

PREDEVELOPMENT LOAN AGREEMENT

by and between

THE CITY OF EMERYVILLE

and

EVOY, L.P.

(3600 San Pablo Avenue, 049-0905-006-01;
3610 San Pablo Avenue, 049-0950-008-01; and
3620 San Pablo Avenue 049-950-001)

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PREDEVELOPMENT LOAN AGREEMENT
(ADDRESS)

This Predevelopment Loan Agreement (the "**Agreement**") is entered into as of _____, 2019 (the "**Effective Date**"), by and between the City of Emeryville, a municipal corporation (the "City") and Evoy, L.P., a California limited partnership, (the "**Developer**"), with reference to the following facts, purposes and intentions.

RECITALS

A. These recitals ("**Recitals**") refer to and utilize certain capitalized terms which are defined in Article 1 of this Agreement. The parties intend to refer to those definitions in connection with the use of capitalized terms in these Recitals.

B. Developer intends to develop (i) no fewer than thirty-eight (38) affordable residential units (plus one (1) unrestricted manager's unit); and (ii) an approximately thirty-six hundred (3,600) square foot ground floor commercial space to be used to provide food security services (the "**Development**") on certain real property located at 3600 San Pablo Avenue, 3610 San Pablo Avenue, and 3620 San Pablo Avenue in the City of Emeryville, California, more particularly described in Exhibit A attached (the "**Property**").

C. The Property consists of three parcels of property, previously owned by a single, private owner. On August 1, 2019, after the Property fell into foreclosure, the bankruptcy court approved of a purchase agreement between the private owner and Developer. Developer expects to acquire the Property on or before [DATE] in accordance with the purchase agreement.

D. Developer requested that the City provide Developer financial assistance to acquire the Property.

E. Pursuant to this Agreement between Developer and the City, the City is providing Two Million Dollars (\$2,000,000) of financial assistance to Developer (the "**Predevelopment Loan**") from the City's Capital Improvement Fund to fund the acquisition of the Property, which is evidenced by a promissory note, more particularly described in Exhibit D attached (the "**Predevelopment Note**"), and is secured by a deed of trust on the Property, more particularly described in Exhibit C attached (the "**Predevelopment Deed of Trust**").

F. Developer will record restrictions on the Property, ensuring that the Development remains affordable to households with incomes between thirty-percent (30%) and eighty-percent (80%) of the area median income (the "**AMI**") with the average of all household incomes not exceeding sixty-percent (60%) of the AMI for seventy-five (75) years.

G. Developer will lease the ground floor commercial space to Emeryville Citizens Assistance Program ("**ECAP**"), a community services organization that provides food to people who are experiencing homelessness or at risk of experiencing homelessness. ECAP will be required to pay rent not to exceed the operating and maintenance cost incurred by Developer for the commercial space.

H. As more fully set forth in Section 6.14, this Agreement does not authorize the granting of the Land Use Approvals or the construction of the Development. Such actions may be authorized and will become possible only upon subsequent discretionary action of the City.

NOW, THEREFORE, in consideration of the Recitals hereof and the mutual promises and covenants set forth in this Agreement, the parties agree as follows:

ARTICLE 1 DEFINITIONS AND EXHIBITS

Section 1.1 Definitions.

The following capitalized terms have the meanings set forth in this Section 1.1 wherever used in this Agreement, unless otherwise provided:

- (a) "Agreement" has the meaning set forth in the first paragraph of the Recitals.
- (b) "City" has the meaning set forth in the first paragraph of the Recitals.
- (c) "Default" has the meaning set forth in Section 5.1.
- (d) "Developer" has the meaning set forth in the first paragraph of the Recitals.
- (e) "Development" has the meaning set forth in the Paragraph B of the Recitals.
- (f) "Effective Date" has the meaning set forth in the first paragraph of Recitals above.
- (g) "Land Use Approvals" means the permits and approvals necessary for the development of the Development on the Property, including, but not limited to, overall design and architectural review and approval by the City and any other applicable government entity.
- (h) "Loss Payee" means the party entitled to an insurance claim payment.
- (i) "Predevelopment Deed of Trust" has the meaning set forth in Paragraph E of the Recitals.
- (j) "Predevelopment Loan" has the meaning set forth in Paragraph E of the Recitals.
- (k) "Predevelopment Loan Documents" means this Agreement, the Predevelopment Note, the Regulatory Agreement and the Predevelopment Deed of Trust.

(l) "Predevelopment Note" has the meaning set forth in Section E of the Recitals.

(m) "Property" has the meaning set forth in Paragraph B of the Recitals.

(n) "Regulatory Agreement" means the Affordable Housing Agreement between the City and Developer dated _____ and recorded in the Official Records of Alameda County on _____ as document number _____, which shall regulate the use and occupancy of the Development, substantially in the form attached as Exhibit E.

(o) "Term" means the term of this Agreement, which shall commence on the Effective Date and shall terminate on the third (3rd) anniversary of the date of closing, unless extended by the City Manager pursuant to Section 2.7.

(p) "Transfer" has the meaning set forth in Section 3.6(a).

Section 1.2 Exhibits. The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A Legal Description of the Property

Exhibit B Development Milestones

Exhibit C Deed of Trust

Exhibit D Predevelopment Note

Exhibit E Affordable Housing Agreement

ARTICLE 2 PREDEVELOPMENT LOAN PROVISIONS

Section 2.1 Predevelopment Loan. Subject to satisfaction of the conditions set forth in Section 2.6, the City shall lend to Developer the principal sum not to exceed Two Million Dollars (\$2,000,000) for the purposes set forth in Section 2.3 of this Agreement. The Predevelopment Loan shall be evidenced by the Predevelopment Note in a form to be provided by the City, which shall be executed by Developer concurrently herewith.

