

**AMENDED AND RESTATED
DISPOSITION AND DEVELOPMENT AGREEMENT
By and Between
CITY OF SAN PABLO
and
NOVIN DEVELOPMENT CORP.**

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**AMENDED AND RESTATED
DISPOSITION AND DEVELOPMENT AGREEMENT**

THIS AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT (the “Agreement”) is entered into by and between the CITY OF SAN PABLO, a California municipal corporation (the “City”) and NOVIN DEVELOPMENT CORP., a California corporation (the “Developer”), as of _____, 2026 (the “Effective Date”), and amends and restates in its entirety the Disposition and Development Agreement entered into by the City and the Developer dated April 5, 2022, as amended by that certain First Amendment to Disposition and Development Agreement entered into as of April 5, 2023, by that certain Second Amendment to Disposition and Development Agreement entered into as of April 5, 2024, and by that certain Third Amendment to Disposition and Development Agreement entered into as of April 5, 2025 (herein collectively the “Original DDA” having an Effective Date of April 5, 2022). The City and the Developer hereby agree as follows:

**ARTICLE 1
SUBJECT OF AGREEMENT**

1.1 Purpose of this Agreement

The purpose of this Agreement is to provide for the sale and development of certain real property (the “Site”) located within the City and generally identified as 1820 Rumrill Boulevard. Pursuant to this Agreement, the Developer will acquire the Site from the City and will develop a multi-family affordable housing project on the Site containing up to forty-four (44), but not less than thirty-nine (39), units of affordable rental housing and one (1) manager’s unit, together with parking and associated amenities (the “Project”). The Project is more particularly described in the Scope of Development (Attachment No. 4). The Developer proposes to finance the Project through a combination of funding sources, including low income housing tax credits, loans from the City’s Low and Moderate Income Housing Asset Fund (“LMIHAF”), loans from the County of Contra Costa (the “County”), a loan of CRDP funds from the East Bay Regional Center, and a loan of Multifamily Housing Program funds from the California Department of Housing and Community Development (“HCD”), all as more fully described herein. The loans from the City, County, East Bay Regional Center and HCD will be payable from residual receipts from the Project that will be allocated to repayment of the respective loans in accordance with the terms of an Intercreditor Agreement to be entered into by and between the City, the County, East Bay Regional Center, HCD and the Developer (the “Intercreditor Agreement”), the terms of which shall be satisfactory to and approved by the City in its sole discretion. Unless and until the Intercreditor Agreement has been approved and executed by the City, the City shall have no obligation to sell the Site to the Developer.

The sale of the Site by the City, the development of the Project by the Developer, and the fulfillment generally of this Agreement are in the best interests of the City and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

1.2 The Site

The Site is shown on the Map of the Site (Attachment No. 1), and is more particularly described in the Legal Description of the Site (Attachment No. 2). The Site is a

designated affordable housing asset of the City as the successor-in-interest of the housing assets and functions of the former Redevelopment Agency of the City of San Pablo.

1.3 Parties to this Agreement

1.3.1 The City

The City is a California municipal corporation. The office of the City is located at 1000 Gateway Avenue, San Pablo, California, 94806. "City," as used in this Agreement, includes the City of San Pablo and any assignee of or successor to its rights, powers and responsibilities.

1.3.2 The Developer

The Developer is Novin Development Corp., a California corporation. For purposes of this Agreement, the principal address of the Developer is 1990 N. California Blvd., Suite 1060, Walnut Creek, California, 94596. Wherever the term "Developer" is used herein, such term shall include any permitted nominee, assignee or successor-in-interest as herein provided.

The qualifications and identity of the Developer are of particular concern to the City, and it is because of such qualifications and identity that the City has entered into this Agreement. Prior to the issuance of a Certificate of Completion for the Site as set forth in Section 3.6 hereof, no voluntary or involuntary successor-in-interest of the Developer shall acquire any rights or powers under this Agreement, and the Developer shall not assign all or any part of this Agreement without the prior written approval of the City, except as expressly set forth herein. Any such assignment by the Developer in violation of this Agreement shall be void. This Agreement may be terminated by the City pursuant to Section 5.6.2 of this Agreement, or the City may exercise its remedies under Article 5 hereof, if there is any significant change (voluntary or involuntary) in the membership, management or control of the Developer prior to the issuance of a Certificate of Completion for the Site.

Notwithstanding the foregoing, the City acknowledges that the Developer intends to finance a portion of the Project with low income tax credits to be purchased by an institutional tax credit investor. For that purpose, the Developer shall be entitled to transfer and assign the rights under this Agreement, including the right to acquire title to the Site, to a newly formed entity, in which the Developer, along with a non-profit entity, shall be the General Partners, and the limited partner shall be the purchaser of the tax credits awarded for the development, provided, however, that any such transfer and assignment shall include the assumption of all of the Developer's obligations hereunder and shall be set forth in an assignment agreement consistent with the terms of this Agreement and satisfactory to the City.

1.4 Deposit

An escrow for conveyance of the Site from the City to the Developer was opened by the City as described in Section 2.3, and the Developer delivered to the Escrow Agent a deposit in the amount of FIFTY THOUSAND DOLLARS (\$50,000.00) (the "Deposit") as security for the performance of the obligations of the Developer to be performed prior to the return of the Deposit to the Developer or its retention by the City as liquidated damages.

Upon termination of this Agreement by the City as provided in Section 5.6.2 hereof, the Deposit (including all interest paid thereon, if any) shall be paid to the City as liquidated damages as provided therein.

Upon termination of this Agreement by the Developer as provided in Section 5.6.1 hereof, the Deposit (including all interest paid thereon, if any) shall be returned to the Developer.

Upon the close of escrow for conveyance of the Site to the Developer, the Deposit shall be delivered to the City for retention in accordance with this Section 1.4.

If the Developer is in default with respect to any provision of this Agreement, the City may, but shall have no obligation to, use the Deposit or any portion of the Deposit to cure such default or to compensate the City for any expense or damage sustained by the City and resulting from such default. If this Agreement has not been terminated as a result of such default, the Developer, on demand from the City, shall promptly restore such Deposit to the full amount required by this Section 1.4.

If this Agreement shall not have been theretofore cancelled or terminated, or the Deposit shall not have been returned to the Developer, the City shall return the Deposit to the Developer upon completion of the improvements and development of the Site for which a final Certificate of Completion has been issued pursuant to Section 3.6 hereof.

1.5 Definitions

1.5.1 “Additional Encumbrance” is defined in Section 2.2.2 of this Agreement.

1.5.2 “Agreement” shall mean this Disposition and Development Agreement.

1.5.3 “Certificate of Completion” is defined in Section 3.6 of this Agreement.

1.5.4 “City” is defined in Section 1.3.1 of this Agreement.

1.5.5 “City Conditions Precedent” is defined in Section 2.4.1 of this Agreement.

1.5.6 “City’s Title Notice” is defined in Section 2.2.2 of this Agreement.

1.5.7 “Construction Lender” is defined in Section 2.16 of this Agreement.

1.5.8 “Construction Loan” is defined in Section 2.16 of this Agreement.

1.5.9 “Contamination” is defined in Section 2.13.2 of this Agreement.

1.5.10 “Deposit” is defined in Section 1.4 of this Agreement.

1.5.11 “Developer” is defined in Section 1.3.2 of this Agreement.

1.5.12 “Developer Conditions Precedent” is defined in Section 2.4.2 of this Agreement.

1.5.13 “Developer’s Title Notice” is defined in Section 2.2.2 of this Agreement.

1.5.14 “Effective Date” is defined in the first paragraph of this Agreement and in Article 7 of this Agreement.

1.5.15 “Entitlements” is defined in Section 2.5 of this Agreement.

1.5.16 “Environmental Response Actions” is defined in Section 2.13.4 of this Agreement.

1.5.17 “Environmental Response Costs” is defined in Section 2.13.4 of this Agreement.

1.5.18 “Escrow Agent” is defined in Section 2.3 of this Agreement.

1.5.19 “Feasibility Period” is defined in Section 2.2.3 of this Agreement.

1.5.20 “Final Evidence of Financing” is defined in Section 2.15 of this Agreement.

1.5.21 “Force Majeure” is defined in Section 6.4 of this Agreement.

1.5.22 “Hazardous Materials” is defined in Section 2.13.4 of this Agreement.

1.5.23 “Indemnitees” is defined in Section 2.13.2 of this Agreement.

1.5.24 “Intercreditor Agreement” is defined in Section 1.1 of this Agreement.

1.5.25 “Permanent Lender” is defined in Section 2.16 of this Agreement.

1.5.26 “Permanent Loan” is defined in Section 2.16 of this Agreement.

1.5.27 “Permitted Exceptions” is defined in Section 2.2.2 of this Agreement.

1.5.28 “Preliminary Documents” is defined in Section 2.2.1 of this Agreement.

1.5.29 “Preliminary Evidence of Financing” is defined in Section 2.15 of this Agreement.

1.5.30 “Project” is defined in Section 1.1 of this Agreement.

1.5.31 “Purchase Price” is defined in Section 2.1.1 of this Agreement.

1.5.32 “Site” is defined in Section 1.1 and Attachment Nos. 1 and 2 of this Agreement.

1.5.33 “Title Company” is defined in Section 2.3 of this Agreement.

1.5.34 “Title Objections” is defined in Section 2.2.2 of this Agreement.

ARTICLE 2 SALE OF THE SITE

2.1 Sale and Purchase

2.1.1 Purchase Price

In accordance with and subject to all the terms, covenants and conditions of this Agreement, the City agrees to sell, and the Developer agrees to purchase for development, the Site for the sum of NINE HUNDRED THIRTY-FIVE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$935,250.00) (the "Purchase Price"). The Purchase Price shall be payable in the form of a promissory note (the "Purchase Money Note"), executed by the Developer in favor of the City in substantially the form attached hereto as Attachment No. 7, in the principal amount of the Purchase Price (the "Purchase Money Loan"). The Purchase Money Loan shall bear simple interest per annum at the rate of three percent (3%). Except as may be modified by the Intercreditor Agreement, if applicable, payments on the Purchase Money Loan and the Predevelopment Loan shall together be paid from seventy-five percent (75%) of the residual receipts from the Project. The outstanding principal and all accrued and unpaid interest on the Purchase Money Loan shall be due and payable in full thirty (30) years from the date of the Purchase Money Note, provided, however, that the term of the Purchase Money Loan may be increased to fifty-five (55) years by the City Manager upon receipt of satisfactory evidence from the Developer that such longer term is required in order to secure required financing for the development of the Project. Payment of the Purchase Money Loan shall be secured by a lien on the Site under a deed of trust (the "Purchase Money Deed of Trust") executed by the Developer in favor of the City in substantially the form attached hereto as Attachment No. 8. The Purchase Money Deed of Trust shall be subject and subordinate only to the terms of a construction and/or permanent loan, as follows:

(1) The City agrees that the Purchase Money Note Deed of Trust shall be subject and subordinate to the terms and conditions of a construction deed of trust securing a construction loan given by a lender approved by the City (the "Construction Lender") not to exceed a sum that would cause the total of all permitted liens against the Site, to exceed ninety percent (90%) of the projected Project value including land and construction (the "Construction Loan"), provided that the Construction Lender agrees to include in its deed of trust or in a separately recorded subordination agreement with the City the following conditions: (a) the City shall receive copies of any notices of default issued by the Construction Lender to the Developer; (b) the City shall have the right to cure any default by the Developer within ninety (90) days after a notice of default; and (c) the City shall have the right to foreclose the Purchase Money Deed of Trust without the Construction Lender accelerating its debt upon the following conditions: (i) the transferee of the Site has been approved by the Construction Lender, which approval may be withheld in the Construction Lender's sole and absolute discretion; and (ii) such transferee has assumed all of the Developer's obligations under the Construction Loan (whether arising before or after the City's foreclosure) pursuant to an assumption agreement in form and substance satisfactory to the Construction Lender.

(2) The City agrees that the Purchase Money Deed of Trust shall also be subject and subordinate to the terms and conditions of a deed of trust securing a permanent loan given by a lender reasonably approved by the City (the "Permanent Lender") not to exceed a sum that would cause the total of all permitted liens against the Site to exceed ninety percent (90%) of the Project value including land and improvements (the "Permanent Loan"), provided that the

Permanent Lender agrees to include in its deed of trust or in a separately recorded subordination agreement with the City the conditions described in subparagraph (1) above.

2.2 Feasibility Period

2.2.1 Delivery of Preliminary Documents by City. The City has delivered or caused to be delivered to the Developer all documents listed below (“Preliminary Documents”):

a. Preliminary Report. A preliminary report (“Preliminary Report”) from the Title Company dated no earlier than thirty (30) days before the Effective Date of the Original DDA covering the Site, together with a legible copy (as reasonably obtainable) of all exceptions to title shown in the Preliminary Report.

b. Surveys. Copies of any survey of the Site in the City’s possession or control.

c. Plans. Copies of any existing construction drawings, as-built plans, and specifications for the Site that are in the City’s possession or control.

d. Materials Related to the Condition of the Site. To the extent that such matters exist and are in the possession or control of the City, copies of any environmental impact reports, “Phase I” or “Phase II” reports, or environmental site assessments concerning hazardous materials on the Site, complaints or notices of the presence of hazardous materials on the Site, geological surveys, soil tests, engineering reports, inspection results, and any complaints or notices received regarding the safety of the Site.

e. Contracts. Copies of any contracts affecting the use of the Site that are in the City’s possession or control.

2.2.2 Developer’s Approval of Title. The Developer’s obligation to purchase the Site is expressly conditioned on the Developer’s approval of the condition of title of the Site in accordance with the following procedure:

a. Permitted Exceptions. The following exceptions shown on the Preliminary Report are permitted (“Permitted Exceptions”): (a) the standard preprinted exceptions and exclusions of the Title Company; and (b) any other exception shown on the Preliminary Report, other than exceptions for monetary liens, which the Developer does not object to by written notice to the City within fifteen (15) days after delivery of the Preliminary Report (“Developer’s Title Notice”). All exceptions on the Preliminary Report other than the Permitted Exceptions will be “Title Objections.” The Preliminary Report was delivered to the Developer on April 12, 2022. The Developer acknowledges and agrees that it has no Title Objections.

b. Title Objections. With respect to any Title Objection, the City will have ten (10) days after delivery of the Developer’s Title Notice (or ten (10) days after the date provided for delivery of the Developer’s Title Notice) to give notice to the Developer in writing (“City’s Title Notice”), stating either (a) the manner in which the City will remove or cure any Title Objection or (b) that the City will not remove or cure a Title Objection. If the City fails to deliver the City’s Title Notice within the time specified in this Section 2.2.2, the City will be deemed to have elected not to remove or cure such Title Objection. Despite the foregoing, the City agrees to remove all liens securing the payment of money, if any, that encumber the Site.

c. City Elects Not to Cure. If the City elects not to cure or remove a Title Objection (or is deemed to have so elected), then the Developer will have ten (10) days after delivery of the City's Title Notice (or ten (10) days after the date provided for delivery of the City's Title Notice) to deliver a written notice to the City ("Developer's Election Notice") of the Developer's election either to (a) proceed with the purchase of the Site, waive such Title Objection, and accept the exception shown in the Preliminary Report as a Permitted Exception, or (b) terminate this Agreement. If the Developer fails to deliver the Developer's Election Notice within the time specified in this Section 2.2.2, the Developer will be deemed to have elected to terminate this Agreement.

d. Additional Encumbrances. If any encumbrance or other exception to title arises or is discovered after the delivery of the Preliminary Report ("Additional Encumbrance"), the party discovering such Additional Encumbrance must promptly give written notice to the other. No later than ten (10) days after delivery of the notice of such Additional Encumbrance, the Developer will deliver a new Developer's Title Notice to the City specifying whether the Additional Encumbrance is a Title Objection or a Permitted Exception. If the Developer objects to the Additional Encumbrance, the parties will proceed in the same manner as set forth above for Title Objections arising from the Preliminary Report. If the Developer fails to deliver the Developer's Election Notice within the time specified in this Section 2.2.2, the Developer will be deemed to have elected to terminate this Agreement.

2.2.3 Review of Preliminary Documents and Physical Condition of the Site

a. Feasibility Period. The Developer's obligation to purchase the Site is expressly conditioned on its approval, in its sole discretion, of the condition of the Site and all other matters concerning the Site, including without limitation economic, financial, and accounting matters relating to or affecting the Site or its value, and the physical and environmental condition of the Site (including, without limitation, Hazardous Materials Contamination, if any, on, under or above the Site, or any portion thereof, and the soils and seismic condition of the Site, as described in Section 2.13 of this Agreement). The Developer had one hundred twenty (120) days from the Effective Date of the Original DDA (the "Feasibility Period") to conduct such investigations as the Developer chose to determine, in its sole discretion, whether this contingency is met. The Feasibility Period has expired and the Developer hereby approves all physical conditions of the Site (including the soils and seismic conditions and any Hazardous Materials contamination on, under or about the Site, or any portion thereof) and all other matters concerning the Site.

b. Access to Site. In accordance with Section 2.14 of this Agreement, the Developer and the Developer's consultants, agents, engineers, inspectors, contractors, and employees ("Developer's Representatives") will be given reasonable access to the Site during regular business hours for the purpose of performing such investigation work. The Developer will undertake such investigation work at its sole cost and expense. The Developer agrees to indemnify, defend with counsel reasonably acceptable to the City, and hold the City harmless from all claims (including claims of lien for work or labor performed or materials or supplies furnished), demands, liabilities, losses, damages, costs, fees, and expenses, including the City's reasonable attorneys' fees, costs, and expenses, arising from the acts or activities of the Developer or the Developer's Representatives in, on, or about the Site during or arising in connection with the Developer's investigation work on the Site. The Developer will repair any damage caused by its investigation work.

2.3 Escrow

On the date set forth in the Schedule of Performance (Attachment No. 3), the City opened an escrow with Old Republic Title Company, as escrow agent (the “Escrow Agent” and/or “Title Company”), for the conveyance of the Site. This Agreement, together with any supplemental escrow instructions provided by the parties and consistent herewith, shall constitute the joint escrow instructions of the City and the Developer, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of escrow. The City and the Developer shall provide such additional escrow instructions as shall be necessary and consistent with this Agreement. The Escrow Agent hereby is empowered to act under this Agreement, and, upon indicating its acceptance of the provisions of this Section 2.3 in writing, delivered to the City and to the Developer within five (5) days after the opening of the escrow, shall carry out its duties as Escrow Agent hereunder.

The Developer shall deposit with the Escrow Agent the Purchase Price for the Site in accordance with the provisions of Section 2.10 of this Agreement.

The Developer shall pay in escrow to the Escrow Agent the following fees, charges and costs promptly after the Escrow Agent has notified the Developer of the amount of such fees, charges and costs, but not earlier than ten (10) days prior to the scheduled date for the close of escrow:

- a. All documentary transfer tax, escrow, title and recording fees; and
- b. The premium for the title insurance policy or special endorsements to be paid by the Developer as set forth in Section 2.11 of this Agreement.

The City shall timely and properly execute, acknowledge and deliver to the Escrow Agent the grant deed (in the form required by Section 2.8 hereof) conveying to the Developer fee title to the Site and shall deliver an estoppel certificate certifying that the Developer has completed all acts necessary to entitle the Developer to such conveyance, if such be the fact.

The City shall pay in escrow to the Escrow Agent the following fees, charges and costs promptly after the Escrow Agent has notified the City of the amount of such fees, charges and costs, but not earlier than ten (10) days prior to the scheduled date for the close of escrow:

- a. Costs necessary to place the title to the Site in the condition for conveyance required by the provisions of this Agreement.

Upon delivery of the grant deed to the Escrow Agent pursuant to Section 2.9 of this Agreement, the Escrow Agent shall record such deed following the parties’ satisfaction of all of the conditions to closing set forth in Section 2.4 of this Agreement and when fee title to the Site can be vested in the Developer in accordance with the terms and provisions of this Agreement. The Escrow Agent shall buy, affix and cancel any transfer stamps required by law and pay any transfer tax required by law. Any insurance policies governing the Site are not to be transferred.

The Escrow Agent is authorized to:

- a. Pay and charge the City and the Developer, respectively, for any fees, charges and costs payable under this Section 2.3 of this Agreement. Before such payments are made, the Escrow Agent shall notify the City and the

Developer of the fees, charges and costs necessary to clear title and close the escrow;

- b. Disburse funds and deliver documents to the parties entitled thereto when the conditions of this escrow have been fulfilled by the City and the Developer; and
- c. Record any instruments delivered through this escrow, if necessary or proper, to vest fee title in the Developer in accordance with the terms and provisions of this Agreement.

All funds received in this escrow shall be deposited by the Escrow Agent with other escrow funds of the Escrow Agent in a general interest-bearing escrow account or accounts with any state or national bank doing business in the State of California. Such funds may be transferred to any other such general escrow account or accounts. All disbursements shall be made by check of the Escrow Agent, or by wire transfer if so directed by the party receiving such funds. All adjustments shall be made on the basis of a 30-day month.

If this escrow is not in condition to close on or before the time for conveyance established in Section 2.7 of this Agreement, any party who then shall have fully performed the acts to be performed before the conveyance may, in writing, terminate this Agreement in the manner set forth in Section 5.6.1 or 5.6.2 hereof, as the case may be, and demand the return of its money, papers or documents. Thereupon all obligations and liabilities of the parties under this Agreement shall cease and terminate in the manner set forth in Section 5.6.1 or 5.6.2 hereof, as the case may be. If none of the parties shall have fully performed the acts to be performed on or before the time for conveyance established in Section 2.7, no termination or demand for return shall be recognized until ten (10) days after the Escrow Agent shall have mailed copies of such demand to the other party or parties at the address of its or their principal place or places of business. If any objections are raised within the 10-day period, the Escrow Agent is authorized to hold all money, papers and documents with respect to the Site until instructed in writing by the City and the Developer or upon a final ruling by a court of competent jurisdiction. If no such demands are made, the escrow shall be closed as soon as possible. Nothing in this Section 2.3 shall be construed to impair or affect the rights or obligations of the City or the Developer to specific performance or other remedies provided for herein.

Any amendment of these escrow instructions shall be in writing and signed by the City and the Developer. At the time of any amendment, the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment.

All communications from the Escrow Agent to the City or the Developer shall be directed to the addresses and in the manner established in Section 6.1 of this Agreement for notices, demands and communications between the City and the Developer.

The liability of the Escrow Agent under this Article 2 of this Agreement is limited to performance of the obligations imposed upon it under Sections 2.3 to 2.12, both inclusive, of this Agreement.

2.4 Conditions to Closing; Representations

2.4.1 City Conditions to Closing. The City's obligation to proceed with the sale of the Site is subject to the fulfillment (or waiver in writing by the City) of each and all of the

conditions precedent set forth in this Section 2.4.1 (“City Conditions Precedent”), which are solely for the benefit of the City, and which shall be fulfilled or waived by the time periods provided for herein:

a. No Default. At the time of close of escrow, the Developer shall not be in default of any of its obligations under this Agreement and all representations and warranties of the Developer contained herein shall be true and correct in all material respects.

b. Execution of Documents. The Developer shall have executed the Affordable Housing Regulatory Agreement (pursuant to Section 4.1) and any other documents required hereunder and shall have delivered such documents into escrow.

c. Payment of Closing Costs. The Developer shall have paid the Developer’s share of all required closing costs to the Escrow Agent in accordance with Section 2.3 hereof.

d. Entitlements. The Developer shall have obtained all Entitlements necessary for development of the Site pursuant to this Agreement, subject only to payment of the appropriate fees.

e. Financing. The City shall have approved the Developer’s financing, equity funding and final construction budget as provided in Section 2.15 hereof, and, if applicable, the Intercreditor Agreement (defined in Section 1.1) shall have been approved and executed by the City, the County, East Bay Regional Center, HCD and the Developer.

f. Insurance. The Developer shall have provided to the City proof of insurance as required by Section 3.1.8.

g. Title Insurance. The Title Company shall, upon the Developer’s payment of Title Company’s regularly scheduled premium, be ready to issue an ALTA lender’s title insurance policy, with any endorsements reasonably requested by the City, insuring the validity of the City’s liens on the Site for the Predevelopment Loan and the Purchase Money Loan, subject and subordinate only to those liens described in Section 2.1.1 and 2.16 hereof.

h. Building and Other Required Permits. The Developer shall have presented to the City evidence that it has satisfied all requirements necessary to obtain a grading permit and an initial building permit for vertical improvements pursuant to this Agreement, subject only to the payment of all applicable fees.

2.4.2 Developer Conditions to Closing. The Developer’s obligation to proceed with the purchase of the Site is subject to the fulfillment (or waiver in writing by the Developer) of each and all of the conditions precedent set forth in this Section 2.4.2 (“Developer Conditions Precedent”), which are solely for the benefit of the Developer, and which shall be fulfilled or waived by the time periods provided for herein:

a. No Default. At the time of close of escrow, the City shall not be in default of any of its obligations under this Agreement and all representations and warranties of the City contained herein shall be true and correct in all material respects.

b. Execution of Documents. The City shall have delivered the grant deed for the Site, properly executed, and any other documents required hereunder into escrow.

c. Entitlements. The Developer shall have obtained, subject only to the payment of the appropriate fees, all Entitlements necessary for the development of the Site pursuant to this Agreement.

d. Financing. The Developer shall have obtained all financing, including debt and equity funding, needed to pay all costs of acquiring and developing the Site as provided in Section 2.15 hereof within the time set forth in the Schedule of Performance (Attachment No. 3).

e. Title Insurance. The Title Company shall, upon the Developer's payment of Title Company's regularly scheduled premium, be ready to issue an ALTA extended coverage owner's title insurance policy, with any endorsements reasonably requested by the Developer, showing fee simple title to the Site vested in the Developer, subject only to the Permitted Exceptions.

2.4.3 City Representations. The City represents and warrants to the Developer as follows:

a. Authority. The City is a California municipal corporation, has full right, power and lawful authority to convey the Site as provided herein, and the execution, performance and delivery of this Agreement and the grant deed to the Site has been fully authorized by all requisite actions on the part of the City.

b. No Conflict. To the best of the City's knowledge, the City's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which the City is a party or by which it is bound.

c. No Claims. To the best of the City's knowledge, there are no outstanding disputes, claims, or pending or, to the City's knowledge, threatened legal proceedings or administrative actions of any kind or character adversely affecting the Site or the City's interest; and to the City's knowledge, there are no easements or rights-of-way which have been acquired by prescription or which are otherwise not of record.

Until the close of escrow, the City shall, upon learning of any fact or condition that would cause any of the warranties and representations in this Section 2.4.3 not to be true as of the close of escrow, immediately give written notice of such fact or condition to the Developer. Such exception to a representation shall not be deemed a breach by the City hereunder, but shall constitute an exception that the Developer shall have a right to approve or disapprove if such exception would have a material effect on the value and/or operation of the improvements to be constructed on the Site. If the Developer elects to close escrow following disclosure of such information, the City's representations and warranties contained herein shall be deemed to have been made as of the close of escrow subject to such exception. If, following the disclosure of such information, the Developer elects to not close escrow, then this Agreement and the escrow shall automatically terminate, all money, papers and documents deposited into escrow shall be returned to the party that made such deposit, and neither the City nor the Developer shall have any further rights, obligations or liabilities hereunder, except as otherwise expressly provided in this Agreement.

2.4.4 Developer Representations. The Developer represents and warrants to the City as follows:

a. Authority. The Developer has full right, power and lawful authority to accept the conveyance of the Site and undertake all other obligations as provided herein, and the execution, performance and delivery of this Agreement by the Developer have been fully authorized by all requisite actions on the part of the Developer.

b. No Conflict. To the best of the Developer's knowledge, the Developer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which the Developer is a party or by which it is bound.

c. No Developer Bankruptcy. The Developer is not the subject of any bankruptcy proceeding, has not made a general assignment for the benefit of creditors, suffered the filing of an involuntary petition by its creditors, suffered the appointment of a receiver to take possession of substantially all of its assets, suffered the attachment or other judicial seizure of substantially all of its assets, admitted its inability to pay its debts as they come due or made an offer of settlement, extension or composition to its creditors generally.

Until the close of escrow, the Developer shall, upon learning of any fact or condition that would cause any of the warranties and representations in this Section 2.4.4 not to be true as of the close of escrow, immediately give written notice of such fact or condition to the City. Such exception to a representation shall not be deemed a breach by the Developer hereunder, but shall constitute an exception that the City shall have a right to approve or disapprove. If the City elects to close escrow following disclosure of such information, the Developer's representations and warranties contained herein shall be deemed to have been made as of the close of escrow subject to such exception. If, following the disclosure of such information, the City elects to not close escrow, then this Agreement and the escrow shall automatically terminate, all money, papers and documents deposited into escrow shall be returned to the party that made such deposit, and neither the City nor the Developer shall have any further rights, obligations or liabilities hereunder, except as otherwise expressly provided in this Agreement.

2.5 Entitlements

As used herein, "Entitlements" means all land use approvals legally required by the City in its Governmental Capacity (as defined in Section 6.11 hereof) or any other governmental authority as a condition of development of the Site and shall include any and all entitlements, licenses, permits or other approvals required by the City in its Governmental Capacity or any other governmental authority as a condition to development of the Site, including any conditional use permit, if required, and design review approval. Within the time set forth in the Schedule of Performance (Attachment No. 3), the Developer shall apply for and obtain all Entitlements, subject only to the payment of applicable fees, and the Developer shall remit corresponding fees charged by the City or such other governmental authority for such Entitlements on a timely basis. The Developer's application for the Entitlements shall be consistent with the Scope of Development (Attachment No. 4) and the terms and conditions of this Agreement. If the Developer fails to obtain the Entitlements within the time set forth in the Schedule of Performance (Attachment No. 3), the Developer will be deemed to have elected to terminate this Agreement.

The Developer understands and acknowledges that the City approvals and related requirements include actions requiring the exercise by the City of its governmental authority and discretion in its Governmental Capacity, as described in Section 6.11 of this Agreement, to ensure that the development complies with the *San Pablo Municipal Code*, including as set forth in

Chapter 17.16 thereof compliance with the California Environmental Quality Act (“CEQA”; Public Resources Code Section 21000 *et seq.*), and the guidelines implementing CEQA (“CEQA Guidelines”; Title 14 of the California Code of Regulations, Section 15000 *et seq.*).

2.6 Condition of Title

The City shall convey to the Developer fee simple title to the Site, subject only to the Permitted Exceptions.

2.7 Conveyance of Title and Delivery of Possession

Provided that the Developer is not in default under this Agreement following notice and expiration of any applicable cure periods, and provided that all conditions precedent to such conveyance have occurred, and subject to Force Majeure pursuant to Section 6.4 below and any mutually agreed upon extensions of time, conveyance to the Developer of title to the Site shall be completed on or prior to the date specified in the Schedule of Performance (Attachment No. 3). The City and the Developer agree to perform all acts reasonably necessary to cause conveyance of title in sufficient time for title to be conveyed in accordance with the foregoing provisions.

