

Exhibit B

**FIRST AMENDMENT TO
COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO)
PREDEVELOPMENT LOAN AND COMMITMENT OF
HOME PROGRAM FUNDS AGREEMENT
(Permanent Supportive Housing Project)**

This **FIRST AMENDMENT TO COMMUNITY HOUSING DEVELOPMENT ORGANIZATION PREDEVELOPMENT LOAN AND COMMITMENT OF HOME PROGRAM FUNDS AGREEMENT** (“First Amendment”) is entered into by and among the **CITY OF COSTA MESA**, a California municipal corporation (“City”), and the **COSTA MESA HOUSING AUTHORITY**, a public body corporate and politic (“CMHA”) (together, City and CMHA are referred to as “Costa Mesa”), and **MERCY HOUSE CHDO, INC.**, a California nonprofit corporation (“Mercy House”), and **WAKELAND HOUSING AND DEVELOPMENT CORPORATION**, a California nonprofit corporation (“Wakeland”) (together, Mercy House and Wakeland are referred to as “Developer”) and is dated as of July 16, 2013, which is the date that the City Council of the City of Costa Mesa (“City Council”) and CMHA board considered and approved this First Amendment at an open public meeting thereof (“Effective Date”). Each of City, CMHA, Mercy House and Wakeland may be referred to as a “Party” and together as the “Parties”.

RECITALS

A. City is a municipal corporation that has received funds from the United States Department of Housing and Urban Development (“HUD”) pursuant to the HOME Investment Partnerships Act and HOME Investment Partnerships Program, Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended (42 U.S.C. §12701, *et seq.*), and the implementing regulations thereto (24 CFR Part 92) (collectively “HOME Program”) for the purposes of providing more decent, safe, sanitary, and affordable housing for Very Low Income and Lower Income (as the terms are hereinafter defined) citizens of, including homeless persons in, Costa Mesa. City is experienced in the acquisition, construction, development, rehabilitation and operation of housing and housing programs that are affordable to persons of Very Low Income and Lower Income.

B. CMHA is a housing authority duly organized and existing under the California Housing Authorities Law, Health and Safety Code Section 34200, *et seq.*, (“HAL”) and authorized to acquire, construct, develop, rehabilitate, and operate housing and housing programs that are affordable to persons of Very Low and Lower Income, including without limitation causing development and operation of a permanent supportive housing project intended for homeless persons of Costa Mesa.

C. The City, CMHA, Wakeland and Mercy House entered into that certain *Community Housing Development Organization Predevelopment Loan and Commitment of Home Program Funds Agreement* (“Original Agreement”) dated May 21, 2013, which is the date such contract was approved by the City Council and CMHA board.

D. Capitalized terms used in this First Amendment are as defined in the Original Agreement unless otherwise defined herein.

E. Among other provisions, the Original Agreement authorized a Predevelopment Loan of up to \$500,000 of federal HOME Funds, including CHDO set-aside funds, to be disbursed pursuant and subject to the terms and conditions therein, which proceeds will be used by Developer only for certain Eligible Predevelopment Expenses as the costs therefor are described in that certain *Eligible Predevelopment Activities and Expenses with Predevelopment Budget and Performance Schedule*, Exhibit A, to the Original Agreement.

F. The maximum Predevelopment Loan amount and budget, as set forth in the Original Agreement and Exhibit A thereto as of May 21, 2013 when that contract was approved, generally corresponded to the then anticipated, unencumbered HOME Funds that could have been committed to the proposed Project, which if not committed by the City would have been deobligated by HUD as of and after June 30, 2013.

G. On June 6, 2013 in an email from the City's Los Angeles area HUD representative to a City representative, HUD provided general approval of the Original Agreement as a "commitment" of HOME Funds pursuant to and in compliance with Section 92.2. The HUD representative wrote, in part: "I've received concurrence from HQ [headquarters- HUD Washington DC], and the predevelopment loan agreement is sufficient for meeting the definition of a commitment."