Section 2.2 Interest.

(a) Subject to the provisions of Section 2.2(b) below, the outstanding principal balance of the Predevelopment Loan shall bear simple interest at the rate of three percent (3%) per annum commencing with the date of first disbursement.

(b) In the event of a Default, interest on the Predevelopment Loan shall begin to accrue, as of the date of Default and continue until such time as the Predevelopment Loan funds are repaid in full or the Default is cured, at the default rate of the lesser of ten percent (10%), compounded annually, or the highest rate permitted by law.

Section 2.3 Use of Funds. Proceeds of the Predevelopment Loan may be used only for the acquisition of the Property, unless the City Manager approves in writing a different use of the funds.

Section 2.4 Security. As security for the Predevelopment Loan, and as part of the consideration for entering into this Agreement, Developer agrees to the following:

(a) Developer grants to the City a valid, first priority, continuing security interest in all presently existing and hereafter acquired or arising collateral in order to secure prompt, full and complete payment of any and all obligations to the City under this Agreement and in order to secure prompt, full and complete performance by Developer of each of its covenants and duties under each of the Predevelopment Loan Documents (the "**Assignment Agreement**"). Collateral includes all rights, title, interest, claims and demands of Developer in and to the collateral documents, including contract rights and general intangibles, now existing or hereafter arising; and all amendments, substitutions for, and proceeds thereof, including, without limitation, insurance and similar payments (the "**Collateral**"). Collateral documents include all contracts, architectural and engineering plans and specifications, reports, approvals, and any other information related to the development of the Property obtained by Developer (the "**Collateral Documents**"). The Assignment Agreement will become effective upon an uncured event of Default of Developer as defined in Section 5.1, or upon termination of this Agreement. The City will not have any obligation under any Collateral Document assigned until it expressly agrees in writing to be bound by such contracts or agreements. Upon an event of Default that has not been cured pursuant to this Agreement or termination of this Agreement, the City may use any of the foregoing assigned Collateral Documents for any purpose for which Developer could have used them for development of the Property, and Developer shall cooperate with the City to implement the Assignment Agreement and immediately deposit with the City, for the City's use, all the Collateral Documents;

(b) Developer will execute and record against the Property the Predevelopment Deed of Trust substantially in the form of Exhibit D attached hereto;

(c) Developer shall execute and record the Regulatory Agreement substantially in the form of Exhibit E attached hereto; and

(d) The Predevelopment Loan shall be nonrecourse. Developer shall not have any personal liability for payment of the principal of, and interest on, the Predevelopment Loan. Following recordation of the Predevelopment Deed of Trust, the sole recourse of the City with respect to the principal of, or interest on, the Predevelopment Note will be to the property described in the Predevelopment Deed of Trust; provided, however, that nothing contained in the foregoing limitation of liability limits or impairs the enforcement of all the rights and remedies of the City against all such security for the Predevelopment Note, or impairs the right of City to assert the unpaid principal amount of the Predevelopment 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 to repay the principal and interest on the Predevelopment Note. Except as hereafter set forth; nothing contained herein is intended to relieve Developer of its obligation to indemnify the City under Section 3.8, Section 3.9 and Section 6.4 of this Agreement, or liability for (i) loss or damage of any kind resulting from waste, fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the Predevelopment 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 Developer other than in accordance with the Predevelopment Deed of Trust; and (iv) the misappropriation 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.

Section 2.5 Subordination.

(a) City shall not subordinate the Regulatory Agreement to other private lenders. The City may subordinate the Predevelopment Deed of Trust to financing approved by the City (in each case, a "**Senior Lien**"), but only on condition that all of the following conditions are satisfied:

(1) The conditions of the subordination agreement are negotiated prior to the closing of the loans secured by the Senior Liens.

(2) All of the proceeds of the proposed Senior Lien, less any transaction costs, must be used to provide acquisition, construction and/or permanent financing for the Development.

(3) The proposed lender (each, a "**Senior Lender**") must be a state or federally chartered financial institution, a nonprofit corporation or a public entity that is not affiliated with Developer or any of Developer's affiliates, other than as a depositor or a lender.

(4) Developer must demonstrate to the City's reasonable satisfaction that subordination of the Deed of Trust is necessary to secure adequate acquisition, construction, and/or permanent financing to ensure the viability of the Development, including the operation of the Development as affordable housing, as required by the Predevelopment Loan Documents. To satisfy this requirement, Developer must provide to the City, in addition to any other information reasonably required by the City, evidence demonstrating that the proposed amount of the Senior Loan is necessary to provide adequate acquisition, construction, and/or permanent financing to ensure the viability of the Development, and adequate financing for the Development would not be available without the proposed subordination.

(5) The subordination agreement(s) must be structured to minimize the risk that the Predevelopment Deed of Trust would be extinguished as a result of a foreclosure by the Senior Lender or other holder of the Senior Lien. To satisfy this requirement, the subordination agreement must provide the City with adequate rights to cure any defaults by Developer, including: (i) providing the City or its successor with copies of any notices of default

at the same time and in the same manner as provided to Developer; (ii) providing the City with a cure period of at least one hundred twenty (120) days to cure any default; and (iii) providing the City with the right to ensure that the Project attributes will be maintained to agreed upon standards.

(6) The subordination(s) described in this Section 2.5 may be effective only during the original term of the Senior Loan and any extension of its term approved in writing by the City.

(7) No subordination may limit the effect of the Predevelopment Deed of Trust before a foreclosure, nor require consent of the holder of the Senior Loan to exercise of any remedies by the City under the Predevelopment Loan Documents.