Possession shall be delivered to the Developer concurrently with the conveyance of title, except that limited access may be permitted before conveyance of title as permitted in Sections 2.2.3 and 2.14 of this Agreement. The Developer shall accept title and possession on or before the said date.

The Site shall be conveyed free of any possession or right of possession by any person except that of the Developer and the Permitted Exceptions.

2.8 Form of Grant Deed

The City shall convey to the Developer fee title to the Site in the condition provided in Section 2.6 of this Agreement by grant deed in substantially the form set forth in Attachment No. 5.

2.9 Time for and Place of Delivery of Grant Deed

Subject to Force Majeure pursuant to Section 6.4 below or any mutually agreed upon extensions of time, the City shall deposit the grant deed for the Site on or before the date established for the conveyance of the Site in the Schedule of Performance (Attachment No. 3).

2.10 Payment of the Purchase Price and Recordation of Grant Deed and Other Documents

The Developer shall deposit the Purchase Price for the Site (including the properly executed Purchase Money Note and Purchase Money Deed of Trust) and other sums required hereunder with the Escrow Agent prior to the date for conveyance of the Site, provided that the Escrow Agent shall have notified the Developer in writing that the grant deed, properly executed and acknowledged by the City, has been delivered to the Escrow Agent and that the condition of title is as required by Section 2.6 of this Agreement. The City and the Developer shall also deliver to the Escrow Agent their respective counterparts of the Affordable Housing Regulatory Agreement, properly executed and acknowledged. If applicable, the City and the Developer shall also deposit with the Escrow Agent the fully executed Intercreditor Agreement (defined in Section

1.1). Upon the close of escrow, the Escrow Agent shall file the grant deed, Purchase Money Deed of Trust, Predevelopment Loan Deed of Trust (as provided in Section 2.16), Affordable Housing Regulatory Agreement and Intercreditor Agreement for recordation among the land records in the Office of the County Recorder of Contra Costa County, shall deliver the Purchase Money Note to the City, and shall deliver to the Developer and City title insurance policies insuring title in conformity with Section 2.11 of this Agreement.

2.11 Title Insurance

Concurrently with recordation of the grant deed for the Site, the Title Company shall provide and deliver to the Developer a title insurance policy issued by the Title Company, together with such endorsements requested by Developer, insuring that fee title is vested in the Developer in the condition of title required by Section 2.6 of this Agreement. The Title Company shall provide the City with copies of the Developer's title insurance policy. The Title Company shall also provide and deliver to the City an ALTA lender's title insurance policy, with any endorsements reasonably requested by the City, insuring the validity of the City's liens on the Site for the Predevelopment Loan and the Purchase Money Loan, subject and subordinate only to those liens described in Section 2.1.1 and 2.16 hereof. The Developer shall pay for all premiums for title insurance coverage or special endorsements.

2.12 Taxes and Assessments

Ad valorem taxes and assessments, if any, on the Site, and taxes upon this Agreement or any rights hereunder, levied, assessed or imposed for any period commencing prior to conveyance of title shall be borne by the City. All ad valorem taxes and assessments levied or imposed for any period commencing after closing of the escrow shall be paid by the Developer.

2.13 Condition of the Site

2.13.1 "As-Is". Within fourteen (14) days after the opening of the escrow for conveyance of the Site to the Developer, the City provided the Developer with all information of which it has actual knowledge concerning the physical condition of the Site, including, without limitation, information about any Hazardous Materials, as defined below. The Developer acknowledges and agrees that it is acquiring the Site "as is," in its current physical condition, with no warranties, express or implied, as to the physical condition thereof, the presence or absence of any latent or patent condition thereon or therein, including without limitation, any Hazardous Materials thereon or therein, any soils and seismic conditions, and any other matters affecting the Site. It shall be the sole responsibility of the Developer, at the Developer's sole expense, to investigate and determine the soil conditions of the Site and the suitability of such soil conditions for the improvements to be constructed by the Developer. If the Developer determines that the soil conditions are not in all respects entirely suitable for the use or uses to which the Site will be put, then it is the sole responsibility and obligation of the Developer to take such action as may be necessary to place the soil conditions of the Site in a condition suitable for the development of the Site.

2.13.2 Indemnity. The Developer agrees, from and after the date title to or possession of the Site is delivered from the City to the Developer under this Agreement, to defend, indemnify, protect and hold harmless the City and its officers, beneficiaries, employees, agents, attorneys, representatives, legal successors and assigns ("Indemnitees"), obligations, orders, decrees, judgments, liens, demands, actions, Environmental Response Actions (as defined herein),

claims, losses, damages, fines, penalties, expenses, Environmental Response Costs (as defined herein) or costs of any kind or nature whatsoever, together with fees (including, without limitation, reasonable attorneys' fees and experts' and consultants' fees), whenever arising, resulting from, arising out of or based upon the actual or claimed generation, storage, handling, transportation, use, presence, placement, migration and/or release of Hazardous Materials (as defined herein), at, on, in, beneath or from the Site (sometimes herein collectively referred to as "Contamination"), and/or arising out of or based upon any soils or seismic issues affecting the Site. The Developer's defense, indemnification, protection and hold harmless obligations herein shall include, without limitation, the duty to respond to any governmental inquiry, investigation, claim or demand, at the Developer's sole cost.

2.13.3 Release and Waiver. The Developer hereby releases and waives all rights, causes of action and claims the Developer has or may have in the future against the Indemnitees arising out of or in connection with any Hazardous Materials (as defined herein) at, on, in, beneath or from the Site and/or arising out of or in connection with any soils or seismic issues affecting the Site. In furtherance of the intentions set forth herein, the Developer acknowledges that it is familiar with Section 1542 of the Civil Code of the State of California, which provides as follows:

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

The Developer hereby waives and relinquishes any right or benefit which it has or may have under Section 1542 of the Civil Code of the State of California or any similar provision of the statutory or non-statutory law of any other applicable jurisdiction to the full extent that it may lawfully waive all such rights and benefits pertaining to the subject matter of this Section 2.13.3.

2.13.4 Definitions.

a. As used in this Agreement, the term "Environmental Response Actions" means any and all activities, data compilations, preparation of studies or reports, interaction with environmental regulatory agencies, obligations and undertakings associated with environmental investigations, removal activities, remediation activities or responses to inquiries and notice letters, as may be sought, engendered, initiated or required in connection with any local, state or federal governmental or private party claims, including any claims by the Developer.

b. As used in this Agreement, the term "Environmental Response Costs" means any and all costs associated with Environmental Response Actions including, without limitation, any and all fines, penalties and damages.

c. As used in this Agreement, the term "Hazardous Materials" means any substance, material or waste which is (1) defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," or "restricted hazardous waste" under any provision of California law; (2) petroleum; (3) asbestos; (4) polychlorinated biphenyls; (5) radioactive materials; (6) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251 *et seq.* (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317); (7) defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.* (42

U.S.C. Section 6903); (8) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 *et seq.* (42 U.S.C. Section 9601); or (9) determined by California, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property.

2.13.5 Materiality. The Developer acknowledges and agrees that the defense, indemnification, protection and hold harmless obligations of the Developer for the benefit of the City set forth in this Section 2.13 are a material element of the consideration to the City for the performance of its obligations under this Agreement, and that the City would not have entered this Agreement unless the Developer’s obligations were as provided for herein.

2.13.6 Developer Precautions After Closing. Upon the close of escrow, the Developer shall take all necessary precautions to prevent the release into the environment of any Hazardous Materials that are located in, on or under the Site. Such precautions shall include compliance with all governmental requirements with respect to Hazardous Materials. In addition, the Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially reasonable standards as respects the disclosure, containment, storage, use, removal and disposal of Hazardous Materials.

2.13.7 Required Disclosures After Closing. After the close of escrow, the Developer shall notify the City, and provide to the City a copy or copies, of all environmental permits, disclosures, applications, entitlements or inquiries relating to the Site, including notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to any governmental requirements relating to Hazardous Materials. The Developer shall report to the City, as soon as possible after each incident, any unusual or potentially important incidents with respect to the environmental condition of the Site.

2.14 Preliminary Work by the Developer

Prior to the conveyance of title to the Site from the City, representatives of the Developer shall have the right of access to the Site at all reasonable times for the purpose of obtaining data, making surveys and tests necessary to carry out this Agreement. Promptly following the opening of escrow for conveyance of the Site to the Developer, the City shall provide to the Developer, and the Developer shall have access to, all data and information on the Site available to the City, but without warranty or representation by the City as to the completeness, correctness or validity of such data and information.

Any preliminary work undertaken on the Site by the Developer prior to conveyance of title thereto shall be done only after obtaining an encroachment permit from the City’s Public Works Department and any other necessary permits from the appropriate governmental agencies, and any such work shall be done at the sole expense of the Developer. As provided in Section 2.2.3.b of this Agreement, the Developer shall save and protect the City against any claims resulting from any such preliminary work, access or use of the Site. Copies of data, surveys and tests obtained or made by the Developer on the Site shall be filed with the City.

2.15 Submission of Evidence of Financing

Within the time set forth in the Schedule of Performance (Attachment No. 3), the Developer shall provide the City with a preliminary budget for the construction of the Developer’s improvements on the Site required by this Agreement, including all proposed sources and uses of

funds, all “hard” and “soft” costs and contingencies and reflecting, to the extent possible, firm bids or accepted contracts and with evidence of sufficient funds to meet all budget requirements (the “preliminary evidence of financing”).

Unless otherwise approved by the City, the Developer’s evidence of sufficient funds, as required for the preliminary evidence of financing, must include only the following: (a) Developer equity; and (b) preliminary loan commitments (subject to standard qualifications and exceptions), in form and content acceptable to the City. Within ten (10) days after the City’s request, the Developer shall provide any additional information requested by the City for evaluation of the actual availability of funds included in such preliminary evidence of financing, including without limitation further evidence required for clarification or audited financial reports.

Within the time set forth in the Schedule of Performance (Attachment No. 3), the Developer shall provide the City with a complete and firm budget for the construction of the Developer’s improvements on the Site required by this Agreement, including all proposed sources and uses of funds, all “hard” and “soft” costs and contingencies and reflecting, to the extent possible, firm bids or accepted contracts and with evidence of sufficient funds to meet all budget requirements (the “final evidence of financing”).

Unless otherwise approved by the City, the Developer’s evidence of sufficient funds, as required for the final evidence of financing, must include only the following: (a) Developer equity; and (b) firm and binding loan commitments (subject to standard qualifications and exceptions), in form and content acceptable to the City. Within ten (10) days after the City’s request, the Developer shall provide any additional information requested by the City for evaluation of the actual availability of funds included in such final evidence of financing, including without limitation further evidence required for clarification or audited financial reports.

As a material obligation under this Agreement, the Developer shall ensure that the loan documents comply, in all respects, with this Agreement. The City may reject any commitment if it is based upon sources and uses of funds that are different from those approved by the City for the development of the Site. The City may also reject any commitment that requires changes that conflict with this Agreement, that requires amendment of this Agreement or that requires the City to enter into agreements with any lender, guarantor, equity partner or any other third party other than agreements expressly permitted in this Agreement.

The City shall approve or disapprove each such evidence of financing commitments and the construction budget within thirty (30) days of receipt of a complete submission. If the City shall disapprove any such evidence of financing or the construction budget, the City shall do so by notice to the Developer stating the reasons for such disapproval and the Developer shall promptly obtain and submit to the City new evidence of financing. The City shall approve or disapprove such new evidence of financing in the same manner and within the same times established in this Section 2.15 for the approval or disapproval of the evidence of financing initially submitted to the City. Any required approval of the City under this Section 2.15 shall not be unreasonably withheld or delayed.

2.16 Predevelopment Loan

a. In consideration of the agreements and covenants of the Developer hereunder, the City agrees to loan to the Developer the sum of ONE MILLION DOLLARS (\$1,000,000) (the “Predevelopment Loan”). Subject to satisfaction of all conditions precedent

thereto set forth in this Agreement, the Predevelopment Loan shall be disbursed to the Developer according to the following schedule:

- Twenty-five percent (25%) of the Predevelopment Loan (the “First Disbursement”) shall be made promptly following the Effective Date of this Agreement.
- Twenty percent (20%) of the Predevelopment Loan (the “Second Disbursement”) shall be made after the Developer has prepared and submitted fifty percent (50%) complete design drawings to, and received comments from, City Planning and EDH, and within ten (10) days after the Developer has made a written request to the City for the Second Disbursement.
- Twenty-five percent (25%) of the Predevelopment Loan (the “Third Disbursement”) shall be made after the Developer has prepared and submitted fifty percent (50%) complete construction drawings to City Planning and EDH, and within ten (10) days after the Developer has made a written request to the City for the Third Disbursement.
- Ten percent (10%) of the Predevelopment Loan (the “Fourth Disbursement”) shall be made within ten (10) days after the Developer has made a written request to the City for the Fourth Disbursement which written request provides evidence satisfactory to the City that the Developer has submitted its application for low-income housing tax credits for the Project.
- Twenty percent (20%) of the Predevelopment Loan (the “Fifth/Final Disbursement”) shall be made within ten (10) days after the Developer has been notified that it will receive an award of low income housing tax credits for the Project, satisfactory evidence of which is provided to the City, and after the Developer has made a written request to the City for the Fifth/Final Disbursement.

The Predevelopment Loan shall be used for soft costs of the Project (e.g., architecture, engineering, legal and permitting), and shall not be used for Developer fees or Developer overhead. Upon the date the Developer acquires title to the Site from the City as set forth in this Agreement, the Predevelopment Loan shall be secured by a deed of trust on the Site as described in subsection b. below. As additional security for the Predevelopment Loan, the Developer shall assign all of its rights to all of the assets acquired with Predevelopment Loan funds, including, but not limited to, the following (herein the “Predevelopment Assets”):

Permits and Legal

- Zoning and land-use approvals
- Legal, title searches and contracts

Architectural and Engineering Plans

- Design and engineering services
- Conceptual layouts, schematics, and design development

Market and Feasibility Studies

- Studies evaluating demand, cost projections, and potential ROI
- Reports required for CTCAC application

Consulting and Advisory Costs

- Payments to project consultants, planners, or other advisory services
- Project management before construction begins

Other Predevelopment Expenses

- Miscellaneous costs directly tied to preparing the project for construction
- Permits, environmental remediation, or temporary site improvements

The assignment agreement or agreements shall be in form satisfactory to the City, shall be entered into immediately following the acquisition of any Predevelopment Assets and shall expressly provide that the City is obtaining rights to the Predevelopment Assets without assuming any obligations with respect thereto.

b. The Predevelopment Loan shall be evidenced by a promissory note (the “Predevelopment Loan Note”) to be executed by the Developer in favor of the City in substantially the form attached hereto as Attachment No. 9. The Predevelopment Loan shall bear simple interest per annum at the rate of three percent (3%). Until the Developer completes the purchase of the Site, the Predevelopment Loan shall be subject to payment in full by the Developer within thirty (30) days of a written demand by the City. The City’s written demand for payment in full may be made promptly following the Developer’s failure to complete the purchase of the Site within the time and manner required by this Agreement. Following the Developer’s purchase of the Site and except as may be modified by the Intercreditor Agreement: (i) payments on the Predevelopment Loan shall be paid along with payment of the Purchase Money Loan from seventy-five percent (75%) of the residual receipts from the Project; (ii) the outstanding principal and all accrued and unpaid interest on the Predevelopment Loan shall be due and payable in full thirty (30) years from the date of the Predevelopment Loan Note, provided, however, that the term of the Predevelopment Loan may be increased to fifty-five (55) years by the City Manager upon receipt of satisfactory evidence from the Developer that such longer term is required in order to secure required financing for the development of the Project; and (iii) the Predevelopment Loan Note shall be secured by a deed of trust (the “Predevelopment Loan Deed of Trust”) on the Site in substantially the form attached hereto as Attachment No. 10. The Predevelopment Loan Deed of Trust shall be subject and subordinate only to the terms of a construction and/or permanent loan, as follows:

(1) The City agrees that the Predevelopment Loan Deed of Trust shall be subject and subordinate to the terms and conditions of a construction deed of trust securing a construction loan given by a lender approved by the City (the “Construction Lender”) not to exceed a sum that would cause the total of all permitted liens against the Site, to exceed ninety percent (90%) of the projected Project value including land and construction (the “Construction Loan”), provided that the Construction Lender agrees to include in its deed of trust or in a separately recorded subordination agreement with the City the following conditions: (a) the City shall receive copies of any notices of default issued by the Construction Lender to the Developer; (b) the City shall have the right to cure any default by the Developer within ninety (90) days after a notice of default; and (c) the City shall have the right to exercise any and all remedies under the Predevelopment Loan Deed of Trust following the expiration of ninety (90) days after delivery of notice from the City to the Construction Lender of a default under the Predevelopment Loan Note or the Project Loan Deed of Trust.

(2) The City agrees that the Predevelopment Loan Deed of Trust shall also be subject and subordinate to the terms and conditions of a deed of trust securing a permanent loan given by a lender reasonably approved by the City (the “Permanent Lender”) not to exceed a sum that would cause the total of all permitted liens against the Site to exceed ninety percent (90%) of the Project value including land and improvements (the “Permanent Loan”), provided that the

Permanent Lender agrees to include in its deed of trust or in a separately recorded subordination agreement with the City the conditions described in subparagraph (1) above.

c. Prior to the disbursement of any portion of the Predevelopment Loan:

(1) The Developer shall have executed and delivered the Predevelopment Loan Note and any other documents reasonably requested by the City to evidence and secure the Predevelopment Loan; and

(2) The Developer shall not then be in default of any of its obligations under this Agreement or the Predevelopment Loan Note. The Developer expressly acknowledges and agrees that (a) the exclusive source of funds for the Predevelopment Loan is LMIHAF monies held by the City, as the successor-in-interest to the former San Pablo Redevelopment Agency, that must be used in accordance with the provisions of Health and Safety Code Section 33334.2, as modified by Health and Safety Code Section 34176.1, for the purposes of increasing, improving and preserving affordable housing in the City of San Pablo and (b) in the event legislation is enacted by the State that reduces or eliminates the amount of LMIHAF monies available to the City for any or all scheduled disbursements of the Predevelopment Loan pursuant to this Agreement, the City's disbursement obligation(s) shall be correspondingly reduced or eliminated.

ARTICLE 3 DEVELOPMENT OF THE SITE

3.1 Development of the Site by the Developer

3.1.1 Scope of Development. The Site shall be developed as provided in the Scope of Development (Attachment No. 4).

3.1.2 Local, State and Federal Laws. The Developer shall carry out the construction of the improvements on the Site in conformity with all applicable laws, including all applicable federal and state labor standards.

3.1.3 Preliminary Site Plan. The Developer has prepared and submitted to the City a preliminary site plan for development of the Site. The preliminary site plan is attached to this Agreement as Exhibit A of the Scope of Development (Attachment No. 4). The Site shall be developed as generally shown in the preliminary site plan and related documents except as changes may be mutually agreed upon between the Developer and the City. Any such changes shall be within the limitations of the Scope of Development (Attachment No. 4).

3.1.4 Construction Plans, Drawings and Related Documents. The Developer shall prepare and submit construction plans, drawings and related documents in accordance with all applicable City requirements.

3.1.5 Governmental Agency Permits

Before commencement of construction or development of any buildings, structures or other work of improvement upon the Site, the Developer shall secure or cause to be secured any and all permits, approvals or entitlements which may be required by the City or any other governmental agency affected by such construction, development or work.

It is the responsibility of the Developer, without cost to the City, to process, obtain, and maintain all Entitlements to assure that the design, construction, use, operation, maintenance, repair and replacement of the improvements on the Site are carried out in accordance with the provisions of this Agreement, and are permitted by zoning, all applicable City land use requirements and all other governmental requirements. Nothing contained in this Agreement shall be deemed to waive the right of the City to act in its Governmental Capacity (as defined in Section 6.11 hereof) with respect to the consideration and approval of the Entitlements and all other permits, licenses and approvals requested by the Developer from time to time in connection with the development of the Site nor shall it entitle the Developer to any Entitlement or other City approval necessary for the development of the Site, or to the waiver of any applicable City requirements relating thereto, and the failure of the City to issue or approve any Entitlement shall not be a default of the City under this Agreement.

This Agreement does not (a) grant any land use entitlement to the Developer, (b) supersede, nullify, or amend any condition which may be imposed by the City in its Governmental Capacity in connection with approval of the development of the Site, (c) guarantee to the Developer or any other party any profits from the development of the Site, or (d) amend any governmental requirements of the City. Nothing in this Agreement shall be construed or interpreted as committing the City to approve or undertake any action or review process or activities that require the independent exercise of discretion by the City, including any approval of any Entitlement or permit application for which the Developer applies after the date of this Agreement.

This Agreement is not a development agreement as provided in Government Code Section 65864 and, as set forth above, is not a grant of any entitlement, permit, land use approval, or vested right in favor of the Developer or the development of the Site.

3.1.6 Cost of Construction. The cost of developing the Site and constructing all improvements thereon shall be borne by the Developer. The City and the Developer shall each pay the costs necessary to administer and carry out their respective responsibilities and obligations under this Agreement.

3.1.7 Construction Schedule

a. After the conveyance of title to the Site, the Developer shall begin and complete all construction and development within the times specified in the Schedule of Performance (Attachment No. 3) or such reasonable extension of said dates as may be granted by the City or subject to as provided in Section 6.4 of this Agreement. The Schedule of Performance is subject to revision from time-to-time as mutually agreed upon in writing between the Developer and the City and as necessary to account for Force Majeure.

b. During the period of construction, but not more frequently than once a calendar quarter, the Developer shall submit to the City a written progress report of the construction when and as requested by the City. The report shall be in such form and detail as may reasonably be required by the City and shall include a reasonable number of construction photographs taken since the last report submitted by the Developer.

3.1.8 Indemnification; Bodily Injury, Property Damage and Workers' Compensation Insurance

a. Indemnification

The Developer agrees to and shall indemnify, protect, defend and hold the City, and its officers, beneficiaries, employees, agents, attorneys, representatives, legal successors and assigns ("Indemnitees"), harmless from and against all liability, loss, damage, costs or expenses (including reasonable attorneys' fees and court costs) of any kind or nature arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person which shall occur on or adjacent to the Site resulting from or in connection with the development, use or operation of the Site by the Developer, its agents, servants or employees or the general contractor or any subcontractor or supplier of or to the Site, including any issues related to the seismicity of the Site, or the Developer's performance or non-performance under or with respect to this Agreement.

The Developer, for itself and for each and every successor-in-interest, hereby releases and waives all rights, causes of action and claims the Developer, or such successors-in-interest, has or may have in the future against the Indemnitees arising out of or in connection with all liability, loss, damage, costs or expenses (including reasonable attorneys' fees and court costs) of any kind or nature arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person which shall occur on or adjacent to the Site resulting from or in connection with the development, use or operation of the Site by the Developer, each and every successor-in-interest of the Developer, the Developer's agents, servants or employees or the general contractor or any subcontractor or supplier of or to the Site, including any issues related to the seismicity of the Site, or the Developer's performance or non-performance under or with respect to this Agreement. In furtherance of the intentions set forth herein, the Developer, for itself and for each and every successor-in-interest, acknowledges that it is familiar with Section 1542 of the Civil Code of the State of California that provides as follows:

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

The Developer, for itself and for each and every successor-in-interest, hereby waives and relinquishes any right or benefit which it has or may have under Section 1542 of the Civil Code of the State of California or any similar provision of the statutory or nonstatutory law of any other applicable jurisdiction to the full extent that it may lawfully waive all such rights and benefits pertaining to the subject matter of this Section 3.1.8.a.

The Developer, for itself and for each and every successor-in-interest, acknowledges and agrees that the defense, indemnification, protection and hold harmless obligations of the Developer and its successors-in-interest for the benefit of the City set forth in this Section 3.1.8.a. are a material element of the consideration to the City for the performance of its obligations under this Agreement, and that the City would not have entered this Agreement unless the Developer's and successors' obligations were as provided for herein.

b. Bodily Injury, Property Damage and Workers' Compensation Insurance

Concurrently with its execution of this Agreement, the Developer shall furnish or cause to be furnished to the City duplicate originals or appropriate certificates of insurance policies providing the following coverage in not less than the following amounts from insurers reasonably acceptable to the City's Risk Manager:

(1) General Liability: Bodily injury, personal injury and property damage insurance policies in the amount of at least \$1,000,000 per occurrence and \$2,000,000 aggregate. If Commercial General Liability insurance or other form with a general aggregate limit shall apply separately to the Site and Developer's obligations under this Agreement, the general aggregate limit shall be twice the required occurrence limit;

(2) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage;

(3) Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by state law and Employers' Liability limits of \$1,000,000 per accident, \$1,000,000 policy limit bodily injury by disease, and \$1,000,000 each employee bodily injury by disease; and

(4) Builders' Risk: Completed value of the improvements on the Site.

The above-required insurance policies shall name the City as additional or co-insureds and be endorsed to provide that coverage shall not be suspended, voided, cancelled or reduced in limit except after thirty (30) days prior written notice to the City. The Developer shall include all contractors or subcontractors with whom it has contracted for the performance of work on the Site as insureds under its policies or shall furnish or cause to be furnished separate certificates of insurance for each contractor or subcontractor. All coverages for contractors shall be subject to all of the requirements listed herein. The Developer shall also furnish or cause to be furnished to the City evidence satisfactory to the City that any contractor with whom it has contracted for the performance of work on the Site carries workers' compensation insurance as required by law. Except as otherwise expressly provided herein, the obligations set forth in this Section 3.1.8.b. shall remain in effect only until a Certificate of Completion has been issued as provided in Section 3.6 hereof.

3.1.9 Rights of Access. For the purposes of assuring compliance with this Agreement, representatives of the City shall have the reasonable right of access to the Site without charges or fees and upon reasonable notice and at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the improvements. Such representatives of the City shall be those who are so identified in writing by the City Manager of the City.

3.1.10 Antidiscrimination During Construction. The Developer, for itself and its successors and assigns, agrees that in the construction of the improvements provided for in this Agreement, the Developer will not discriminate against any employee or applicant for employment because of any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Section 12926, 12926.1, and 12926.2 of the Government Code.

3.2 Taxes, Assessments, Encumbrances and Liens

The Developer shall pay when due all real estate taxes and assessments assessed and levied, if any, on the Site for any period subsequent to conveyance of title thereof to the Developer. Prior to issuance of a Certificate of Completion, (a) the Developer shall not place or allow to be placed on the Site any mortgage, trust deed, encumbrance or lien unauthorized by this Agreement, and (b) the Developer shall remove or have removed any levy or attachment made on the Site (or any portion thereof), or shall assure the satisfaction thereof, within a reasonable time. Nothing herein contained shall be deemed to prohibit the Developer from contesting the validity or amounts of any tax, assessment, encumbrance or lien, nor to limit the remedies available to the Developer in respect thereto.

3.3 Prohibition Against Transfer of Site, the Buildings or Structures Thereon and Assignment of Agreement

Except as expressly permitted by this Agreement, prior to issuance of a Certificate of Completion pursuant to Section 3.6 hereof, the Developer shall not sell, transfer, convey, assign or lease the whole or any part of its interest in the Site or the buildings or improvements thereon without the prior written approval of the City. This prohibition shall not be deemed to prevent the granting of easements or permits, or mortgages or deeds of trust permitted under Section 3.4 hereof, to facilitate the development of the Site or to prohibit or restrict the leasing of any part or parts of a building or structure when said improvements are completed.

In the absence of specific written agreement by the City, no such transfer, assignment or approval by the City shall be deemed to relieve the Developer or any other party from any obligations under this Agreement.

3.4 Security Financing; Rights of Holders

3.4.1 No Encumbrances Except Mortgages, Deeds of Trust, Sales and Leases-Back or Other Financing for Development

Notwithstanding Sections 3.2 and 3.3 of this Agreement, mortgages, deeds of trust, sales and leases-back or any other form of conveyance required for any reasonable method of financing are permitted but only for the purpose of securing loans of funds to be used for financing the development of the Site under this Agreement. The Developer shall notify the City in advance of any such mortgage, deed of trust, sale and lease-back or other form of conveyance for financing and the Developer shall not enter into any such conveyance for financing without the prior written approval of the City, not to be unreasonably withheld, conditioned or delayed. The words "mortgage" and "deed of trust," as used herein, include all other appropriate modes of financing real estate acquisition, construction and land development.

3.4.2 Holder Not Obligated to Construct Improvements

The holder of any mortgage, deed of trust or other security interest authorized by this Agreement shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Site to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Agreement.

3.4.3 Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure

Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in completion of construction of the improvements, the City shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage, deed of trust or other security interest authorized by this Agreement who has previously made a written request to the City therefor. Each such holder shall (insofar as the rights of the City are concerned) have the right, at its option, within ninety (90) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the security interest debt and the lien on its security interest. In the event there is more than one such holder, the right to cure or remedy a breach or default of the Developer under this Section 3.4.3 shall be exercised by the holder first in priority or as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of the Developer under this Section 3.4.3; provided that such holder shall not have any obligation or duty under this Agreement to construct or complete the improvements. In the event any holder elects to complete the improvements, it shall only do so in the manner provided in this Agreement as to the improvements to which the lien or title relates and shall, prior to commencing such completion, submit evidence reasonably satisfactory to the City that it or its agents or contractors has the qualifications and financial responsibility necessary to complete the improvements. Any such holder properly completing such improvements shall be entitled, upon written request made to the City, to a Certificate of Completion from the City.

3.4.4 Failure of Holder to Complete Improvements

In any case where, six (6) months after default by the Developer in completion of construction of improvements under this Agreement, the holder of any mortgage, deed of trust or other security interest creating a lien or encumbrance upon the Site has not exercised the option to construct, or if it has exercised the option and has not proceeded diligently with construction, the City may pay off the mortgage, deed of trust or other security interest by payment to the holder of the full amount of the unpaid debt, plus any accrued and unpaid interest. If the ownership of the Site has vested in the holder, then the City, if it so desires, shall be entitled to a conveyance of the Site from the holder to the City upon payment to the holder of an amount equal to the sum of the following:

- a. The unpaid mortgage, deed of trust or other security interest debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);
- b. All expenses with respect to foreclosure;
- c. The net expenses, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent management of the Site;
- d. The costs of any authorized improvements made by such holder; and
- e. An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the

mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the City.

3.4.5 Right of City to Cure Mortgage, Deed of Trust or Other Security Interest Default

In the event of a default or breach by the Developer of a mortgage, deed of trust or other security interest with respect to the Site prior to the completion of development, and the holder has not exercised its option to complete the development, the City may cure the default prior to completion of any foreclosure. In such event, the City shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the City in curing the default. The City shall also be entitled to a lien upon the Site to the extent of such costs and disbursements. Any such lien shall be subject to mortgages, deeds of trust or other security interests executed for the sole purpose of obtaining funds to develop the Site as authorized herein.