H. Recently and based on fiscal year-end accounting by HUD of all of the City's federal program funds, including as itemized on HUD's HOME deadline compliance report and program income that is allocated monthly, City staff is now aware that \$85,257 of carryover HOME Funds allocable to FY 2011-2012 continue to be unencumbered and remain available for commitment and expenditure for eligible HOME Program activities, which would include the proposed Project.

I. HUD has informed the City that if the City Council does not commit these remaining funds by July 31, 2013, then such funds would be deobligated and remitted back to HUD.

J. A primary objective of the Original Agreement was to commit, as defined by Section 92.2, unencumbered HOME Funds that were at risk to be deobligated by HUD as of and after June 30, 2013 so that such monies, when encumbered, would be available as the initial funds toward implementation of the Project through the Predevelopment Loan Agreement.

K. The activities and budget set forth in Exhibit A to the Original Agreement, in particular the monies estimated and allocable for all or part of the option payment or earnest money deposit if and when a Site is selected for the Project, may require more funds than the original Predevelopment Loan amount, so the Parties desire that the additional \$85,257 in available, unencumbered HOME Funds by this First Amendment be added to the total monies available for disbursement to the Developer under the terms and conditions of the Predevelopment Loan and the Agreement, as amended.

L. This First Amendment is intended by the Parties to increase the total Predevelopment Loan amount by \$85,257, for a total loan amount of up to \$585,257, which will be eligible to be disbursed and loaned by the City to the Developer for Eligible Predevelopment Activities and Expenses in accordance with the Predevelopment Budget and Performance Schedule, Exhibit A, to the Original Agreement.

M. Pursuant to the §92.2 HOME Program Commitment intended by the Original Agreement and as also intended by this First Amendment, the City desires to reserve and commit

\$85,257 in additional HOME Funds, for a total Predevelopment Loan amount of up to \$585,257, part HOME set-aside funds for a CHDO and part non-set-aside funds, in order for City to fund the Predevelopment Loan to Developer to pay for the Eligible Predevelopment Expenses that are Project-specific activities.

N. The City's provision of the Predevelopment Loan to Developer pursuant to the Original Agreement and this First Amendment, and the fulfillment generally thereof, are in the vital and best interests of the City and the welfare of its residents, and in accordance with the purpose and provisions of the HOME Program.

AGREEMENT

NOW THEREFORE, based upon the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by all Parties (City, CMHA, Mercy House and Wakeland), hereby agree as follows:

1. DEFINITIONS

The defined terms set forth in the Original Agreement remain and the following terms are added to the definitions of the Agreement:

"Agreement" shall mean the Original Agreement together as amended by this First Amendment including all exhibits and other documents attached and incorporated hereto.

"Predevelopment Loan" shall mean the loan of HOME Funds referred to the Recitals of the Original Agreement and this First Amendment in a loan amount up to \$585,257 to be provided by the City to Developer for the Eligible Predevelopment Expenses and as itemized in Exhibit A to the Original Agreement.

2. AMENDMENT OF PREDEVELOPMENT LOAN AMOUNT

2.1 Predevelopment Loan Amount Increased. The Original Agreement is amended by this First Amendment so that the Agreement, as amended, shall read throughout that wherever the Predevelopment Loan amount is listed as up to \$500,000, the amount shall be increased by \$85,257 to read "\$585,257". The Promissory Note, Exhibit B to the Original Agreement, shall be hereby amended to denote the maximum Predevelopment Loan amount of \$585,257.00, which Note is attached hereto as Attachment No. 1 (Exhibit B-1, Promissory Note (Deferred Repayment Loan) and fully incorporated by this reference.

3. GENERAL PROVISIONS

3.1 Counterparts. This First Amendment may be executed in counterparts.

3.2 Agreement in Effect. Except as amended by this First Amendment, the Original Agreement shall remain in full force and effect.

3.3 Entire Agreement, Waivers and Amendments. The Agreement, including the Original Agreement as amended by this First Amendment, including all Exhibits integrates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous agreements among the Parties with respect to all or any part of the subject matter hereof.

All waivers of the provisions of the Agreement must be in writing and signed by the appropriate authorities of the Party to be charged, and all amendments and modifications hereto must be in writing and signed by the appropriate authorities of Costa Mesa and Developer.