(8) Upon a determination by the City Manager that the conditions in this Section have been satisfied, the City Manager or his/her designee will be authorized to execute the approved subordination agreement without the necessity of any further action or approval.

(b) Notwithstanding this Section 2.5(a) herein, the City hereby agrees to subordinate the Predevelopment Deed of Trust to the preapproved one-million dollar (\$1,000,000) loan from Housing Trust Silicon Valley.

Section 2.6 Conditions to Funding. The City shall fund the Predevelopment Loan upon satisfaction of the following conditions:

(a) Developer has executed and delivered to the City of the Predevelopment Note, the Regulatory Agreement, and the Predevelopment Deed of Trust;

(b) Developer's legal counsel has provided to the City an opinion, satisfactory to the City's legal counsel, that Developer: (i) is duly formed, validly existing, in good standing under the laws of the State of California; (ii) has the power and authority to enter into an agreement with the City; (iii) shall be bound by the terms of the Agreement when executed and delivered; and (iv) that addresses such other matters as the City may reasonably request.

(c) Developer has furnished the City with: (i) evidence of the insurance coverage, naming the City as co-insured, meeting the requirements of Section 3.5 below; (ii) audited or financially reviewed financial statements for Developer's last three (3) fiscal years; (iii) a development budget; (iv) a preliminary thirty (30) year proforma; (v) a title report; and (vi) loan documents from the other funding sources approved by the City closing on the same or different date from the Predevelopment Loan closing date.

(d) Upon satisfaction of these conditions, the City shall disburse the Predevelopment Loan (or so much thereof as is required), for cost of acquiring the Property. Notwithstanding any other provisions of this Agreement, the City shall have no further obligation to disburse any portion of the Predevelopment Loan to Developer following: (i) termination of this Agreement; or (ii) notification by the City to Developer of a Default under the terms of this Agreement.

Section 2.7 Repayment of the Predevelopment Loan.

(a) Term. The Term of the Predevelopment Loan shall be three (3) years from the date of the Predevelopment Loan closing. The City Manager shall have the option to extend the Term to five (5) years from the date of the Predevelopment Loan closing, which approval shall not be unreasonably withheld if the Developer is making good faith efforts in the City's sole discretion to meet the development milestones. Any extension may be conditioned on the Developer submitting an updated proposal for approval by the City.

(b) Repayments. All payments of principal and interest on the Predevelopment Loan shall be deferred for the Term of the Predevelopment Loan. If the Predevelopment Loan is not extended by the City Manager to permanent financing pursuant to subsection (c) below, all principal and interest shall be due in full upon expiration of the Term, as such Term may be extended pursuant to subsection (a) above.

(c) Permanent Financing. If construction or permanent financing is awarded by the City for the Development through a Notice of Funding Availability or other process, the City Manager shall have the option to convert the Predevelopment Loan to construction or permanent financing. If the Predevelopment Loan is converted to construction or permanent financing, the terms and conditions will be determined at the time the Predevelopment Loan is converted and the parties will either amend this Agreement or enter into a new written agreement.

ARTICLE 3 DEVELOPER OBLIGATIONS

Section 3.1 Development Milestones. Developer shall perform the following tasks, among others, no later than the dates set forth in the schedule of development milestones attached to this Agreement as Exhibit B: (i) submit the Phase I Environmental Assessment to Alameda County Environmental Health Department; (ii) submit the zoning/planning application to the Emeryville Department of Community Development; (iii) secure Development entitlements; secure construction and permanent financing; (iv) apply for competitive state financing; and (v) submit the California 4% or 9% Tax Credit application.

Section 3.2 Affordability Restrictions. In accordance with the Regulatory Agreement, the affordable housing units are to remain affordable to low income households as defined in the Regulatory Agreement, for a time period of no less than seventy-five (75) years, unless other lenders or the tax credit investor require a shorter term, but in no event less than fifty-five (55) years. However, if the City Manager determines that the development of low-income housing is infeasible and the Predevelopment Loan is still outstanding, the City Manager may release the Regulatory Agreement, in whole or in part, in connection with the sale of the Property, provided the Predevelopment Loan is repaid as part of the sale.

Section 3.3 Use. The Property shall be used only for purposes consistent with this Agreement and the Regulatory Agreement.

Section 3.4 Planning, Zoning, and Building Permit Approval. Developer shall give the City Manager or designee reasonable notice of all meetings with the City Planning and Building staff concerning design and permitting issues.

Section 3.5 Insurance. Developer shall maintain and keep in force, at Developer's sole cost and expense, the following insurance applicable to the Development in a form acceptable to the City with evidence of such coverage provided to the City within ten (10) days of execution of this Agreement, but in no event later than the initial disbursement of Predevelopment Loan funds pursuant to this Agreement:

(a) Workers' Compensation insurance to the extent required by law, including Employer's Liability coverage, with limits not less than One Million Dollars (\$1,000,000) each accident.

(b) Commercial General Liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverage for Contractual Liability, Personal Injury, Broadform Property Damage, and Products and Completed Operations.

(c) Comprehensive Automobile Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverage for owned, non-owned and hired vehicles, as applicable; provided, however, that if Developer does not own or lease vehicles for purposes of this Agreement, then no automobile insurance shall be required.

(d) Property insurance, including during the course of construction builder's risk insurance, covering the Development, in form appropriate for the nature of such property, covering all risks of loss, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the City, naming the City as a Loss Payee, as its interests may appear. Flood insurance shall be obtained if required by applicable federal regulations.

(e) For any design professionals working on the Development, errors and omission coverage in a minimum amount of One Million Dollars (\$1,000,000).