3.4.6 Reasonable Amendments

In the event a person or persons providing funding to the Developer to finance the development of the Site requests changes to the provisions of this Section 3.4, or to any other provision of this Agreement that affects such funding, the City agrees to negotiate in good faith such proposed amendment(s). Any proposed amendment that would be a substantial change to the provisions of this Agreement may be subject to approval by the City Council, as determined by the City Manager with advice from the City Attorney.

3.5 Right to Satisfy Other Liens on the Site After Title Passes

After the conveyance of title to the Site to the Developer and prior to the issuance by the City of a Certificate of Completion pursuant to Section 3.6 hereof, and after the Developer has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on the Site, the City shall have the right to satisfy any such liens or encumbrances, provided, however, that nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Site to forfeiture or sale. In such event, the City shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the City in satisfying any such liens or encumbrances. The City shall also be entitled to a lien upon the Site to the extent of such costs and expenses. Any such lien shall be subject to mortgages, deeds of trust or other security interests executed for the sole purpose of obtaining funds to develop the Site as authorized herein.

3.6 Certificate of Completion

Promptly after completion of all construction required by this Agreement to be completed by the Developer upon the Site, the City shall furnish the Developer with a Certificate of Completion upon written request therefor by the Developer. Any Certificate of Completion shall be in such form as to permit it to be recorded in the Office of the County Recorder of Contra Costa County.

A Certificate of Completion shall be, and shall so state, conclusive determination of satisfactory completion of the construction required by this Agreement upon the Site (or such portion thereof) and of full compliance with the terms hereof pertaining to such construction. After issuance of such Certificate of Completion, any party then owning or thereafter purchasing, leasing

or otherwise acquiring any interest in the Site covered by said Certificate of Completion shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement pertaining to such construction. Except as otherwise provided herein, after the issuance of a Certificate of Completion for the Site (or such portion thereof), neither the City nor any other person shall have any rights, remedies or controls with respect to the Site (or such portion thereof) that it would otherwise have or be entitled to exercise under this Agreement as a result of a default in or breach of any provision of this Agreement pertaining to such construction, and the respective rights and obligations of the parties with reference to the Site (or portion thereof) shall be as set forth in the grant deed for the Site. Notwithstanding the foregoing, the provisions of this Agreement shall not merge but shall survive the issuance of a Certificate of Completion as necessary to give full force and effect to the provisions referring to this Agreement in the grant deed and other documents recorded pursuant to this Agreement.

The City shall not unreasonably withhold or delay any Certificate of Completion. If the City refuses or fails to furnish a Certificate of Completion for the Site (or such portion thereof) after written request from the Developer, the City shall, within thirty (30) days following such written request, provide the Developer with a written statement of the reasons the City refused or failed to furnish a Certificate of Completion. The statement shall also contain the City's opinion of the action the Developer must take to obtain a Certificate of Completion. If the reason for such refusal is confined to the immediate unavailability of specific items or materials for landscaping, the City will issue the Certificate of Completion upon the posting of a bond by the Developer with the City in an amount representing a fair value of the work not yet completed. If the City shall have failed to provide such written statement within said thirty (30) days, the Developer shall be deemed entitled to the Certificate of Completion.

Such Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a mortgage or any insurer of a mortgage securing money loaned to finance the improvements or any part thereof. Such Certificate of Completion is not notice of completion as referred to in California Civil Code Section 8182.

ARTICLE 4 USE OF THE SITE

4.1 Uses; Affordable Housing Regulatory Agreement

The Developer covenants and agrees for itself, its successors, its assigns and every successor-in-interest that the Site shall be devoted to the development of the Project, containing affordable rental dwelling uses, as described in this Agreement.

The Developer further covenants and agrees for itself, its successors, its assigns and every successor-in-interest that (a) all of the affordable rental dwelling units constructed on the Site shall be, at a minimum, made available for occupancy by "lower income households," as defined in Health and Safety Code Section 50079.5 (i.e., total household income is not greater than 80% of area median income, adjusted for household size), at an "affordable rent" for lower income households as defined in Health and Safety Code Section 50053, (b) persons currently living or employed in the City of San Pablo shall be entitled to a preference in the rental of the dwelling units constructed on the Site, and (c) these covenants and restrictions shall remain in effect for not less than fifty-five (55) years from the date of issuance of the Certificate of Completion for the Site. Copies of all regulatory agreements of the California Tax Credit Allocation Committee

(“TCAC”), the County, HCD or others applicable to the rental dwelling units constructed on the Site shall be provided to the City.

To effectuate the affordable housing covenants and restrictions contained herein, the Developer shall execute and deliver to the Escrow Agent, an “Affordable Housing Regulatory Agreement,” in substantially the form attached hereto as Attachment No. 6, which shall be promptly recorded against the Site at the close of escrow therefor.

4.2 Obligation to Refrain From Discrimination

The Developer covenants by and for itself and any successors-in-interest that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, Section 12955.2 and Section 12955.3 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall the Developer itself or any person claiming under or through it 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 of the Site. The foregoing covenants shall run with the land.

4.3 Form of Nondiscrimination and Nonsegregation Clauses

The Developer shall refrain from restricting the rental, sale or lease of the Site on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, Section 12955.2 and Section 12955.3 of the Government Code. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

a. In deeds: “The grantee herein covenants by and for himself or herself, his or her 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 any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, Section 12955.2 and Section 12955.3 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises herein conveyed, nor shall the grantee himself or herself, or any person claiming under or through him or her, 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 premises herein conveyed. The foregoing covenants shall run with the land.”

b. In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

“That there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, Section 12955.2 and Section 12955.3 of the

Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, 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 premises herein leased.”

c. In contracts: “There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, Section 12955.2 and Section 12955.3 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself, or any person claiming under or through him or her, 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 of the land.”

4.4 Effect and Duration of Covenants

The covenants established in this Agreement shall, without regard to technical classification and designation, be binding for the benefit and in favor of the City, its successors and assigns, and any successor-in-interest to the Site or any part thereof and shall remain in effect until issuance of the Certificate of Completion or such other date specified in this Agreement, except for the covenants against discrimination which shall remain in effect in perpetuity.

The City is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. This Agreement and the covenants shall run in favor of the City without regard to whether the City has been, remains or is an owner of any land or interest therein in the Site. The City shall have the right, if this Agreement or the covenants are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and the covenants may be entitled.

ARTICLE 5 DEFAULTS, REMEDIES AND TERMINATION

5.1 Defaults -- General

Subject to the extensions of time set forth in Section 6.4 and any mutually agreed upon extensions of time, failure or delay by any party to perform any term or provision of this Agreement within the times provided herein constitutes a default under this Agreement. The party who so fails or delays must cure, correct or remedy such failure or delay within thirty (30) days after receipt of written notice of default, or if such cure cannot reasonably be effectuated within such 30-day period, the party in default shall commence to cure, correct or remedy such default within said 30-day period and thereafter continuously pursue completion of such cure, correction or remedy with reasonable diligence and during any period of curing shall not be in default.

The injured party shall give written notice of default to the party in default specifying the default complained of by the injured party. Except as required to protect against

further damages, the injured party may not institute proceedings against the party in default until expiration of the cure period provided for above. Failure or delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

5.2 Legal Actions

5.2.1 Institution of Legal Actions

In addition to any other rights or remedies and except as otherwise provided in this Article 5, either party may institute legal action to cure, correct or remedy any default, or recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement, if such default is not cured by the defaulting party within the time period specified in Section 5.1 above. Such legal actions must be instituted in the Superior Court of the County of Contra Costa, State of California, in an appropriate municipal court in that County or in the appropriate Federal District Court in the State of California.

5.2.2 Applicable Law

The laws of the State of California, exclusive of choice of laws provisions, shall govern the interpretation and enforcement of this Agreement.

5.2.3 Acceptance of Service of Process

In the event that any legal action is commenced by the Developer against the City, service of process on the City shall be made by personal service upon the City Manager of the City or in such other manner as may be provided by law.

In the event that any legal action is commenced by the City against the Developer, service of process on the Developer shall be made by personal service upon any corporate officer of the Developer or in such other manner as may be provided by law and shall be valid whether made within or without the State of California.

5.3 Rights and Remedies are Cumulative

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by any other party.

5.4 Damages

Except as otherwise provided in this Agreement, if the Developer defaults under any of the provisions of this Agreement and fails to cure such default following notice from the City and expiration of applicable cure periods, the Developer shall be liable to the City for any damages caused by such default. The City shall have no liability for damages whatsoever under

this Agreement. The parties acknowledge and agree that it is a material part of the Developer's consideration to the City that the City shall not be at risk of liability for money damages relating to or arising from this Agreement. The Developer, for itself and for all successors and assignees, hereby releases the City and all of its agents, employees, representatives, council members, board members, consultants, and officers of the City from any and all claims seeking to impose money damages on the City as a result of the City's negotiation, drafting, execution or performance of this Agreement.

5.5 Specific Performance

Except as otherwise provided in this Agreement, if the Developer or City defaults under any of the provisions of this Agreement and the defaulting party fails to cure such default following notice and expiration of applicable cure periods, the nondefaulting party, at its option, may institute an action for specific performance of the terms of this Agreement.

5.6 Remedies and Rights of Termination Prior to Conveyance of the Site

5.6.1 Termination by the Developer

In the event that prior to the close of escrow for conveyance of title to the Site to the Developer:

- a. The Developer Conditions Precedent set forth in Section 2.4.2 have not been satisfied as required through no fault of the Developer; or
- b. The City does not tender conveyance of the Site or possession thereof in the manner and condition and by the date provided in this Agreement, and any such failure is not cured within thirty (30) days after written demand by the Developer;

then this Agreement may, at the option of the Developer, be terminated by written notice thereof to the City. Upon such termination, the City and the Developer shall have no further rights against or liability to the others under this Agreement with respect to the Site, except that the Deposit shall be returned to the Developer.

5.6.2 Termination by the City

In the event that prior to conveyance of title to the Site to the Developer:

- a. The Developer transfers or assigns or attempts to transfer or assign this Agreement or any rights herein or in the Site or the buildings or improvements thereon in violation of this Agreement; or
- b. There is any significant change in the ownership or identity of the Developer or the parties in control of the Developer or the degree thereof in violation of the provisions of Section 1.3.2 hereof, except for a transfer to an affiliate controlled by the Developer; or
- c. The Developer does not submit evidence that it has the necessary equity capital and mortgage financing for development of the Site

in satisfactory form and in the manner and by the dates provided in this Agreement; or

- d. After satisfaction or waiver by Developer of all the Developer Conditions Precedent, the Developer does not pay the Purchase Price and take title to the Site under tender of conveyance by the City pursuant to this Agreement; or
- e. The City Conditions Precedent have not been satisfied as required through no fault of the City; or
- f. The Developer is in breach or default with respect to any other obligation under this Agreement; and
- g. If any default or failure referred to in subdivisions c. through f. of this Section shall not be cured within the time period specified in Section 5.1 above;

then, this Agreement, and any rights of the Developer or any assignee or transferee in this Agreement pertaining thereto or arising therefrom with respect to the City, may, at the option of the City, be terminated by the City by written notice thereof to the Developer. Upon such termination, neither the City nor the Developer shall have any further rights against or liability to the other under this Agreement except liquidated damages payable to the City as set forth below.

IN THE EVENT OF TERMINATION UNDER THIS SECTION 5.6.2, THE DEPOSIT SHALL BE PAID TO THE CITY AS LIQUIDATED DAMAGES AND AS ITS PROPERTY WITHOUT ANY DEDUCTION, OFFSET OR RECOUPMENT WHATSOEVER. IF THE DEVELOPER SHOULD DEFAULT UPON ITS OBLIGATIONS MAKING IT NECESSARY FOR THE CITY TO TERMINATE THIS AGREEMENT AND TO PROCURE ANOTHER PARTY OR PARTIES TO DEVELOP THE SITE, THEN THE DAMAGES SUFFERED BY THE CITY BY REASON THEREOF WOULD BE UNCERTAIN. SUCH DAMAGES WOULD INVOLVE SUCH VARIABLE FACTORS AS THE EXPENSE OF INTERESTING PARTIES AND NEGOTIATING WITH SUCH PARTIES; POSTPONEMENT OF TAX AND OTHER REVENUES THEREFROM TO THE COMMUNITY; AND THE FAILURE OF THE CITY TO EFFECT ITS PURPOSES AND OBJECTIVES WITHIN A REASONABLE TIME, RESULTING IN ADDITIONAL IMMEASURABLE DAMAGE AND LOSS TO THE CITY AND THE COMMUNITY. IT IS IMPRACTICABLE AND EXTREMELY DIFFICULT TO FIX THE AMOUNT OF SUCH DAMAGES TO THE CITY, BUT THE PARTIES ARE OF THE OPINION, UPON THE BASIS OF ALL INFORMATION AVAILABLE TO THEM, THAT SUCH DAMAGES WOULD APPROXIMATELY EQUAL THE DEPOSIT AT THE TIME OF THE DEFAULT OF THE DEVELOPER, AND THE DEPOSIT SHALL BE PAID TO THE CITY UPON ANY SUCH OCCURRENCE AS THE TOTAL OF ALL LIQUIDATED DAMAGES FOR ANY AND ALL SUCH DEFAULTS AND NOT AS A PENALTY. IN THE EVENT THAT THIS PARAGRAPH SHOULD BE HELD TO BE VOID FOR ANY REASON, THE CITY SHALL BE ENTITLED TO THE FULL EXTENT OF DAMAGES OTHERWISE PROVIDED BY LAW.

THE DEVELOPER AND THE CITY SPECIFICALLY
ACKNOWLEDGE THIS LIQUIDATED DAMAGES PROVISION BY THEIR SIGNATURES
HERE:

By: _____
Developer

By: _____
City

5.7 City Option to Repurchase, Reenter and Repossess

The City shall have the additional right at its option to repurchase, reenter and take possession of the Site (or portion thereof) with all improvements thereon, if after conveyance of title to the Site and prior to the issuance of a Certificate of Completion pursuant to Section 3.6 hereof, the Developer shall:

- a. Fail to proceed with the construction of the improvements as required by this Agreement for a period of three (3) months (subject to extensions for Force Majeure) after written notice thereof from the City;
- b. Abandon or substantially suspend construction of the improvements for a period of three (3) months (subject to extensions for Force Majeure) after written notice of such abandonment or suspension from the City; or
- c. Transfer or suffer any involuntary transfer of the Site or any part thereof in violation of this Agreement.

Such right to repurchase, reenter and repossess, to the extent provided in this Agreement, shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

- a. Any mortgage, deed of trust or other security instrument permitted by this Agreement; or
- b. Any rights or interests provided in this Agreement for the protection of the holder of such mortgages, deeds of trust or other security instruments.

To exercise its right to repurchase, reenter and take possession with respect to the Site, the City shall pay to the Developer in cash an amount equal to:

- a. The Purchase Price paid to the City by the Developer for the Site; plus
- b. The costs actually incurred and documented by the Developer for on-site labor and materials for the construction of the improvements existing on the Site at the time of the repurchase, reentry and repossession, but specifically not including any design, planning or other preconstruction or other soft costs, and exclusive of amounts financed; less
- c. Any gains or income withdrawn or made by the Developer from the Site or the improvements thereon; and less

- d. The amount of any unpaid assessments and liens against the Site.

ARTICLE 6 GENERAL PROVISIONS

6.1 Notices, Demands and Communications Between the Parties

Formal notices, demands and communications between the City and the Developer shall be in writing and sent to the following addresses, or at any other address as that party may later designate by notice, by one or more of the following methods:

a. Addresses/Fax Numbers

City: City of San Pablo
1000 Gateway Avenue
San Pablo, CA 94070
Attention: City Manager
Telephone: (510) 215-3001
Fax Number: (510) 215-3011

Developer: Novin Development Corp.
1990 N. California Blvd., Suite 1060
Walnut Creek, CA 94596
Attention: Iman Novin, President
Telephone: (925) 344-6244
Fax Number: (925) 344-6436

b. Methods

(1) Certified mail, return receipt requested, in which case notice shall be deemed delivered five (5) days after deposit, postage prepaid, in the United States mail; or

(2) A nationally recognized overnight courier, by priority overnight service, in which case notice shall be deemed delivered one (1) day after deposit with that courier; or

(3) Hand delivery with signed receipt for delivery from a person at the place of business of the receiving party and authorized to accept delivery for the receiving party, in which case notice shall be deemed delivered upon receipt; or

(4) Facsimile transmission, if a copy of the notice is also sent the same day by United States certified mail, in which case notice shall be deemed delivered one (1) day after the facsimile transmission, provided that a transmission report is automatically generated reflecting the accurate transmission of the notice to the receiving party at the fax number specified in paragraph a. above.

6.2 Conflicts of Interest

No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any

decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

The Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

6.3 Non-liability of City Officials and Employees

No member, official or employee of the City shall be personally liable to the Developer in the event of any default or breach by the City or for any amount which may become due to the Developer or on any obligations under the terms of this Agreement.

6.4 Enforced Delay: Extension of Times of Performance

In addition to the specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to Force Majeure. "Force Majeure" means war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; acts of terrorism; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts of another party; acts or the failure to act of any public or governmental agency or entity (except that acts or the failure to act of the City shall not excuse performance by the City) or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause. If, however, notice by the party claiming such extension is sent to the other parties more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice. Times of performance under this Agreement may also be extended in writing by the City and the Developer.

6.5 Inspection of Books and Records

The City has the right, upon not less than three (3) days' notice, at all reasonable times, to inspect the books and records of the Developer pertaining to the Site as pertinent to the purposes of this Agreement. The City's notice shall identify a reasonable justification for the City's request.

6.6 Plans and Data

Where the Developer does not proceed with the purchase and development of the Site, and when this Agreement is terminated pursuant to Section 5.6.2 hereof for any reason, the Developer shall deliver to the City copies of any and all plans and data owned by the Developer concerning the Site, and the City shall have the right to use such plans and data without obligation to the Developer or any other person.

6.7 Further Assurances

The Developer and the City agree to mutually consider reasonable requests for amendments to this Agreement and/or modifications to the forms of documents attached hereto or execution of other implementing documents which may be made by any of the parties hereto, lending institutions, or bond counsel or financial consultants to the City, provided such requests

are consistent with this Agreement and would not substantially alter the basic business terms included herein.

6.8 City Approvals and Actions

Whenever a reference is made herein to an action or approval to be undertaken by the City, the City Manager of the City or his or her designee is authorized to act on behalf of the City, unless specifically provided otherwise or the context requires otherwise. The City Manager shall have the right to seek additional authority from the City Council as the City Manager may deem advisable or necessary.

6.9 Brokers

Neither the City nor the Developer shall be liable for any real estate commissions or brokerage fees that may arise herefrom. The City and the Developer each represent that it has not engaged the services of any finder or broker and that it is not liable for any real estate commissions, broker's fees, or finder's fees that may accrue with respect to the sale of the Site from the City to the Developer.

6.10 Approvals

Unless otherwise provided in this Agreement, whenever approval, consent or satisfaction (collectively, an "approval") is required of a party pursuant to this Agreement, it shall not be unreasonably withheld or delayed. Unless provision is made for a specific time period, approval shall be given within thirty (30) days after receipt of written request for approval. If a party fails to act within the 30-day period, or other time period for approval as may be specified in this Agreement, the party requesting the approval, consent or satisfaction may send a second and final notice, together with a clear statement indicating that if the other party does not act upon such request within twenty (20) days following receipt of the second notice, the request shall be deemed approved. Failure of a party to act within the 20-day period shall be deemed an approval of the request, provided the requesting party has included the statement to that effect in its notice and has provided in a timely manner all other information required in connection with said request. All approvals (including conditional approvals) and disapprovals shall be given or made in writing. If a party disapproves, the reasons therefor shall be stated in reasonable detail in writing.

This Section 6.10 shall not apply to any approvals of the City required in its Governmental Capacity as defined in Section 6.11.

6.11 Proprietary and Governmental Roles of City

Except where clearly and expressly provided otherwise in this Agreement, the capacity of the City in this Agreement shall be as owner and/or seller of property only ("Proprietary Capacity"), and any obligations or restrictions imposed by this Agreement on the City shall be limited to that capacity and shall not relate to, constitute a waiver of, supersede or otherwise limit or affect the exercise by the City of its governmental authority with respect to any matter related to this Agreement, including the regulation and entitlement of the Site pursuant to governmental requirements, enacting laws, inspecting structures, reviewing and issuing permits and all of the other legislative and administrative or enforcement functions of each pursuant to federal, state or local law ("Governmental Capacity").

**ARTICLE 7
ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS**

This Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original. This Agreement comprises pages 1 through 37, inclusive, and Attachment Nos. 1 through 10, attached hereto and incorporated herein by reference, all of which constitute the entire understanding and agreement of the parties. The effective date of this Agreement shall be the date when this Agreement has been signed by the City (the "Effective Date").

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City and the Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of the City and the Developer.

IN WITNESS WHEREOF, the City and the Developer have executed this Agreement on the dates set forth adjacent to their signatures.

CITY OF SAN PABLO

Date Signed: _____

By: _____
City Manager

"CITY"

APPROVED AS TO FORM:

By _____
C. Nicole Murphy, Special Counsel

NOVIN DEVELOPMENT CORP.

Date Signed: _____

By: _____

Date Signed: _____

By: _____

"DEVELOPER"

ATTACHMENT NO. 1

MAP OF THE SITE

[TO BE INSERTED]

ATTACHMENT NO. 2

LEGAL DESCRIPTION OF THE SITE

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF SAN PABLO, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL ONE:

LOTS 3, 4, 5, 6 AND 7 IN BLOCK 14, AS SHOWN ON THE MAP OF SUNNYSIDE TRACT, MAP NO. 2, FILED IN BOOK "E" OF MAPS, AT PAGE 111, CONTRA COSTA RECORDS.

PARCEL TWO:

THAT PORTION OF THE "LANE/ALLEY" LYING WITHIN BLOCK 14 AS DESIGNATED ON SAID MAP NO. 2, SUNNYSIDE TRACT, FILED SEPTEMBER 19, 1904, IN MAP BOOK "E", PAGE 111, CONTRA COSTA COUNTY RECORDS THAT WOULD PASS WITH THE CONVEYANCE OF PARCEL ONE ABOVE BY OPERATION OF LAW, PURSUANT TO THE ORDER OF VACATION ISSUED BY THE CITY OF SAN PABLO UNDER CITY ORDINANCE NUMBER 349, A CERTIFIED COPY OF WHICH RECORDED ON DECEMBER 6, 1961, AS INSTRUMENT NO. 85122, IN BOOK 4009, AT PAGE 211 OF CONTRA COSTA COUNTY OFFICIAL RECORDS, SAID PORTION OF SAID "LAND/ALLEY" BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 3 IN SAID BLOCK 14; THENCE FROM SAID POINT OF BEGINNING EASTERLY ALONG THE DIRECT EXTENSION EASTERLY OF THE NORTH LINE OF SAID LOT 3, TO THE CENTER LINE OF THE "LANE" LYING WITHIN SAID BLOCK 14, AS DESIGNATED ON SAID MAP E OF MAPS 111; THENCE SOUTHERLY ALONG SAID CENTER LINE 80 FEET TO THE NORTH LINE OF LOT 7 IN SAID BLOCK 14; THENCE WESTERLY ALONG SAID NORTH LINE TO THE EAST LINE OF SAID LOT 4; THENCE NORTHERLY ALONG SAID EAST LINE AND ALONG THE EAST LINE OF SAID LOT 3, 80 FEET TO THE POINT OF BEGINNING.

(APN: 411-041-009-1)

ATTACHMENT NO. 3

SCHEDULE OF PERFORMANCE

<u>Action</u>	<u>Date</u>
1. <u>Execution of Agreement.</u> The City Council shall consider this Agreement and, if authorized, shall execute and deliver this Agreement to the Developer.	Within 30 days after this Agreement is executed by the Developer and delivered to the City.
2. <u>Opening of Escrow.</u> The City shall open an escrow for conveyance of the Site. (Section 2.3)	COMPLETED -- Escrow was opened on April 7, 2022.
3. <u>Submission -- Deposit.</u> The Developer shall deliver the Deposit to the Escrow Agent. (Section 1.4)	COMPLETED -- the Deposit was submitted on May 10, 2022.
4. <u>Preliminary Documents.</u> The City shall deliver or cause to be delivered the Preliminary Documents to the Developer. (Section 2.2)	COMPLETED.
5. <u>Submission -- Preliminary Evidence of Financing.</u> The Developer shall submit to the City for review and approval the Developer's preliminary evidence of financing necessary for development of the Site, provided such required evidence shall not include the anticipated tax credits or purchase of such tax credits as part or all of Developer's equity requirement. (Section 2.15)	Within 90 days after the Effective Date of this Agreement.
6. <u>Approval -- Preliminary Evidence of Financing.</u> The City shall approve or disapprove Developer's preliminary evidence of financing. (Section 2.15)	Within 30 days after receipt thereof by the City and prior to the close of escrow for conveyance of the Site to the Developer.
7. <u>Feasibility Period.</u> The Developer shall evaluate the condition of the Site and notify the City whether the Developer approves or disapproves the condition of the Site. (Section 2.2)	COMPLETED.

<u>Action</u>	<u>Date</u>
8. <u>Submission -- Final Evidence of Financing.</u> Developer shall submit to the City for review and approval the Developer's final evidence of financing necessary for development of the Site, including any applicable tax credits or other governmental funding. (Section 2.15)	Not later than 30 days prior to the estimated date for the close of escrow.
9. <u>Approval -- Final Evidence of Financing.</u> City shall approve or disapprove Developer's final evidence of financing. (Section 2.15)	Within 30 days after receipt thereof by the City and prior to the close of escrow for conveyance of the Site to the Developer.
10. <u>Submission -- Certificates of Insurance.</u> Developer shall furnish to the City duplicate originals or appropriate certificates of bodily injury and property damage insurance policies. (Section 3.1.8)	Concurrently with the Developer's execution of this Agreement.
11. <u>City Delivers Grant Deed into Escrow.</u> City shall have executed and delivered the grant deed for the Site into escrow. (Section 2.9)	Prior to the close of escrow for conveyance of the Site to the Developer.
12. <u>Developer Delivers Purchase Price, Deeds of Trust, Affordable Housing Regulatory Agreement and Intercreditor Agreement into Escrow.</u> Developer shall have delivered the Purchase Money Note and Deeds of Trust into escrow and City and Developer shall have executed and delivered the Affordable Housing Regulatory Agreement and Intercreditor Agreement (if applicable) into escrow. (Section 2.10)	Prior to the close of escrow for conveyance of the Site to the Developer.
13. <u>Close of Escrow.</u> The City shall convey or cause conveyance of title to the Site to the Developer, and the Developer shall accept such conveyance. (Section 2.7)	As soon as practicable after the satisfaction of all conditions precedent to close of escrow, but in no event later than 24 months after the Effective Date of this Agreement, except that if tax credits are awarded, the close of escrow shall be no later than 210 days from the tax credit reservation date provided by TCAC.
14. <u>Commencement of Construction of Developer's improvements on the Site.</u> Developer shall commence construction of the improvements on the Site. (Section 3.1.7)	Within 60 days after the close of escrow for conveyance of the Site to the Developer.

Action

Date

- | | |
|--|---|
| 15. <u>Completion of Construction.</u> Developer shall complete construction of the improvements on the Site. (Section 3.1.7) Developer shall provide evidence of compliance with the Local Employment and Contracting requirements of Section VIII of Attachment No. 4. | Within 30 months after the commencement thereof. |
| 16. <u>Issuance -- Certificate of Completion.</u> The City shall furnish Developer with a Certificate of Completion. (Section 3.6) | After completion of all construction required for the improvements on the Site. |

ATTACHMENT NO. 4

SCOPE OF DEVELOPMENT

I. GENERAL

The Developer agrees that the Site shall be developed and improved in accordance with the provisions of this Agreement and the plans, drawings and related documents approved by the City pursuant hereto, including, in particular, the preliminary site plan and conceptual drawings attached to this Scope of Development as Exhibit A.

II. DEVELOPER IMPROVEMENTS ON THE SITE

The Developer shall construct, or cause to be constructed, on the Site, the Project consisting of up to forty-four (44), but not less than thirty-nine (39), affordable rental dwelling units and one (1) manager's unit, together with related parking and amenities.

The layout and configuration of the components of the Developer's improvements on the Site are shown on the preliminary site plan (Exhibit A of this Scope of Development).

The Developer shall also construct other infrastructure, as specified and required by the City to support the improvements on the Site, including streets, sidewalks, curbs, gutters, and utilities.

III. ARCHITECTURE AND DESIGN

The improvements on the Site shall be well-landscaped, shall be effectively and aesthetically designed and shall conform to the design approved by the City through the design review process. The plans submitted by the Developer shall describe in detail the architectural character intended for the Developer's improvements on the Site.

IV. LANDSCAPING

Landscaping shall embellish all open spaces upon the Site to integrate the Developer's improvements with adjacent sites within the area. Landscaping includes such materials as paving, trees, shrubs and other plant materials, landscape containers, plaza furniture, top soil preparation, automatic irrigation, landscape and pedestrian lighting. Landscaping shall carry out the objectives and principles of the City's desire to accomplish a high-quality aesthetic environment and shall be consistent with the design approved by the City through the design review process.

V. SCREENING

Trash areas shall be screened on at least three (3) sides and have movable doors or other devices to obscure such areas from view. All fire standpipes and such other fire related mechanical devices shall be screened with plant materials. Rooftop equipment shall be hidden so as to mitigate views from principal elevations surrounding the development, unless otherwise approved by the City.

VI. APPLICABLE CODES AND REQUIREMENTS

A. Codes. The Developer's improvements shall be constructed in accordance with the California Building Standards Code and the City Municipal Code.

VII. SITE CLEARANCE AND PREPARATION

A. On-Site Demolition and Clearance

At its sole cost and expense, the Developer shall (1) clear, grub and remove (as may be needed and called for in the approved plans) all on-site pavements, walks, curbs, gutters and other improvements as may be required by the City, and (2) remove or plug utilities, such as storm sewers, sanitary sewers, water systems, electrical overhead and underground systems and telephone and gas systems located on the Site, as may be required by the City.

B. Compaction, Finish Grading and Site Work

At its sole cost and expense, the Developer shall compact, finish grade and do such site preparation as is necessary for the construction of the Developer's improvements on the Site.

