

RESOLUTION NO. 21-48

Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Execute The First Amendment To Predevelopment Loan Agreement By And Between The City Of Emeryville And Evoy, L.P., An Affiliate Of Resources For Community Development, A California Nonprofit Public Benefit Corporation, For The Development Of Affordable Housing At 3600, 3610 And 3620 San Pablo Avenue, Increasing The Predevelopment Loan Amount By \$1,500,000 To A Total Amount Not To Exceed \$3,500,000; Appropriating \$1,500,000 From The Low And Moderate Income Housing Fund (Fund 298) To The Fiscal Year 2020-2021 Budget For Capital Improvement Project No. H-07; And Authorizing The Allocation Of 89 Affordable Rental Units Of The City's Article 34 Authority

WHEREAS, on June 5, 2018, the voters in the City of Emeryville approved Measure C, which provides for the issuance of up to \$50,000,000 in general obligation bonds for affordable housing programs in the City of Emeryville; and

WHEREAS, Article XXXIV of the Constitution of the State of California ("Article 34") provides that no low-rent housing project shall be developed, constructed or acquired in any manner by any state public body until a majority of the qualified electors of the city in which it is proposed to develop, construct, or acquire the project, voting upon such issue, approve such project by voting in favor thereof at an election to be held for that purpose, or at any general or special election; and

WHEREAS, Measure C also constituted the approval required by Article 34, authorizing an additional 500 affordable housing units; and

WHEREAS, on November 5, 2019, the City Council adopted Resolution No. 19-150, authorizing the City Manager to execute a \$2,000,000 pre-development loan agreement with Resources for Community Development ("Developer") to acquire 3600, 3610 and 3620 San Pablo Avenue (collectively herein referred to as the "Site") and on November 22, 2019 the Developer entered into a Predevelopment Loan Agreement with the City to acquire the Site for affordable housing; and

WHEREAS, Developer requested a zoning application be processed under Senate Bill ("SB") 35 and Assembly Bill ("AB") 1763 and on October 20, 2020 the Community Development Director approved the zoning application for a seven-story building with 89 affordable residential units and one resident manager's unit, with ground floor commercial space (the "Project"); and

WHEREAS, on January 19, 2021, the City Council adopted Resolution No. 21-01, authorizing the commitment of an additional \$14,747,486 in permanent financing with \$1,500,000 to be made available for additional predevelopment expenses, for a total amount of \$16,747,486 in loan funds committed to support the development of the Project; and

WHEREAS, Developer has requested that an additional \$1,500,000 in predevelopment funds be made available to support the predevelopment costs associated with the Project; now, therefore, be it

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 3600 San Pablo Avenue Predevelopment Loan Agreement Amendment
 City Council Meeting | June 1, 2021
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RESOLVED, that the City Council of the City of Emeryville hereby authorizes the City Manager to execute the First Amendment to Predevelopment Loan Agreement increasing the predevelopment loan amount by \$1,500,000 to a total amount not to exceed \$3,500,000 to be used for predevelopment costs associated with the Project, in substantial form as attached hereto as Exhibit A, and to execute any further revisions as may be agreed upon by the City Manager and City Attorney that do not materially increase the obligations of the City thereunder; and be it further

RESOLVED, That the City Council of the City of Emeryville hereby appropriates \$1,500,000 from the Housing Successor Fund (Fund 298) to the Fiscal Year 2020-2021 Capital Improvement Program Budget for the 3600 San Pablo Avenue Project (Project H-07), with any amount not spent in Fiscal Year 2020-2021 being carried forward to Fiscal Year 2021-2022, and be it further

RESOLVED, that, through the actions described in this Resolution, the City Council of the City of Emeryville hereby restricts the affordability of 99% of the proposed housing units at the Project to low-income households (89 affordable units out of 90 total units), thereby utilizing 89 of the City's 500 units of Article 34 Authority.

ADOPTED by the City Council of the City of Emeryville at a regular meeting held on Tuesday, June 1, 2021 by the following vote:

AYES:	5	Mayor Martinez, Vice Mayor Donahue, and Council Members
NOES:	0	Bauters, Medina, and Patz
ABSTAIN:	0	
ABSENT:	0	

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MAYOR

ATTEST:

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CITY CLERK

APPROVED AS TO FORM:

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INTERIM CITY ATTORNEY

FIRST AMENDMENT TO PREDEVELOPMENT LOAN AGREEMENT

This First Amendment to Predevelopment Loan Agreement ("First Amendment") is entered into as of _____ 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:

A. The City and the Developer entered into the certain Predevelopment Loan Agreement dated November 22, 2019 (the "Loan Agreement") whereby the City loaned to the Developer certain funds for predevelopment costs associated with development of an affordable housing project including ground floor commercial space to be used to provide food security services to be located at 3600 San Pablo Avenue, 3610 San Pablo Avenue and 3620 San Pablo Avenue in the City of Emeryville, California (the "Property").

B. The City and the Developer now desire to amend the Loan Agreement to increase the amount of the predevelopment loan and to make other changes as provided below.

WITH REFERENCE TO THE FACTS RECITED ABOVE, the City and the Developer agree as follows:

1. Predevelopment Loan. Section 2.1 of the Loan Agreement is amended in its entirety to read as follows:

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 Three Million Five Hundred Dollars (\$3,500,000) for the purposes set forth in Section 2.3 of this Agreement. The Predevelopment Loan shall be evidenced by the Amended and Restated Predevelopment Note executed by the Developer concurrently with this First Amendment.

2. Use of Funds. Section 2.3 of the Loan Agreement is amended in its entirety to read as follows:

2.3 Use of Funds. Proceeds of the Predevelopment Loan may be used only for the acquisition of the Property and predevelopment expenses including architecture, engineering, construction management consulting, legal fees, permit fees, financing fees and relocation expenses. Predevelopment expenses incurred on or after November 22, 2019 shall be eligible for payment from the Predevelopment Loan.

3. Repayment of the Predevelopment Loan.

(a) Section 2.7(a) of the Loan Agreement is amended in its entirety to read as follows:

2.7(a) Term. The Predevelopment Loan shall be due in full on expiration of the Term, provided, however, the City Manager shall have the option to extend the Term for two additional

years, 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. Notwithstanding the above, if the construction financing for the Development closes prior to expiration of the Term, as the Term may be extended pursuant to this Section 2.7(a), the Term of the Predevelopment Loan shall be extended for an additional fifty-five (55) years on terms and conditions to be determined prior to the closing of the construction financing as evidenced by an amendment to the Loan Agreement or a new loan agreement entered into by the City and the Developer.