(f) Developer shall cause any general contractor or subcontractor working on the Development under direct contract with Developer or subcontract, to maintain insurance of the types and in at least the minimum amounts described in subsections (a), (b), and (c) above, except that the limit of liability for commercial general liability insurance for subcontractors shall be One Million Dollars (\$1,000,000), and shall require that such insurance shall meet all of the general requirements of subsections (g), (h), and (i) below.

(g) The required insurance shall be provided under an occurrence form, and Developer shall maintain such coverage continuously throughout the Term. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit

or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be three (3) times the occurrence limits specified above.

(h) Commercial General Liability and Comprehensive Automobile Liability insurance policies shall be endorsed to name as an additional insured the City, and its officers, agents, employees and members of the City Council.

(i) All policies and bonds shall contain (a) the agreement of the insurer to give the City at least thirty (30) days' notice prior to cancellation (including, without limitation, for nonpayment of premium) or any material change in said policies; (b) an agreement that such policies are primary and noncontributing with any insurance that may be carried by the City; (c) a provision that no act or omission of Developer shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; and (d) a waiver by the insurer of all rights of subrogation against the City and its authorized parties in connection with any loss or damage thereby insured against.

(j) If in connection with the use of the Predevelopment Loan funds, death, serious personal injury, or substantial property damage occurs, Developer shall immediately notify the City. Developer shall promptly submit to the City a written report, in such form as may be required by the City, of all accidents which occur in connection with this Agreement. This report shall include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Developer's contractor or subcontractor, if any; (3) name and address of Developer's liability insurance carrier; and (4) a detailed description of the accident and whether any of the City's equipment, tools or material were involved.

Section 3.6 Transfers.

(a) For purposes of this Agreement, "Transfer" means any sale, assignment, or transfer, whether voluntary or involuntary, of (i) any rights and/or duties under this Agreement, and/or (ii) any interest in the Development, including (but not limited to) a fee simple interest, a joint tenancy interest, a life estate, a partnership interest, a leasehold interest, a security interest including any mortgages or deeds of trust, or an interest evidenced by a land contract by which possession of the Development is transferred and Developer retains title.

(b) Except for the leasing of residential units in the ordinary course of business, no Transfer shall be permitted without the prior written consent of the City, which the City may withhold in its sole discretion. The Predevelopment Loan shall automatically accelerate and be due in full upon any unauthorized Transfer. Notwithstanding the above, the Transfer of the Property to a limited partnership in which the Developer or an affiliate controlled by the Developer is the sole general partner or any transfer of a limited partnership interest in Developer to a tax credit investor shall be allowed subject to the approval of the partnership agreement by the City.

Section 3.7 Non-Discrimination. Developer covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, disability, sex, sexual orientation, marital status, familial status, ancestry or national origin in the sale, lease, sublease, transfer, use,

occupancy, tenure or enjoyment of the Development, nor shall Developer or any person claiming under or through Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Development.

Section 3.8 Relocation. If and to the extent that development of the Development results in the permanent or temporary displacement of residential tenants, homeowners, or businesses, then Developer shall comply with all applicable state statutes and regulations with respect to relocation planning, advisory assistance, and payment of monetary benefits. If temporary or permanent relocation of residential tenants, homeowners, or businesses is required, Developer shall prepare and submit a relocation plan to the City for approval. Developer is solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with such relocation laws. Developer shall indemnify, defend (with counsel reasonably chosen by the City), and hold harmless the City against all claims that arise out of relocation obligations to residential tenants, homeowners, or businesses permanently or temporarily displaced by the Development.

Section 3.9 Hazardous Materials.

(a) Developer shall keep and maintain the Property in compliance with and shall not cause or permit the Property to be in violation of any Hazardous Materials Law (defined below), including but not limited to, soil and ground water conditions. Developer shall not shall not cause or permit the use, generation, manufacture, storage or disposal of on, under, or about the Property or transportation to or from the Property of (i) any substance, material, or waste that is petroleum, petroleum-related, or a petroleum by-product, asbestos or asbestos-containing material, polychlorinated biphenyls, flammable, explosive, radioactive, freon gas, radon, or a pesticide, herbicide, or any other agricultural chemical, and (ii) any waste, substance or material defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "toxic materials", "toxic waste", "toxic substances," or words of similar import under any Hazardous Materials Law (collectively referred to hereinafter as "Hazardous Materials"). Developer shall cause the tenants and other persons who may come onto the Property to comply with the foregoing.

(b) Developer shall immediately notify the City in writing if at any time it has any notice of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Developer, the tenants, or the Property pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, health, industrial hygiene, environmental conditions, or the regulation or protection of the environment, and all amendments thereto as of this date and to be added in the future and any successor statute or rule or regulation promulgated thereto ("Hazardous Materials Law"); (ii) all claims made or threatened by any third party against Developer, the tenants, or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to as "Hazardous Materials Claims"); and (iii) Developer's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law including but not

limited to the provisions of California Health and Safety Code, Section 25220 et seq., or any regulation adopted in accordance therewith.

(c) The City shall have the right to join and participate in, as a party if it so elects, and be represented by counsel of its own choice in, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims, and to have its reasonable attorneys' fees in connection therewith paid by Developer.