3.4 Interpretation. This First Amendment shall be interpreted to effectuate the terms of the Original Agreement as expressly modified hereby, in accordance with the laws of the State of California, and as if prepared and reviewed equally by both parties; further, the parties agree that all attachments, exhibits, and other implementing instruments entered into prior to the date hereof are deemed by the parties to be amended to be consistent with and following the terms and provisions of this First Amendment.

3.5 Applicable Law Venue. The internal laws of the State of California shall govern the interpretation of this First Amendment. All legal actions must be instituted and maintained in the Superior Court of the County of Orange, State of California, or in any other appropriate court in Orange County.

3.6 Severability. If any term, provision, covenant or condition of this First Amendment is held by a court of competent jurisdiction to be invalid void or unenforceable, the remainder of this First Amendment shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this First Amendment.

3.7 Developer Review. Wakeland and Mercy House each jointly and severally acknowledge and agree that, while each has retained legal counsel for certain matters, with regard to this First Amendment each entity knowingly, willingly and voluntarily of its choosing has decided each does not desire or intend to have its respective legal counsel review and advise it independently about this First Amendment prior to duly executing and entering into such contract; Wakeland and Mercy House each further acknowledge and agree that it is under no duress or coercion by the City or the CMHA and each makes its decision to enter into this First Amendment without reservation or qualification and having been fully informed and advised of its rights to have its legal counsel review and advise it about this First Amendment and entering into this contract.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have executed this *First Amendment to Community Housing Development Organization Predevelopment Loan and Commitment of HOME Program Funds Agreement* as of the Effective Date set forth above.

DEVELOPER:

MERCY HOUSE CHDO, INC.
a California nonprofit corporation

By: _____
Larry Haynes
Its: Executive Director
Date: _____

WAKELAND HOUSING AND DEVELOPMENT CORPORATION,
a California nonprofit corporation

By: _____
Kenneth L. Sauder
Its: President and CEO
Date: _____

By: _____
Rebecca Louie
Its: Vice President and COO
Date: _____

[Corporations Code: requires two authorized officer/director signatures for each corporation]
[SIGNATURES CONTINUE ON NEXT PAGE]

*[Signature blocks continued below from previous page for First Amendment to Community
Housing Development Organization
Predevelopment Loan and Commitment of HOME Program Funds Agreement]*

COSTA MESA

CITY OF COSTA MESA,
a California municipal corporation

By: _____
Stephen M. Mensinger, Mayor Pro Tem

Date: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

COSTA MESA HOUSING AUTHORITY,
a public body corporate and politic

By: _____
Stephen M. Mensinger, Vice Chair

Date: _____

ATTEST:

Secretary

APPROVED AS TO FORM:

By: _____
General Counsel or Special Counsel

ATTACHMENT NO. 1
EXHIBIT B-1
PROMISSORY NOTE (DEFERRED REPAYMENT NOTE)

EXHIBIT B
PROMISSORY NOTE
(Deferred Repayment Note)

\$585,257.00

July 16, 2013

Costa Mesa, California

FOR VALUE RECEIVED, MERCY HOUSE CHDO, INC., a California nonprofit corporation, and **WAKELAND HOUSING AND DEVELOPMENT CORPORATION**, a California nonprofit corporation (together, jointly and severally, “Developer”), jointly and severally promise to pay to the **CITY OF COSTA MESA**, a California municipal corporation (“City”), or order, at the City’s office at 77 Fair Drive, Costa Mesa, California, 92628, or such other place as the City may designate in writing, the principal sum of up to **Five Hundred Eighty-Five Thousand Two Hundred Fifty-Seven Dollars (\$585,257.00)**, or so much of such amount which has been disbursed by the City to or on behalf of Developer for Eligible Predevelopment Expenses (“Predevelopment Loan”), in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

1. Agreement. This Promissory Note (Deferred Payment Note) (“Note”) is given in accordance with that certain *Community Housing Development Organization Predevelopment Loan and Commitment of HOME Program Funds Agreement* entered into and executed by the City, the Costa Mesa Housing Authority, a public body corporate and politic, and Mercy House and Wakeland and dated as of May 21, 2013 (“Original Agreement”) as amended by that certain *First Amendment to Community Housing Development Organization Predevelopment Loan and Commitment of HOME Program Funds Agreement* and dated as of July 16, 2013 (“First Amendment”). Together the Original Agreement and the First Amendment are referred to as the Agreement. The rights and obligations of Developer and City under this Note shall be governed by the Agreement and by the additional terms set forth in this Note.