(b) Section 2.7(c) is deleted in its entirety.

4. Development Milestones. Section 3.1 of the Loan Agreement is amended in its entirety to read as follows:

3.1 Development Milestones. The Developer shall perform the tasks set forth in the schedule of development milestones attached to this First Amendment as Exhibit B within the time set forth in Exhibit B. Exhibit B attached to this First Amendment replaces Exhibit B attached to the Loan Agreement.

5. Effect of Amendments.

Unless otherwise specifically amended herein, the terms of the Loan Agreement shall remain in full force and effect. This First Amendment shall be effective as of the effective date of the Loan Agreement. Unless otherwise defined herein, any capitalized terms used in this First Amendment shall have the definitions set forth in the Loan Agreement. In the event of conflict between the Loan Agreement and this First Amendment, this First Amendment shall control.

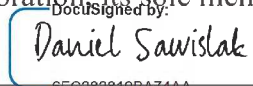
BY SIGNING BELOW, the Parties agree to this First Amendment as of the date first written above.

DEVELOPER:

EVOY, L.P., a California limited partnership

By: RCD GP III LLC, a California limited liability company, its general partner

By: Resources for Community Development,
a California nonprofit public benefit
corporation, its sole member/manager

By: 
Daniel Sawislak, Executive Director

CITY:

THE CITY OF EMERYVILLE, a municipal
corporation

By: _____

Its: _____

APPROVED AS TO FORM:

DocuSigned by:
By: Andrea Visveshwara as Interim
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City Attorney

EXHIBIT B

DEVELOPMENT MILESTONES AND TIME SCHEDULE

Development Milestones	
Task	Estimated Completion Date
Submit Phase II Environmental Site Assessment to California Department of Toxic Substances Control	January 31, 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
Submit Final Financing Plan	October 31, 2022
Commence Construction	December 1, 2022
Complete Construction	December 1, 2024

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 November 22, 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 December 8, 2019 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 November 22, 2019 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, and Four Million Dollars (\$4,000,000) aggregate limit.

(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) [Intentionally omitted].

(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 as 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: 
Daniel 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 a 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)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

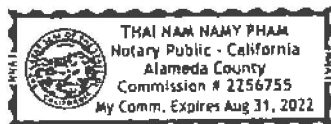
State of California

County of ALAMEDA

On November 26, 2019 before me, THAI NAM NAM PHAM, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared CHRISTINE DANIEL
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer – Title(s): _____☐ Partner – ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian of Conservator☐ Other: _____

Signer is Representing: _____

Signer's Name: _____

☐ Corporate Officer – Title(s): _____☐ Partner – ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian of Conservator☐ Other: _____

Signer is Representing: _____



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

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Emeryville
1333 Park Avenue
Emeryville, CA 94608-3517
Attention: City Attorney

No fee for recording pursuant to
Government Code Section 27383

APNS: 49-950-1, 49-950-6, 49-950-8

DEED OF TRUST WITH ASSIGNMENT OF RENTS,
SECURITY AGREEMENT, AND FIXTURE FILING
(City of Emeryville Loan – 3600 San Pablo Avenue)

THIS DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT, AND FIXTURE FILING ("Deed of Trust") is made as of November 22, 2019, by and among Evoy, L.P., a California limited partnership ("Trustor"), Old Republic Title Company, a California corporation ("Trustee"), and the City of Emeryville, a municipal corporation ("Beneficiary").

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, Trustor's fee interest in the property located in the City of Emeryville, County of Alameda, State of California, that is described in the attached Exhibit A, incorporated herein by this reference (the "Property").

TOGETHER WITH all interest, estates or other claims, both in law and in equity which Trustor now has or may hereafter acquire in the Property and the rents;

TOGETHER WITH all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, including (without limiting the generality of the foregoing) all tenements, hereditaments and appurtenances thereof and thereto;

TOGETHER WITH any and all buildings and improvements of every kind and description now or hereafter erected thereon, and all property of Trustor now or hereafter affixed to or placed upon the Property;

TOGETHER WITH all building materials and equipment now or hereafter delivered to said property and intended to be installed therein;

TOGETHER WITH all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed,

adjoining the Property, and any and all sidewalks, alleys and strips and areas of land adjacent to or used in connection with the Property;

TOGETHER WITH all estate, interest, right, title, other claim or demand, of every nature, in and to such property, including the Property, both in law and in equity, including, but not limited to, all deposits made with or other security given by Trustor to utility companies, the proceeds from any or all of such property, including the Property, claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Trustor now has or may hereafter acquire, any and all awards made for the taking by eminent domain or by any proceeding or purchase in lieu thereof of the whole or any part of such property, including without limitation, any awards resulting from a change of grade of streets and awards for severance damages to the extent Beneficiary has an interest in such awards for taking as provided in Section 4.1 herein;

TOGETHER WITH all of Trustor's interest in all articles of personal property or fixtures now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the Property which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to said building or buildings in any manner; and

TOGETHER WITH all of Trustor's interest in all building materials, fixtures, equipment, work in process and other personal property to be incorporated into the Property; all goods, materials, supplies, fixtures, equipment, machinery, furniture and furnishings, signs and other personal property now or hereafter appropriated for use on the Property, whether stored on the Property or elsewhere, and used or to be used in connection with the Property; all rents, issues and profits, and all inventory, accounts, accounts receivable, contract rights, general intangibles, chattel paper, instruments, documents, notes drafts, letters of credit, insurance policies, insurance and condemnation awards and proceeds, trade names, trademarks and service marks arising from or related to the Property and any business conducted thereon by Trustor; all replacements, additions, accessions and proceeds; and all books, records and files relating to any of the foregoing; and

TOGETHER WITH all funds in all operating, replacement and transition reserve accounts created in connection with the development and operation of the Property and any improvements thereon.

All of the foregoing, together with the Property, is herein referred to as the "Security." To have and to hold the Security together with acquittances to Trustee, its successors and assigns forever.