VIII. LOCAL CONTRACTING

A. Construction Contracts. Prior to solicitation of bids for contracts for construction of improvements on the Site, the Developer shall meet with the EDC, and work cooperatively with the EDC to contact local contractors to provide a reasonable opportunity to bid, and shall make commercially reasonable efforts to maximize the use of local contractors, including local trucking firms. The Developer shall make commercially reasonable efforts to award separate contracts for discrete portions of construction improvements, in order to promote opportunities for local participation. The Developer shall require all prime construction contractors that are retaining subcontractors to work cooperatively with the EDC to contact local contractors to provide a reasonable opportunity to bid, and to make commercially reasonable efforts to maximize the use of local contractors, including local trucking firms. Prior to commencement of construction under any prime contract award, the Developer shall provide the City with a list of contractors and subcontractors to be used in performance of the contract, and whether each listed contractor or subcontractor is a local business.

B. Service Contracts During Construction Phase. Prior to solicitation of bids for service contracts to be performed on-site during construction of improvements, including contracts for security services, the Developer or its property manager shall work cooperatively with the EDC to contact local contractors to provide a reasonable opportunity to bid on such service contracts, and shall make commercially reasonable efforts to maximize the use of local contractors.

EXHIBIT A
PRELIMINARY SITE PLAN
[TO BE INSERTED]

ATTACHMENT NO. 5

FORM OF GRANT DEED

RECORDING REQUESTED BY:

City of San Pablo
1000 Gateway Avenue
San Pablo, CA 94806
ATTN: City Manager

WHEN RECORDED, MAIL TO:

NOVIN DEVELOPMENT CORP.
1990 N. California Blvd., Suite 800
Walnut Creek, CA 95076
ATTN: _____

No fee for recording pursuant to
Government Code section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Documentary Transfer Tax: \$
Based upon full fair market value of property

GRANT DEED

For valuable consideration, the receipt of which is hereby acknowledged,

THE CITY OF SAN PABLO, a municipal corporation (herein called "Grantor"), hereby grants to _____, a _____ (herein called "Grantee"), the real property (the "Property") legally described in the document attached hereto, labeled Exhibit A, and incorporated herein by this reference.

1. The Property is conveyed pursuant to the Amended and Restated Disposition and Development Agreement (the "DDA") entered into by and between the Grantor and the Grantee and dated _____, 2026. The Property is also conveyed subject to easements of record.

2. The Grantee covenants and agrees for itself, its successors, its assigns and every successor-in-interest that the Property shall be devoted to the development of the Project described in the DDA, in particular, the development of up to forty-four (44), but not less than thirty-nine (39), affordable rental dwelling units, and one manager's unit, and further that (a) all of the affordable rental dwelling units constructed on the Property shall be, at a minimum, made available for occupancy by "lower income households," as defined in Health and Safety Code Section 50079.5 (i.e., total household income is not greater than 80% of area median income, adjusted for

household size), at an “affordable rent,” as defined in Health and Safety Code Section 50053, (b) persons currently living or employed in the City of San Pablo shall be entitled to a preference in the rental of the dwelling units constructed on the Property, and (c) these covenants and restrictions shall remain in effect for not less than fifty-five (55) years from the date of issuance of the Certificate of Completion for the Property. To further effectuate the Grantee’s covenants hereunder, the Grantee has entered into an Affordable Housing Regulatory Agreement to be recorded against the Property concurrently with the recordation of this Grant Deed.

3. The Grantee covenants and agrees for itself, its successors, its assigns and every successor-in-interest that the uses on the Property shall conform to and be operated and maintained in accordance with the applicable provisions of the *San Pablo Municipal Code and San Pablo Avenue Specific Plan*.

4. The Grantee, for itself and for each and every successor-in-interest, hereby releases and waives all rights, causes of action and claims the Grantee, or such successors in interest, has or may have in the future against the Grantor, and its officers, beneficiaries, employees, agents, attorneys, representatives, legal successors and assigns (“Indemnitees”) arising out of or in connection with all liability, loss, damage, costs or expenses (including reasonable attorneys’ fees and court costs) of any kind or nature arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person which shall occur on or adjacent to the Property resulting from or in connection with the physical condition, development, use or operation of the Property by the Grantee, each and every successor-in-interest of the Grantee, the Grantee’s agents, servants or employees or the general contractor or any subcontractor or supplier of or to the Property, or the Grantee’s performance or non-performance under or with respect to the DDA. In furtherance of the intentions set forth herein, the Grantee, for itself and for each and every successor-in-interest, acknowledges that it is familiar with Section 1542 of the Civil Code of the State of California that provides as follows:

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his settlement with the debtor or released party.”

The Grantee, for itself and for each and every successor-in-interest, hereby waives and relinquishes any right or benefit which it has or may have under Section 1542 of the Civil Code of the State of California or any similar provision of the statutory or nonstatutory law of any other applicable jurisdiction to the full extent that it may lawfully waive all such rights and benefits pertaining to the subject matter of this paragraph 3.

The Grantee, for itself and for each and every successor-in-interest, acknowledges and agrees that the defense, indemnification, protection and hold harmless obligations of the Grantee and its successors-in-interest for the benefit of the Grantor set forth in this paragraph 4 are a material element of the consideration to the Grantor for the performance of its obligations under the DDA, and that the Grantor would not have entered the DDA unless the Grantee’s and successors’ obligations were as provided for herein.

5. Prior to the issuance of a Certificate of Completion by the Grantor as provided in the DDA, the Grantee shall not, except as permitted by the DDA, sell, transfer, convey, assign or lease the Property (or any portion thereof) without the prior written approval of the Grantor. This

prohibition shall not apply subsequent to the issuance of a Certificate of Completion with respect to the improvements upon the Property (or portion thereof). This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Property or to prohibit or restrict the leasing of any part or parts of a building or structure when said improvements are completed.

6. Subject to the provisions of Section 5.7 of the DDA, the City shall have the additional right, at its option, to repurchase, reenter and take possession of the Property hereby conveyed, or such portion thereof, with all improvements thereon, if after conveyance of title and prior to issuance of a Certificate of Completion pursuant to Section 3.6 of the DDA, the Grantee or successor-in-interest shall:

- a. Fail to proceed with the construction of the improvements as required by the DDA for a period of three (3) months after written notice thereof from the Grantor; or
- b. Abandon or substantially suspend construction of the improvements for a period of three (3) months after written notice of such abandonment or suspension from the Grantor; or
- c. Transfer or suffer any involuntary transfer of the Property (as defined in the DDA), or any part thereof, in violation of the DDA.

Such right to repurchase, reenter and repossess, to the extent provided in this paragraph 6, shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

- a. Any mortgage, deed of trust or other security instrument permitted by the DDA; or
- b. Any rights or interests provided in the DDA for the protection of the holder of such mortgages, deeds of trust or other security instruments.

7. The Grantee covenants by and for itself and any successors-in-interest that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, Section 12955.2 and Section 12955.3 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Grantee itself or any person claiming under or through it 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.

All deeds, leases or contracts made relative to the Property, the improvements thereon or any part thereof, shall contain or be subject to substantially the following nondiscrimination clauses:

- a. In deeds: “The grantee herein covenants by and for himself or herself, his or her 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 any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, Section 12955.2 and Section 12955.3 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any 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 premises herein conveyed. The foregoing covenants shall run with the land.”

- b. In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

“That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, Section 12955.2 and Section 12955.3 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, 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, sublessees, subtenants, or vendees in the premises herein leased.”

- c. In contracts: “There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, Section 12955.2 and Section 12955.3 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself, or any person claiming under or through him or her, 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 of the land.”

8. The covenants contained in paragraphs 2, 5 and 6 of this Grant Deed shall remain in effect for the periods of time stated therein. The covenants contained in paragraphs 3 and 4 of this Grant Deed and the covenants against discrimination contained in paragraph 7 of this Grant Deed shall remain in perpetuity.

9. The covenants contained in paragraphs 2, 3, 4, 5, 6 and 7 of this Grant Deed shall be binding for the benefit of the Grantor, its successors and assigns, and any successor-in-interest

to the Property or any part thereof, and such covenants shall run in favor of the Grantor and such aforementioned parties for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. The Grantor and such aforementioned parties, in the event of any breach of any such covenants, shall have the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach. The covenants contained in this Grant Deed shall be for the benefit of and shall be enforceable only by the Grantor, its successors and such aforementioned parties.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers thereunto duly authorized, this ____ day of _____, 20__.

THE CITY OF SAN PABLO,
"GRANTOR"

By: _____
[Not for Execution/Form Only]
City Manager

APPROVED:

By: _____
[Not for Execution/Form Only]
Counsel for Grantor

The provisions of this Grant Deed are hereby approved and accepted by the Grantee.

"GRANTEE"

By: _____
[Not for Execution/Form Only]

EXHIBIT A

LEGAL DESCRIPTION

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF SAN PABLO,
COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, AND MORE PARTICULARLY
DESCRIBED AS FOLLOWS:

[TO BE INSERTED]

(APNs: -)

ATTACHMENT NO. 6

FORM OF AFFORDABLE HOUSING REGULATORY AGREEMENT

**RECORDING REQUESTED BY AND
WHEN RECORDED, MAIL TO:**

City of San Pablo
1000 Gateway Avenue
San Pablo, CA 94806
ATTN: City Manager

No fee for recording pursuant to
Government Code Section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

AFFORDABLE HOUSING REGULATORY AGREEMENT

This AFFORDABLE HOUSING REGULATORY AGREEMENT (the "Agreement") is made and entered into as of this ____ day of _____, ____, by and between the CITY OF SAN PABLO, a California municipal corporation ("City"), and _____, a _____ ("Owner").

Recitals

A. City and Owner have entered into a Disposition and Development Agreement (the "DDA") pursuant to which the Owner will acquire from the City that certain real property located generally at 1820 Rumrill Boulevard in the City of San Pablo, County of Contra Costa, State of California, as more particularly described in Exhibit A attached hereto (the "Property"), and will develop thereon up to forty-four (44), but not less than thirty-nine (39), rental dwelling units which shall be affordable as more fully set forth herein (the "Affordable Housing"). There shall also be one (1) manager's unit in the total unit count. Capitalized terms used but not defined in this Agreement shall have the meanings set forth in the DDA.

B. The City has agreed to sell the Property to the Owner on the condition that the Affordable Housing be maintained and operated in accordance with the restrictions set forth herein concerning affordability, operation, and maintenance.

C. In consideration of the City's agreement to sell the Property to the Owner, the Owner has agreed to observe all the terms and conditions set forth in this Agreement.

Agreements

NOW, THEREFORE, THE CITY AND THE OWNER HEREBY AGREE AS FOLLOWS:

ARTICLE 1
DEFINITIONS

1.1 Definitions

When used in this Agreement, the following terms shall have the respective meanings assigned to them in this Article 1:

(a) “Affordable Housing” shall mean the rental dwelling units constructed on the Property exclusive of the manager’s unit, all of which shall be made available for occupancy by Lower Income Households at Affordable Rent, as defined herein.

(b) “Affordable Rent” shall mean Rent for the use and occupancy of the Unit in compliance with the provisions of Health and Safety Code Section 50053 and the applicable regulations set forth in Title 25 of the California Code of Regulations, Section 6910 *et seq.*, for Lower Income Households.

(c) “Agreement” shall mean this Affordable Housing Regulatory Agreement.

(d) “Area Median Income” shall mean the median family income of a household adjusted for household size as published by the California Department of Housing and Community Development pursuant to Health and Safety Code Section 50093.

(e) “City” shall mean the City of San Pablo, a California municipal corporation.

(f) “Completion Date” shall mean the date of issuance by the City of San Pablo of a Certificate of Completion for the Project, as provided in Section 3.6 of the DDA.

(g) “DDA” shall mean the Amended and Restated Disposition and Development Agreement entered into by and between the City and the Owner dated _____.

(h) “Lower Income Household” shall mean an eligible household as defined in Health and Safety Code Section 50079.5 (i.e., maximum income not greater than 80% of area median income, adjusted for household size) and applicable regulations set forth in Title 25 of the California Code of Regulations, Section 6910 *et seq.*

(i) “Owner” shall mean _____, a _____, and its successors and assigns to the Property, including the Affordable Housing.

(j) “Project” shall mean the Property and the improvements to be constructed on the Property, including the Affordable Housing, as more particularly described in the DDA.

(k) “Property” shall mean the real property owned by the Owner as identified in Recital A of this Agreement and as more particularly described in the Legal Description of the Property, attached hereto as Exhibit A.

(l) “Rent” shall mean the total of monthly payments by the Tenant of a Unit for the use and occupancy of the Unit.

(m) “Tenant” shall mean a household occupying a Unit.

(n) “Term” shall mean the term of this Agreement, which shall commence on the date this Agreement is recorded and shall continue until the fifty-fifth (55th) anniversary of the date this Agreement is recorded.

(o) “Unit” shall mean one of the Affordable Housing units in the Project.

ARTICLE 2 AFFORDABILITY AND OCCUPANCY COVENANTS

2.1 Occupancy Requirements

Every Unit on the Property shall be made available to, and occupied by, a Lower Income Household.

2.2 Affordability

(a) Affordable Rent. All of the Units on the Property shall be restricted to an Affordable Rent.

(b) Rent Increases. Rents on every Unit may be increased no more than once annually based upon changes in Area Median Income. Tenants shall be given at least thirty (30) days' written notice prior to any Rent increase.

(c) No Additional Fees. The Owner shall not charge any fee, other than Rent, to any resident of the Units for any housing or other services provided by the Owner.

2.3 Preferences

In order to ensure that there is an adequate supply of affordable housing within the City of San Pablo for residents and employees of businesses within and/or serving the City, to the extent permitted by law, the Owner shall ensure that preferences in the renting of the Units on the Property shall be given as follows:

(a) First, to persons who are currently living in the City; and

(b) Second, to persons who are currently working in the City.

Prior to the marketing and rental of the Units on the Property, the Owner shall prepare a plan that details the process for providing the above preferences, which plan shall be subject to approval by the City. The Owner shall comply with state and federal fair housing laws in the marketing and rental of the Units on the Property.

ARTICLE 3
INCOME CERTIFICATION AND REPORTING

3.1 Income Certification

The Owner will obtain, complete and maintain on file, immediately prior to initial occupancy and annually thereafter, income certifications from each Tenant renting any of the Units. The Owner shall make a good faith effort to verify that the income provided by an applicant or occupying household in an income certification is accurate by taking two or more of the following steps as a part of the verification process: (a) obtain a pay stub for the most recent pay period; (b) obtain an income tax return for the most recent tax year; (c) conduct a credit agency or similar search; (d) obtain an income verification form from the applicant's or occupying household's current employer; (e) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant or occupying household receives assistance from either of such agencies; or (f) if the applicant or occupying household is unemployed and has no such tax return, obtain another form of independent verification. Copies of Tenant income certifications shall be made available to the City upon request.

3.2 Annual Report to City

The Owner shall submit to the City (a) not later than the forty-fifth (45th) day after the close of each calendar year, or such other date as may be requested by the City, a statistical report, including household size, income and rent data for all Units, and data regarding preferences, setting forth the information called for therein, and (b) within fifteen (15) days after receipt of a written request, any other information or completed forms requested by the City in order to determine compliance with this Agreement.

3.3 Additional Information

The Owner shall provide any additional information reasonably requested by the City. The City shall have the right to examine and make copies of all books, records or other documents of the Owner that pertain to the Affordable Housing.

3.4 Records

The Owner shall maintain complete, accurate and current records pertaining to the Affordable Housing, and shall permit any duly authorized representative of the City to inspect records, including records pertaining to the income and household size of Tenants. All Tenant lists, applications and waiting lists relating to the Affordable Housing shall at all times be kept separate and identifiable from any other business of the Owner and shall be maintained as required by the City, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the City. The Owner shall retain copies of all materials obtained or produced with respect to occupancy of the Units for a period of at least five (5) years.

3.5 On-site Inspection

The City shall have the right to perform an on-site inspection of the Affordable Housing at least one (1) time per year upon not less than twenty-four (24) hours' prior written notice to Owner. The Owner agrees to cooperate in such inspection.

ARTICLE 4
OPERATION OF THE PROJECT

4.1 Residential Use

The Affordable Housing shall be operated only for residential use, and no part of the Affordable Housing shall be operated as transient housing.

4.2 Taxes and Assessments

Subject to any applicable exemptions, the Owner shall pay all real and personal property taxes, assessments and charges and all income, employment, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property; provided, however, that the Owner shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event the Owner exercises its right to contest any tax, assessment, or charge against it, the Owner, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

ARTICLE 5
PROPERTY MANAGEMENT AND MAINTENANCE

5.1 Management Responsibilities

The Owner is responsible for all management functions with respect to the Affordable Housing, including without limitation the selection of Tenants, certification and recertification of household size and income, evictions, collection of Rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The City shall have no responsibility over management of the Affordable Housing. The Owner shall retain a professional property management company approved by the City in its reasonable discretion to perform its management duties hereunder.

5.2 Management Agent; Periodic Reports

The Affordable Housing shall at all times be managed by an experienced management agent reasonably acceptable to the City, with demonstrated ability to operate residential facilities like the Affordable Housing in a manner that will provide decent, safe, and sanitary housing (as approved, the "Management Agent"). The Owner shall submit for the City's approval the identity of any proposed Management Agent. The Owner shall also submit such additional information about the background, experience and financial condition of any proposed Management Agent as is reasonably necessary for the City to determine whether the proposed Management Agent meets the standard for a qualified Management Agent set forth above. If the proposed Management Agent meets the standard for a qualified Management Agent set forth above, the City shall approve the proposed Management Agent by notifying the Owner in writing. Unless the proposed Management Agent is disapproved by the City within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved.

5.3 Performance Review

The City reserves the right to conduct an annual (or more frequently, if deemed necessary by the City) review of the management practices and financial status of the Affordable Housing. The purpose of each periodic review will be to enable the City to determine if the Affordable Housing is being operated and managed in accordance with the requirements and standards of this Agreement. The Owner shall cooperate with the City in such reviews.

5.4 Replacement of Management Agent

If, as a result of a periodic review, the City determines in its reasonable judgment that the Affordable Housing is not being operated and managed in accordance with any of the material requirements and standards of this Agreement, the City shall deliver notice to the Owner of its intention to cause replacement of the Management Agent, including the reasons therefor. Within fifteen (15) days of receipt by the Owner of such written notice, the City staff and the Owner shall meet in good faith to consider methods for improving the financial and operating status of the Affordable Housing, including, without limitation, replacement of the Management Agent. If, after such meeting, the City staff recommends in writing the replacement of the Management Agent, the Owner shall promptly dismiss the then Management Agent, and shall appoint as the Management Agent a person or entity meeting the standards for a Management Agent set forth in Section 5.2 above and approved by the City pursuant to Section 5.2 above. Any contract for the operation or management of the Project entered into by the Owner shall provide that the contract can be terminated as set forth above. Failure to remove the Management Agent in accordance with the provisions of this Section shall constitute a default under this Agreement, and the City may enforce this provision through legal proceedings as specified in Section 6.8 below.

5.5 Approval of Management Policies

The Owner shall submit its written management policies with respect to the Affordable Housing to City for its review, and shall amend such policies in any way necessary to ensure that such policies comply with the provisions of this Agreement.

5.6 Property Maintenance

The Owner agrees, for the entire Term of this Agreement, to maintain all interior and exterior improvements, including landscaping, on the Property in good condition and repair (and, as to landscaping, in a healthy condition) and in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials, and in accordance with the following maintenance conditions:

City places prime importance on quality maintenance to protect its investment and to ensure that all City-assisted affordable housing projects within the City are not allowed to deteriorate due to below-average maintenance. Normal wear and tear of the Affordable Housing will be acceptable to the City assuming the Owner agrees to provide all necessary improvements to assure the Affordable Housing is maintained in good condition. The Owner shall make all repairs and replacements necessary to keep the improvements in good condition and repair.

In the event that the Owner breaches any of the covenants contained in this section and such default continues for a period of five (5) days after written notice from the City with respect to graffiti, debris, waste material, and general maintenance or thirty (30) days after written notice from City with respect to landscaping and building improvements, then the City, in addition to whatever other remedy it may have at law or in equity, shall have the right to enter upon the Property and perform or cause to be performed all such acts and work necessary to cure the default. Pursuant to such right of entry, the City shall be permitted (but is not required) to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas on the Property, and to attach a lien on the Property, or to assess the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by the City and/or costs of such cure, which amount shall be promptly paid by the Owner to the City upon demand.

ARTICLE 6 MISCELLANEOUS

6.1 Lease Provisions

In leasing the Units, the Owner shall use a form of Tenant lease approved by the City. The form of Tenant lease shall also comply with all requirements of this Agreement, and shall, among other matters:

(a) Provide for termination of the lease and consent by the Tenant to immediate eviction for failure: (1) to provide any information required under this Agreement or reasonably requested by the Owner to establish or recertify the Tenant's qualification, or the qualification of the Tenant's household, for occupancy in the Affordable Housing in accordance with the standards set forth in this Agreement; or (2) to qualify as a Lower Income Household as a result of any material misrepresentation made by such Tenant with respect to income computation or certification.

(b) Be for an initial term of one (1) year. After the initial year of tenancy, the lease shall be month to month, however Rent may not be raised more often than once a year and then only in connection with a change in Area Median Income. The Owner will provide each Tenant with at least thirty (30) days' written notice of any increase in Rent applicable to such Tenant.

6.2 Lease Termination

Any termination of a lease or refusal to renew must be preceded by not less than sixty (60) days' written notice to the Tenant by the Owner specifying the grounds for the action.

6.3 Nondiscrimination

All of the Units shall be available for occupancy on a continuous basis to members of the general public who are income eligible as Lower Income Households. The Owner shall not give preference to any particular class or group of persons in renting the Units, except as set forth in Section 2.3 of this Agreement. There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, Section 12955.2 and Section 12955.3 of

the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of any Unit, nor shall the Owner, or any person claiming under or through the Owner, 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 of any Unit.

6.4 Section 8 Certificate Holders

The Owner will accept as Tenants, on the same basis as all other prospective Tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor. The Owner shall not apply selection criteria to Section 8 certificate or voucher holders that is more burdensome than criteria applied to all other prospective Tenants, nor shall the Owner apply or permit the application of management policies or lease provisions with respect to the Affordable Housing that have the effect of precluding occupancy of Units by such prospective Tenants.

6.5 Term

The provisions of this Agreement shall apply to the Property for the entire Term. This Agreement shall bind any successor, heir or assign of the Owner, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by City. The City has sold the Property to the Owner on the condition, and in consideration of, this provision, and would not do so otherwise.

6.6 Notice of Expiration of Term

At least six (6) months prior to the expiration of the Term of this Agreement, the Owner shall provide by first-class mail, postage prepaid, a notice to all Tenants of the Units containing (a) the anticipated date of the expiration of the Term, and (b) any anticipated increase in Rent upon the expiration of the Term.

6.7 Covenants to Run With the Land

The City and the Owner hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property, provided, however, that on the expiration of the Term of this Agreement said covenants and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof, shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the City expressly releases such conveyed portion of the Property from the requirements of this Agreement.

6.8 Enforcement by City

If the Owner fails to perform any obligation under this Agreement, and fails to cure the default within thirty (30) days after the City has notified the Owner in writing of the default or, if the default cannot be cured within thirty (30) days, has failed to commence to cure within thirty (30) days and thereafter diligently pursue such cure and complete such cure within ninety

(90) days, the City shall have the right to enforce this Agreement by an action at law or in equity to compel the Owner's performance and/or for damages, or any other remedy provided by law.

6.9 Attorneys' Fees and Costs

In any action brought to enforce this Agreement, the prevailing party shall be entitled to all costs and expenses of suit, including attorneys' fees.

6.10 Recording and Filing

The City and the Owner shall cause this Agreement, and all amendments and supplements to it, to be recorded in the Official Records of the County of Contra Costa.

6.11 Governing Law

This Agreement shall be governed by the laws of the State of California, other than its choice of law provisions.

6.12 Waiver of Requirements

Any of the requirements of this Agreement may be expressly waived by the City in writing, but no waiver by the City of any requirement of this Agreement shall, or shall be deemed to, extend to or affect any other provision of this Agreement.

6.13 Amendments

This Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the real property records of County of Contra Costa.

6.14 Notices

Any notice requirement set forth herein shall be deemed to be satisfied three (3) days after mailing of the notice first-class United States certified mail, postage prepaid, addressed to the appropriate party as follows:

Owner: _____

Attention: _____

City: City of San Pablo
1000 Gateway Avenue
San Pablo, CA 94806
Attention: Community Development Director

Such addresses may be changed by notice to the other party given in the same manner as provided above.

6.15 Severability

If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.

6.16 Multiple Originals; Counterparts

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

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

CITY:

CITY OF SAN PABLO, a California municipal corporation

By: _____
Matt Rodriguez, City Manager

OWNER:

_____,
a _____

By: _____
Its: _____

EXHIBIT A

LEGAL DESCRIPTION

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF SAN PABLO, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

[TO BE INSERTED]

(APNs:)

ATTACHMENT NO. 7

FORM OF PURCHASE MONEY NOTE

\$935,250.00

_____, 20____
San Pablo, California

PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned _____, a California _____ (herein the "Borrower"), whose principal address is _____, _____, California, _____, promises to pay to the CITY OF SAN PABLO, a California municipal corporation (herein the "Lender"), the principal sum of NINE HUNDRED THIRTY-FIVE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$935,250.00) (the "Purchase Money Loan"), with simple interest at the rate of three percent (3%) per annum, upon the terms and conditions set forth herein.

1. DDA; Affordable Housing Regulatory Agreement. This Purchase Money Note is made pursuant to that certain Amended and Restated Disposition and Development Agreement dated as of _____, 2026, between Borrower and Lender (herein the "DDA"), pursuant to which Borrower will undertake the acquisition and development of certain real property (the "Site") located within the City of San Pablo, California, to provide a project on the Site containing up to forty-four (44), but not less than thirty-nine (39), units of affordable rental housing and one (1) manager's unit, together with parking and associated amenities, all as more particularly set forth in the DDA (the "Project"). The Lender is making the loan evidenced by this Purchase Money Note to facilitate the Project. In consideration of the loan from the Lender evidenced by this Purchase Money Note, the Borrower has also entered into an Affordable Housing Regulatory Agreement (herein the "Affordable Housing Regulatory Agreement") with the Lender dated as of _____, 202____, pursuant to which Borrower has covenanted that all of the affordable rental dwelling units in the Project shall be made available for occupancy to "lower income households" (households whose income does not exceed 80% of area median income, adjusted for household size) as defined in Health and Safety Code Section 50079.5, at an "affordable rent," as defined in Health and Safety Code Section 50053 (a monthly rent that does not exceed the product of 30% times 60% of area median income, adjusted for household size appropriate for the unit) and applicable regulations set forth in Title 25 of the California Code of Regulations, Section 6910 *et seq.* and that the restrictions shall remain in effect for a period of fifty-five (55) years from the issuance of the Certificate of Completion for the Project as provided in Section 3.6 of the DDA (herein the "Completion Date").

2. Purchase Money Deed of Trust. Payment of this Purchase Money Note is secured by a deed of trust (the "Purchase Money Deed of Trust") from Borrower to Lender, dated of even date herewith.

3. Payment. This Purchase Money Note shall be due and payable in full no later than thirty (30) years from the date hereof. Commencing on _____, 20____, and on _____ of each year thereafter, the Borrower shall make payments to the Lender in an amount equal to seventy-five percent (75%) of Residual Receipts, substantially as defined below [or, if applicable, in accordance with that certain Intercreditor Agreement by and between

the Lender, the Developer, the County of Contra Costa, East Bay Regional Center and HCD, dated _____, and recorded on _____ in the official records of the County of Contra Costa as Instrument No. _____].

“Residual Receipts” means, in a particular calendar year, the amount by which Gross Revenue (defined below) exceeds Annual Operating Expenses (defined below).

“Gross Revenue,” with respect to a particular calendar year, shall mean all revenue, income, receipts, and other consideration actually received from ownership or operation of the Project. “Gross Revenue” shall include, but not be limited to: all rents, fees and charges paid by tenants, Section 8 payments or other rental subsidy payments received for the dwelling units, deposits forfeited by tenants, all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; proceeds from vending and laundry room machines; the proceeds of business interruption or similar insurance; the proceeds of casualty insurance to the extent not utilized to repair or rebuild the Project; condemnation awards for a taking of part or all of the Project for a temporary period; and any revenue derived from a refinancing of the Project. “Gross Revenue” shall also include the fair market value of any goods or services provided in consideration for the leasing or other use of any portion of the Project. “Gross Revenue” shall not include tenants’ security deposits, loan proceeds other than revenue derived from a refinancing of the Project, capital contributions or similar advances.

“Annual Operating Expenses,” with respect to a particular calendar year, shall mean the following costs reasonably and actually incurred for operation and maintenance of the Project to the extent that they are consistent with an annual independent audit performed by a certified public accountant using generally accepted accounting principles: property and other taxes and assessments imposed on the Project; debt service currently due on a non-optional basis (excluding debt service due from Residual Receipts or surplus cash of the Project) on loans associated with development of the Project and approved by the City; property management fees and reimbursements, not to exceed fees and reimbursements which are standard in the industry and pursuant to a management contract approved by the City; premiums for property damage and liability insurance; utility services not paid for directly by tenants, including but not limited to water, sewer, trash collection, gas and electricity; maintenance and repair including but not limited to pest control, landscaping and grounds maintenance, painting and decorating, cleaning, common systems repairs, general repairs, janitorial, and supplies; any annual license or certificate of occupancy fees required for operation of the Project; security services; advertising and marketing; cash deposited into a reserve for capital replacements of Project improvements in an amount not to exceed \$15,750; extraordinary operating costs specifically approved by the City; payments of deductibles in connection with casualty insurance claims not normally paid from reserves; the amount of uninsured losses actually replaced, repaired or restored, and not normally paid from reserves; and other ordinary and reasonable operating expenses not listed above. “Annual Operating Expenses” shall not include the following: developer fees; asset management fees; partnership management fees; depreciation, amortization, depletion or other non-cash expenses; any amount expended from a reserve account; and any capital cost with respect to the Project, as determined by the accountant for the Project.

4. Manner of Payment. Payment shall be made in lawful money of the United States to Lender at 1000 Gateway Avenue, San Pablo, California. The place of payment may be changed from time to time as the Lender may from time to time designate in writing.

5. Right to Prepay. Borrower shall have the right to prepay this Purchase Money Note in whole or in part.

6. Transfer of the Site. If all or any part of the Site or an interest therein is sold or transferred by the Borrower without the Lender's prior written consent, except as otherwise permitted under the DDA, the Lender may, at the Lender's option, declare all sums owing on this Purchase Money Note to be immediately due and payable.