(d) Developer shall indemnify and hold harmless the City and its councilmembers, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, fine, penalty, judgment, award, settlement, expense or liability, directly or indirectly arising out of or attributable to: (i) any actual or past or present violation of any Hazardous Materials Law; (ii) any Hazardous Materials Claim; (iii) any actual or past or present use, generation, manufacture, storage, release, threatened release, discharge, disposal, transportation, or presence of Hazardous Materials on, under, or about the Property; (iv) any investigation, cleanup, remediation, removal, or restoration work of site conditions of the Property relating to Hazardous Materials (whether on the Property or any other property); and (v) the breach of any representation of warranty by or covenant of Developer in this Section 3.9. Such indemnity shall include, without limitation: (x) all consequential damages; (y) the costs of any required or necessary investigation, repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (z) all reasonable costs and expenses incurred by the City in connection with clauses (x) and (y), including but not limited to reasonable attorneys' fees and consultant fees. This obligation to indemnify shall survive termination of this Agreement and shall not be diminished or affected in any respect as a result of any notice, disclosure, knowledge, if any, to or by the City of Hazardous Materials.

(e) Without the City's prior written consent, which shall not be unreasonably withheld, Developer shall not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any claims made or threatened by any third party against Developer, any tenant, or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials, which remedial action, settlement, consent decree or compromise might, in the City's reasonable judgment, impair the value of the City's security hereunder; provided, however, that the City's prior consent shall not be necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain the City's consent before taking such action, provided that in such event Developer shall notify the City as soon as practicable of any action so taken. The City agrees not to withhold its consent, where such consent is required hereunder, if either (i) a particular remedial action is ordered by a court of competent jurisdiction, (ii) Developer will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Developer establishes to the reasonable satisfaction of the City that there is no reasonable alternative to such remedial action which would result in less impairment of the City's security hereunder; or (iv) the action has been agreed to by the City.

(f) Developer hereby acknowledges and agrees that (i) this Section is intended as the City's written request for information (and Developer's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5, and (ii) each representation and warranty in this Agreement (together with any indemnity obligation applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by the Parties to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

(g) In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the City's or the trustee's rights and remedies under the Deed of Trust, the City may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to (i) waive its lien on such environmentally impaired or affected portion of the Property and (ii) exercise (1) the rights and remedies of an unsecured creditor, including reduction of its claim against Developer to judgment, and (2) any other rights and remedies permitted by law. For purposes of determining the City right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), Developer shall be deemed to have willfully permitted or acquiesced in a release or threatened release of Hazardous Materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of Hazardous Materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and Developer knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) attorneys' fees, incurred by the City in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the rate specified in the Note until paid, shall be added to the indebtedness secured by the Deed of Trust and shall be due and payable to the City upon its demand made at any time following the conclusion of such action.

Section 3.10 Maintenance and Damage.

(a) Developer shall maintain and cause any tenant to maintain the Property and any improvements in good repair and in a neat, clean and orderly condition. If there arises a condition in contravention of this requirement, and if Developer has not cured such condition within thirty (30) days after receiving a notice from the City of such a condition, then in addition to any other rights available to the City, the City shall have the right to perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Property.

(b) If any improvement constructed on the Property by Developer, now or in the future, is damaged or destroyed, then Developer shall, at its cost and expense, diligently undertake to repair or restore such improvement consistent with any plans and specifications approved by the City. Such work or repair shall be commenced no later than the later of one hundred twenty (120) days, or such longer period approved by the City in writing, after the damage or loss occurs or thirty (30) days following receipt of the insurance proceeds, and shall be complete within one (1) year thereafter. Any insurance proceeds collected for such damage or

destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, then Developer shall make up the deficiency.

Section 3.11 Public Engagement. Developer agrees that regardless of whether the process for obtaining the Land Use Approvals for the Development includes a public engagement process, the Developer shall hold at least one community meeting and at least two study sessions with the Planning Commission to present the Development Concept and design for the Development as well as participate in at least one study session with the City Council, if requested by the City Council and Developer shall make a good faith effort to address community concerns and comments.

Section 3.12 State Prevailing Wages. To the extent required by applicable law:

(a) Developer shall pay and shall cause any consultants or contractors to pay prevailing wages in the performance of the predevelopment activities and construction of any improvements on the Property as those wages are determined pursuant to Labor Code Sections 1720 et seq., to employ apprentices as required by Labor Code Sections 1777.5 et seq., and the implementing regulations of the Department of Industrial Relations (the "**DIR**").

(b) Developer shall and shall cause the consultants and contractors to comply with the other applicable provisions of Labor Code Sections 1720 et seq., 1777.5 et seq., and implementing regulations of the DIR.

(c) Developer shall and shall cause the consultants and contractors to keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to Labor Code Sections 1720 et seq., and apprentices have been employed are required by Labor Code Sections 1777.5 et seq.

(d) During the performance of the predevelopment activities and construction of any improvements on the Property, Developer shall or shall cause the contractor to post at the Property the applicable prevailing rates of per diem wages. Copies of the currently applicable current per diem prevailing wages are available from DIR.

(e) Developer shall cause its contractors and subcontractors performing the predevelopment activities and constructing any improvements on the Property to be registered as set forth in Labor Code Section 1725.5.

(f) Developer shall cause its respective contractors and subcontractors, in all calls for bids, bidding materials and the construction contract documents for performing the predevelopment activities, and constructing any improvements on the Property to specify that:

(1) No contractor or subcontractor may be listed on a bid proposal nor be awarded a contract for the performance of the predevelopment activities or construction of any improvements on the Property unless registered with the DIR pursuant to Labor Code Section 1725.5.

(2) The performance of the predevelopment activities and construction of any improvements on the Property are subject to compliance monitoring and enforcement by the DIR.

(A) Developer shall provide the City all information required by Labor Code Section 1773.3 as set forth in the DIR's online form PWC-100 within 2 days of the award of any contract (<https://www.dir.ca.gov/pwc100ext/>).