2. Interest. No interest shall accrue on the Predevelopment Loan.

3. Repayment of Predevelopment Loan.

(a) City will waive repayment if:

(i) *Failure to Select a Site after Completion of the Site Selection Process.* If after establishing a Site Selection Process and the good faith implementation by the Parties thereof, in the event the City Council does not approve one or more parcels as the Site for development of the Project, then the Contract Officer will waive repayment of the Predevelopment Loan by Developer based on satisfactory evidence that there are objective

impediments to continuing to take steps toward completion of the Project that are reasonably beyond the control of Developer and that cause the Project to be infeasible pursuant to 24 CFR §92.301(a)(3).

(ii) *Development of the Project is Infeasible.* The Contract Officer will waive repayment if Developer, as borrower, provides evidence reasonably satisfactory to the Contract Officer that there are objective impediments to the Project that are reasonably beyond the control of Developer or Site (post-selection by the City Council) that causes the Project to be infeasible pursuant to 24 CFR § 92.301(a)(3). (a)

(b) If Costa Mesa (City and/or CMHA) and Developer enter into an Affordable Housing Agreement (“AHA”) for the Project, any such agreement shall set forth repayment terms of the Predevelopment Loan and fold in this Predevelopment Loan into the loan provided by and under such AHA.

(c) The Predevelopment Loan shall be immediately due and payable in the event that Developer commits a material default of the Agreement and fails to cure the default within the time period(s) provided in the Agreement.

(d) The Predevelopment Loan shall be immediately due and payable in the event that Developer assigns or attempts to assign any portion of the Agreement or the Project or the Site (post-selection).

(e) The Predevelopment Loan shall be immediately due and payable in the event that Costa Mesa and Developer fail to enter into an AHA for the Project within six-months after expiration of the term set forth in Section 2.1 of the Agreement.

Failure to declare such amounts due shall not constitute a waiver on the part of City to declare them due subsequently.

5. **Waivers.**

(a) Developer expressly agrees that this Note or any payment hereunder may be extended from time to time at City’s sole discretion and that City may accept security in consideration for any such extension or release any security for this Note at its sole discretion all without in any way affecting the liability of Developer.

(b) No extension of time for payment of this Note made by agreement by City with any person now or hereafter liable for the payment of this Note shall operate to release, discharge, modify, change or affect the original liability of Developer under this Note, either in whole or in part.

(c) The obligations of Developer under this Note shall be absolute and Developer waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reasons whatsoever.

ATTACHMENT NO. 1 TO FIRST AMENDMENT
EXHIBIT B-1
PROMISSORY NOTE (Deferred Repayment Note)
Page 2 of 3

6. Attorneys' Fees and Costs. Developer agrees that if any amounts due under this Note are not paid when due, to pay in addition, all costs and expenses of collection and reasonable attorneys' fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed.

7. Amendments and Modifications. This Note may not be changed orally, but only by an amendment in writing signed by Developer and by City.

8. Developer Assignment Prohibited. In no event shall Developer assign or transfer any portion of this Note (or the Agreement, or the Project, or the Site (post-selection)) without the prior express written consent of City, which consent may be given or withheld in the City's sole discretion

9. Terms. Any terms not separately defined herein shall have the same meanings as set forth in the Agreement.

DEVELOPER:

MERCY HOUSE

MERCY HOUSE CHDO, INC.
a California nonprofit corporation

By: _____
Larry Haynes
Its: Executive Director
Date: _____

WAKELAND

WAKELAND HOUSING AND DEVELOPMENT CORPORATION,
a California nonprofit corporation

By: _____
Kenneth L. Sauder
Its: President and CEO
Date: _____

By: _____
Rebecca Louie
Its: Vice President and COO
Date: _____

[Corporations Code: requires two authorized officer/director signatures for each corporation]