FOR THE PURPOSE OF SECURING THE FOLLOWING OBLIGATIONS (the "Secured Obligations"):

(a) Payment to Beneficiary of all sums at any time owing under or in connection with the Note (defined in Section 1.1(c) below) until paid or cancelled and any other amounts owing under the Predevelopment Loan Documents (defined in Section 1.1(d) below). Said principal and other payments shall be due and payable as provided in the Note or other Predevelopment Loan Documents, as applicable. The Note and all its terms are incorporated herein by reference, and this conveyance shall secure any and all extensions thereof, however evidenced;

(b) Payment of any sums advanced by Beneficiary to protect the Security pursuant to the terms and provisions of this Deed of Trust following a breach of Trustor's obligation to advance said sums and the expiration of any applicable cure period, with interest thereon as provided herein;

(c) Performance of every obligation, covenant or agreement of Trustor contained herein and in the Predevelopment Loan Documents; and

(d) All modifications, extensions and renewals of any of the Secured Obligations (including without limitation, (i) modifications, extensions or renewals at a different rate of interest, or (ii) deferrals or accelerations of the required principal payment dates or interest payment dates or both, in whole or in part), however evidenced, whether or not any such modification, extension or renewal is evidenced by a new or additional promissory note or notes.

AND TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS AND AGREES:

ARTICLE 1 DEFINITIONS

Section 1.1 In addition to the terms defined elsewhere in this Deed of Trust, the following terms shall have the following meanings in this Deed of Trust:

(a) "Assignment Agreement" means the Assignment of Collateral Documents (defined in Section 2.4(a) of the Loan Agreement) dated of even date herewith by and between Trustor and Beneficiary.

(b) "Loan Agreement" means that certain Predevelopment Loan Agreement between Trustor and Beneficiary, of even date herewith, providing for the Beneficiary to loan to Trustor the amount of up to Two Million Dollars (\$2,000,000) for the development of no fewer than thirty-eight (38) affordable residential units (including one (1) unrestricted manager's unit) and approximately thirty-six hundred (3,600) square feet of ground floor commercial space to be used to provide food security services on the Property.

(c) "Note" means the promissory note in the principal amount of up to Two Million Dollars (\$2,000,000) of even date herewith, executed by Trustor in favor of the Beneficiary, as it may be amended or restated, the payment of which is secured by this Deed of Trust. A copy of

the Note is on file with the Beneficiary and terms and provisions of the Note are incorporated herein by reference.

(d) "Predevelopment Loan Documents" means this Deed of Trust, the Note, the Loan Agreement, the Regulatory Agreement, and any other debt, loan or security instruments between Trustor and the Beneficiary relating to the Property.

(e) "Principal" means the amount required to be paid under the Note.

(f) "Regulatory Agreement" means the Affordable Housing Agreement of even date herewith by and between the Beneficiary and Trustor and recorded against the Property concurrently herewith.

(g) "Senior Lender" means lenders making loans under the Approved Financing to which the Beneficiary has subordinated this Deed of Trust pursuant to Section 2.5 of the Loan Agreement.

ARTICLE 2 MAINTENANCE AND MODIFICATION OF THE PROPERTY AND SECURITY

Section 2.1 Maintenance and Modification of the Property by Trustor.

(a) Trustor agrees that at all times prior to full payment and performance of the Secured Obligations, Trustor will, at Trustor's own expense, maintain, preserve and keep the Security or cause the Security to be maintained and preserved in good condition. Trustor will from time to time make or cause to be made all repairs, replacements and renewals deemed proper and necessary by it. The Beneficiary shall have no responsibility in any of these matters or for the making of improvements or additions to the Security.

(b) Trustor agrees to pay fully and discharge (or cause to be paid fully and discharged) all claims for labor done and for material and services furnished in connection with the Security, diligently to file or procure the filing of a valid notice of cessation upon the event of a cessation of labor on the work or construction on the Security for a continuous period of thirty (30) days or more, and to take all other reasonable steps to forestall the assertion of claims of lien against the Security of any part thereof. Trustor irrevocably appoints, designates and authorizes Beneficiary as its agent (said agency being coupled with an interest) with the authority, but without any obligation, to file or record any notices of completion or cessation of labor or any other notice that Beneficiary deems necessary or desirable to protect its interest in and to the Security or the Predevelopment Loan Documents; provided, however, that Beneficiary shall exercise its rights as agent of Trustor only in the event that Trustor shall fail to take, or shall fail to diligently continue to take, those actions as hereinbefore provided.

(c) Upon demand by Beneficiary, Trustor shall make or cause to be made such demands or claims as Beneficiary shall specify upon laborers, materialmen, subcontractors or other persons who have furnished or claim to have furnished labor, services or materials in connection with the Security. Nothing herein contained shall require Trustor to pay any claims for labor, materials or services which Trustor in good faith disputes and is diligently contesting

provided that Trustor shall, within thirty (30) days after the filing of any claim of lien, record in the Office of the Recorder of Alameda County, a surety bond in an amount 1 and 1/2 times the amount of such claim item to protect against a claim of lien.

Section 2.2 Granting of Easements. Trustor may not grant easements, licenses, rights-of-way or other rights or privileges in the nature of easements with respect to any property or rights included in the Security except those required or desirable for installation and maintenance of public utilities, including, without limitation, water, gas, electricity, sewer, cable, telephone and telegraph, or those required by law, and as approved, in writing, by Beneficiary.

Section 2.3 Assignment of Rents.