(B) Developer shall cause its contractors to post job site notices, as prescribed by regulation by the DIR.

(C) Developer shall cause its contractors to furnish payroll records required by Labor Code Section 1776 directly to the Labor Commissioner, at least monthly in the electronic format prescribed by the Labor Commissioner.

Section 3.13 Indemnification. Developer shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Developer, its contractor and subcontractors): (i) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., (ii) to employ apprentices pursuant to Labor Code Sections 1777.5 et seq., (iii) to meet the conditions of Labor Code Section 1771.4, and implementing regulations of the DIR, or (iv) to comply with the other applicable provisions of Labor Code Sections 1720 et seq., 1777.5 et seq., and 1771.4, and the implementing regulations of the DIR, in connection with the predevelopment activities or any other work undertaken or in connection with the Property. The requirements in this Subsection shall survive the repayment of the Predevelopment Loan, and the reconveyance of the Deed of Trust.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF DEVELOPER

Section 4.1 Representations and Warranties. Developer hereby represents and warrants to the City as follows:

(a) Organization. Developer is duly organized, validly existing California nonprofit public benefit corporation and is in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted.

(b) Authority of Developer. Developer has full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver the Predevelopment Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Authority of Persons Executing Documents. This Agreement and the Predevelopment Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered by Developer, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Developer, and all actions required under Developer's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this

Agreement and the Predevelopment Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken (to the extent such actions are required as of the date of execution and delivery of the above-named documents).

(d) Valid Binding Agreements. This Agreement and the Predevelopment Loan Documents and all other documents or instruments which have been executed and delivered by Developer pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of Developer enforceable by and against it in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting the rights of creditors generally and general principles of equity.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement and the Predevelopment Loan Documents by Developer or of any other documents or instruments executed and delivered, or to be executed or delivered by Developer, pursuant to this Agreement, nor the performance by Developer of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on Developer, or any provision of the organizational documents of Developer, or will conflict with or constitute a breach of or a default under any agreement to which Developer is a party, or will result in the creation or imposition of any lien upon any assets or property of Developer, other than liens established pursuant hereto.

(f) Compliance with Laws; Consents and Approvals. The development of the Property will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency.

(g) Pending Proceedings. Developer is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Developer, threatened against or affecting Developer, or the Property, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Developer, materially and adversely affect Developer's ability to repay the Predevelopment Loan or impair the security to be given to the City pursuant hereto.

(h) Title to Land. Developer has good and marketable fee title to the Property and there exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than those liens approved by the City, liens for current real property taxes and assessments not yet due and payable, and liens in favor of the City or approved in writing by the City.

(i) Financial Statements. The financial statements of Developer and other financial data and information furnished by Developer to the City fairly present the information contained therein. As of the date of this Agreement, there has not been any adverse, material

change in the financial condition of Developer from that shown by such financial statements and other data and information.

(j) Sufficient Funds. Developer holds sufficient funds and/or binding commitments for sufficient funds to pay predevelopment expenses of the Property.

ARTICLE 5 DEFAULT AND REMEDIES

Section 5.1 Events of Default. Each of the following shall constitute a "Default" by Developer under this Agreement:

(a) Failure to Make Payment. Failure by Developer to repay the principal and any interest on the Predevelopment Loan within ten (10) days of receipt of written notice from the City that such payment is due pursuant to the Predevelopment Loan Documents.

(b) Breach of Covenants. Failure by Developer to duly perform, comply with, or observe any of the conditions, terms, or covenants of any of the Predevelopment Loan Documents, and such failure having continued uncured for thirty (30) days after receipt of written notice thereof from the City to Developer or, if the breach cannot be cured within thirty (30) days, Developer shall not be in breach so long as Developer is diligently undertaking to cure such breach and such breach is cured within sixty (60) days; provided, however, that if a different period or notice requirement is specified under any other section of this Article 5, the specific provisions shall control.

(c) Unauthorized Transfer. Any Transfer other than as permitted by Section 3.6.

(d) Representation or Warranty Incorrect. Any representation or warranty of Developer contained in this Agreement, or in any application, financial statement, certificate, or report submitted in connection with any of the Predevelopment Loan Documents, proves to have been incorrect in any material and adverse respect when made.

(e) Adverse Financial Condition. A material adverse change in Developer's financial condition, or an event or condition materially impairing Developer's intended use of the Property, or Developer's ability to repay the Predevelopment Loan occurs.

(f) Other Obligations. Failure by Developer to make any payment or perform any of its other covenants, agreements, or obligations under any other agreement with respect to the Development.

(g) Insolvency. A decree or order by a court having jurisdiction (i) adjudging Developer to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of Developer or seeking any arrangement for Developer under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of Developer in bankruptcy or insolvency or for any of their properties, (iv) directing the winding up or liquidation of Developer, if any such decree or order described in clauses (i) to (iv), inclusive,

shall have continued unstayed or undischarged for a period of ninety (90) days; or (v) Developer shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive. The occurrence of any of the events of Default in this paragraph shall act to accelerate automatically, without the need for any action by the City, the indebtedness evidenced by the Note.

(h) Assignment; Attachment. Assignment by Developer of its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event or, if sooner, prior to sale pursuant to such sequestration, attachment, or execution. The occurrence of any of the events of default in this paragraph shall act to accelerate automatically, without the need for any action by the City, the indebtedness evidenced by the Note.

(i) Suspension; Dissolution. Voluntarily suspension or dissolution by Developer of its business.