7. Default. The occurrence of any of the following (each an "Event of Default") shall constitute an event of default under this Purchase Money Note:

(a) Borrower fails to pay any amount due hereunder within fifteen (15) days of its due date; or

(b) Any breach of or event of default by Borrower under the Affordable Housing Regulatory Agreement, the DDA, the Purchase Money Deed of Trust, the Intercreditor Agreement (if applicable) or any other contract or instrument securing this Purchase Money Note, which breach or event of default is not cured within the notice and grace periods applicable thereto as set forth in such documents, or if no notice and grace period is otherwise specified for such breach or event of default, within thirty (30) days after written notice thereof from Lender to Borrower, provided that if a breach or default cannot be cured within such thirty (30) day period, Borrower shall not be in default so long as Borrower commences to cure such breach or default within such thirty (30) day period and thereafter diligently prosecutes such cure to completion; or

(c) The filing of a petition by or against the Borrower under any provisions of the Bankruptcy Reform Act, Title 11 of the United States Code, as amended or recodified from time to time, or under any similar or other law relating to bankruptcy, insolvency, reorganization or other relief for debtors; the appointment of a receiver, trustee, custodian or liquidator of or for any part of the assets or property of the Borrower; if Borrower becomes insolvent; if Borrower makes a general assignment for the benefit of creditors; if Borrower is generally not paying its debts as they become due; or any attachment or like levy is made on any property of Borrower.

Upon the occurrence of any Event of Default, or at any time thereafter, at the option of the Lender hereof, the entire unpaid principal owing on this Purchase Money Note shall become immediately due and payable. This option may be exercised at any time following any such Event of Default, and Lender's failure to exercise such option shall not constitute a waiver of such option with respect to any subsequent Event of Default. Lender's failure in the exercise of any other right or remedy hereunder or under any agreement which secures the indebtedness or is related thereto shall not affect any right or remedy and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof.

8. Late Charge. At all times after an Event of Default by reason of Borrower's failure to pay amounts due under this Purchase Money Note, interest shall accrue on the sums as to which Borrower is in default at the lower of the highest rate then allowed by law or five percent (5%) over the prime interest rate announced by Bank of America N.T.&S.A., as of the date of the default. If Bank of America N.T.&S.A. no longer exists or fails to announce a prime interest rate, the prime interest rate announced by the largest bank, in terms of total assets, of the member banks of the Twelfth District Federal Reserve Bank that announce a prime interest rate, shall be applicable for purposes of this paragraph.

9. Borrower agrees to pay immediately upon demand all costs and expenses of Lender including reasonable attorneys' fees, (a) if after default this Purchase Money Note be placed in the hands of an attorney or attorneys for collection, (b) if after a default hereunder or under the Purchase Money Deed of Trust, the Affordable Housing Regulatory Agreement or the DDA, Lender finds it necessary or desirable to secure the services or advice of one or more attorneys with regard to collection of this Purchase Money Note against Borrower, any guarantor or any other party liable therefor or to the protection of its rights under this Purchase Money Note, the Purchase Money Deed of Trust, the Affordable Housing Regulatory Agreement and the DDA, or (c) if Lender seeks to have the Site abandoned by or reclaimed from any estate in bankruptcy, or attempts to have any stay or injunction prohibiting the enforcement or collection of this Purchase Money Note or prohibiting the enforcement of the Purchase Money Deed of Trust or any other agreement evidencing or securing this Purchase Money Note lifted by any bankruptcy or other court.

10. If Lender shall be made a party to or shall reasonably intervene in any action or proceeding, whether in court or before any governmental agency, affecting the property or the title thereto or the interest of the Lender under the Purchase Money Deed of Trust, including, without limitation, any form of condemnation or eminent domain proceeding, except any action alleging negligence or misconduct on Lender's part, Lender shall be reimbursed by Borrower immediately upon demand for all costs, charges and attorneys' fees incurred by Lender in any such case, and the same shall be secured by the Purchase Money Deed of Trust as a further charge and lien upon the Site.

11. The Borrower waives to the full extent permitted by applicable law the benefit of any laws or rules of court now or hereafter in effect relating to exemption, appraisal or stay of execution. The Borrower also hereby waives and releases to the full extent permitted by applicable law all benefit that might accrue to it by virtue of any present or future laws exempting any property securing this Purchase Money Note, real or personal, or any part of the proceeds arising from any sale of any such property, from attachment, levy or sale under execution, or providing for any stay of execution, exemption from civil process or extension of time for payment; and the Borrower agrees that any real estate that may be levied upon pursuant to a judgment obtained by virtue hereof, or any writ of execution issued thereon, may be sold upon any such writ or by nonjudicial trustee's sale under any deed of trust that may be executed to secure this Purchase Money Note in whole or in part in any order desired by the Lender.

12. Whenever used, the words "Borrower" and "Lender" shall be deemed to include the respective successors and assigns of each.

13. This Purchase Money Note shall be binding upon Borrower, its successors and assigns.

14. Time is of the essence with respect to every provision hereof. This Purchase Money Note shall be construed in accordance with and be governed by the laws of the State of California.

15. This Purchase Money Note is a nonrecourse note whereby Borrower has no personal liability for repayment of the sums evidenced hereby, and the Lender, upon an Event of Default, must resort only to income, profits or other funds generated from the exercise of the Lender's rights with respect to the Site, including any funds which may result from the sale or disposition of the Site subsequent to a foreclosure of the Purchase Money Deed of Trust, or

conveyance of a deed to the Site in lieu of such foreclosure, for repayment of any amounts owed hereunder.

The foregoing limitation shall not apply to any and all loss, damage, liability, action, cause of action, cost or expense (including, without limitation, reasonable attorneys' fees and expenses) incurred by the Lender as a result of any (a) fraud or material misrepresentation under or in connection with the loan or any loan document, (b) intentional bad faith waste of the Site, (c) losses resulting from the Borrower's failure to maintain insurance as required under the Purchase Money Deed of Trust, or (d) misappropriation of any rent, security deposits, insurance proceeds, condemnation awards or any other proceeds derived from the Site and actually received by the Borrower. In the event any of the foregoing events (a) through (d) occurs, the Lender shall have the right to proceed directly against the Borrower at the time the event giving rise to the recourse liability occurred to recover any and all loss, damage, liability, action, cause of action, cost or expense (including, without limitation, reasonable attorneys' fees and expenses) incurred by the Lender.

16. If any provision of this Purchase Money Note shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

_____, a California
_____, "BORROWER"

By _____
Title _____

By _____
Title _____

ATTACHMENT NO. 8

FORM OF PURCHASE MONEY DEED OF TRUST

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of San Pablo
1000 Gateway Avenue
San Pablo, CA 94806
Attention: City Manager

No fee for recording pursuant to
Government Code Section 27383

(Space above this line for Recorder's use)

DEED OF TRUST, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND
FIXTURE FILING (herein the "Purchase Money Deed of Trust") is being entered into as of this
_____ day of _____, 20__, by _____, a
California _____ (the "Trustor"), to _____
(the "Trustee"), in favor of the CITY OF SAN PABLO, a California municipal corporation (the
"Beneficiary").

Trustor is the fee owner of the real property (the "property"), described in the attached
Exhibit A, which is incorporated into this Purchase Money Deed of Trust by reference. This
Purchase Money Deed of Trust is executed by Trustor in consideration of a loan being made by
Beneficiary to Trustor (the "Purchase Money Loan"). The Purchase Money Loan is evidenced by
a promissory note of even date herewith in a principal amount of NINE HUNDRED THIRTY-
FIVE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$935,250.00) executed by Trustor in
favor of Beneficiary (the "Purchase Money Note").

In consideration of the Purchase Money Loan, Trustor hereby irrevocably grants, conveys,
transfers and assigns to the Trustee, its successors and assigns, in trust, with power of sale and
right of entry and possession as provided below, all of its present and future estate, right, title and
interest in and to the following described property (the "Mortgaged Property" or the "Premises"):

(A) All of Trustor's estate, right, title and interest in and to the property, and all
minerals, oil, gas and other hydrocarbon substances on the property, as well as all development
rights, air rights, water, water rights, and water stock relating to the property;

(B) All present and future structures, buildings, improvements, appurtenances and
fixtures of any kind on the property, including but not limited to all apparatus, equipment and
appliances used in connection with the operation or occupancy of the property, such as fire
sprinklers and alarm systems, heating and air-conditioning systems and facilities used to provide

any utility services, refrigeration, ventilation, laundry, drying, dishwashing, garbage disposal, stoves, recreation or other services on the property, and all window coverings, drapes and rods, carpeting and floor coverings, it being intended and agreed that all such items will be conclusively considered to be a part of the real property conveyed by this Purchase Money Deed of Trust, whether or not attached or affixed to the property (the "Improvements");

(C) All appurtenances of the property and all rights of the Trustor in and to any streets, roads or public places, easements or rights-of-way, relating to the property;

(D) All of the rents, royalties, profits and income of the property, and all rights of Trustor under all present and future leases affecting the property, including but not limited to any security deposits;

(E) All proceeds and claims arising on account of any damage to or taking of the property or any Improvements thereon or any part thereof, and all causes of action and recoveries for any loss or diminution in the value of the property or any Improvements;

(F) All goods located on the property and used in the operation or occupancy of the property or in any construction on the property but which are not effectively made real property under Clause (B) above, including but not limited to all appliances, furniture and furnishings, building service equipment, and building materials, supplies and equipment;

(G) All general intangibles relating to the development or use of the property, including but not limited to all governmental permits relating to construction on the property, all names under or by which the property or any Improvements on the property may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all trademarks and goodwill in any way relating to the property; and

(H) All water stock relating to the property, all shares of stock or other evidence of ownership of any part of the property that is owned by the Trustor in common with others, and all documents of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the property.

This instrument secures:

(1) The payment and performance of the Trustor's indebtedness and obligations under the Purchase Money Note including all extensions, renewals, modifications, amendments and replacements of the Purchase Money Note;

(2) The payment and performance of the Trustor's obligations under this Purchase Money Deed of Trust;

(3) The payment of all sums advanced or paid out by the Beneficiary or the Trustee under or pursuant to any provision of this Purchase Money Deed of Trust, together with interest thereon as provided herein;

(4) The payment of the principal and interest on all other future loans or advances made by the Beneficiary to the Trustor (or any successor-in-interest to the Trustor as the owner of all or any part of the Mortgaged Property) when the promissory note evidencing the loan or advance specifically states that it is secured by this Purchase Money Deed of Trust ("Future Advances"),

including all extensions, renewals, modifications, amendments and replacements of any Future Advances;

(5) The payment and performance of each and every obligation, covenant, and agreement of Trustor contained under all other present and future agreements executed by Trustor in favor of Beneficiary and relating to the Purchase Money Note or the Purchase Money Loan, including without limitation, the Amended and Restated Disposition and Development Agreement executed between Trustor and Beneficiary (the “DDA”), and the Affordable Housing Regulatory Agreement recorded against the property (the “Affordable Housing Regulatory Agreement”) (as such documents may be amended, modified or supplemented from time to time, collectively herein the “Related Documents”).

This Purchase Money Deed of Trust, the Purchase Money Note, the Related Documents and any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby may hereafter be referred to as the “Loan Documents.”

ARTICLE I COVENANTS OF TRUSTOR

To protect the security of this Purchase Money Deed of Trust, the Trustor agrees as follows:

1.01 Performance. Trustor will pay and perform all indebtedness and obligations that are secured by this Purchase Money Deed of Trust in accordance with their terms. All sums payable by Trustor hereunder shall be paid without notice, demand, counterclaim, offset, deduction, or defense.

1.02 Insurance. Trustor will maintain in force on the Mortgaged Property (a) hazard insurance against loss or damage to the Improvements and Personal Property by fire and any of the risks covered by “fire and extended coverage” insurance, (b) commercial general liability insurance, (c) such other insurance, and in such amounts, as may from time to time be reasonably required by Beneficiary against the same or other hazards, excluding flood insurance and earthquake insurance, and (d) any other insurance required by law. The insurance policies must be satisfactory to the Beneficiary as to amount, form, deductibles and insurer, and must cover all risks Beneficiary requires. With respect to public liability insurance, Beneficiary shall be named as an additional insured, and as to Beneficiary such insurance shall be primary and noncontributing in the event of loss with any other insurance Beneficiary may carry. The hazard insurance policy must contain a standard mortgagee clause satisfactory to the Beneficiary making all losses payable to the Beneficiary. All such insurance policies may only be cancelled or modified upon not less than thirty (30) days’ prior written notice to the Beneficiary. Certificates of all such insurance satisfactory to the Beneficiary and, at the request of Beneficiary, such insurance policies, together with receipts for the payment of premiums, are to be delivered to and held by the Beneficiary. Certificates of all renewal and replacement policies must be delivered to the Beneficiary at least fifteen (15) days before expiration of the old policies. Approval, disapproval or acceptance of any insurance by the Beneficiary will not be a representation of the solvency of any insurer, the sufficiency of any amount of insurance or the form or legal sufficiency of any insurance contracts, and Trustor hereby expressly assumes full responsibility for and liability, if any, with respect thereto.

1.03 Proceeds. All insurance proceeds on the Mortgaged Property, and all causes of action, claims, compensation, awards and recoveries for any damage, condemnation or taking of

all or any part of the Mortgaged Property or for any damage or injury to it or for any loss or diminution in value of the Mortgaged Property, are hereby assigned to and shall be paid to the Beneficiary, subject to the rights of superior lienholders. Trustor, upon obtaining knowledge of the institution of any such proceedings or of any damage to the Mortgaged Property, will immediately notify the Beneficiary in writing. The Beneficiary may participate in any suits or proceedings relating to any such proceeds, causes of action, claims, compensation, awards or recoveries and may, subject to the rights of superior lienholders, make any compromise or settlement thereof and may join with Trustor in adjusting any loss covered by insurance. The Beneficiary will apply any sums received by it under this paragraph first to the payment of all of its costs and expenses (including but not limited to legal fees and disbursements) incurred in obtaining those sums, and then, in its absolute discretion (subject to the following paragraph) and without regard to the adequacy of its security, to the payment of the indebtedness and obligations secured by this Purchase Money Deed of Trust or to Trustor for restoration or repair of the Mortgaged Property. Any application of such amounts or any portion thereof to the indebtedness secured hereby shall not be construed to cure or waive any default or notice of default hereunder or invalidate any act done pursuant to any such notice or default.

In the event Trustor is not in default hereunder and the following conditions are satisfied, Beneficiary shall make such remaining proceeds available to Trustor to restore the Mortgaged Property: (i) the Beneficiary shall be furnished with an estimate for its approval of the cost of restoration or repair accompanied by an architect's certification as to such costs and appropriate final plans and specifications for reconstruction of the improvements for approval by the Beneficiary; (ii) the improvements so restored or repaired shall be of substantially the same character and value as the improvements prior to damage or destruction and proper for the purposes for which they were originally erected; (iii) Trustor shall proceed forthwith with the completion of construction of the improvements, including the necessary work of restoration, in accordance with plans, specifications and drawings submitted to and approved by the Beneficiary; (iv) any monies which the Beneficiary makes available for restoration shall be disbursed in accordance with standard construction lending practice or in any other manner approved by the Beneficiary; (v) Trustor shall furnish the beneficiary with evidence satisfactory to the Beneficiary that all improvements so restored and/or repaired and their contemplated use fully comply with all zoning, environmental and building laws, ordinances and regulations, and with all other applicable federal, state and municipal laws and requirements; and (vi) if the estimated costs of reconstruction shall exceed the proceeds available, Trustor shall furnish a satisfactory bond of completion or such cash deposits or other evidence satisfactory to the Beneficiary of Trustor's ability to meet such excess costs.

1.04 Payment of Taxes and Claims. Subject to the provisions of the following paragraph of this Section 1.04, Trustor agrees to pay when due all taxes and assessments which are or may become a lien on the Mortgaged Property and any bonds, fees, liens, charges, fines, impositions and other items which are attributable to or which are assessed against the Mortgaged Property or its rents, royalties, profits and income ("Taxes"). Trustor also agrees to pay when due all lawful claims and demands of mechanics, materialmen, laborers and others for any work performed or materials delivered for the Mortgaged Property ("Claims").

Trustor, at its expense, may contest, by appropriate proceedings conducted in good faith and with due diligence, the amount or validity, in whole or in part, of any Taxes or Claims, provided (i) Trustor shall have notified Beneficiary prior to the commencement of such proceedings, (ii) in the case of any unpaid Taxes or Claims, such proceedings shall suspend the

collection thereof from Trustor, Beneficiary and the Mortgaged Property, and shall not constitute a presently enforceable lien against the Mortgaged Property during the pendency of such contest, (iii) neither the Mortgaged Property nor any part thereof nor any interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost, (iv) such proceedings shall not have an adverse effect on the lien or security interest created hereby or upon the enforcement of any provisions of the Loan Documents, and (v) if Beneficiary shall so require, Trustor shall have deposited with Beneficiary such security reasonably necessary for payment of the contested Taxes or Claims, with interest and penalties and Beneficiary's expenses.

1.05 Impounds. Beneficiary may, at its option to be exercised prior to or upon the recordation of this Purchase Money Deed of Trust or thereafter upon thirty (30) days' written notice to Trustor and the existence of any reasonable grounds for insecurity as to payment by Trustor, require the deposit with Beneficiary or its designee by Trustor of amounts sufficient to discharge the obligations of Trustor under Sections 1.02 and 1.04 hereof as and when they become due. The determination of the amounts to be deposited with Beneficiary and the times for such deposit shall be made by Beneficiary in its sole discretion. Said amounts shall not be considered to be held by Beneficiary or its designee in trust nor as agent of Trustor, shall bear interest at the rate of interest customarily paid by Beneficiary, and shall be applied to the payment of the obligations in respect of which the amounts were deposited or, at the option of Beneficiary, to the payment of said obligations in such order or priority as Beneficiary shall determine. If at any time within thirty (30) days prior to the due date of any of the aforementioned obligations the amounts then on deposit therefor shall be insufficient for the payment of such obligations in full, Trustor shall, within ten (10) days after demand, deposit the amount of the deficiency with Beneficiary. If the amounts deposited are in excess of the actual obligations for which they were deposited, Beneficiary may refund any such excess, or, at its option, may hold the same in a reserve account, not in trust and bearing interest, and reduce proportionately the required deposits for the ensuing year. Nothing herein contained shall be deemed to affect any right or remedy of Beneficiary under any other provision of this Purchase Money Deed of Trust or under any statute or rule of law to pay any such amount and to add the amount so paid to the indebtedness hereby secured.

All amounts so deposited shall be held by Beneficiary or its designee as additional security for the sums secured by this Purchase Money Deed of Trust, and upon the occurrence of a default hereunder Beneficiary may, in its sole and absolute discretion, and without regard to the adequacy of its security hereunder in the event of a monetary default or nonmonetary default if the Beneficiary elects to accelerate the Purchase Money Loan, apply such amounts or any portion thereof to any part of the indebtedness secured hereby. Any such application of said amounts or any portion thereof to any indebtedness secured hereby shall not be construed to cure or waive any default or notice of default hereunder or invalidate any act done pursuant to any such default or notice.

To the extent Beneficiary requires deposits to be made pursuant to this Section 1.05, Trustor shall deliver to Beneficiary all tax bills, bond and assessment statements, statements of insurance premiums, and statements for any other obligations referred to above as soon as the same are received by Trustor. If Beneficiary sells or assigns this Purchase Money Deed of Trust, Beneficiary shall have the right to transfer all amounts deposited under this Section to the purchaser or assignee, and Beneficiary shall thereupon be released and have no further liability hereunder for the application of such deposits, and Trustor shall look solely to such purchaser or assignee for such application and for all responsibility relating to such deposits.

1.06 Security Agreement. This Purchase Money Deed of Trust constitutes a security agreement with respect to all personal property and fixtures in which the Beneficiary is granted a security interest hereunder, and the Beneficiary shall have all of the rights and remedies of a secured party under the California Uniform Commercial Code as well as all other rights and remedies available at law or in equity. Trustor hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Beneficiary the attorney-in-fact of Trustor, to execute, deliver and, if appropriate, to file with the appropriate filing officer or office such security agreements, financing statements, continuation statements or other instruments as the Beneficiary may request or require in order to impose, perfect or continue the perfection of, the lien or security interest created hereby. Upon the occurrence of any default hereunder, the Beneficiary shall have the right to cause any of the Mortgaged Property which is personal property and subject to the security interest of the Beneficiary hereunder, not including any personal property of any Tenant of the Project or any leased personal property of Trustor (“Personal Property”) to be sold at any one or more public or private sales in any manner permitted by applicable law, and the Beneficiary shall further have all other rights and remedies, whether at law, in equity, or by statute, as are available to secured creditors under applicable law. Any such disposition may be conducted by an employee or agent of the Beneficiary or the Trustee. Any person, including both the Trustor and the Beneficiary, shall be eligible to purchase any part or all of such property at any such disposition.

Expenses of retaking, holding, preparing for sale, selling or the like shall be borne by Trustor and shall include the Beneficiary’s and the Trustee’s attorneys’ fees and legal expenses. Trustor, upon demand of the Beneficiary, shall assemble the Personal Property and make it available to the Beneficiary at the property, a place which is hereby deemed to be reasonably convenient to the Beneficiary. The Beneficiary shall give Trustor at least five (5) days’ prior written notice of the time and place of any public sale or other disposition of such property or of the time of or after which any private sale or any other intended disposition is to be made, and if such notice is sent to Trustor, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Trustor.

Trustor hereby warrants, represents and covenants as follows:

(a) Trustor is, and as to portions of the Personal Property to be acquired after the date hereof will be, the sole owner of the Personal Property (except that Trustor may lease Personal Property which is immaterial in value and merely incidental to the operation of the Mortgaged Property), free from any senior adverse lien, security interest, encumbrance or adverse claims thereon of any kind whatsoever except as permitted by Section 4.14 of this Purchase Money Deed of Trust. Trustor will notify Beneficiary of, and will defend the Personal Property against, all claims and demands of all persons at any time claiming the same or any interest therein.

(b) Trustor will not lease, sell, convey or in any manner transfer the Personal Property, without the prior written consent of Beneficiary, except for transfers as described in clause (d) below.

(c) The Personal Property is not used or bought for personal, family or household purposes.

(d) The Personal Property will be kept on or at the property and Trustor will not remove the Personal Property from the property without the prior written consent of Beneficiary, except

such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Trustor with new items of equal or greater quality and value.

(e) Trustor maintains a place of business in the State of California and Trustor will immediately notify Beneficiary in writing of any change in its place of business.

(f) Trustor will execute and deliver to the Beneficiary on demand, and at Trustor's cost and expense, any documents required to perfect and continue the perfection of the Beneficiary's security interest in the Personal Property of Trustor granted by this instrument.

1.07 Assignment of Rents. All of the existing and future rents, royalties, income and profits of the Mortgaged Property that arise from its use or occupancy are hereby absolutely and presently assigned to the Beneficiary. Trustor irrevocably appoints Beneficiary its true and lawful attorney-in-fact at the option of Beneficiary at any time and from time to time to demand, receive and enforce payment, give receipts or releases and sue in the name of Trustor or Beneficiary for all such rents, royalties, incomes and profits. However, until Trustor is in default under this Purchase Money Deed of Trust, Trustor will have a license to demand, receive and enforce payment, give receipts or releases and sue in the name of Trustor for all such rents, royalties, income and profits. Upon any default by Trustor, the Beneficiary may terminate Trustor's license in its discretion at any time without notice to Trustor and may thereafter collect the rents, royalties, income and profits itself or by an agent or receiver. No action taken by the Beneficiary to collect any rents, royalties, income or profits will make the Beneficiary a "mortgagee-in-possession" of the Mortgaged Property, unless the Beneficiary personally or by agent enters into actual possession of the Mortgaged Property. Possession by a court-appointed receiver will not be considered possession by the Beneficiary. All rents, royalties, income and profits collected by the Beneficiary or a receiver will be applied first to pay all expenses of collection, and then to the payment of all costs of operation and management of the Mortgaged Property, and then to the payment of the indebtedness and obligations secured by this Purchase Money Deed of Trust in whatever order the Beneficiary directs in its absolute discretion and without regard to the adequacy of its security.

1.08 Acceleration. Except as otherwise permitted in the Affordable Housing Regulatory Agreement or the DDA, if the Mortgaged Property or any part thereof or beneficial interest therein or any interest of Trustor is sold, assigned, transferred, conveyed, encumbered or full possessory rights therein transferred, conveyed or encumbered, in either or any case without the prior written consent of Beneficiary, such event shall constitute a default under this Purchase Money Deed of Trust and Beneficiary, at its option, may declare the Purchase Money Note and all other obligations hereunder to be immediately due and payable, and Beneficiary may invoke any remedies following such acceleration as are permitted by this Purchase Money Deed of Trust or at law or in equity. The provisions of this Section 1.08 shall not apply to: (a) the granting of such security interests in the Mortgaged Property for the purpose of securing loans or funds to be used for financing the development of the Mortgaged Property, to which Beneficiary has agreed this Purchase Money Deed of Trust shall be subordinate as described in Section 4.14 hereof; and (b) a refinancing which does not increase the amounts of periodic payments or aggregate principal amount owed by Trustor, or extend the time for repayment thereof.

1.09 Use and Maintenance.

(a) Trustor agrees that at all times during construction and thereafter, Trustor will use, maintain, preserve and keep the Mortgaged Property, including all Improvements thereon to be maintained, preserved and kept, and to perform all obligations with respect to the development and rental of the individual residential units, in accordance with the terms and conditions of the DDA and the Affordable Housing Regulatory Agreement.

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 Improvements to be constructed on the property, diligently to file or procure the filing of a valid notice of completion upon completion of construction of any part of the Improvements or the Mortgaged Property, diligently file or procure the filing of a notice of cessation upon the event of a cessation of labor on the work or construction of the Improvements 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 Mortgaged Property or 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 for record any notices of completion or cessation of labor or any other notice that Beneficiary deems necessary or desirable to protect its interests in and to the Improvements, the Mortgaged Property, the DDA or the Affordable Housing Regulatory Agreement; 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.

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 Improvements. 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 ten (10) days after the filing of any claim of lien, record in the Office of the Recorder of Contra Costa County a surety bond sufficient to release said claim of lien, or provide Beneficiary, at Trustor's cost, with such security or assurances (and extensions, renewals or substitutions thereof) as Beneficiary may, in its sole discretion, approve in writing.

(b) Trustor will not commit any waste on the Mortgaged Property or take any actions that might invalidate any insurance carried on the Mortgaged Property. Trustor will maintain the Mortgaged Property in good condition and repair and will complete or restore and repair promptly and in a good and workmanlike manner any building, structure, or improvement which may be constructed, damaged or destroyed thereon, whether or not insurance or other proceeds are available to cover in whole or in part the cost of any such completion, restoration or repair. No Improvements may be removed, demolished or materially altered except for purposes of replacement valued at less than TWENTY THOUSAND DOLLARS (\$20,000.00) without the prior written consent of the Beneficiary.

(c) Without the prior written consent of the Beneficiary, Trustor will not seek, make or consent to any change in the zoning or nature of occupancy or conditions of use of all or any part of the Mortgaged Property to the extent the same was not intended by the Beneficiary at the time this Purchase Money Deed of Trust was delivered.

(d) Trustor shall comply with all applicable laws, orders, ordinances, regulations, restrictions and requirements of all governmental authorities affecting the Mortgaged Property and the use thereof, including, without limitation, those relating to hazardous substances, pollution, or protection of the environment. Trustor will comply with and make all payments required under the provisions of any covenants, conditions or restrictions affecting the Mortgaged Property, including but not limited to those contained in the Affordable Housing Regulatory Agreement.

1.10 Records. Trustor will keep adequate books and records of account of the Mortgaged Property and its own financial affairs sufficient to permit the preparation of financial statements therefrom in accordance with generally accepted accounting principles. The Beneficiary will have the right to examine, copy and audit Trustor's records and books of account applicable to the Mortgaged Property at all reasonable times.

1.11 Defense. Trustor will, at its own expense, appear in and defend any action or proceeding that might affect the Beneficiary's security or the rights or powers of the Beneficiary or the Trustee or that purports to affect any of the Mortgaged Property. If Trustor fails to perform any of its covenants or agreements contained in this Purchase Money Deed of Trust after the expiration of any applicable cure period, or if any action or proceeding of any kind (including but not limited to any bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding) is commenced which might affect the Beneficiary's or the Trustee's interest in the Mortgaged Property or the Beneficiary's right to enforce its security, then the Beneficiary and/or the Trustee may, at their option, but without obligation to do so and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereunder, make any appearances, disburse any sums and take any actions as may be deemed necessary or desirable to the Trustee or the Beneficiary to protect or enforce the security of this Purchase Money Deed of Trust or to remedy the failure of Trustor to perform its covenants (without, however, waiving any default of Trustor), including but not limited to disbursement of reasonable attorneys' fees, entry upon the Mortgaged Property to make repairs or to take other action to protect the security hereof, and payment, purchase, contest or compromise of any encumbrance, charge or lien which in the judgment of the Beneficiary or the Trustee appears to be prior or superior hereto. Trustor agrees to pay all reasonable out-of-pocket expenses of the Beneficiary and the Trustee thus incurred (including but not limited to fees and disbursements of counsel). Any sums so disbursed or advanced by the Beneficiary or the Trustee will be additional indebtedness of Trustor secured by this Purchase Money Deed of Trust and will be payable by Trustor upon demand. Any such sums so disbursed or advanced will bear interest at ten percent (10%) per annum, provided that any such sums so disbursed or advanced by the Trustee will not bear interest in excess of the maximum rate permitted to be charged by the Trustee under applicable law. This paragraph will not be construed to require the Beneficiary or the Trustee to incur any expenses, make any appearances, or take any actions.

1.12 Financing Statement. This Purchase Money Deed of Trust constitutes a financing statement filed as a fixture filing in the Official Records of the County Recorder of the county in which the Mortgaged Property is located with respect to any and all fixtures included within the term "Mortgaged Property" as used herein and with respect to any goods or other personal property that may now be or hereafter become such fixtures.

1.13 Indemnity. In addition to any other indemnities to Beneficiary specifically provided for in this Purchase Money Deed of Trust, Trustor shall defend, with counsel approved by Beneficiary, protect, indemnify and save harmless Beneficiary from and against any and all

losses, liabilities, obligations, claims, demands, damages, fines, taxes, penalties, actions, causes of action, orders, decrees, judgments, liens, costs and expenses (including, without limitation, experts', consultants' and attorneys' fees), imposed upon or incurred by or asserted against Beneficiary by reason of (a) Beneficiary's interest in the Mortgaged Property, (b) any accident, injury to or death of a person or persons or loss of or damage to property occurring on or about or with respect to the Mortgaged Property or any part thereof or the adjoining sidewalks, curbs, vaults and vault space (if any), streets or ways, (c) any use, non-use, misuse, possession, occupation, alteration, operation, maintenance, management or condition (including, without limitation, the location or alleged location, release or suspected release of any Hazardous Material (as defined in Section 1.14(a) below) thereon) of the Mortgaged Property or any part thereof, or of the adjoining sidewalks, curbs, streets, ways, vaults and vault space (if any), (d) any failure on the part of Trustor to perform or observe any of its agreements or obligations under this Purchase Money Deed of Trust or the Loan Documents, (e) any failure on the part of Trustor to comply with any law, regulation, ordinance, or requirement of any governmental body applicable to the Mortgaged Property, (f) the performance of any labor or service or the furnishing of any material or other property in respect of the Mortgaged Property or any part thereof, (g) any negligence (to the extent that proceeds from any insurance actually maintained by Beneficiary do not cover the loss caused thereby) or willful act or omission on the part of Trustor, and (h) any breach of any representation or warranty of Trustor contained in this Purchase Money Deed of Trust. All amounts payable to Beneficiary under this Section that are not paid within ten (10) days after written demand therefor by Beneficiary shall bear interest from the date of such demand. The provisions of this Section 1.13 shall survive the termination and reconveyance of this Purchase Money Deed of Trust.