(a) As part of the consideration for the indebtedness evidenced by the Note, Trustor hereby absolutely and unconditionally assigns and transfers to Beneficiary all the rents and revenues of the Property including those now due, past due, or to become due by virtue of any lease or other agreement for the occupancy or use of all or any part of the Property, regardless of to whom the rents and revenues of the Property are payable, subject to the rights of Senior Lenders. Trustor hereby authorizes Beneficiary or Beneficiary's agents to collect the aforesaid rents and revenues and hereby directs each tenant of the Property to pay such rents to Beneficiary or Beneficiary's agents; provided, however, that prior to written notice given by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Predevelopment Loan Documents, Trustor shall collect and receive all rents and revenues of the Property as trustee for the benefit of Beneficiary and Trustor to apply the rents and revenues so collected to the Secured Obligations with the balance, so long as no such breach has occurred, to the account of Trustor, it being intended by Trustor and Beneficiary that this assignment of rents constitutes an absolute assignment and not an assignment for additional security only. Upon delivery of written notice by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Predevelopment Loan Documents, and without the necessity of Beneficiary entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Beneficiary shall immediately be entitled to possession of all rents and revenues of the Property as specified in this Section as the same becomes due and payable, including, but not limited to, rents then due and unpaid, and all such rents shall immediately upon delivery of such notice be held by Trustor as trustee for the benefit of Beneficiary only; provided, however, that the written notice by Beneficiary to Trustor of the breach by Trustor shall contain a statement that Beneficiary exercises its rights to such rents. Trustor agrees that commencing upon delivery of such written notice of Trustor's breach by Beneficiary to Trustor, each tenant of the Property shall make such rents payable to and pay such rents to Beneficiary or Beneficiary's agents on Beneficiary's written demand to each tenant therefor, delivered to each tenant personally, by mail or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of a default by Trustor.

(b) Trustor hereby covenants that Trustor has not executed any prior assignment of said rents except to Senior Lenders or any other lender approved by the Beneficiary, that Trustor has not performed, and will not perform, any acts or has not executed and will not execute, any instrument which would prevent Beneficiary from exercising its rights under this Section, and that at the time of execution of this Deed of Trust, there has been no anticipation or prepayment of any of the rents of the Property for more than two (2) months prior to the due dates of such

rents. Trustor covenants that Trustor will not hereafter collect or accept payment of any rents of the Property more than two (2) months prior to the due dates of such rents. Trustor further covenants that Trustor will execute and deliver to Beneficiary such further assignments of rents and revenues of the Property as Beneficiary may from time to time request.

(c) Upon Trustor's breach of any covenant or agreement of Trustor in the Predevelopment Loan Documents, Beneficiary may in person, by agent or by a court-appointed receiver, regardless of the adequacy of Beneficiary's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof, including, but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the Property, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Deed of Trust. In the event Beneficiary elects to seek the appointment of a receiver for the Property upon Trustor's breach of any covenant or agreement of Trustor in this Deed of Trust, Trustor hereby expressly consents to the appointment of such receiver. Beneficiary or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

(d) All rents and revenues collected subsequent to delivery of written notice by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Predevelopment Loan Documents shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Trustor as lessor or landlord of the Property and then to the sums secured by this Deed of Trust. Beneficiary or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents actually received. Beneficiary shall not be liable to Trustor, anyone claiming under or through Trustor or anyone having an interest in the Property by reason of anything done or left undone by Beneficiary under this Section.

(e) If the rents of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the rents, any funds expended by Beneficiary for such purposes shall become part of the Secured Obligations pursuant to Section 3.3 hereof. Unless Beneficiary and Trustor agree in writing to other terms of payment, such amounts shall be payable by Trustor to Beneficiary upon notice from Beneficiary to Trustor requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in Section 3.3.

(f) Any entering upon and taking and maintaining of control of the Property by Beneficiary or the receiver and any application of rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Beneficiary under applicable law or provided herein. This assignment of rents of the Property shall terminate at such time as this Deed of Trust ceases to secure the Secured Obligations.

ARTICLE 3
TAXES AND INSURANCE; ADVANCES

Section 3.1 Taxes, Other Governmental Charges and Utility Charges.

(a) Trustor shall pay, or cause to be paid prior to the date of delinquency, all taxes, assessments, charges and levies imposed by any public authority or utility company which are or may become a lien affecting the Security or any part thereof; provided, however, that Trustor shall not be required to pay and discharge any such tax, assessment, charge or levy so long as (i) the legality thereof shall be promptly and actively contested in good faith and by appropriate proceedings, and (ii) Trustor maintains reserves adequate to pay any liabilities contested pursuant to this Section. With respect to taxes, special assessments or other similar governmental charges, Trustor shall pay such amount in full prior to the attachment of any lien therefor on any part of the Security; provided, however, if such taxes, assessments or charges may be paid in installments, Trustor may pay in such installments. Except as provided in clause (ii) of the first sentence of this paragraph, the provisions of this Section shall not be construed to require that Trustor maintain a reserve account, escrow account, impound account or other similar account for the payment of future taxes, assessments, charges and levies.

(b) In the event that Trustor shall fail to pay any of the foregoing items required by this Section to be paid by Trustor, Beneficiary may (but shall be under no obligation to) pay the same, after the Beneficiary has notified Trustor of such failure to pay and Trustor fails to fully pay such items within seven (7) business days after receipt of such notice. Any amount so advanced therefor by Beneficiary, together with interest thereon from the date of such advance at the maximum rate permitted by law, shall become part of the Secured Obligations secured hereby, and Trustor agrees to pay all such amounts.

Section 3.2 Provisions Respecting Insurance.

(a) Trustor agrees to provide insurance conforming in all respects to that required under the Predevelopment Loan Documents during the course of construction and following completion, and at all times until all amounts secured by this Deed of Trust have been paid and all Secured Obligations secured hereunder fulfilled, and this Deed of Trust reconveyed.

(b) All such insurance policies and coverages shall be maintained at Trustor's sole cost and expense. Certificates of insurance for all of the above insurance policies, showing the same to be in full force and effect, shall be delivered to the Beneficiary upon demand therefor at any time prior to Trustor's satisfaction of the Secured Obligations.

Section 3.3 Advances. In the event Trustor shall fail to maintain the full insurance coverage required by this Deed of Trust or shall fail to keep the Security in accordance with the Predevelopment Loan Documents, the Beneficiary, after at least seven (7) days prior notice to Trustor, may (but shall be under no obligation to) take out the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefor by the Beneficiary shall become part of the Secured Obligations (together with interest as set forth below) and shall be secured hereby, which amounts Trustor agrees to pay on the demand of the Beneficiary, and if

not so paid, shall bear interest from the date of the advance at the lesser of ten percent (10%) per annum or the maximum rate permitted by law.

