement pursuant to this Cash Flow Note shall be made in accordance with the provisions of the Subordinate Deed of Trust, with a copy to: Gubb and Barshay LLP, 505 14th Street, Suite 450, Oakland, California 94612, Attention: Evan Gross, Esq.; Merritt Community Capital Fund XXI, L.P., c/o Merritt Community Capital, 1970 Broadway, Suite 250, Oakland, CA 94612, Attention: President; and Carle Mackie Powers & Ross, 100 B Street, Suite 400, Santa Rosa, CA 95401 Attn: Henry Loh.

11. **Payments on Non-Business Day.** If the date for the making of any payment under this Cash Flow Note is not a Business Day, such payment shall be due and payable on the next succeeding Business Day.

12. **Governing Law.** The laws of the State of California, other than those laws denominated choice of law rules which would require the application of the laws of another forum, shall govern the validity, construction and effect of this Cash Flow Note.

13. **Severability.** The invalidity, illegality or unenforceability of any provision of this Cash Flow Note shall not affect the validity, legality or enforceability of any other provision, and all other provisions shall remain in full force and effect.

14. **No Agency or Partnership.** The relationship between the Borrower and the Lender is, and at all times shall remain, solely that of debtor and creditor. No covenant or provision of this Cash Flow Note is intended, nor shall it be deemed or construed, to create a partnership, joint venture, agency or common interest in profits or income between the Borrower and the Lender, or render Lender liable for any debts, obligations, acts, omissions, representations or contracts of Borrower.

15. **Entire Agreement; Amendment, Assignment and Waiver.** This Cash Flow Note contains the complete and entire understanding of the parties with respect to the matters covered. This Cash Flow Note may not be assigned, amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by a written instrument signed by the party against whom enforcement of the waiver, amendment, change, or modification is sought, and then only to the extent set forth in that instrument and approved by the Limited Partner. No specific waiver of any of the terms of this Cash Flow Note shall be considered as a general waiver.

16. **Captions.** The captions of the sections of this Cash Flow Note are for convenience only and shall be disregarded in construing this Cash Flow Note.

17. **Waiver of Trial by Jury.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, BORROWER AND LENDER (A) COVENANT AND AGREE NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS CASH FLOW NOTE OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVE ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

18. **Time of the Essence.** Time is of the essence with respect to this Cash Flow Note.

19. **Subordination.** The indebtedness evidenced by this Cash Flow Note is and shall be subordinate in right of payment to the prior payment in full of all amounts then due and payable (including, but not limited to, all amounts due and payable by virtue of any default or acceleration or upon maturity) with respect to the Senior Loan Documents.

20. **Standstill.** Notwithstanding Lender's rights under applicable law or any provision in this Cash Flow Note or in this Deed of Trust to the contrary, during the Compliance Period (as defined in Borrower Partnership Agreement), Lender will not, without the prior written consent of the limited partner(s) of Borrower, (i) foreclose the Deed of Trust, (ii) accept any prepayment of principal or interest under the Deed of Trust, (iii) pledge, assign, hypothecate, transfer, convey or sell this Cash Flow Note or the Deed of Trust or any interest in the Loan, or (iv) modify, waiver or amend any of the terms or provisions of this Cash Flow Note or the Deed of Trust.

21. **Cancellation of Existing Note.** This Cash Flow Note (the "Existing Note") amends and restates that certain Cash Flow Note (Tax-Exempt Seller Loan) dated as of February 1, 2020, by Borrower for the benefit of Lender, in its entirety. Upon execution of this Cash Flow Note, the Existing Note will be cancelled and of no further force and effect.

[Signature Page Follows Immediately]

IN WITNESS WHEREOF, this Cash Flow Note as of the date first set forth above.

BORROWER:

WINDSOR GARDENS HOUSING ASSOCIATES, L.P.,
a California limited partnership

By: CHW Windsor Gardens, LLC,
a California limited liability company,
its general partner

By: Community HousingWorks,
a California nonprofit public benefit corporation,
its sole member/manager

By: _____
Mary Jane Jagodzinski
Senior Vice President of
Housing & Real Estate Development