1.14 Environmental Matters.

(a) Trustor hereby represents and warrants to Beneficiary as follows:

(i) As used herein, the term "Hazardous Materials" means and includes any flammable, explosive, or radioactive materials or hazardous, toxic or dangerous wastes, substances or related materials or any other chemicals, materials or substances, exposure to which is prohibited, limited or regulated by any federal, state, county, regional or local authority, including, but not limited to, asbestos, PCBs, petroleum products and by-products, substances defined or listed as "hazardous substances," "toxic substances," "hazardous waste," "hazardous material," "extremely hazardous waste," "restricted hazardous waste" or similarly identified in, pursuant to, or for purposes of, the California Solid Waste Management, Resource Recovery and Recycling Act (California Government Code Section 66700, *et seq.*), the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, *et seq.*); the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, *et seq.*); the Resource Conservation and Recovery Act (42 U.S.C. Section 6901, *et seq.*); Section 25117 or Section 25316 of the California Health & Safety Code; any so-called "Superfund" or "Superlien" law or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree now or in the future regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material; any substance or mixture regulated under the Toxic Substance Control Act of 1976 (15 U.S.C. Section 2601, *et seq.*); any "toxic pollutant" under the Clean Water Act (33 U.S.C. Section 1251, *et seq.*); and any hazardous air pollutant under the Clean Air Act (42 U.S.C. Section 7901, *et seq.*). References to specific statutes include any existing or future amendments or replacements thereof.

(ii) Trustor has obtained or will obtain all certificates, permits, licenses, approvals and authorizations necessary for the lawful construction, occupancy, use and operation of the Mortgaged Property for the purposes for which it is being used, including, but not limited to, any certificates, permits, licenses, approvals and authorizations required by any federal, state, county, regional or local authority whose jurisdiction includes, in whole or in part, environmental protection or matters pertaining to health, safety and welfare. Except as previously disclosed to Beneficiary, Trustor has received no notice of any lawsuit or other regulatory, administrative, judicial or legal proceeding which is presently pending or threatened which (A) challenges the issuance of any of the certificates, permits, licenses, approvals or authorizations for the Mortgaged Property or (B) alleges noncompliance by Trustor or the Mortgaged Property with any law, regulation, rule or ordinance which has a material effect on the operation, occupancy, leasing or use of the Mortgaged Property for the purposes for which it will be used. In addition, none of the nonresidential tenants (if any) of the Mortgaged Property, to the knowledge of Trustor after due inquiry, has failed to obtain any certificate, permit, license, approval or authorization required in connection with its operations on its premises.

(b) Trustor shall keep and maintain the Mortgaged Property at all times in compliance with any and all federal, state and local statutes, laws, ordinances, codes, rules, regulations, orders and decrees now or hereafter relating to Hazardous Materials, industrial hygiene or to the environmental conditions on, under or about the Mortgaged Property, including, but not limited to, soil and ground water conditions (“Hazardous Materials Laws”). Trustor shall not use, generate, manufacture, release, store or dispose of, or permit to be used, generated, manufactured, released, stored or disposed of on, under, about or from the Mortgaged Property, or transport to or from or permit to be transported to or from the Mortgaged Property, any Hazardous Materials in violation of any Hazardous Materials Laws. Trustor hereby agrees at all times to comply fully and in a timely manner with, and to cause all of Trustor’s employees, agents, contractors, subcontractors and any other persons entering the Mortgaged Property with the express or implied consent of Trustor, to so comply with, all Hazardous Materials Laws.

Trustor shall have the right to contest, at Trustor’s sole cost and expense, the applicability of any Hazardous Materials Laws or the grounds for any attempted enforcement of any Hazardous Materials Laws provided that: (i) as a condition to any such contest, Trustor shall deliver to Beneficiary, at Trustor's sole cost and expense, such test results, consultants’ reports and other information regarding the then current environmental condition of the Mortgaged Property and the effect that any additional delay that may result from any such contest would have on such environmental condition, as Beneficiary may reasonably require; (ii) Trustor shall have no right to contest if the delay that might result from any such contest would result in any material deterioration in the environmental condition of the Mortgaged Property or any portion thereof or in any material deterioration in the environmental condition of any other property; (iii) Trustor shall have no such right to contest if, as a result of such contest, any governmental agency would have the right to enforce a lien on all or any portion of the Mortgaged Property; and (iv) Trustor shall give prior written notice to Beneficiary of Trustor’s intention to exercise such right of contest and, upon written request of Beneficiary, shall deliver to Beneficiary a good and sufficient bond or other security reasonably satisfactory to Beneficiary for the costs which would be incurred in complying with such Hazardous Materials Laws. Should a new chemical, material or substance become prohibited by federal, state or local regulation, or become known to pose a hazard, Trustor shall take measures to comply with the law or regulation, and/or take such steps as are necessary to minimize environmental threats.

(c) Trustor shall immediately advise Beneficiary in writing of (and furnish Beneficiary with copies of all relevant documents pertaining to): (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions relating to the Mortgaged Property instituted, completed or threatened pursuant to any environmental laws, statutes, ordinances, rules and regulations, including any Hazardous Materials Laws, and of any notices received by Trustor with respect to the foregoing; (ii) Trustor's discovery of any claim made or clearly threatened in writing by any third party (other than by a governmental agency) and of any claim made or clearly threatened (whether or not in writing) by any governmental agency against Trustor or the Mortgaged 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 Mortgaged Property that could cause the Mortgaged Property or any part thereof to be classified as "border-zone property" under the provisions of California Health and Safety Code Sections 25220, *et seq.*, or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Mortgaged Property under any Hazardous Materials Laws. Beneficiary shall have the right to join and participate in, as a party if it so elects, any legal or administrative proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Trustor.

(d) Without Beneficiary's prior written consent, which shall not be unreasonably withheld or delayed, Trustor shall not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Mortgaged Property, nor enter into any settlement agreement, consent decree or other compromise in respect to any Hazardous Materials Claims, which remedial action, settlement, consent or compromise might, in Beneficiary's reasonable judgment, impair the value of Beneficiary's security hereunder; provided, however, that Beneficiary's prior consent shall not be necessary in the event that the presence of any Hazardous Materials on, under or about the Mortgaged 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 possible to obtain Beneficiary's consent before taking such action, provided that in such event Trustor shall notify Beneficiary as soon as practicable of any action so taken. 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 establishes to the reasonable satisfaction of Beneficiary that there is no reasonable alternative to such remedial action which would result in less impairment of Beneficiary's security hereunder; (iii) all federal, state and local governmental agencies having jurisdiction have approved of or required the particular remedial action; or (iv) a particular remedial action is recommended by a reputable environmental consultant selected or approved by Beneficiary in a report which is satisfactory to Beneficiary in its reasonable discretion.

(e) Trustor hereby agrees to defend (with counsel approved by Beneficiary), indemnify, protect and hold Beneficiary harmless from and against, and shall reimburse Beneficiary for any and all Claims (as defined below). Trustor hereby expressly waives, with respect to any Claims, any immunity to which Trustor may otherwise be entitled under any industrial or workers' compensation laws. As used herein, "Claims" means any and all actual out-of-pocket costs (including, without limitation, attorneys' fees, consultants' fees, experts' fees, including sums paid in settlement of any claim, expenses and court costs), expense, loss or obligation arising from any claim, demand, loss, liability, damage, injunctive relief, order, decree, judgment, injury to or death of any person, damage or injury to property or natural resources, fine,

tax, penalty, action and cause of action of any kind incurred by or asserted against Beneficiary and arising, directly or indirectly, in whole or in part, out of the generation, storage, release, discharge, deposit, migration, use, handling or presence, placement or alleged or suspected generation, storage, release, discharge, migration, deposit, use, handling, presence or placement of any Hazardous Materials at, on, about, under, within or from the Mortgaged Property, or in or adjacent to any part of the Mortgaged Property, or in the soil, ground water or soil vapor on or under the Mortgaged Property, or elsewhere in connection with the transportation of Hazardous Materials to or from the Mortgaged Property in violation of any Hazardous Materials Laws, whether or not known to Trustor or Beneficiary, whether foreseeable or unforeseeable, regardless of the source of such generation, storage, release, discharge, deposit, migration, use, handling, presence or placement and regardless of when such generation, storage, release, discharge, deposit, migration, use, handling, presence or placement occurred or is discovered. Without limiting the generality of the foregoing and for purposes of clarification only, Claims also include all actual out-of-pocket costs incurred by Beneficiary in connection with (i) any investigation to determine whether the Mortgaged Property is in compliance with Hazardous Materials Laws, which investigation determines that the Mortgaged Property is not in compliance with such Laws, (ii) remediating any environmental contamination, and causing the Mortgaged Property to be or become in compliance with all applicable Hazardous Materials Laws, (iii) any investigation, removal or remediation of any kind and disposal of any Hazardous Materials present at, on, under or within the Mortgaged Property or released from the Mortgaged Property to the extent required by applicable Hazardous Materials Laws in effect at the time of such removal, remediation or disposal, and (iv) any repair of any damage to the Mortgaged Property or any other property caused by any such investigation, removal, remediation or disposal. The rights of Beneficiary hereunder shall not be limited by any investigation or the scope of any investigation undertaken by or on behalf of Beneficiary in connection with the Mortgaged Property prior to the date hereof. The provisions of this Section 1.14(e) shall survive the termination and reconveyance of this Purchase Money Deed of Trust.

ARTICLE II EVENTS OF DEFAULT

2.01 Default. The Trustor will be in default under this Purchase Money Deed of Trust if:

(a) There shall be a failure to make the payment of any installment of principal or interest or any other sum secured hereby which continues for fifteen (15) days after such payment is due; or

(b) There shall be a failure to comply with any other term, obligation, covenant or condition contained in this Purchase Money Deed of Trust; provided, however, that Trustor shall not be in default if Trustor, after Beneficiary sends written notice demanding cure of such failure, (i) cures the failure within thirty (30) days, or (ii) if the cure requires more than thirty (30) days, immediately commences to cure the failure and thereafter diligently prosecutes such cure to completion within sixty (60) days after giving notice of the default.

(c) There occurs an appointment, pursuant to an order of a court of competent jurisdiction, of a trustee, receiver or liquidator of the Mortgaged Property or any part thereof, or of Trustor, or any termination or voluntary suspension of the transaction of business of Trustor, or any attachment, execution or other judicial seizure of all or any substantial portion of Trustor's

assets, which appointment, attachment, execution or seizure is not discharged within forty-five (45) days; or

(d) Trustor, or any member of Trustor at any level or any trustee of Trustor, shall file a voluntary case under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of Trustor or such person or entity or for any part of the Mortgaged Property or any substantial part of Trustor's or such person's or entity's property, or shall make any general assignment for the benefit of Trustor's or such person's or entity's creditors, or shall fail generally to pay Trustor's or such person's or entity's debts as they become due or shall take any action in furtherance of any of the foregoing; or

(e) A court having jurisdiction shall enter a decree or order for relief in respect of Trustor, or any member of Trustor at any level or any trustee of Trustor, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or Trustor or such member or trustee shall consent to or shall fail to oppose any such proceeding, or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Trustor or such person or entity or for any part of the Mortgaged Property or any substantial part of Trustor's or such person's or entity's property, or ordering the winding up or liquidation of the affairs of Trustor or any such person or entity, and such decree or order shall not be dismissed within sixty (60) days after the entry thereof; or

(f) There has occurred a default under any term, covenant, agreement, condition, provision, representation or warranty contained in any of the Related Documents or any other mortgage or deed of trust encumbering all or any portion of the Mortgaged Property, regardless of whether such mortgage or deed of trust is prior or subordinate to this Purchase Money Deed of Trust, or contained in any note or other instrument secured thereby, or contained in any other instrument securing such note, if such default remains uncured following any applicable notice, grace or cure period; or

(g) There has occurred a violation of any condition, covenant or restriction recorded against or affecting the property, and such violation has not been cured within any applicable cure period provided therein; or

(h) Any representation or disclosure made to the Beneficiary by Trustor proves to be materially false or misleading on the date as of which made, whether or not that representation or disclosure appears in this Purchase Money Deed of Trust; or

(i) There has occurred a change of the constituent members, whether voluntarily or involuntarily or otherwise, or the sale, conveyance, transfer, disposition, charging or encumbrance of any such member interests, without the prior written consent of the Beneficiary or as otherwise permitted in the DDA.

With respect to any right to cure or cure period provided in this Section 2.01, performance of a cure by any member of Trustor shall have the same effect as would like performance by Trustor.

ARTICLE III
REMEDIES

3.01 Remedies. If the Trustor is in default, the Beneficiary may, at its option, and without notice to or demand upon the Trustor:

(a) Declare any or all indebtedness secured by this Purchase Money Deed of Trust to be due and payable immediately;

(b) Upon five (5) days' notice to Trustor, enter onto the Mortgaged Property, in person or by agent or by court-appointed receiver, and take any and all steps which may be desirable in the Beneficiary's sole discretion to complete any unfinished construction, to manage and operate the Mortgaged Property and to do any and all other acts which the Beneficiary deems proper to protect the security hereof and, either with or without taking possession, in its own name or in the name of the Trustor, sue for or otherwise collect and receive the rents, royalties, income and profits of the Mortgaged Property, and the Beneficiary may apply any rents, royalties, income or profits collected against the indebtedness secured by this Purchase Money Deed of Trust without in any way curing or waiving any default of the Trustor;

(c) Bring a court action to foreclose this Purchase Money Deed of Trust or to enforce its provisions or any of the indebtedness or obligations secured by this Purchase Money Deed of Trust;

(d) Cause any or all of the Mortgaged Property to be sold under the power of sale granted by this Purchase Money Deed of Trust in any manner permitted by applicable law; and

(e) Exercise any other right or remedy available under the Loan Documents or any other agreement of the Trustor, or under any guaranty of any obligations of the Trustor to the Beneficiary relating to the Purchase Money, or otherwise available at law or in equity.

3.02 Power of Sale. In connection with the exercise of the power of sale granted by this Purchase Money Deed of Trust:

(a) Beneficiary may elect to cause the Mortgaged Property or any part thereof to be sold under the power of sale herein granted in any manner permitted by applicable law. In connection with any sale or sales hereunder, Beneficiary may elect to treat any of the Mortgaged Property which consists of a right in action or which is property that can be severed from the real property covered hereby or any improvements thereon without causing structural damage thereto as if the same were personal property, and dispose of the same in accordance with applicable law, separate and apart from the sale of real property. Any sale of any personal property hereunder shall be conducted in any manner permitted by Section 9501 or any other applicable section of the California Commercial Code. Where the Mortgaged Property consists of real and personal property or fixtures, whether or not such personal property is located on or within the real property, Beneficiary may elect in its discretion to exercise its rights and remedies against any or all of the real property, personal property, and fixtures in such order and manner as is now or hereafter permitted by applicable law.

(b) Without limiting the generality of the foregoing, Beneficiary may, in its sole and absolute discretion and without regard to the adequacy of its security, elect to proceed against any or all of the real property, personal property and fixtures in any manner permitted under Section

9501(4)(a) of the California Commercial Code; and if the Beneficiary elects to proceed in the manner permitted under Section 9501(4)(a)(ii) of the California Commercial Code, the power of sale herein granted shall be exercisable with respect to all or any of the real property, personal property and fixtures covered hereby, as designated by Beneficiary, and the Trustee is hereby authorized and empowered to conduct any such sale of any real property, personal property and fixtures in accordance with the procedures applicable to real property.

(c) Where the Mortgaged Property consists of real property and personal property, any reinstatement of the obligation secured hereby, following default and an election by the Beneficiary to accelerate the maturity of said obligation, which is made by Trustor or any other person or entity permitted to exercise the right of reinstatement under Section 2924c of the California Civil Code or any successor statute, shall, in accordance with the terms of California Commercial Code Section 9501(4)(c)(iii), not prohibit the Beneficiary from conducting a sale or other disposition of any personal property or fixtures or from otherwise proceeding against or continuing to proceed against any personal property or fixtures in any manner permitted by the California Commercial Code; nor shall any such reinstatement invalidate, rescind or otherwise affect any sale, disposition or other proceeding held, conducted or instituted with respect to any personal property or fixtures prior to such reinstatement or pending at the time of such reinstatement. Any sums paid to Beneficiary in effecting any reinstatement pursuant to Section 2924c of the California Civil Code shall be applied to the secured obligation and to the Beneficiary's and Trustee's reasonable costs and expenses in the manner required by Section 2924c.

(d) Should Beneficiary elect to sell any portion of the Mortgaged Property which is real property or which is personal property or fixtures that Beneficiary has elected under Section 9501(4)(a)(ii) of the California Commercial Code to sell together with real property in accordance with the laws governing a sale of real property, Beneficiary or Trustee shall give such notice of default and election to sell as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, and without the necessity of any demand on Trustor, Trustee, at the time and place specified in the notice of sale, shall sell said real property or part thereof at public auction to the highest bidder for cash in lawful money of the United States. Trustee may, and upon request of Beneficiary shall, from time to time, postpone any sale hereunder by public announcement thereof at the time and place noticed therefor.

(e) If the Mortgaged Property consists of several lots, parcels or items of property, Beneficiary may: (i) designate the order in which such lots, parcels or items shall be offered for sale or sold, or (ii) elect to sell such lots, parcels or items through a single sale, or through two or more successive sales, or in any other manner Beneficiary deems in its best interest. Any person, including Trustor, Trustee or Beneficiary, may purchase at any sale hereunder, and Beneficiary shall have the right to purchase at any sale hereunder by crediting upon the bid price the amount of all or any part of the indebtedness hereby secured. Should Beneficiary desire that more than one sale or other disposition of the Mortgaged Property be conducted, Beneficiary may, at its option, cause the same to be conducted simultaneously, or successively, on the same day, or at such different days or times and in such order as Beneficiary may deem to be in its best interests, and no such sale shall terminate or otherwise affect the lien of this Purchase Money Deed of Trust on any part of the Mortgaged Property not sold until all indebtedness secured hereby has been fully paid. In the event Beneficiary elects to dispose of the Mortgaged Property through more than one sale, Trustor agrees to pay the costs and expenses of each such sale and of any judicial proceedings

wherein the same may be made, including reasonable compensation to Trustee and Beneficiary, their agents and counsel, and to pay all expenses, liabilities and advances made or incurred by Trustee in connection with such sale or sales, together with interest on all such advances made by Trustee at the lower of the interest rate set forth in the Purchase Money Note or the maximum rate permitted by law to be charged by Trustee.

(f) Upon any sale hereunder, Trustee shall execute and deliver to the purchaser or purchasers a deed or deeds conveying the property so sold, but without any covenant or warranty whatsoever, express or implied, whereupon such purchaser or purchasers shall be let into immediate possession; and the recitals in any such deed or deeds of facts, such as default, the giving of notice of default and notice of sale, and other facts affecting the regularity or validity of such sale or disposition, shall be conclusive proof of the truth of such facts and any such deed or deeds shall be conclusive against all persons as to such facts recited therein.

3.03 Sale Proceeds. The proceeds of any sale under this Purchase Money Deed of Trust will be applied in the following manner:

FIRST: Payment of the costs and expenses of the sale, including but not limited to the Trustee's fees, legal fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of the Trustee, together with interest on all advances made by the Trustee at the maximum rate permitted to be charged by the Trustee under applicable law.

SECOND: Payment of all sums expended by the Beneficiary under the terms of this Purchase Money Deed of Trust and not yet repaid, together with interest on such sums at the maximum rate permitted to be charged by the Beneficiary under applicable law.

THIRD: Payment of the indebtedness and obligations of the Trustor secured by this Purchase Money Deed of Trust in any order that the Beneficiary chooses.

FOURTH: The remainder, if any, to the person or persons legally entitled to it.

3.04 Waiver. Trustor, for itself and for all persons hereunder claiming through or under it or who may at any time acquire a lien on all or any part of the Mortgaged Property or any interest therein, hereby expressly waives and releases all rights to direct the order in which any of the Mortgaged Property and/or any other property now or hereafter constituting security for any of the indebtedness secured hereby will be sold in the event of any sale under this Purchase Money Deed of Trust, and also any right to have any of the Mortgaged Property and/or any other property now or hereafter constituting security for any of the indebtedness secured hereby marshalled upon any foreclosure of this Purchase Money Deed of Trust or of any other security for any of said indebtedness.

3.05 Remedies Cumulative. All remedies contained in this Purchase Money Deed of Trust are cumulative, and the Beneficiary also has all other remedies provided by law or in any other agreement between Trustor and the Beneficiary. No delay or failure by the Beneficiary to exercise any right or remedy under this Purchase Money Deed of Trust will be construed to be a waiver of that right or remedy or of any default by Trustor. The Beneficiary may exercise any one or more of its rights and remedies at its option without regard to the adequacy of its security.

3.06 Costs and Fees. Trustor will pay all of the Beneficiary's and the Trustee's costs, fees and expenses incurred in any efforts to enforce any terms of this Purchase Money Deed of Trust or in the performance of its or their duties hereunder, whether or not any lawsuit is filed, including but not limited to legal fees and disbursements, foreclosure costs and title insurance or trustee's sale guaranty charges and any other governmental charges or impositions imposed by any governmental authority on the Trustee or the Beneficiary by reason of its or their interest in the Purchase Money Note, any note evidencing a future advance, or this Purchase Money Deed of Trust.

ARTICLE IV MISCELLANEOUS

4.01 Invalidity. The invalidity or unenforceability of any one or more provisions of this Purchase Money Deed of Trust will in no way affect any other provision.

4.02 Loan Statement. Trustor agrees to pay to the Beneficiary a reasonable charge, not to exceed the maximum allowed by law, for giving any statement of the status of the obligations secured by this Purchase Money Deed of Trust.

4.03 Late Charge. If Trustor shall fail to make any payment due hereunder within fifteen (15) days after the date the same is due and payable, a late charge by way of damages shall be immediately due and payable in the amount of ten percent (10%) of the overdue amount. Trustor recognizes that default in making the payments herein agreed to be paid when due will result in the Beneficiary incurring additional expense in servicing the Loan, in loss to the Beneficiary of the use of the money due, and in frustration to the Beneficiary in meeting its loan commitments. Trustor agrees that, if for any reason it fails to pay the amounts due under this Purchase Money Deed of Trust within fifteen (15) days after the date when due, the Beneficiary shall be entitled to damages for the detriment caused thereby, but that it is extremely difficult and impractical to ascertain the extent of such damages. Trustor agrees that such amount as is specified herein is a reasonable approximation of damages for late payment.

4.04 Notices. All notices given under this Purchase Money Deed of Trust must be in writing and will be effectively served upon personal delivery or, if mailed, no later than five (5) days after deposit in certified United States mail, postage prepaid, return receipt requested, sent to the Beneficiary at its address appearing in the recording information block on the front page of this Purchase Money Deed of Trust and sent to the Trustor at its addresses appearing below its signature, which addresses may be changed by written notice. However, the service of any notice of default or notice of sale under this Purchase Money Deed of Trust as required by law will, if mailed, be effective on the date of mailing.

4.05 Beneficiary Consent. Without affecting Trustor's liability for the payment of any of the indebtedness secured by this Purchase Money Deed of Trust, the Beneficiary may from time to time and without notice to the Trustor (a) release any person liable for the payment of that indebtedness, (b) extend or modify the terms of payment of that indebtedness, (c) accept additional real or personal property of any kind as security, or alter, substitute or release any property securing that indebtedness, or (d) cause the Trustee to consent to the making of any map or plat of the Mortgaged Property, or to reconvey any part of the Mortgaged Property, or to join in granting any easement or creating any restriction on the Mortgaged Property, or to join in any subordination or other agreement affecting this Purchase Money Deed of Trust.

4.06 Trustee Acceptance. Trustee accepts this Trust when this Purchase Money Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

4.07 Statute of Limitations. The Trustor waives all present and future statutes of limitations as a defense to any action to enforce the provisions of this Purchase Money Deed of Trust or to collect any indebtedness secured by this Purchase Money Deed of Trust to the fullest extent permitted by law, provided that such waiver shall not apply at any time after payment in full of all sums secured by the Purchase Money Deed of Trust.

4.08 Interpretation. The term “Trustor” includes both the original Trustor and any subsequent owner or owners of any of the Mortgaged Property, and the term “Beneficiary” includes the original Beneficiary and also any future owner or holder, including pledgees and participants, of the Purchase Money Note or any interest therein. Whenever the context requires, the singular includes the plural and vice versa and each gender includes each other gender. The headings of the articles of this Purchase Money Deed of Trust are for convenience only and do not limit its provisions.

4.09 Consent. The Beneficiary’s consent to any act or omission by Trustor will not be a consent to any other or subsequent act or omission or a waiver of the need for such consent in any future or other instance.

4.10 Successors. The terms of this Purchase Money Deed of Trust will bind and benefit the heirs, legal representatives, successors and assigns of Trustor and Beneficiary and the successors-in-trust of the Trustee. If more than one person is named as Trustor, each will be jointly and severally liable to perform the obligations of the Trustor.

4.11 California Law. This Purchase Money Deed of Trust will be governed by California law, excepting those provisions dealing with choice of laws.

4.12 Removal of Trustee. The Beneficiary may remove the Trustee or any successor Trustee at any time or times and appoint a successor Trustee by recording a written substitution in the county where the real property covered by this Purchase Money Deed of Trust is located, or in any other manner permitted by law. Upon that appointment, all of the powers, rights and authority of the Trustee will immediately become vested in its successor.

4.13 Inconsistency. The terms of this Purchase Money Deed of Trust, or any modification thereof, shall prevail in the event of any inconsistency with the terms of the DDA, including, but not limited to, any terms of the DDA covering entitlement to or distribution of any insurance or condemnation proceeds or other items referred to in this Purchase Money Deed of Trust.

4.14 Subordination. This Purchase Money Deed of Trust may be made subordinate to and only to the terms and conditions of documents evidencing construction and/or permanent financing as provided in the DDA. The loan documents to which this Purchase Money Deed of Trust shall be subordinate shall include, and subordination hereunder is subject to, the following conditions (alternatively, these conditions may be contained in a separately recorded subordination agreement between the construction and/or permanent financing lender and Beneficiary): (a) the Beneficiary shall receive copies of any notices of default issued by the lender to the Trustor; (b) the Beneficiary shall have the right to cure any default by the Trustor within ninety (90) days after a notice of default; and (c) the Beneficiary shall have the right to exercise any and all remedies

under this Purchase Money Deed of Trust following the expiration of ninety (90) days after delivery of notice of default from the Beneficiary to the lender of a default by Trustor under the Purchase Money Note or this Purchase Money Deed of Trust. The Beneficiary shall be entitled to reimbursement from the Trustor of all direct but reasonable costs and expenses incurred by Beneficiary in curing a default of Trustor.

4.15 Nonrecourse. The Purchase Money Note secured by this Purchase Money Deed of Trust is a nonrecourse note whereby Trustor has no personal liability for repayment of the sums evidenced thereby, and the Beneficiary in the event of default must resort only to income, profits or other funds generated from the exercise of the Beneficiary's rights with respect to the Premises, including any funds which may result from the sale or disposition of the Mortgaged Property subsequent to a foreclosure of this Purchase Money Deed of Trust, or conveyance of a deed to the Mortgaged Property in lieu of such foreclosure, for repayment of any amounts owed hereunder.

The foregoing limitation shall not apply to any and all loss, damage, liability, action, cause of action, cost or expense (including, without limitation, reasonable attorneys' fees and expenses) incurred by the Beneficiary as a result of any (a) fraud or material misrepresentation under or in connection with the loan or any loan document, (b) intentional bad faith waste of the Mortgaged Property, (c) losses resulting from the Trustor's failure to maintain insurance as required under this Purchase Money Deed of Trust, or (d) misappropriation of any rent, security deposits, insurance proceeds, condemnation awards or any other proceeds derived from the Mortgaged Property and actually received by the Trustor. In the event any of the foregoing events (a) through (d) occurs, the Beneficiary shall have the right to proceed directly against the Trustor at the time the event giving rise to the recourse liability occurred to recover any and all loss, damage, liability, action, cause of action, cost or expense (including, without limitation, reasonable attorneys' fees and expenses) incurred by the Beneficiary.

IN WITNESS WHEREOF, the undersigned has executed this Purchase Money Deed of Trust as of the day and year first hereinabove written.

_____, a California

By _____

Title _____

By _____

Title _____

“TRUSTOR”

Trustor's Address:

_____, CA _____

ATTACHMENT NO. 9

FORM OF PREDEVELOPMENT LOAN NOTE

\$1,000,000.00

_____, 20____
San Pablo, California

PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned _____, a California _____ (herein the “Borrower”), whose principal address is _____, _____, California, _____, promises to pay to the CITY OF SAN PABLO, a California municipal corporation (herein the “Lender”), the principal sum of ONE MILLION DOLLARS (\$1,000,000) (the “Predevelopment Loan”), with simple interest at the rate of three percent (3%) per annum, upon the terms and conditions set forth herein.

1. DDA; Affordable Housing Regulatory Agreement. This Predevelopment Loan Note is made pursuant to that certain Amended and Restated Disposition and Development Agreement dated as of _____, 2026, between Borrower and Lender (herein the “DDA”), pursuant to which Borrower will undertake the acquisition and development of certain real property (the “Site”) located within the City of San Pablo, California, to provide a project on the Site containing up to forty-four (44), but not less than thirty-nine (39), units of affordable rental housing and one (1) manager’s unit, together with parking and associated amenities, all as more particularly set forth in the DDA (the “Project”). The Lender is making the loan evidenced by this Predevelopment Loan Note to facilitate the Project. In consideration of the loan from the Lender evidenced by this Predevelopment Loan Note, the Borrower has also agreed to enter into an Affordable Housing Regulatory Agreement (herein the “Affordable Housing Regulatory Agreement”) with the Lender, pursuant to which Borrower will covenant that all of the affordable rental dwelling units in the Project shall be made available for occupancy to “lower income households” (households whose income does not exceed 80% of area median income, adjusted for household size) as defined in Health and Safety Code Section 50079.5, at an “affordable rent,” as defined in Health and Safety Code Section 50053 and applicable regulations set forth in Title 25 of the California Code of Regulations, Section 6910 *et seq.* and that the restrictions shall remain in effect for a period of fifty-five (55) years from the issuance of the Certificate of Completion for the Project as provided in Section 3.6 of the DDA (herein the “Completion Date”).