ARTICLE 4 DAMAGE, DESTRUCTION OR CONDEMNATION

Section 4.1 Awards and Damages. Subject to the rights of Senior Lenders, all judgments, awards of damages, settlements and compensation made in connection with or in lieu of (i) taking of all or any part of or any interest in the Property by or under assertion of the power of eminent domain, (ii) any damage to or destruction of the Property or in any part thereof by insured casualty, and (iii) any other injury or damage to all or any part of the Property (collectively, the "Funds") are hereby assigned to and shall be paid to the Beneficiary by a check made payable to the Beneficiary. The Beneficiary is authorized and empowered (but not required) to collect and receive any Funds and is authorized to apply them in whole or in part upon any indebtedness or obligation secured hereby, in such order and manner as the Beneficiary shall determine in the Beneficiary's reasonable judgment after consultation with the Trustor. The Beneficiary shall be entitled to settle and adjust all claims under insurance policies provided under this Deed of Trust and may deduct and retain from the proceeds of such insurance the amount of all expenses incurred by it in connection with any such settlement or adjustment. All or any part of the amounts so collected and recovered by the Beneficiary may be released to Trustor upon such conditions as the Beneficiary may impose for its disposition. Application of all or any part of the Funds collected and received by the Beneficiary or the release thereof shall not cure or waive any default under this Deed of Trust. The rights of the Beneficiary under this Section are subject to the rights of any Senior Lender.

ARTICLE 5 AGREEMENTS AFFECTING THE PROPERTY; FURTHER ASSURANCES; PAYMENT OF PRINCIPAL AND INTEREST

Section 5.1 Other Agreements Affecting Property. Trustor shall duly and punctually perform all terms, covenants, conditions and agreements binding upon it under the Predevelopment Loan Documents and any other agreement of any nature whatsoever now or hereafter involving or affecting the Security or any part thereof.

Section 5.2 Agreement to Pay Attorneys' Fees and Expenses. In the event of any Event of Default (as defined in Section 7.1) hereunder, and if the Beneficiary should employ attorneys or incur other expenses for the collection of amounts due or the enforcement of performance or observance of an obligation or agreement on the part of Trustor in this Deed of Trust, Trustor agrees that it will, on demand therefor, pay to the Beneficiary the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Beneficiary (including, but not limited to, other professional service fees and costs); and any such amounts paid by the Beneficiary shall be added to the Secured Obligations, and shall bear interest from the date such expenses are incurred at the lesser of ten percent (10%) per annum or the maximum rate permitted by law.

Section 5.3 Payment of the Principal. Trustor shall pay to the Beneficiary the Principal and any other payments as set forth in the Note in the amounts and by the times set out therein.

Section 5.4 Personal Property. To the maximum extent permitted by law, the personal property subject to this Deed of Trust shall be deemed to be fixtures and part of the real property and this Deed of Trust shall constitute a fixtures filing under the California Commercial Code. As to any personal property not deemed or permitted to be fixtures, this Deed of Trust shall constitute a security agreement under the California Commercial Code. Trustor hereby grants the Beneficiary a security interest in such items.

Section 5.5 Financing Statement. Trustor shall execute and deliver to the Beneficiary such financing statements pursuant to the appropriate statutes, and any other documents or instruments as are required to convey to the Beneficiary a valid perfected security interest in the Security. Trustor agrees to perform all acts which the Beneficiary may reasonably request so as to enable the Beneficiary to maintain such valid perfected security interest in the Security in order to secure the payment of the Note in accordance with its terms. The Beneficiary is authorized to file a copy of any such financing statement in any jurisdiction(s) as it shall deem appropriate from time to time in order to protect the security interest established pursuant to this instrument. Trustor shall pay all costs of filing such financing statements and any extensions, renewals, amendments, and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements, and releases thereof, as the Beneficiary may reasonably require. Without the prior written consent of the Beneficiary, Trustor shall not create or cause to be created pursuant to the California Commercial Code any other security interest in the Security, including replacements and additions thereto.

Section 5.6 Operation of the Security. Trustor shall operate the Security (and, in case of a transfer of a portion of the Security subject to this Deed of Trust, the transferee shall operate such portion of the Security) in full compliance with the Predevelopment Loan Documents.

Section 5.7 Inspection of the Security. At any and all reasonable times upon seventy-two (72) hours' notice, the Beneficiary and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right, without payment of charges or fees, to inspect the Security, provided, however, that any such inspection shall not unreasonably disturb any tenants or other occupants of the Property.

Section 5.8 Nondiscrimination. The Trustor herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, age, sex, sexual orientation, source of income, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Security, nor shall Trustor itself or any person claiming under or through Trustor 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 Property. The foregoing covenants shall run with the land.

ARTICLE 6 HAZARDOUS WASTE

(a) Trustor 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. Trustor shall not, and 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"). Trustor shall cause any tenants and other persons who may come onto the Property to comply with the foregoing.

(b) Trustor shall immediately notify the Beneficiary 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 Trustor, any tenant, 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 Trustor, any tenant, 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) Trustor'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 classified as "border-zone property" under California Health and Safety Code or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law.

(c) Beneficiary 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 Trustor. Trustor shall indemnify and hold harmless Beneficiary 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 Trustor in this Article, and Section 5.1(i) of the Loan Agreement. 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 Beneficiary in connection with clauses (x) and (y), including but not limited to reasonable attorneys' fees and consultant fees. This indemnification applies whether or not any government agency has issued a cleanup order. Losses, claims, costs, suits, liability, and expenses covered by this indemnification provision include, but are not limited to: (1) losses attributable to diminution in the value of the Property; (2) loss or restriction of use of rentable space on the Property; (3) adverse effect on the marketing of any rental space on the Property; and (4) penalties and fines levied by, and remedial or enforcement actions of any kind issued by any regulatory agency (including but not limited to the costs of any required testing, remediation, repair, removal, cleanup or detoxification of the Property and surrounding properties). This obligation to indemnify shall survive reconveyance of this Deed of Trust and shall not be diminished or affected in any respect as a result of any notice, disclosure, knowledge, if any, to or by the Beneficiary of Hazardous Material.

(d) Without Beneficiary's prior written consent, which shall not be unreasonably withheld, Trustor 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 Trustor, 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 Beneficiary's reasonable judgment, impair the value of the Beneficiary's security hereunder; provided, however, that the Beneficiary'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 Beneficiary's consent before taking such action, provided that in such event Trustor shall notify the Beneficiary as soon as practicable of any action so taken.