(j) Liens on Property and the Development. Any claim of lien (other than liens approved in writing by the City) filed against the Development, the Property, or any part thereof, or any interest or right made appurtenant thereto, or the service of any notice to withhold proceeds of the Predevelopment Loan and the continued maintenance of said claim of lien or notice to withhold for a period of twenty (20) days without discharge or satisfaction thereof or provision therefor (including, without limitation, the posting of bonds) satisfactory to the City.

(k) Condemnation. The condemnation, seizure, or appropriation of all or the substantial part of the Property and the Development, except that condemnation by the City shall cause the Predevelopment Loan to accelerate but shall not be a Default.

Section 5.2 Remedies. The occurrence of any Default hereunder following the expiration of all applicable notice and cure periods will, either at the option of the City or automatically where so specified, relieve the City of any obligation to make or continue the Predevelopment Loan and shall give the City the right to proceed with any and all remedies set forth in this Agreement and the Predevelopment Loan Documents, including but not limited to the following:

(a) Acceleration of Note. The City shall have the right to cause all indebtedness of Developer to the City under this Agreement and the Predevelopment Note, together with any accrued interest thereon, to become immediately due and payable. Developer waives all right to presentment, demand, protest or notice of protest or dishonor. The City may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the City as a creditor and secured party under the law including the Uniform Commercial Code, including foreclosure under the Predevelopment Deed of Trust. Developer shall be liable to pay the City on demand all reasonable expenses, costs and fees (including, without limitation, reasonable attorney's fees and expenses) paid or incurred by the City in connection with the collection of the Predevelopment Loan and the preservation, maintenance, protection, sale, or other disposition of the security given for the Predevelopment Loan.

(b) Assignment Agreement. The City shall have the right to exercise all rights under the Assignment Agreement.

(c) Specific Performance. The City shall have the right to mandamus or other suit, action or proceeding at law or in equity to require Developer to perform its obligations and covenants under the Predevelopment Loan Documents or to enjoin acts or things which may be unlawful or in violation of the provisions of the Predevelopment Loan Documents.

(d) Right to Cure at Developer's Expense. The City shall have the right (but not the obligation) to cure any monetary default by Developer under a loan other than the Predevelopment Loan. Developer agrees to reimburse the City for any funds advanced by the City to cure a monetary default by Developer upon demand therefore, together with interest thereon at the lesser of the maximum rate permitted by law or ten percent (10%) per annum from the date of expenditure until the date of reimbursement.

Section 5.3 Right of Contest. Developer shall have the right to contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute a Default hereunder. Any such contest shall be prosecuted diligently and in a manner unprejudicial to the City or the rights of the City hereunder.

Section 5.4 Remedies Cumulative. No right, power, or remedy given to the City by the terms of this Agreement or the Predevelopment Loan Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the City by the terms of any such instrument, or by any statute or otherwise against Developer and any other person. Neither the failure nor any delay on the part of the City to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the City of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

ARTICLE 6 GENERAL PROVISIONS

Section 6.1 Relationship of Parties. Nothing contained in this Agreement shall be interpreted or understood by any of the parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the City and Developer or Developer's agents, employees or contractors, and Developer shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement for the development of the Development. Regarding the development of the Development, Developer shall be solely responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding, and all other laws and regulations governing such matters, and shall include requirements in each contract that contractors shall be solely responsible for similar matters relating to their employees. Developer agrees to be solely responsible for its own acts and those of its agents and employees.

Notwithstanding the preceding paragraph, the City shall have the right to provide input regarding the selection and, if necessary, the replacement of such consultants or vendors employed by Developer to perform the development milestones contemplated by this Agreement. Developer shall consider in good faith such input from the City, and shall confer with the City, upon request, regarding such selection and replacement decisions.

Section 6.2 No Claims. Nothing contained in this Agreement shall create or justify any claim against the City, by any person Developer may have employed or with whom Developer may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the development of the Development, and Developer shall include similar requirements in any contracts entered into for the development of the Development.

Section 6.3 Amendments. No alteration or variation of the terms of this Agreement shall be valid unless made in writing by the parties.

Section 6.4 Indemnification. Except as directly caused by the City's sole gross negligence or willful misconduct, Developer agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the City) the City, and its council members, officers and employees, from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of Developer's performance or non-performance of its obligations under this Agreement, arising from Developer's purchase and ownership of the Property, the development, marketing, rental, operation and management of the Development, or any documents executed by Developer in connection with the Development. The provisions of this Section 6.4 shall survive termination of this Agreement.

Section 6.5 Non-Liability of City Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to Developer, or any successor in interest, in the event of any Default or breach by the City, or for any amount which may become due to Developer or its successor or on any obligation under the terms of this Agreement.

Section 6.6 No Third-Party Beneficiaries. There shall be no third-party beneficiaries to this Agreement.

Section 6.7 Action by the City. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent, request, extension of time, waiver of condition, termination, or other action by the City is required or permitted under this Agreement, such action may be given, made, or taken by the City Manager without further approval by the City Council, and any such action shall be in writing. The amount of the Predevelopment Loan may not be increased without approval of the City Council.

Section 6.8 Waivers. Any waiver by the City of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the City to take action on any breach or default of Developer or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Developer to perform any obligation under this Agreement shall not operate as a waiver or release from any of its

obligations under this Agreement. Consent by the City to any act or omission by Developer shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the City's written consent to future waivers.

Section 6.9 Notices, Demands and Communications. Formal notices, demands, and communications between the City and Developer shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the City and Developer as follows:

City:
City of Emeryville
1333 Park Avenue
Emeryville, CA 94608
Attn: Christine Daniel, City Manager

Developer:
Evoy, L.P.
c/o Resources for Community Development
2220 Oxford Street
Berkeley, CA 94704
Attn: Dan Sawislak, Executive Director

Such written notices, demands, and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this Section. Receipt shall be deemed to have occurred on the date shown on a written receipt for delivery or refusal of delivery.