2. Predevelopment Loan Deed of Trust/Assignment of Predevelopment Loan Assets. Upon the close of escrow for the Borrower’s acquisition of title to the Site, payment of this Predevelopment Loan Note shall be secured by a deed of trust (the “Predevelopment Loan Deed of Trust”) from Borrower to Lender, to be executed as of the date of the close of escrow. As additional security for the Predevelopment Loan, the Borrower shall assign all of its rights to all of the assets acquired with Predevelopment Loan funds, including, but not limited to, the following (herein the “Predevelopment Assets”):

Permits and Legal

- Zoning and land-use approvals
- Legal, title searches and contracts

Architectural and Engineering Plans

- Design and engineering services
- Conceptual layouts, schematics, and design development

Market and Feasibility Studies

- Studies evaluating demand, cost projections, and potential ROI
- Reports required for CTCAC application

Consulting and Advisory Costs

- Payments to project consultants, planners, or other advisory services
- Project management before construction begins

Other Predevelopment Expenses

- Miscellaneous costs directly tied to preparing the project for construction
- Permits, environmental remediation, or temporary site improvements

The assignment agreement or agreements shall be in form satisfactory to the Lender, shall be entered into immediately following the acquisition of any Predevelopment Assets and shall expressly provide that the Lender is obtaining rights to the Predevelopment Assets without assuming any obligations with respect thereto.

3. Payment. Until the Borrower completes the purchase of the Site, the Predevelopment Loan shall be subject to payment in full by the Borrower within thirty (30) days of a written demand by the Lender. The Lender’s written demand for payment in full may be made promptly following the Borrower’s failure to complete the purchase of the Site within the time and manner required by the DDA. Following the Borrower’s purchase of the Site: (a) this Predevelopment Loan Note shall be due and payable in full no later than thirty (30) years from the date hereof; and (b) commencing on _____, 20__, and on _____ of each year thereafter, the Borrower shall make payments to the Lender in an amount equal to seventy-five percent (75%) of Residual Receipts, substantially as defined below [or, if applicable, in accordance with that certain Intercreditor Agreement by and between the Lender, the Developer, the County of Contra Costa, East Bay Regional Center and HCD, dated _____, and recorded on _____ in the official records of the County of Contra Costa as Instrument No. _____].

“Residual Receipts” means, in a particular calendar year, the amount by which Gross Revenue (defined below) exceeds Annual Operating Expenses (defined below).

“Gross Revenue,” with respect to a particular calendar year, shall mean all revenue, income, receipts, and other consideration actually received from ownership or operation of the Project. “Gross Revenue” shall include, but not be limited to: all rents, fees and charges paid by tenants, Section 8 payments or other rental subsidy payments received for the dwelling units, deposits forfeited by tenants, all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; proceeds from vending and laundry room machines; the proceeds of business interruption or similar insurance; the proceeds of casualty insurance to the extent not utilized to repair or rebuild the Project; condemnation awards for a taking of part or all of the Project for a temporary period; and any revenue derived from a refinancing of the Project. “Gross Revenue” shall also include the fair market value of any goods or services provided in

consideration for the leasing or other use of any portion of the Project. "Gross Revenue" shall not include tenants' security deposits, loan proceeds other than revenue derived from a refinancing of the Project, capital contributions or similar advances.

"Annual Operating Expenses," with respect to a particular calendar year, shall mean the following costs reasonably and actually incurred for operation and maintenance of the Project to the extent that they are consistent with an annual independent audit performed by a certified public accountant using generally accepted accounting principles: property and other taxes and assessments imposed on the Project; debt service currently due on a non-optional basis (excluding debt service due from Residual Receipts or surplus cash of the Project) on loans associated with development of the Project and approved by the City; property management fees and reimbursements, not to exceed fees and reimbursements which are standard in the industry and pursuant to a management contract approved by the City; premiums for property damage and liability insurance; utility services not paid for directly by tenants, including but not limited to water, sewer, trash collection, gas and electricity; maintenance and repair including but not limited to pest control, landscaping and grounds maintenance, painting and decorating, cleaning, common systems repairs, general repairs, janitorial, and supplies; any annual license or certificate of occupancy fees required for operation of the Project; security services; advertising and marketing; cash deposited into a reserve for capital replacements of Project improvements in an amount not to exceed \$15,750; extraordinary operating costs specifically approved by the City; payments of deductibles in connection with casualty insurance claims not normally paid from reserves; the amount of uninsured losses actually replaced, repaired or restored, and not normally paid from reserves; and other ordinary and reasonable operating expenses not listed above. "Annual Operating Expenses" shall not include the following: developer fees; asset management fees; partnership management fees; depreciation, amortization, depletion or other non-cash expenses; any amount expended from a reserve account; and any capital cost with respect to the Project, as determined by the accountant for the Project.

4. Manner of Payment. Payment shall be made in lawful money of the United States to Lender at 1000 Gateway Avenue, San Pablo, California. The place of payment may be changed from time to time as the Lender may from time to time designate in writing.

5. Right to Prepay. Borrower shall have the right to prepay this Predevelopment Loan Note in whole or in part.

6. Transfer of the Site. If all or any part of the Site or an interest therein is sold or transferred by the Borrower without the Lender's prior written consent, except as otherwise permitted under the DDA, the Lender may, at the Lender's option, declare all sums owing on this Predevelopment Loan Note to be immediately due and payable.

7. Default. The occurrence of any of the following (each an "Event of Default") shall constitute an event of default under this Predevelopment Loan Note:

(a) Borrower fails to pay any amount due hereunder within fifteen (15) days of its due date; or

(b) Any breach of or event of default by Borrower under the Affordable Housing Regulatory Agreement, the DDA, the Predevelopment Loan Deed of Trust or any other contract or instrument securing this Predevelopment Loan Note, which breach or event of default is not cured within the notice and grace periods applicable thereto as set forth in such documents,

or if no notice and grace period is otherwise specified for such breach or event of default, within thirty (30) days after written notice thereof from Lender to Borrower, provided that if a breach or default cannot be cured within such thirty (30) day period, Borrower shall not be in default so long as Borrower commences to cure such breach or default within such thirty (30) day period and thereafter diligently prosecutes such cure to completion; or

(c) The filing of a petition by or against the Borrower under any provisions of the Bankruptcy Reform Act, Title 11 of the United States Code, as amended or recodified from time to time, or under any similar or other law relating to bankruptcy, insolvency, reorganization or other relief for debtors; the appointment of a receiver, trustee, custodian or liquidator of or for any part of the assets or property of the Borrower; if Borrower becomes insolvent; if Borrower makes a general assignment for the benefit of creditors; if Borrower is generally not paying its debts as they become due; or any attachment or like levy is made on any property of Borrower.

Upon the occurrence of any Event of Default, or at any time thereafter, at the option of the Lender hereof, the entire unpaid principal owing on this Predevelopment Loan Note shall become immediately due and payable. This option may be exercised at any time following any such Event of Default, and Lender's failure to exercise such option shall not constitute a waiver of such option with respect to any subsequent Event of Default. Lender's failure in the exercise of any other right or remedy hereunder or under any agreement which secures the indebtedness or is related thereto shall not affect any right or remedy and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof.

8. Late Charge. At all times after an Event of Default by reason of Borrower's failure to pay amounts due under this Predevelopment Loan Note, interest shall accrue on the sums as to which Borrower is in default at the lower of the highest rate then allowed by law or five percent (5%) over the prime interest rate announced by Bank of America N.T.&S.A., as of the date of the default. If Bank of America N.T.&S.A. no longer exists or fails to announce a prime interest rate, the prime interest rate announced by the largest bank, in terms of total assets, of the member banks of the Twelfth District Federal Reserve Bank that announce a prime interest rate, shall be applicable for purposes of this paragraph.

9. Borrower agrees to pay immediately upon demand all costs and expenses of Lender including reasonable attorneys' fees, (a) if after default this Predevelopment Loan Note be placed in the hands of an attorney or attorneys for collection, (b) if after a default hereunder or under the Predevelopment Loan Deed of Trust, the Affordable Housing Regulatory Agreement or the DDA, Lender finds it necessary or desirable to secure the services or advice of one or more attorneys with regard to collection of this Predevelopment Loan Note against Borrower, any guarantor or any other party liable therefor or to the protection of its rights under this Predevelopment Loan Note, the Predevelopment Loan Deed of Trust, the Affordable Housing Regulatory Agreement and the DDA, or (c) if Lender seeks to have the Site abandoned by or reclaimed from any estate in bankruptcy, or attempts to have any stay or injunction prohibiting the enforcement or collection of this Predevelopment Loan Note or prohibiting the enforcement of the Predevelopment Loan Deed of Trust or any other agreement evidencing or securing this Predevelopment Loan Note lifted by any bankruptcy or other court.

10. If Lender shall be made a party to or shall reasonably intervene in any action or proceeding, whether in court or before any governmental agency, affecting the property or the title thereto or the interest of the Lender under the Predevelopment Loan Deed of Trust, including,

without limitation, any form of condemnation or eminent domain proceeding, except any action alleging negligence or misconduct on Lender's part, Lender shall be reimbursed by Borrower immediately upon demand for all costs, charges and attorneys' fees incurred by Lender in any such case, and the same shall be secured by the Predevelopment Loan Deed of Trust as a further charge and lien upon the Site.

11. The Borrower waives to the full extent permitted by applicable law the benefit of any laws or rules of court now or hereafter in effect relating to exemption, appraisal or stay of execution. The Borrower also hereby waives and releases to the full extent permitted by applicable law all benefit that might accrue to it by virtue of any present or future laws exempting any property securing this Predevelopment Loan Note, real or personal, or any part of the proceeds arising from any sale of any such property, from attachment, levy or sale under execution, or providing for any stay of execution, exemption from civil process or extension of time for payment; and the Borrower agrees that any real estate that may be levied upon pursuant to a judgment obtained by virtue hereof, or any writ of execution issued thereon, may be sold upon any such writ or by nonjudicial trustee's sale under any deed of trust that may be executed to secure this Predevelopment Loan Note in whole or in part in any order desired by the Lender.

12. Whenever used, the words "Borrower" and "Lender" shall be deemed to include the respective successors and assigns of each.

13. This Predevelopment Loan Note shall be binding upon Borrower, its successors and assigns.

14. Time is of the essence with respect to every provision hereof. This Predevelopment Loan Note shall be construed in accordance with and be governed by the laws of the State of California.

15. If any provision of this Predevelopment Loan Note shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

_____, a California
_____, "BORROWER"

By _____
Title _____

By _____
Title _____

ATTACHMENT NO. 10

FORM OF PREDEVELOPMENT LOAN DEED OF TRUST

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of San Pablo
1000 Gateway Avenue
San Pablo, CA 94806
Attention: City Manager

No fee for recording pursuant to
Government Code Section 27383

(Space above this line for Recorder's use)

DEED OF TRUST, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND
FIXTURE FILING (herein the "Predevelopment Loan Deed of Trust") is being entered into as of
this _____ day of _____, 20__, by _____, a
California _____ (the "Trustor"), to _____
(the "Trustee"), in favor of the CITY OF SAN PABLO, a California municipal corporation (the
"Beneficiary").

Trustor is the fee owner of the real property (the "property"), described in the attached
Exhibit A, which is incorporated into this Predevelopment Loan Deed of Trust by reference. This
Predevelopment Loan Deed of Trust is executed by Trustor in consideration of a loan being made
by Beneficiary to Trustor (the "Predevelopment Loan"). The Predevelopment Loan is evidenced
by a promissory note of even date herewith in a principal amount of ONE MILLION DOLLARS
(\$1,000,000.00) executed by Trustor in favor of Beneficiary (the "Predevelopment Loan Note").

In consideration of the Predevelopment Loan, Trustor hereby irrevocably grants, conveys,
transfers and assigns to the Trustee, its successors and assigns, in trust, with power of sale and
right of entry and possession as provided below, all of its present and future estate, right, title and
interest in and to the following described property (the "Mortgaged Property" or the "Premises"):

(A) All of Trustor's estate, right, title and interest in and to the property, and all
minerals, oil, gas and other hydrocarbon substances on the property, as well as all development
rights, air rights, water, water rights, and water stock relating to the property;

(B) All present and future structures, buildings, improvements, appurtenances and
fixtures of any kind on the property, including but not limited to all apparatus, equipment and
appliances used in connection with the operation or occupancy of the property, such as fire
sprinklers and alarm systems, heating and air-conditioning systems and facilities used to provide
any utility services, refrigeration, ventilation, laundry, drying, dishwashing, garbage disposal,

stoves, recreation or other services on the property, and all window coverings, drapes and rods, carpeting and floor coverings, it being intended and agreed that all such items will be conclusively considered to be a part of the real property conveyed by this Predevelopment Loan Deed of Trust, whether or not attached or affixed to the property (the "Improvements");

(C) All appurtenances of the property and all rights of the Trustor in and to any streets, roads or public places, easements or rights-of-way, relating to the property;

(D) All of the rents, royalties, profits and income of the property, and all rights of Trustor under all present and future leases affecting the property, including but not limited to any security deposits;

(E) All proceeds and claims arising on account of any damage to or taking of the property or any Improvements thereon or any part thereof, and all causes of action and recoveries for any loss or diminution in the value of the property or any Improvements;

(F) All goods located on the property and used in the operation or occupancy of the property or in any construction on the property but which are not effectively made real property under Clause (B) above, including but not limited to all appliances, furniture and furnishings, building service equipment, and building materials, supplies and equipment;

(G) All general intangibles relating to the development or use of the property, including but not limited to all governmental permits relating to construction on the property, all names under or by which the property or any Improvements on the property may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all trademarks and goodwill in any way relating to the property; and

(H) All water stock relating to the property, all shares of stock or other evidence of ownership of any part of the property that is owned by the Trustor in common with others, and all documents of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the property.

This instrument secures:

(1) The payment and performance of the Trustor's indebtedness and obligations under the Predevelopment Loan Note including all extensions, renewals, modifications, amendments and replacements of the Predevelopment Loan Note;

(2) The payment and performance of the Trustor's obligations under this Predevelopment Loan Deed of Trust;

(3) The payment of all sums advanced or paid out by the Beneficiary or the Trustee under or pursuant to any provision of this Predevelopment Loan Deed of Trust, together with interest thereon as provided herein;

(4) The payment of the principal and interest on all other future loans or advances made by the Beneficiary to the Trustor (or any successor-in-interest to the Trustor as the owner of all or any part of the Mortgaged Property) when the promissory note evidencing the loan or advance specifically states that it is secured by this Predevelopment Loan Deed of Trust ("Future

Advances”), including all extensions, renewals, modifications, amendments and replacements of any Future Advances;

(5) The payment and performance of each and every obligation, covenant, and agreement of Trustor contained under all other present and future agreements executed by Trustor in favor of Beneficiary and relating to the Predevelopment Loan Note or the Predevelopment Loan, including without limitation, the Amended and Restated Disposition and Development Agreement executed between Trustor and Beneficiary (the “DDA”), and the Affordable Housing Regulatory Agreement recorded against the property (the “Affordable Housing Regulatory Agreement”) (as such documents may be amended, modified or supplemented from time to time, collectively herein the “Related Documents”).

This Predevelopment Loan Deed of Trust, the Predevelopment Loan Note, the Related Documents and any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby may hereafter be referred to as the “Loan Documents.”

ARTICLE I COVENANTS OF TRUSTOR

To protect the security of this Predevelopment Loan Deed of Trust, the Trustor agrees as follows:

1.01 Performance. Trustor will pay and perform all indebtedness and obligations that are secured by this Predevelopment Loan Deed of Trust in accordance with their terms. All sums payable by Trustor hereunder shall be paid without notice, demand, counterclaim, offset, deduction, or defense.

1.02 Insurance. Trustor will maintain in force on the Mortgaged Property (a) hazard insurance against loss or damage to the Improvements and Personal Property by fire and any of the risks covered by “fire and extended coverage” insurance, (b) commercial general liability insurance, (c) such other insurance, and in such amounts, as may from time to time be reasonably required by Beneficiary against the same or other hazards, excluding flood insurance and earthquake insurance, and (d) any other insurance required by law. The insurance policies must be satisfactory to the Beneficiary as to amount, form, deductibles and insurer, and must cover all risks Beneficiary requires. With respect to public liability insurance, Beneficiary shall be named as an additional insured, and as to Beneficiary such insurance shall be primary and noncontributing in the event of loss with any other insurance Beneficiary may carry. The hazard insurance policy must contain a standard mortgagee clause satisfactory to the Beneficiary making all losses payable to the Beneficiary. All such insurance policies may only be cancelled or modified upon not less than thirty (30) days’ prior written notice to the Beneficiary. Certificates of all such insurance satisfactory to the Beneficiary and, at the request of Beneficiary, such insurance policies, together with receipts for the payment of premiums, are to be delivered to and held by the Beneficiary. Certificates of all renewal and replacement policies must be delivered to the Beneficiary at least fifteen (15) days before expiration of the old policies. Approval, disapproval or acceptance of any insurance by the Beneficiary will not be a representation of the solvency of any insurer, the sufficiency of any amount of insurance or the form or legal sufficiency of any insurance contracts, and Trustor hereby expressly assumes full responsibility for and liability, if any, with respect thereto.

1.03 Proceeds. All insurance proceeds on the Mortgaged Property, and all causes of action, claims, compensation, awards and recoveries for any damage, condemnation or taking of all or any part of the Mortgaged Property or for any damage or injury to it or for any loss or diminution in value of the Mortgaged Property, are hereby assigned to and shall be paid to the Beneficiary, subject to the rights of superior lienholders. Trustor, upon obtaining knowledge of the institution of any such proceedings or of any damage to the Mortgaged Property, will immediately notify the Beneficiary in writing. The Beneficiary may participate in any suits or proceedings relating to any such proceeds, causes of action, claims, compensation, awards or recoveries and may, subject to the rights of superior lienholders, make any compromise or settlement thereof and may join with Trustor in adjusting any loss covered by insurance. The Beneficiary will apply any sums received by it under this paragraph first to the payment of all of its costs and expenses (including but not limited to legal fees and disbursements) incurred in obtaining those sums, and then, in its absolute discretion (subject to the following paragraph) and without regard to the adequacy of its security, to the payment of the indebtedness and obligations secured by this Purchase Money Deed of Trust or to Trustor for restoration or repair of the Mortgaged Property. Any application of such amounts or any portion thereof to the indebtedness secured hereby shall not be construed to cure or waive any default or notice of default hereunder or invalidate any act done pursuant to any such notice or default.

In the event Trustor is not in default hereunder and the following conditions are satisfied, Beneficiary shall make such remaining proceeds available to Trustor to restore the Mortgaged Property: (i) the Beneficiary shall be furnished with an estimate for its approval of the cost of restoration or repair accompanied by an architect's certification as to such costs and appropriate final plans and specifications for reconstruction of the improvements for approval by the Beneficiary; (ii) the improvements so restored or repaired shall be of substantially the same character and value as the improvements prior to damage or destruction and proper for the purposes for which they were originally erected; (iii) Trustor shall proceed forthwith with the completion of construction of the improvements, including the necessary work of restoration, in accordance with plans, specifications and drawings submitted to and approved by the Beneficiary; (iv) any monies which the Beneficiary makes available for restoration shall be disbursed in accordance with standard construction lending practice or in any other manner approved by the Beneficiary; (v) Trustor shall furnish the beneficiary with evidence satisfactory to the Beneficiary that all improvements so restored and/or repaired and their contemplated use fully comply with all zoning, environmental and building laws, ordinances and regulations, and with all other applicable federal, state and municipal laws and requirements; and (vi) if the estimated costs of reconstruction shall exceed the proceeds available, Trustor shall furnish a satisfactory bond of completion or such cash deposits or other evidence satisfactory to the Beneficiary of Trustor's ability to meet such excess costs.

1.04 Payment of Taxes and Claims. Subject to the provisions of the following paragraph of this Section 1.04, Trustor agrees to pay when due all taxes and assessments which are or may become a lien on the Mortgaged Property and any bonds, fees, liens, charges, fines, impositions and other items which are attributable to or which are assessed against the Mortgaged Property or its rents, royalties, profits and income ("Taxes"). Trustor also agrees to pay when due all lawful claims and demands of mechanics, materialmen, laborers and others for any work performed or materials delivered for the Mortgaged Property ("Claims").

Trustor, at its expense, may contest, by appropriate proceedings conducted in good faith and with due diligence, the amount or validity, in whole or in part, of any Taxes or Claims,

provided (i) Trustor shall have notified Beneficiary prior to the commencement of such proceedings, (ii) in the case of any unpaid Taxes or Claims, such proceedings shall suspend the collection thereof from Trustor, Beneficiary and the Mortgaged Property, and shall not constitute a presently enforceable lien against the Mortgaged Property during the pendency of such contest, (iii) neither the Mortgaged Property nor any part thereof nor any interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost, (iv) such proceedings shall not have an adverse effect on the lien or security interest created hereby or upon the enforcement of any provisions of the Loan Documents, and (v) if Beneficiary shall so require, Trustor shall have deposited with Beneficiary such security reasonably necessary for payment of the contested Taxes or Claims, with interest and penalties and Beneficiary's expenses.

1.05 Impounds. Beneficiary may, at its option to be exercised prior to or upon the recordation of this Predevelopment Loan Deed of Trust or thereafter upon thirty (30) days' written notice to Trustor and the existence of any reasonable grounds for insecurity as to payment by Trustor, require the deposit with Beneficiary or its designee by Trustor of amounts sufficient to discharge the obligations of Trustor under Sections 1.02 and 1.04 hereof as and when they become due. The determination of the amounts to be deposited with Beneficiary and the times for such deposit shall be made by Beneficiary in its sole discretion. Said amounts shall not be considered to be held by Beneficiary or its designee in trust nor as agent of Trustor, shall bear interest at the rate of interest customarily paid by Beneficiary, and shall be applied to the payment of the obligations in respect of which the amounts were deposited or, at the option of Beneficiary, to the payment of said obligations in such order or priority as Beneficiary shall determine. If at any time within thirty (30) days prior to the due date of any of the aforementioned obligations the amounts then on deposit therefor shall be insufficient for the payment of such obligations in full, Trustor shall, within ten (10) days after demand, deposit the amount of the deficiency with Beneficiary. If the amounts deposited are in excess of the actual obligations for which they were deposited, Beneficiary may refund any such excess, or, at its option, may hold the same in a reserve account, not in trust and bearing interest, and reduce proportionately the required deposits for the ensuing year. Nothing herein contained shall be deemed to affect any right or remedy of Beneficiary under any other provision of this Predevelopment Loan Deed of Trust or under any statute or rule of law to pay any such amount and to add the amount so paid to the indebtedness hereby secured.

All amounts so deposited shall be held by Beneficiary or its designee as additional security for the sums secured by this Predevelopment Loan Deed of Trust, and upon the occurrence of a default hereunder Beneficiary may, in its sole and absolute discretion, and without regard to the adequacy of its security hereunder in the event of a monetary default or nonmonetary default if the Beneficiary elects to accelerate the Predevelopment Loan, apply such amounts or any portion thereof to any part of the indebtedness secured hereby. Any such application of said amounts or any portion thereof to any indebtedness secured hereby shall not be construed to cure or waive any default or notice of default hereunder or invalidate any act done pursuant to any such default or notice.

To the extent Beneficiary requires deposits to be made pursuant to this Section 1.05, Trustor shall deliver to Beneficiary all tax bills, bond and assessment statements, statements of insurance premiums, and statements for any other obligations referred to above as soon as the same are received by Trustor. If Beneficiary sells or assigns this Predevelopment Loan Deed of Trust, Beneficiary shall have the right to transfer all amounts deposited under this Section to the purchaser or assignee, and Beneficiary shall thereupon be released and have no further liability

hereunder for the application of such deposits, and Trustor shall look solely to such purchaser or assignee for such application and for all responsibility relating to such deposits.

1.06 Security Agreement. This Predevelopment Loan Deed of Trust constitutes a security agreement with respect to all personal property and fixtures in which the Beneficiary is granted a security interest hereunder, and the Beneficiary shall have all of the rights and remedies of a secured party under the California Uniform Commercial Code as well as all other rights and remedies available at law or in equity. Trustor hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Beneficiary the attorney-in-fact of Trustor, to execute, deliver and, if appropriate, to file with the appropriate filing officer or office such security agreements, financing statements, continuation statements or other instruments as the Beneficiary may request or require in order to impose, perfect or continue the perfection of, the lien or security interest created hereby. Upon the occurrence of any default hereunder, the Beneficiary shall have the right to cause any of the Mortgaged Property which is personal property and subject to the security interest of the Beneficiary hereunder, not including any personal property of any Tenant of the Project or any leased personal property of Trustor (“Personal Property”) to be sold at any one or more public or private sales in any manner permitted by applicable law, and the Beneficiary shall further have all other rights and remedies, whether at law, in equity, or by statute, as are available to secured creditors under applicable law. Any such disposition may be conducted by an employee or agent of the Beneficiary or the Trustee. Any person, including both the Trustor and the Beneficiary, shall be eligible to purchase any part or all of such property at any such disposition.

Expenses of retaking, holding, preparing for sale, selling or the like shall be borne by Trustor and shall include the Beneficiary’s and the Trustee’s attorneys’ fees and legal expenses. Trustor, upon demand of the Beneficiary, shall assemble the Personal Property and make it available to the Beneficiary at the property, a place which is hereby deemed to be reasonably convenient to the Beneficiary. The Beneficiary shall give Trustor at least five (5) days’ prior written notice of the time and place of any public sale or other disposition of such property or of the time of or after which any private sale or any other intended disposition is to be made, and if such notice is sent to Trustor, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Trustor.

Trustor hereby warrants, represents and covenants as follows:

(a) Trustor is, and as to portions of the Personal Property to be acquired after the date hereof will be, the sole owner of the Personal Property (except that Trustor may lease Personal Property which is immaterial in value and merely incidental to the operation of the Mortgaged Property), free from any senior adverse lien, security interest, encumbrance or adverse claims thereon of any kind whatsoever except as permitted by Section 4.14 of this Predevelopment Loan Deed of Trust. Trustor will notify Beneficiary of, and will defend the Personal Property against, all claims and demands of all persons at any time claiming the same or any interest therein.

(b) Trustor will not lease, sell, convey or in any manner transfer the Personal Property, without the prior written consent of Beneficiary, except for transfers as described in clause (d) below.

(c) The Personal Property is not used or bought for personal, family or household purposes.

(d) The Personal Property will be kept on or at the property and Trustor will not remove the Personal Property from the property without the prior written consent of Beneficiary, except such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Trustor with new items of equal or greater quality and value.

(e) Trustor maintains a place of business in the State of California and Trustor will immediately notify Beneficiary in writing of any change in its place of business.

(f) Trustor will execute and deliver to the Beneficiary on demand, and at Trustor's cost and expense, any documents required to perfect and continue the perfection of the Beneficiary's security interest in the Personal Property of Trustor granted by this instrument.

1.07 Assignment of Rents. All of the existing and future rents, royalties, income and profits of the Mortgaged Property that arise from its use or occupancy are hereby absolutely and presently assigned to the Beneficiary. Trustor irrevocably appoints Beneficiary its true and lawful attorney-in-fact at the option of Beneficiary at any time and from time to time to demand, receive and enforce payment, give receipts or releases and sue in the name of Trustor or Beneficiary for all such rents, royalties, incomes and profits. However, until Trustor is in default under this Purchase Money Deed of Trust, Trustor will have a license to demand, receive and enforce payment, give receipts or releases and sue in the name of Trustor for all such rents, royalties, income and profits. Upon any default by Trustor, the Beneficiary may terminate Trustor's license in its discretion at any time without notice to Trustor and may thereafter collect the rents, royalties, income and profits itself or by an agent or receiver. No action taken by the Beneficiary to collect any rents, royalties, income or profits will make the Beneficiary a "mortgagee-in-possession" of the Mortgaged Property, unless the Beneficiary personally or by agent enters into actual possession of the Mortgaged Property. Possession by a court-appointed receiver will not be considered possession by the Beneficiary. All rents, royalties, income and profits collected by the Beneficiary or a receiver will be applied first to pay all expenses of collection, and then to the payment of all costs of operation and management of the Mortgaged Property, and then to the payment of the indebtedness and obligations secured by this Predevelopment Loan Deed of Trust in whatever order the Beneficiary directs in its absolute discretion and without regard to the adequacy of its security.

1.08 Acceleration. Except as otherwise permitted in the Affordable Housing Regulatory Agreement or the DDA, if the Mortgaged Property or any part thereof or beneficial interest therein or any interest of Trustor is sold, assigned, transferred, conveyed, encumbered or full possessory rights therein transferred, conveyed or encumbered, in either or any case without the prior written consent of Beneficiary, such event shall constitute a default under this Predevelopment Loan Deed of Trust and Beneficiary, at its option, may declare the Predevelopment Loan Note and all other obligations hereunder to be immediately due and payable, and Beneficiary may invoke any remedies following such acceleration as are permitted by this Predevelopment Loan Deed of Trust or at law or in equity. The provisions of this Section 1.08 shall not apply to: (a) the granting of such security interests in the Mortgaged Property for the purpose of securing loans or funds to be used for financing the development of the Mortgaged Property, to which Beneficiary has agreed this Predevelopment Loan Deed of Trust shall be subordinate as described in Section 4.14 hereof; and (b) a refinancing which does not increase the amounts of periodic payments or aggregate principal amount owed by Trustor, or extend the time for repayment thereof.

1.09 Use and Maintenance.

(a) Trustor agrees that at all times during construction and thereafter, Trustor will use, maintain, preserve and keep the Mortgaged Property, including all Improvements thereon to be maintained, preserved and kept, and to perform all obligations with respect to the development and rental of the individual residential units, in accordance with the terms and conditions of the DDA and the Affordable Housing Regulatory Agreement.

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 Improvements to be constructed on the property, diligently to file or procure the filing of a valid notice of completion upon completion of construction of any part of the Improvements or the Mortgaged Property, diligently file or procure the filing of a notice of cessation upon the event of a cessation of labor on the work or construction of the Improvements 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 Mortgaged Property or 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 for record any notices of completion or cessation of labor or any other notice that Beneficiary deems necessary or desirable to protect its interests in and to the Improvements, the Mortgaged Property, the DDA or the Affordable Housing Regulatory Agreement; 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.

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 Improvements. 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 ten (10) days after the filing of any claim of lien, record in the Office of the Recorder of Contra Costa County a surety bond sufficient to release said claim of lien, or provide Beneficiary, at Trustor's cost, with such security or assurances (and extensions, renewals or substitutions thereof) as Beneficiary may, in its sole discretion, approve in writing.