(e) The Beneficiary 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) Trustor will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Trustor establishes to the reasonable satisfaction of the Beneficiary that there is no reasonable alternative to such remedial action which would result in less impairment of the Beneficiary's security hereunder; or (iv) the action has been agreed to by the Beneficiary.

(f) The Trustor hereby acknowledges and agrees that (i) this Article is intended as the Beneficiary's written request for information (and the Trustor'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 Deed of Trust or any of the other

Predevelopment Loan Documents (together with any indemnity applicable to a breach of any such representation and warranty) with respect to the environmental condition of the property is intended by the Beneficiary and the Trustor 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 Beneficiary's or the Trustee's rights and remedies under this Deed of Trust, the Beneficiary may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Property and (2) exercise (a) the rights and remedies of an unsecured creditor, including reduction of its claim against the Trustor to judgment, and (b) any other rights and remedies permitted by law. For purposes of determining the Beneficiary's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), the Trustor will 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 the Trustor 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 Beneficiary 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 default rate specified in the Loan Agreement until paid, will be added to the indebtedness secured by this Deed of Trust and will be due and payable to the Beneficiary upon its demand made at any time following the conclusion of such action.

(h) Trustor is aware that California Civil Code Section 2955.5(a) provides as follows: "No lender shall require a borrower, as a condition of receiving or maintaining a loan secured by real property, to provide hazard insurance coverage against risks to the improvements on that real property in an amount exceeding the replacement value of the improvements on the property."

ARTICLE 7 EVENTS OF DEFAULT AND REMEDIES

Section 7.1 Events of Default. The following shall constitute events of default ("Events of Default") following the expiration of any applicable notice and cure periods included in the Loan Agreement: (i) failure to make any payment to be paid by Trustor under the Predevelopment Loan Documents subject to any applicable notice and cure periods; (ii) failure to observe or perform any of Trustor's other covenants, agreements or obligations under the Predevelopment Loan Documents, including, without limitation, the provisions concerning discrimination subject to any applicable notice and cure periods and if no cure period is otherwise provided, within thirty (30) days after Trustor receives written notice of such failure;

or (iii) failure to make any payment or observe or perform any of Trustor's other covenants, agreements, or obligations under any Secured Obligations, which default shall not be cured within the times and in the manner provided therein.

Section 7.2 Acceleration of Maturity. If an Event of Default shall have occurred and be continuing, then at the option of the Beneficiary, the amount of any payment related to the Event of Default and all unpaid Secured Obligations shall immediately become due and payable, upon written notice by the Beneficiary to Trustor (or automatically where so specified in the Predevelopment Loan Documents), and no omission on the part of the Beneficiary to exercise such option when entitled to do so shall be construed as a waiver of such right.

Section 7.3 The Beneficiary's Right to Enter and Take Possession. If an Event of Default shall have occurred and be continuing, the Beneficiary may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Security shall not cure or waive any Event of Default or Notice of Sale (as defined below) hereunder or invalidate any act done in response to such Event of Default or pursuant to such Notice of Sale, and, notwithstanding the continuance in possession of the Security, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust, or by law upon occurrence of any Event of Default, including the right to exercise the power of sale;

(b) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

(c) Deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause Trustor's interest in the Security to be sold ("Notice of Default and Election to Sell"), which notice Trustee or Beneficiary shall cause to be duly filed for record in the Official Records of Alameda County; or

(d) Exercise all other rights and remedies provided herein, in the instruments by which Trustor acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the Secured Obligations.

Section 7.4 Foreclosure By Power of Sale.

(a) Should the Beneficiary elect to foreclose by exercise of the power of sale herein contained, the Beneficiary shall give notice to the Trustee (the "Notice of Sale") and shall deposit with Trustee this Deed of Trust which is secured hereby (and the deposit of which shall be deemed to constitute evidence that the Secured Obligations are immediately due and payable), and such receipts and evidence of any expenditures made that are additionally secured hereby as Trustee may require.

(b) Upon receipt of such Notice of Sale from the Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Election to Sell as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Notice of Default and Election to Sell and after Notice of Sale having been given as required by law, sell the Security, at the time and place of sale fixed by it in the Notice of Sale, whether as a whole or in separate lots or parcels or items as Trustee shall deem expedient and in such order as it may determine unless specified otherwise by Trustor according to California Civil Code Section 2924g(b), at public auction to the highest bidder, for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed or any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale, and Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers.

(c) After deducting all reasonable costs, fees and expenses of Trustee, including costs of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale to payment of: (i) the unpaid Principal amount of the Note; (ii) all other Secured Obligations owed to Beneficiary under the Predevelopment Loan Documents; (iii) all other sums then secured hereby; and (iv) the remainder, if any, to Trustor.

(d) Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new Notice of Sale.

Section 7.5 Receiver. If an Event of Default shall have occurred and be continuing, Beneficiary, as a matter of right and without further notice to Trustor or anyone claiming under the Security, and without regard to the then value of the Security or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Security (or a part thereof), and Trustor hereby irrevocably consents to such appointment and waives further notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases, and all the powers and duties of Beneficiary in case of entry as provided herein, and shall continue as such and exercise all such powers until the date of confirmation of sale of the Security, unless such receivership is sooner terminated.

Section 7.6 Remedies Cumulative. No right, power or remedy conferred upon or reserved to the Beneficiary by this Deed of Trust is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity.

Section 7.7 No Waiver.

(a) No delay or omission of the Beneficiary to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy, or shall be construed to be a waiver of any such Event of Default or acquiescence therein; and every right, power and remedy given by this Deed of Trust to the Beneficiary may be exercised from time to time and as often as may be deemed expeditious by the Beneficiary. Beneficiary's express or implied consent to breach, or waiver of, any obligation of Trustor hereunder shall not be deemed or construed to be a consent to any subsequent breach, or further waiver, of such obligation or of any other obligations of Trustor hereunder. Failure on the part of the Beneficiary to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by the Beneficiary of its right hereunder or impair any rights, power or remedies consequent on any Event of Default by Trustor.

