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January 17, 2019

Department of Housing and Community Development
2020 W. El Camino Ave
Sacramento, CA 95833

RE: Article 34 of the California State Constitution

Ladies and Gentlemen:

We represent The Richman Group of California Development Company, LLC and a to-be-formed limited partnership in which the Company or its affiliate will act as a general partnership (the "Partnership"), in connection with the Partnership's proposed development and operation of that certain affordable housing project located on certain real property in the City of Merced, California (the "City") to be known as Childs Court Apartments (the "Project"). The Company has asked us to discuss with you certain matters relating to Article XXXIV ("Article XXXIV") of the California State Constitution.

The Partnership has requested that we inform you that, as of the date hereof, the City of Merced does not have outstanding Article XXXIV authority for the Project. However, subject to the assumptions, qualifications, and limitations set forth herein, it is our opinion that a California court should conclude that there is no need for an election to approve the Project pursuant to Article XXXIV even if the City of Merced (the "City") does not have outstanding Article XXXIV authority for the Project.

1. Assumptions.

We have assumed that certain relevant facts regarding the Project are and will remain as set forth below:

1. The Partnership has applied to and received a commitment from California Department of Housing and Community Department ("HCD") for a permanent loan of for the Project (the "AHSC Loan"). In connection therewith, HCD will require the Partnership to record a regulatory agreement against the Property restricting occupancy 49% or less of the units in the Project to persons of low income.

2. Pursuant to a Disposition and Development Agreement (the "DDA"), the City has agreed to sell the real property on which the Project will be built to the Partnership and the Partnership will receive from the City one or more loans from the City (collectively, the "City Loans" and together with the AHSC Loan, the "Loans").

3. In executing the DDA and making the City Loans, the City is carrying out routine governmental functions and performing the conventional activities of a lender within the meaning of California Health and Safety Code Sections 37001.5(e)(1) and (2). The City Loans are both structured as loans combined with the affordable housing covenants and statutorily

authorized conditions required to be accepted by a grantee of assistance. We have been advised by the City that it has reached a conclusion that the City's participation in the financing of the Project will constitute the carrying out of routine governmental functions, the performing of the conventional activities of a lender and the imposition of constitutional mandated or statutorily authorized conditions accepted by a grantee of assistance pursuant to Section 37001.5(e) of the California Health and Safety Code and that the Project is not subject to Article XXXIV, on the basis of their activities.

4. The Project has received a reservation of federal low income housing tax credits pursuant to Section 42 of the Internal Revenue Code of 1986 from the California Tax Credit Allocation Committee.

5. The only property tax exemption that the Project will receive will be granted pursuant to California Revenue and Taxation Code Section 214(g).

6. HCD in its capacity as an AHSC lender is the only State Public Body (as defined below) which may be deemed to have developed, constructed, or acquired the Project for purposes of Article XXXIV.

2. Discussion.

A. Role of HCD in its Capacity as an AHSC Lender

California Health & Safety Code Section 37001(a) provides, in relevant part, that a development will not be considered a Low Rent Housing Project if it:

> (1) . . . is privately owned housing, receiving no ad valorem property tax exemption, other than exemptions granted pursuant to subdivision (f) or (g) of section 214 of the Revenue and Taxation Code, not fully reimbursed to all taxing entities; and (2) not more than 49 percent of the dwellings, apartments, or other living accommodations of the development may be occupied by persons of low income.

Based on the application of Health and Safety Code Section 37001(a) and for the reasons set forth below, we are of the opinion that the Project will not constitute a Low Rent Housing Project based on the involvement of HCD in its capacity as an AHSC lender, for purposes of Article XXXIV, and that consequently no Article XXXIV election is required.

1. Private Ownership.

The Project shall be owned by a to-be formed California limited partnership (the "Partnership") comprised solely of non-governmental entities (the "Partnership"). Because the Partnership is a private entity, and because the Partnership will own the Project, the Project is privately owned. Therefore, the first element of Section 37001 (a)(l) is satisfied.

2. Ad valorem property tax exemption.

Section 37001(a)(1) also requires, for a project not to be a "low rent housing project," that the project not receive an "ad valorem property tax exemption, other than exemptions granted pursuant to subdivision (f) or (g) of section 214 of the Revenue and

Taxation Code, not fully reimbursed to all taxing entities." The only property tax exemption that the Project will receive is granted pursuant to Revenue and Taxation Code Section 214(g). Therefore, the second element of Section 37001(a)(1) is satisfied.

3. Maximum of 49% of units regulated by state public body for low-income occupancy.

Section 37001(a)(2) requires that "not more than 49% of the dwellings, apartments, or other living accommodations of the development may be occupied by persons of low income." Here, the State Public Body, as defined, is restricting not more than 49% of the units to low income households.

We note that the Partnership will voluntarily restrict more than 49% of the Project's units to low income households through its execution of the extended low-income housing commitment described in Section 42(h)(6)(B) of the Internal Revenue Code, as amended, in favor of the California Tax Credit Allocation Committee (the "TCAC Regulatory Agreement") in order to maximize the tax credits available to the Project; however, we do not believe this changes the analysis. The fact that the Project may, in fact, have 100% occupancy by low income households does not transform the Project into a Low Rent Housing Project because Article XXXIV does not proscribe low income tenants as such, but regulates state government's role in tailoring projects for low-income occupancy. Health and Safety Code Section 37001(a) itself should not be interpreted to impose a 49% ceiling on actual low-income occupancy if the additional low-income occupancy is not caused by a State Public Body taking an active development role. The statute was intended to define a safe harbor from Article XXXIV, not to preclude private market participants from choosing to make housing available to low-income families. Existing legal authority supports this conclusion. See Redevelopment Agency v. Shepard, 75 Cal. App. 3d 453, 461-462 (1977), holding that where the private developer of a redevelopment agency-assisted project had complete control of the persons who occupy units, the fact that units might be low income did not trigger Article XXXIV; see also 64 Ops. Attorney General 622, 626-628 (1981), opining that low-income requirements imposed by HUD on privately-developed projects did not trigger Article XXXIV despite a local government's role in reviewing the project.

3. Conclusions.

Based on the reasoning and subject to the assumptions, qualifications, and limitations set forth herein, it is our opinion that in a properly pleaded, presented and decided case in which a California court applied the principles of California law discussed herein: a California court should conclude that: Article XXXIV is inapplicable to the facts of this Project, and local voter approval is therefore not required.

4. Qualifications.

We express no opinion as to the effect of events occurring, circumstances arising, or changes of law becoming effective or occurring, after the date hereof on the matters addressed in this opinion letter, and we assume no responsibility to inform you of additional or changed facts, or changes in law, of which we may become aware.

This opinion is furnished to you in connection with the Project and is not to be used or relied upon by any other person or used, circulated, quoted or otherwise referred to for any other purpose, other than by you and your successors and assigns in connection with the Project.

Please do not hesitate to contact us if you have any questions.

Very truly yours,

Nicole Deddens
of BOCARSLY EMDEN
COWAN ESMAIL & ARNDT LLP