Section 6.10 Applicable Law and Venue. This Agreement shall be governed by California law. Any action brought claiming a breach of this Agreement or interpreting this Agreement shall be brought and venued in Alameda County, California.

Section 6.11 Parties Bound. Except as otherwise limited herein, the provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their heirs, executors, administrators, legal representatives, successors and assigns.

Section 6.12 Attorneys' Fees. If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing party will have the right to recover its reasonable attorneys' fees and costs of suit from the other party.

Section 6.13 Severability. If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 6.14 Future City Actions. The parties acknowledge and agree that:

(a) This Agreement does not constitute City approval of, the Land Use Approvals, or construction of the Development;

(b) The City retains full discretion to approve or disapprove any entitlements necessary for the Development.

Section 6.15 Counterparts; Multiple Originals. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute this Agreement.

WHEREFORE, this Agreement has been entered into by the undersigned as of the date first above written.

DEVELOPER:

EVOY, L.P., a California limited partnership

By: RCD GP III LLC, a California nonprofit public
benefit corporation, its sole member/manager

By: _____
David Sawislak, Executive Director

CITY:

THE CITY OF EMERYVILLE, a municipal
corporation

By: _____

Its: _____

APPROVED AS TO FORM:


By: 
Michael Guina, City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF EMERYVILLE, IN THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

Lot 3, Block "A", "Map of a portion of Mrs. M. J. Evoy's Property, Sub'd, Dec. 5th, 1876", filed May 2, 1887, Map Book 3, Page 18, Alameda County Records.

Assessor's Parcel No. 049-0950-001

PARCEL TWO:

Portion of Lot 1, Block "A", "Map of Portion of Mrs. M. J. Evoy's Property Subdivision December 5, 1876" filed May 2, 1877, Map Book 3, Page 18, Alameda County Records, described as follows:

Beginning at the intersection of the Eastern line of San Pablo Avenue with the Northern line of 36th Street, as said Avenue and Street are shown on said Map; running thence along said line of San Pablo Avenue Northerly 30.79 feet; thence Easterly parallel with the Southern line of 37th Street, as shown on said Map, 88 feet; thence at right angles Southerly 34.91 feet, more or less, to said line of 36th Street; thence along the last named line Westerly 75 feet, more or less, to the point of beginning.

PARCEL THREE:

Portion of Lot 1, Block "A", "Map of a Portion of Mrs. M. J. Evoy's Property Subdivided December 5, 1876", filed May 2, 1877, Map Book 3, Page 18, Alameda County Records, described as follows:

Beginning at a point on the Eastern line of San Pablo Avenue, distant thereon 30.79 feet northerly from the Northern line of 36th Street, as said Avenue and Streets are shown on said Map; running thence along said line of San Pablo Avenue Northerly 34 feet; thence Easterly parallel with the Southern line of 37th Street, as shown on said Map, 103 feet; thence at right angles Southerly 30.67 feet to a line drawn Easterly from the point of beginning parallel with said line of 37th Street; thence at right angles Westerly along the line so drawn 88 feet, more or less, to the point of beginning.

APN: 049-0950-006-01 (Affects Parcel Two and Three)

PARCEL FOUR:

Portion of Lot 2, Block "A", Map of a Portion of Mrs. M. J. Evoy's property subdivision December 5, 1876", filed May 2, 1877, Map Book 3, Page 18, Alameda County Records, described as follows:

Beginning at a point on the Eastern line of San Pablo Avenue distant thereon 64.79 feet Northerly from the Northern line of 36th Street, as said Avenue and Street are shown on said Map.

Running thence along said line of San Pablo Avenue Northerly 26.69 feet; thence Easterly parallel with the Southern line of 37th Street, as shown on said Map; 96.937 feet; thence at right angles Southerly 25 feet; thence at right angles Westerly 85 feet to the point of beginning.

PARCEL FIVE:

Beginning at a point on the Eastern line of San Pablo Avenue, distant thereon Southerly 55.39 feet from the intersection thereof with the Southern line of 37th Street, as said Avenue and Street are shown on the Map hereinafter referred to; running thence Easterly parallel with said line of 37th Street, 108.87 feet; thence at right angles Southerly 25 feet; thence at right angles Westerly 96.93 feet, more or less, to the said Easterly line of San Pablo Avenue; thence Northerly along said last named line 27.695 feet to the point of beginning. Being the Northern 25 feet of Lot 2, Block "A", "Map of a Portion of Mrs. M. J. Evoy's property", filed May 2, 1877, Map Book 3, Page 18, Alameda County Records.

APN: 049-0950-008-01 (Affects Parcel Four and Five)

EXHIBIT B

DEVELOPMENT MILESTONES AND TIME SCHEDULE

Development Milestones	
Task	Estimated Completion Date
Submit Phase 1 Environmental Assessment to Alameda County Environmental Health Department	April 1, 2020
Submit Zoning/Planning application to the City of Emeryville Community Development Department	July 1, 2020
Hold at least one (1) Community Meeting, present the Development Concept and Design for the Development in at least two (2) study sessions with the Planning Commission and participate in at least one (1) study session with the City Council	April 1, 2021
Secure Project Entitlements secured by	April 1, 2021
Apply for Competitive State Financing	April 1, 2022
Submit application for 4% or 9% Tax Credits to California Tax Credit Allocation Committee	July 30, 2022

EXHIBIT C
DEED OF TRUST

EXHIBIT D

PREDEVELOPMENT NOTE