(b) If the Beneficiary (i) grants forbearance or an extension of time for the payment or performance of any Secured Obligations, (ii) takes other or additional security or the payment of any sums secured hereby, (iii) waives or does not exercise any right granted in the Predevelopment Loan Documents, (iv) releases any part of the Security from the lien of this Deed of Trust, or otherwise changes any of the terms, covenants, conditions or agreements in the Predevelopment Loan Documents, (v) consents to the granting of any easement or other right affecting the Security, or (vi) makes or consents to any agreement subordinating the lien hereof, any such act or omission shall not release, discharge, modify, change or affect the original liability under this Deed of Trust, or any other obligation of Trustor or any subsequent purchaser of the Security or any part thereof, or any maker, co-signer, endorser, surety or guarantor (unless expressly released); nor shall any such act or omission preclude the Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in any Event of Default then made or of any subsequent Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Beneficiary shall the lien of this Deed of Trust be altered thereby.

Section 7.8 Suits to Protect the Security. The Beneficiary shall have power to (a) institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Security and the rights of the Beneficiary as may be unlawful or any violation of this Deed of Trust, (b) preserve or protect its interest (as described in this Deed of Trust) in the Security, and (c) restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement for compliance with such enactment, rule or order would impair the Security thereunder or be prejudicial to the interest of the Beneficiary.

Section 7.9 Trustee May File Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Trustor, its creditors or its property, Trustee or the Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of the Beneficiary allowed in such proceedings and for any additional amount which may become due and payable by Trustor hereunder after such date.

Section 7.10 Waiver. Trustor waives presentment, demand for payment, notice of dishonor, notice of protest and nonpayment, protest, notice of interest on interest and late charges, and diligence in taking any action to collect any Secured Obligations or in proceedings against the Security, in connection with the delivery, acceptance, performance, default, endorsement or guaranty of this Deed of Trust.

ARTICLE 8 MISCELLANEOUS

Section 8.1 Amendments. This Deed of Trust cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by Beneficiary and Trustor.

Section 8.2 Reconveyance by Trustee. Upon written request of Beneficiary stating that all Secured Obligations have been paid or forgiven, and all obligations under the Predevelopment Loan Documents have been performed in full upon expiration of the term of the Regulatory Agreement, and upon surrender of this Deed of Trust to Trustee for cancellation and retention, and upon payment by Trustor of Trustee's reasonable fees, Trustee shall reconvey the Security to Trustor, or to the person or persons legally entitled thereto.

Section 8.3 Notices.

(a) If at any time after the execution of this Deed of Trust it becomes necessary or convenient for one of the parties hereto to serve any notice, demand or communication upon the other party, such notice, demand or communication must be in writing and is to be served personally or by depositing the same in the registered United States mail, return receipt requested, postage prepaid and (1) if intended for Beneficiary shall be addressed to:

City of Emeryville
1333 Park Avenue
Emeryville, CA 94608
Attn: City Manager
Phone: 510-596-4370
Fax: 510-596-3724

With copies to:

City of Emeryville
1333 Park Avenue
Emeryville, CA 94608
Attn: City Attorney
Phone: 510-596-4380
Fax: 510-596-3724

and (2) if intended for Trustor shall be addressed to:

Evoy, L.P.
c/o Resources for Community Development
2200 Oxford Street
Berkeley, CA 94704
Attn: Dan Sawislak, Executive Director
Phone: 510-841-4410
Fax: 510-548-3502

(b) Any notice, demand or communication shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed in the manner herein specified, on the delivery date or date delivery is refused by the addressee, as shown on the return receipt. Either party may change its address at any time by giving written notice of such change to Beneficiary or Trustor as the case may be, in the manner provided herein, at least ten (10) days prior to the date such change is desired to be effective.

Section 8.4 Successors and Joint Trustors. Where an obligation created herein is binding upon Trustor, the obligation shall also apply to and bind any transferee or successors in interest. Where the terms of the Deed of Trust have the effect of creating an obligation of Trustor and a transferee, such obligation shall be deemed to be a joint and several obligation of

Trustor and such transferee. Where Trustor is more than one entity or person, all obligations of Trustor shall be deemed to be a joint and several obligation of each and every entity and person comprising Trustor.

Section 8.5 Captions. The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

Section 8.6 Invalidity of Certain Provisions. Every provision of this Deed of Trust is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court or other body of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Security, the unsecured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid or applied to the full payment of that portion of the debt which is not secured or partially secured by the lien of this Deed of Trust.

Section 8.7 Governing Law. This Deed of Trust shall be governed by and construed in accordance with the laws of the State of California.

Section 8.8 Gender and Number. In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

Section 8.9 Deed of Trust, Mortgage. Any reference in this Deed of Trust to a mortgage shall also refer to a deed of trust and any reference to a deed of trust shall also refer to a mortgage.

Section 8.10 Actions. Trustor agrees to appear in and defend any action or proceeding purporting to affect the Security.

Section 8.11 Substitution of Trustee. Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the Property is situated, shall be conclusive proof of proper appointment of the successor trustee.

Section 8.12 Statute of Limitations. The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law.

Section 8.13 Acceptance by Trustee. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law, the Trustee is not obligated to notify any party hereto of pending sale

under this Deed of Trust or of any action of proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

Section 8.14 Tax Credit Provisions. Notwithstanding anything to the contrary contained herein or in any documents secured by this Deed of Trust or contained in any subordination agreement, the Beneficiary acknowledges and agrees that in the event of a foreclosure or deed-in-lieu of foreclosure (collectively, "Foreclosure") with respect to the Security encumbered by this Deed of Trust, the following rule contained in 26 U.S.C. Section 42(h)(6)(E)(ii), as amended, shall apply: For a period of three (3) years from the date of Foreclosure, with respect to any unit that had been regulated by the Regulatory Agreement with the California Tax Credit Allocation Committee, (i) none of the tenants occupying those units at the time of Foreclosure may be evicted or their tenancy terminated (other than for good cause), (ii) nor may any rent be increased except as otherwise permitted under Section 42 of the Internal Revenue Code.

Section 8.15 Nonrecourse. Upon recordation of this Deed of Trust, the Note will be nonrecourse to the Trustor, pursuant to and except as provided in Section 2.4 of the Loan Agreement.

[Signatures on following page.]

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first above written.

TRUSTOR:

EVOY, L.P., a California limited partnership

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

By: 
Daniel Sawislak, Executive Director

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF

Alameda

On

11/22/19

, before me,

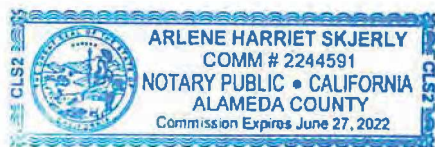
Arlene Harriet Skjerly

, Notary Public,

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Arlene Harriet Skjerly

Name:

Arlene Harriet Skjerly

Notary Public

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 a 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 D
PREDEVELOPMENT NOTE

PROMISSORY NOTE
(City of Emeryville Loan – 3600 San Pablo Avenue)

\$2,000,000

Emeryville, Alameda, California
November 22, 2019

FOR VALUE RECEIVED, the undersigned Evoy L.P., a California limited partnership corporation ("Borrower") hereby promises to pay to the order of the City of Emeryville, a municipal corporation, 1333 Park Avenue, Emeryville, CA 94608-3517 ("Holder"), a principal amount of up to Two Million Dollars (\$2,000,000) or so much thereof as is disbursed to Borrower pursuant to the Loan Agreement (as defined below), plus interest thereon pursuant to Section 2 below.

1. Borrower's Obligation. This promissory note (the "Note") evidences Borrower's obligation to pay Holder the principal amount of up to Two Million Dollars (\$2,000,000) for the funds loaned to Borrower by Holder to finance the acquisition of certain property pursuant to the Predevelopment Loan Agreement between Borrower and Holder of even date herewith (the "Loan Agreement"). All capitalized terms not otherwise defined in this Note shall have the meanings set forth in the Loan Agreement.

2. Interest.

(a) This Note bears simple interest at the rate of three percent (3%) per annum from the date of disbursement.

(b) If a Default occurs, interest on all amounts due under this Note will begin to accrue at the Default Rate, as of the date of Default and continuing until such time as the Loan funds are repaid in full or the Default is cured.

3. Term and Repayment Requirements. Payments due under this Note are due in accordance with Section 2.7 of the Loan Agreement. In any event, the unpaid principal balance, together with any accrued interest, is due and payable upon the expiration of the Term or an extended Term, as applicable. Borrower shall have the right to prepay the City Loan at any time without penalty or additional charge.

4. No Assumption. This Note is not assumable by the successors and assigns of Borrower without the prior written consent of Holder, except as may be otherwise set forth in the Loan Agreement. Any permitted transferee under Section 3.6 of the Loan Agreement shall be entitled to assume Borrower's obligations hereunder.

5. Security. This Note is secured by that certain Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing (the "Deed of Trust") wherein Borrower is the Trustor and Holder is the Beneficiary.

6. Terms of Payment.

(a) All payments due under this Note must be paid in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

(b) All payments on this Note must be paid to Holder at the Community Development Department, 1333 Park Avenue, Emeryville, CA 94608-3517, Attention: Community Development Director, or to such other place as Holder of this Note may from time to time designate.

(c) All payments on this Note must be without expense to Holder, and Borrower agrees to pay all costs and expenses, including re-conveyance fees and reasonable attorney's fees and other professional service fees and costs of Holder, incurred in connection with the payment of this Note and the release of any security hereof.

(d) Notwithstanding any other provision of this Note, or any instrument securing the obligations of Borrower under this Note, if, for any reason whatsoever, the payment of any sums by Borrower pursuant to the terms of this Note would result in the payment of interest which would exceed the amount that Holder may legally charge under the laws of the State of California, then the amount by which payments exceed the lawful interest rate shall automatically be deducted from the principal balance owing on this Note, so that in no event shall Borrower be obligated under the terms of this Note to pay any interest which would exceed the lawful rate.

(e) Upon recordation of the Deed of Trust, this Note will be nonrecourse to Borrower, pursuant to and except as provided in Section 2.4 of the Loan Agreement.

7. Default.

(a) The entire unpaid principal balance, together with all interest thereon, and together with all other sums payable under this Note, shall at the option of Holder become immediately due and payable without further demand, upon occurrence of:

(i) Any failure of Borrower to pay, in full, any payment required under this Note within ten (10) days after receipt of notice from Holder that such payment is due;

(ii) Any failure in the performance by Borrower of any term, condition, provision or covenant set forth in this Note subject to the notice and cure period set forth in Section 5.1 of the Loan Agreement;

(iii) The occurrence of any event of default under any of the Predevelopment Loan Documents, or other instrument securing the obligations of Borrower under this Note or under any other promissory notes hereafter issued by Borrower to Holder

pursuant to the Loan Agreement or the Deed of Trust, subject to notice and cure periods, if any, set forth therein.

(b) Holder's failure to exercise the remedy set forth in Subsection 7(a) above or any other remedy provided by law upon the occurrence of one or more of the foregoing events of default described in subsections (i) through (iii) above, will not constitute a waiver of the right to exercise any remedy at any subsequent time in respect to the same or any other default. The acceptance by Holder hereof of any payment which is less than the total of all amounts due and payable at the time of such payment will not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or at any subsequent time, or nullify any prior exercise of any such remedy or option, without the express consent of Holder, except as and to the extent otherwise provided by law.

8. Waivers.

(a) Borrower hereby waives diligence, presentment, protest and demand, and notice of protest, notice of demand, notice of dishonor and notice of non-payment of this Note. Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time, and that Holder may accept further security or release any security for this Note, all without in any way affecting the liability of Borrower.

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

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

9. Miscellaneous Provisions.

(a) All notices to Holder or Borrower shall be given in the manner and at the addresses set forth in the Loan Agreement, or to such addresses as Holder and Borrower may therein designate.

(b) Borrower promises to pay all costs and expenses, including reasonable attorney's fees and other professional service fees and costs, incurred by Holder in the enforcement of the provisions of this Note, regardless of whether suit is filed to seek enforcement.

(c) This Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

(d) This Note shall be governed by and construed in accordance with the laws of the State of California.

(e) The times for the performance of any obligations hereunder shall be strictly construed, time being of the essence.

(f) This document, together with the Predevelopment Loan Documents, contains the entire agreement between the parties as to the Predevelopment Loan. It may not be modified except upon written consent of the parties.

[Remainder of page intentionally blank.]

[Signature on following page.]

IN WITNESS WHEREOF, Borrower has executed this Note as of the day and year first above written.

BORROWER:

EVOY, L.P., a California limited partnership

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

By: 
Daniel Sawislak, Executive Director