(b) Trustor will not commit any waste on the Mortgaged Property or take any actions that might invalidate any insurance carried on the Mortgaged Property. Trustor will maintain the Mortgaged Property in good condition and repair and will complete or restore and repair promptly and in a good and workmanlike manner any building, structure, or improvement which may be constructed, damaged or destroyed thereon, whether or not insurance or other proceeds are available to cover in whole or in part the cost of any such completion, restoration or repair. No Improvements may be removed, demolished or materially altered except for purposes of replacement valued at less than TWENTY THOUSAND DOLLARS (\$20,000.00) without the prior written consent of the Beneficiary.

(c) Without the prior written consent of the Beneficiary, Trustor will not seek, make or consent to any change in the zoning or nature of occupancy or conditions of use of all or any part of the Mortgaged Property to the extent the same was not intended by the Beneficiary at the time this Predevelopment Loan Deed of Trust was delivered.

(d) Trustor shall comply with all applicable laws, orders, ordinances, regulations, restrictions and requirements of all governmental authorities affecting the Mortgaged Property and the use thereof, including, without limitation, those relating to hazardous substances, pollution, or protection of the environment. Trustor will comply with and make all payments required under the provisions of any covenants, conditions or restrictions affecting the Mortgaged Property, including but not limited to those contained in the Affordable Housing Regulatory Agreement.

1.10 Records. Trustor will keep adequate books and records of account of the Mortgaged Property and its own financial affairs sufficient to permit the preparation of financial statements therefrom in accordance with generally accepted accounting principles. The Beneficiary will have the right to examine, copy and audit Trustor's records and books of account applicable to the Mortgaged Property at all reasonable times.

1.11 Defense. Trustor will, at its own expense, appear in and defend any action or proceeding that might affect the Beneficiary's security or the rights or powers of the Beneficiary or the Trustee or that purports to affect any of the Mortgaged Property. If Trustor fails to perform any of its covenants or agreements contained in this Predevelopment Loan Deed of Trust after the expiration of any applicable cure period, or if any action or proceeding of any kind (including but not limited to any bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding) is commenced which might affect the Beneficiary's or the Trustee's interest in the Mortgaged Property or the Beneficiary's right to enforce its security, then the Beneficiary and/or the Trustee may, at their option, but without obligation to do so and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereunder, make any appearances, disburse any sums and take any actions as may be deemed necessary or desirable to the Trustee or the Beneficiary to protect or enforce the security of this Predevelopment Loan Deed of Trust or to remedy the failure of Trustor to perform its covenants (without, however, waiving any default of Trustor), including but not limited to disbursement of reasonable attorneys' fees, entry upon the Mortgaged Property to make repairs or to take other action to protect the security hereof, and payment, purchase, contest or compromise of any encumbrance, charge or lien which in the judgment of the Beneficiary or the Trustee appears to be prior or superior hereto. Trustor agrees to pay all reasonable out-of-pocket expenses of the Beneficiary and the Trustee thus incurred (including but not limited to fees and disbursements of counsel). Any sums so disbursed or advanced by the Beneficiary or the Trustee will be additional indebtedness of Trustor secured by this Predevelopment Loan Deed of Trust and will be payable by Trustor upon demand. Any such sums so disbursed or advanced will bear interest at ten percent (10%) per annum, provided that any such sums so disbursed or advanced by the Trustee will not bear interest in excess of the maximum rate permitted to be charged by the Trustee under applicable law. This paragraph will not be construed to require the Beneficiary or the Trustee to incur any expenses, make any appearances, or take any actions.

1.12 Financing Statement. This Predevelopment Loan Deed of Trust constitutes a financing statement filed as a fixture filing in the Official Records of the County Recorder of the county in which the Mortgaged Property is located with respect to any and all fixtures included within the term "Mortgaged Property" as used herein and with respect to any goods or other personal property that may now be or hereafter become such fixtures.

1.13 Indemnity. In addition to any other indemnities to Beneficiary specifically provided for in this Predevelopment Loan Deed of Trust, Trustor shall defend, with counsel approved by Beneficiary, protect, indemnify and save harmless Beneficiary from and against any

and all losses, liabilities, obligations, claims, demands, damages, fines, taxes, penalties, actions, causes of action, orders, decrees, judgments, liens, costs and expenses (including, without limitation, experts', consultants' and attorneys' fees), imposed upon or incurred by or asserted against Beneficiary by reason of (a) Beneficiary's interest in the Mortgaged Property, (b) any accident, injury to or death of a person or persons or loss of or damage to property occurring on or about or with respect to the Mortgaged Property or any part thereof or the adjoining sidewalks, curbs, vaults and vault space (if any), streets or ways, (c) any use, non-use, misuse, possession, occupation, alteration, operation, maintenance, management or condition (including, without limitation, the location or alleged location, release or suspected release of any Hazardous Material (as defined in Section 1.14(a) below) thereon) of the Mortgaged Property or any part thereof, or of the adjoining sidewalks, curbs, streets, ways, vaults and vault space (if any), (d) any failure on the part of Trustor to perform or observe any of its agreements or obligations under this Predevelopment Loan Deed of Trust or the Loan Documents, (e) any failure on the part of Trustor to comply with any law, regulation, ordinance, or requirement of any governmental body applicable to the Mortgaged Property, (f) the performance of any labor or service or the furnishing of any material or other property in respect of the Mortgaged Property or any part thereof, (g) any negligence (to the extent that proceeds from any insurance actually maintained by Beneficiary do not cover the loss caused thereby) or willful act or omission on the part of Trustor, and (h) any breach of any representation or warranty of Trustor contained in this Predevelopment Loan Deed of Trust. All amounts payable to Beneficiary under this Section that are not paid within ten (10) days after written demand therefor by Beneficiary shall bear interest from the date of such demand. The provisions of this Section 1.13 shall survive the termination and reconveyance of this Predevelopment Loan Deed of Trust.

1.14 Environmental Matters.

(a) Trustor hereby represents and warrants to Beneficiary as follows:

(i) As used herein, the term "Hazardous Materials" means and includes any flammable, explosive, or radioactive materials or hazardous, toxic or dangerous wastes, substances or related materials or any other chemicals, materials or substances, exposure to which is prohibited, limited or regulated by any federal, state, county, regional or local authority, including, but not limited to, asbestos, PCBs, petroleum products and by-products, substances defined or listed as "hazardous substances," "toxic substances," "hazardous waste," "hazardous material," "extremely hazardous waste," "restricted hazardous waste" or similarly identified in, pursuant to, or for purposes of, the California Solid Waste Management, Resource Recovery and Recycling Act (California Government Code Section 66700, *et seq.*), the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, *et seq.*); the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, *et seq.*); the Resource Conservation and Recovery Act (42 U.S.C. Section 6901, *et seq.*); Section 25117 or Section 25316 of the California Health & Safety Code; any so-called "Superfund" or "Superlien" law or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree now or in the future regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material; any substance or mixture regulated under the Toxic Substance Control Act of 1976 (15 U.S.C. Section 2601, *et seq.*); any "toxic pollutant" under the Clean Water Act (33 U.S.C. Section 1251, *et seq.*); and any hazardous air pollutant under the Clean Air Act (42 U.S.C. Section 7901, *et seq.*). References to specific statutes include any existing or future amendments or replacements thereof.

(ii) Trustor has obtained or will obtain all certificates, permits, licenses, approvals and authorizations necessary for the lawful construction, occupancy, use and operation of the Mortgaged Property for the purposes for which it is being used, including, but not limited to, any certificates, permits, licenses, approvals and authorizations required by any federal, state, county, regional or local authority whose jurisdiction includes, in whole or in part, environmental protection or matters pertaining to health, safety and welfare. Except as previously disclosed to Beneficiary, Trustor has received no notice of any lawsuit or other regulatory, administrative, judicial or legal proceeding which is presently pending or threatened which (A) challenges the issuance of any of the certificates, permits, licenses, approvals or authorizations for the Mortgaged Property or (B) alleges noncompliance by Trustor or the Mortgaged Property with any law, regulation, rule or ordinance which has a material effect on the operation, occupancy, leasing or use of the Mortgaged Property for the purposes for which it will be used. In addition, none of the nonresidential tenants (if any) of the Mortgaged Property, to the knowledge of Trustor after due inquiry, has failed to obtain any certificate, permit, license, approval or authorization required in connection with its operations on its premises.

(b) Trustor shall keep and maintain the Mortgaged Property at all times in compliance with any and all federal, state and local statutes, laws, ordinances, codes, rules, regulations, orders and decrees now or hereafter relating to Hazardous Materials, industrial hygiene or to the environmental conditions on, under or about the Mortgaged Property, including, but not limited to, soil and ground water conditions (“Hazardous Materials Laws”). Trustor shall not use, generate, manufacture, release, store or dispose of, or permit to be used, generated, manufactured, released, stored or disposed of on, under, about or from the Mortgaged Property, or transport to or from or permit to be transported to or from the Mortgaged Property, any Hazardous Materials in violation of any Hazardous Materials Laws. Trustor hereby agrees at all times to comply fully and in a timely manner with, and to cause all of Trustor’s employees, agents, contractors, subcontractors and any other persons entering the Mortgaged Property with the express or implied consent of Trustor, to so comply with, all Hazardous Materials Laws.

Trustor shall have the right to contest, at Trustor’s sole cost and expense, the applicability of any Hazardous Materials Laws or the grounds for any attempted enforcement of any Hazardous Materials Laws provided that: (i) as a condition to any such contest, Trustor shall deliver to Beneficiary, at Trustor's sole cost and expense, such test results, consultants’ reports and other information regarding the then current environmental condition of the Mortgaged Property and the effect that any additional delay that may result from any such contest would have on such environmental condition, as Beneficiary may reasonably require; (ii) Trustor shall have no right to contest if the delay that might result from any such contest would result in any material deterioration in the environmental condition of the Mortgaged Property or any portion thereof or in any material deterioration in the environmental condition of any other property; (iii) Trustor shall have no such right to contest if, as a result of such contest, any governmental agency would have the right to enforce a lien on all or any portion of the Mortgaged Property; and (iv) Trustor shall give prior written notice to Beneficiary of Trustor’s intention to exercise such right of contest and, upon written request of Beneficiary, shall deliver to Beneficiary a good and sufficient bond or other security reasonably satisfactory to Beneficiary for the costs which would be incurred in complying with such Hazardous Materials Laws. Should a new chemical, material or substance become prohibited by federal, state or local regulation, or become known to pose a hazard, Trustor shall take measures to comply with the law or regulation, and/or take such steps as are necessary to minimize environmental threats.

(c) Trustor shall immediately advise Beneficiary in writing of (and furnish Beneficiary with copies of all relevant documents pertaining to): (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions relating to the Mortgaged Property instituted, completed or threatened pursuant to any environmental laws, statutes, ordinances, rules and regulations, including any Hazardous Materials Laws, and of any notices received by Trustor with respect to the foregoing; (ii) Trustor's discovery of any claim made or clearly threatened in writing by any third party (other than by a governmental agency) and of any claim made or clearly threatened (whether or not in writing) by any governmental agency against Trustor or the Mortgaged 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 Mortgaged Property that could cause the Mortgaged Property or any part thereof to be classified as "border-zone property" under the provisions of California Health and Safety Code Sections 25220, *et seq.*, or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Mortgaged Property under any Hazardous Materials Laws. Beneficiary shall have the right to join and participate in, as a party if it so elects, any legal or administrative proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Trustor.

(d) Without Beneficiary's prior written consent, which shall not be unreasonably withheld or delayed, Trustor shall not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Mortgaged Property, nor enter into any settlement agreement, consent decree or other compromise in respect to any Hazardous Materials Claims, which remedial action, settlement, consent or compromise might, in Beneficiary's reasonable judgment, impair the value of Beneficiary's security hereunder; provided, however, that Beneficiary's prior consent shall not be necessary in the event that the presence of any Hazardous Materials on, under or about the Mortgaged 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 possible to obtain Beneficiary's consent before taking such action, provided that in such event Trustor shall notify Beneficiary as soon as practicable of any action so taken. 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 establishes to the reasonable satisfaction of Beneficiary that there is no reasonable alternative to such remedial action which would result in less impairment of Beneficiary's security hereunder; (iii) all federal, state and local governmental agencies having jurisdiction have approved of or required the particular remedial action; or (iv) a particular remedial action is recommended by a reputable environmental consultant selected or approved by Beneficiary in a report which is satisfactory to Beneficiary in its reasonable discretion.

(e) Trustor hereby agrees to defend (with counsel approved by Beneficiary), indemnify, protect and hold Beneficiary harmless from and against, and shall reimburse Beneficiary for any and all Claims (as defined below). Trustor hereby expressly waives, with respect to any Claims, any immunity to which Trustor may otherwise be entitled under any industrial or workers' compensation laws. As used herein, "Claims" means any and all actual out-of-pocket costs (including, without limitation, attorneys' fees, consultants' fees, experts' fees, including sums paid in settlement of any claim, expenses and court costs), expense, loss or obligation arising from any claim, demand, loss, liability, damage, injunctive relief, order, decree, judgment, injury to or death of any person, damage or injury to property or natural resources, fine,

tax, penalty, action and cause of action of any kind incurred by or asserted against Beneficiary and arising, directly or indirectly, in whole or in part, out of the generation, storage, release, discharge, deposit, migration, use, handling or presence, placement or alleged or suspected generation, storage, release, discharge, migration, deposit, use, handling, presence or placement of any Hazardous Materials at, on, about, under, within or from the Mortgaged Property, or in or adjacent to any part of the Mortgaged Property, or in the soil, ground water or soil vapor on or under the Mortgaged Property, or elsewhere in connection with the transportation of Hazardous Materials to or from the Mortgaged Property in violation of any Hazardous Materials Laws, whether or not known to Trustor or Beneficiary, whether foreseeable or unforeseeable, regardless of the source of such generation, storage, release, discharge, deposit, migration, use, handling, presence or placement and regardless of when such generation, storage, release, discharge, deposit, migration, use, handling, presence or placement occurred or is discovered. Without limiting the generality of the foregoing and for purposes of clarification only, Claims also include all actual out-of-pocket costs incurred by Beneficiary in connection with (i) any investigation to determine whether the Mortgaged Property is in compliance with Hazardous Materials Laws, which investigation determines that the Mortgaged Property is not in compliance with such Laws, (ii) remediating any environmental contamination, and causing the Mortgaged Property to be or become in compliance with all applicable Hazardous Materials Laws, (iii) any investigation, removal or remediation of any kind and disposal of any Hazardous Materials present at, on, under or within the Mortgaged Property or released from the Mortgaged Property to the extent required by applicable Hazardous Materials Laws in effect at the time of such removal, remediation or disposal, and (iv) any repair of any damage to the Mortgaged Property or any other property caused by any such investigation, removal, remediation or disposal. The rights of Beneficiary hereunder shall not be limited by any investigation or the scope of any investigation undertaken by or on behalf of Beneficiary in connection with the Mortgaged Property prior to the date hereof. The provisions of this Section 1.14(e) shall survive the termination and reconveyance of this Predevelopment Loan Deed of Trust.

ARTICLE II EVENTS OF DEFAULT

2.01 Default. The Trustor will be in default under this Predevelopment Loan Deed of Trust if:

(a) There shall be a failure to make the payment of any installment of principal or interest or any other sum secured hereby which continues for fifteen (15) days after such payment is due; or

(b) There shall be a failure to comply with any other term, obligation, covenant or condition contained in this Predevelopment Loan Deed of Trust; provided, however, that Trustor shall not be in default if Trustor, after Beneficiary sends written notice demanding cure of such failure, (i) cures the failure within thirty (30) days, or (ii) if the cure requires more than thirty (30) days, immediately commences to cure the failure and thereafter diligently prosecutes such cure to completion within sixty (60) days after giving notice of the default.

(c) There occurs an appointment, pursuant to an order of a court of competent jurisdiction, of a trustee, receiver or liquidator of the Mortgaged Property or any part thereof, or of Trustor, or any termination or voluntary suspension of the transaction of business of Trustor, or any attachment, execution or other judicial seizure of all or any substantial portion of Trustor's

assets, which appointment, attachment, execution or seizure is not discharged within forty-five (45) days; or

(d) Trustor, or any member of Trustor at any level or any trustee of Trustor, shall file a voluntary case under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of Trustor or such person or entity or for any part of the Mortgaged Property or any substantial part of Trustor's or such person's or entity's property, or shall make any general assignment for the benefit of Trustor's or such person's or entity's creditors, or shall fail generally to pay Trustor's or such person's or entity's debts as they become due or shall take any action in furtherance of any of the foregoing; or

(e) A court having jurisdiction shall enter a decree or order for relief in respect of Trustor, or any member of Trustor at any level or any trustee of Trustor, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or Trustor or such member or trustee shall consent to or shall fail to oppose any such proceeding, or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Trustor or such person or entity or for any part of the Mortgaged Property or any substantial part of Trustor's or such person's or entity's property, or ordering the winding up or liquidation of the affairs of Trustor or any such person or entity, and such decree or order shall not be dismissed within sixty (60) days after the entry thereof; or

(f) There has occurred a default under any term, covenant, agreement, condition, provision, representation or warranty contained in any of the Related Documents or any other mortgage or deed of trust encumbering all or any portion of the Mortgaged Property, regardless of whether such mortgage or deed of trust is prior or subordinate to this Predevelopment Loan Deed of Trust, or contained in any note or other instrument secured thereby, or contained in any other instrument securing such note, if such default remains uncured following any applicable notice, grace or cure period; or

(g) There has occurred a violation of any condition, covenant or restriction recorded against or affecting the property, and such violation has not been cured within any applicable cure period provided therein; or

(h) Any representation or disclosure made to the Beneficiary by Trustor proves to be materially false or misleading on the date as of which made, whether or not that representation or disclosure appears in this Predevelopment Loan Deed of Trust; or

(i) There has occurred a change of the constituent members, whether voluntarily or involuntarily or otherwise, or the sale, conveyance, transfer, disposition, charging or encumbrance of any such member interests, without the prior written consent of the Beneficiary or as otherwise permitted in the DDA.

With respect to any right to cure or cure period provided in this Section 2.01, performance of a cure by any member of Trustor shall have the same effect as would like performance by Trustor.

ARTICLE III
REMEDIES

3.01 Remedies. If the Trustor is in default, the Beneficiary may, at its option, and without notice to or demand upon the Trustor:

(a) Declare any or all indebtedness secured by this Predevelopment Loan Deed of Trust to be due and payable immediately;

(b) Upon five (5) days' notice to Trustor, enter onto the Mortgaged Property, in person or by agent or by court-appointed receiver, and take any and all steps which may be desirable in the Beneficiary's sole discretion to complete any unfinished construction, to manage and operate the Mortgaged Property and to do any and all other acts which the Beneficiary deems proper to protect the security hereof and, either with or without taking possession, in its own name or in the name of the Trustor, sue for or otherwise collect and receive the rents, royalties, income and profits of the Mortgaged Property, and the Beneficiary may apply any rents, royalties, income or profits collected against the indebtedness secured by this Predevelopment Loan Deed of Trust without in any way curing or waiving any default of the Trustor;

(c) Bring a court action to foreclose this Predevelopment Loan Deed of Trust or to enforce its provisions or any of the indebtedness or obligations secured by this Predevelopment Loan Deed of Trust;

(d) Cause any or all of the Mortgaged Property to be sold under the power of sale granted by this Predevelopment Loan Deed of Trust in any manner permitted by applicable law; and

(e) Exercise any other right or remedy available under the Loan Documents or any other agreement of the Trustor, or under any guaranty of any obligations of the Trustor to the Beneficiary relating to the Predevelopment Loan, or otherwise available at law or in equity.

3.02 Power of Sale. In connection with the exercise of the power of sale granted by this Predevelopment Loan Deed of Trust:

(a) Beneficiary may elect to cause the Mortgaged Property or any part thereof to be sold under the power of sale herein granted in any manner permitted by applicable law. In connection with any sale or sales hereunder, Beneficiary may elect to treat any of the Mortgaged Property which consists of a right in action or which is property that can be severed from the real property covered hereby or any improvements thereon without causing structural damage thereto as if the same were personal property, and dispose of the same in accordance with applicable law, separate and apart from the sale of real property. Any sale of any personal property hereunder shall be conducted in any manner permitted by Section 9501 or any other applicable section of the California Commercial Code. Where the Mortgaged Property consists of real and personal property or fixtures, whether or not such personal property is located on or within the real property, Beneficiary may elect in its discretion to exercise its rights and remedies against any or all of the real property, personal property, and fixtures in such order and manner as is now or hereafter permitted by applicable law.

(b) Without limiting the generality of the foregoing, Beneficiary may, in its sole and absolute discretion and without regard to the adequacy of its security, elect to proceed against any

or all of the real property, personal property and fixtures in any manner permitted under Section 9501(4)(a) of the California Commercial Code; and if the Beneficiary elects to proceed in the manner permitted under Section 9501(4)(a)(ii) of the California Commercial Code, the power of sale herein granted shall be exercisable with respect to all or any of the real property, personal property and fixtures covered hereby, as designated by Beneficiary, and the Trustee is hereby authorized and empowered to conduct any such sale of any real property, personal property and fixtures in accordance with the procedures applicable to real property.

(c) Where the Mortgaged Property consists of real property and personal property, any reinstatement of the obligation secured hereby, following default and an election by the Beneficiary to accelerate the maturity of said obligation, which is made by Trustor or any other person or entity permitted to exercise the right of reinstatement under Section 2924c of the California Civil Code or any successor statute, shall, in accordance with the terms of California Commercial Code Section 9501(4)(c)(iii), not prohibit the Beneficiary from conducting a sale or other disposition of any personal property or fixtures or from otherwise proceeding against or continuing to proceed against any personal property or fixtures in any manner permitted by the California Commercial Code; nor shall any such reinstatement invalidate, rescind or otherwise affect any sale, disposition or other proceeding held, conducted or instituted with respect to any personal property or fixtures prior to such reinstatement or pending at the time of such reinstatement. Any sums paid to Beneficiary in effecting any reinstatement pursuant to Section 2924c of the California Civil Code shall be applied to the secured obligation and to the Beneficiary's and Trustee's reasonable costs and expenses in the manner required by Section 2924c.

(d) Should Beneficiary elect to sell any portion of the Mortgaged Property which is real property or which is personal property or fixtures that Beneficiary has elected under Section 9501(4)(a)(ii) of the California Commercial Code to sell together with real property in accordance with the laws governing a sale of real property, Beneficiary or Trustee shall give such notice of default and election to sell as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, and without the necessity of any demand on Trustor, Trustee, at the time and place specified in the notice of sale, shall sell said real property or part thereof at public auction to the highest bidder for cash in lawful money of the United States. Trustee may, and upon request of Beneficiary shall, from time to time, postpone any sale hereunder by public announcement thereof at the time and place noticed therefor.

(e) If the Mortgaged Property consists of several lots, parcels or items of property, Beneficiary may: (i) designate the order in which such lots, parcels or items shall be offered for sale or sold, or (ii) elect to sell such lots, parcels or items through a single sale, or through two or more successive sales, or in any other manner Beneficiary deems in its best interest. Any person, including Trustor, Trustee or Beneficiary, may purchase at any sale hereunder, and Beneficiary shall have the right to purchase at any sale hereunder by crediting upon the bid price the amount of all or any part of the indebtedness hereby secured. Should Beneficiary desire that more than one sale or other disposition of the Mortgaged Property be conducted, Beneficiary may, at its option, cause the same to be conducted simultaneously, or successively, on the same day, or at such different days or times and in such order as Beneficiary may deem to be in its best interests, and no such sale shall terminate or otherwise affect the lien of this Purchase Money Deed of Trust on any part of the Mortgaged Property not sold until all indebtedness secured hereby has been fully paid. In the event Beneficiary elects to dispose of the Mortgaged Property through more than one

sale, Trustor agrees to pay the costs and expenses of each such sale and of any judicial proceedings wherein the same may be made, including reasonable compensation to Trustee and Beneficiary, their agents and counsel, and to pay all expenses, liabilities and advances made or incurred by Trustee in connection with such sale or sales, together with interest on all such advances made by Trustee at the lower of the interest rate set forth in the Predevelopment Loan Note or the maximum rate permitted by law to be charged by Trustee.

(f) Upon any sale hereunder, Trustee shall execute and deliver to the purchaser or purchasers a deed or deeds conveying the property so sold, but without any covenant or warranty whatsoever, express or implied, whereupon such purchaser or purchasers shall be let into immediate possession; and the recitals in any such deed or deeds of facts, such as default, the giving of notice of default and notice of sale, and other facts affecting the regularity or validity of such sale or disposition, shall be conclusive proof of the truth of such facts and any such deed or deeds shall be conclusive against all persons as to such facts recited therein.

3.03 Sale Proceeds. The proceeds of any sale under this Predevelopment Loan Deed of Trust will be applied in the following manner:

FIRST: Payment of the costs and expenses of the sale, including but not limited to the Trustee's fees, legal fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of the Trustee, together with interest on all advances made by the Trustee at the maximum rate permitted to be charged by the Trustee under applicable law.

SECOND: Payment of all sums expended by the Beneficiary under the terms of this Predevelopment Loan Deed of Trust and not yet repaid, together with interest on such sums at the maximum rate permitted to be charged by the Beneficiary under applicable law.

THIRD: Payment of the indebtedness and obligations of the Trustor secured by this Predevelopment Loan Deed of Trust in any order that the Beneficiary chooses.

FOURTH: The remainder, if any, to the person or persons legally entitled to it.

3.04 Waiver. Trustor, for itself and for all persons hereunder claiming through or under it or who may at any time acquire a lien on all or any part of the Mortgaged Property or any interest therein, hereby expressly waives and releases all rights to direct the order in which any of the Mortgaged Property and/or any other property now or hereafter constituting security for any of the indebtedness secured hereby will be sold in the event of any sale under this Predevelopment Loan Deed of Trust, and also any right to have any of the Mortgaged Property and/or any other property now or hereafter constituting security for any of the indebtedness secured hereby marshalled upon any foreclosure of this Predevelopment Loan Deed of Trust or of any other security for any of said indebtedness.

3.05 Remedies Cumulative. All remedies contained in this Predevelopment Loan Deed of Trust are cumulative, and the Beneficiary also has all other remedies provided by law or in any other agreement between Trustor and the Beneficiary. No delay or failure by the Beneficiary to exercise any right or remedy under this Predevelopment Loan Deed of Trust will be construed to be a waiver of that right or remedy or of any default by Trustor. The Beneficiary may exercise

any one or more of its rights and remedies at its option without regard to the adequacy of its security.

3.06 Costs and Fees. Trustor will pay all of the Beneficiary's and the Trustee's costs, fees and expenses incurred in any efforts to enforce any terms of this Predevelopment Loan Deed of Trust or in the performance of its or their duties hereunder, whether or not any lawsuit is filed, including but not limited to legal fees and disbursements, foreclosure costs and title insurance or trustee's sale guaranty charges and any other governmental charges or impositions imposed by any governmental authority on the Trustee or the Beneficiary by reason of its or their interest in the Predevelopment Loan Note, any note evidencing a future advance, or this Predevelopment Loan Deed of Trust.

ARTICLE IV MISCELLANEOUS

4.01 Invalidity. The invalidity or unenforceability of any one or more provisions of this Predevelopment Loan Deed of Trust will in no way affect any other provision.

4.02 Loan Statement. Trustor agrees to pay to the Beneficiary a reasonable charge, not to exceed the maximum allowed by law, for giving any statement of the status of the obligations secured by this Predevelopment Loan Deed of Trust.

4.03 Late Charge. If Trustor shall fail to make any payment due hereunder within fifteen (15) days after the date the same is due and payable, a late charge by way of damages shall be immediately due and payable in the amount of ten percent (10%) of the overdue amount. Trustor recognizes that default in making the payments herein agreed to be paid when due will result in the Beneficiary incurring additional expense in servicing the Loan, in loss to the Beneficiary of the use of the money due, and in frustration to the Beneficiary in meeting its loan commitments. Trustor agrees that, if for any reason it fails to pay the amounts due under this Predevelopment Loan Deed of Trust within fifteen (15) days after the date when due, the Beneficiary shall be entitled to damages for the detriment caused thereby, but that it is extremely difficult and impractical to ascertain the extent of such damages. Trustor agrees that such amount as is specified herein is a reasonable approximation of damages for late payment.

4.04 Notices. All notices given under this Predevelopment Loan Deed of Trust must be in writing and will be effectively served upon personal delivery or, if mailed, no later than five (5) days after deposit in certified United States mail, postage prepaid, return receipt requested, sent to the Beneficiary at its address appearing in the recording information block on the front page of this Predevelopment Loan Deed of Trust and sent to the Trustor at its addresses appearing below its signature, which addresses may be changed by written notice. However, the service of any notice of default or notice of sale under this Predevelopment Loan Deed of Trust as required by law will, if mailed, be effective on the date of mailing.

4.05 Beneficiary Consent. Without affecting Trustor's liability for the payment of any of the indebtedness secured by this Predevelopment Loan Deed of Trust, the Beneficiary may from time to time and without notice to the Trustor (a) release any person liable for the payment of that indebtedness, (b) extend or modify the terms of payment of that indebtedness, (c) accept additional real or personal property of any kind as security, or alter, substitute or release any property securing that indebtedness, or (d) cause the Trustee to consent to the making of any map or plat of the Mortgaged Property, or to reconvey any part of the Mortgaged Property, or to join in granting any

easement or creating any restriction on the Mortgaged Property, or to join in any subordination or other agreement affecting this Predevelopment Loan Deed of Trust.

4.06 Trustee Acceptance. Trustee accepts this Trust when this Predevelopment Loan Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

4.07 Statute of Limitations. The Trustor waives all present and future statutes of limitations as a defense to any action to enforce the provisions of this Predevelopment Loan Deed of Trust or to collect any indebtedness secured by this Predevelopment Loan Deed of Trust to the fullest extent permitted by law, provided that such waiver shall not apply at any time after payment in full of all sums secured by the Predevelopment Loan Deed of Trust.

4.08 Interpretation. The term “Trustor” includes both the original Trustor and any subsequent owner or owners of any of the Mortgaged Property, and the term “Beneficiary” includes the original Beneficiary and also any future owner or holder, including pledgees and participants, of the Predevelopment Loan Note or any interest therein. Whenever the context requires, the singular includes the plural and vice versa and each gender includes each other gender. The headings of the articles of this Predevelopment Loan Deed of Trust are for convenience only and do not limit its provisions.

4.09 Consent. The Beneficiary’s consent to any act or omission by Trustor will not be a consent to any other or subsequent act or omission or a waiver of the need for such consent in any future or other instance.

4.10 Successors. The terms of this Predevelopment Loan Deed of Trust will bind and benefit the heirs, legal representatives, successors and assigns of Trustor and Beneficiary and the successors-in-trust of the Trustee. If more than one person is named as Trustor, each will be jointly and severally liable to perform the obligations of the Trustor.

4.11 California Law. This Predevelopment Loan Deed of Trust will be governed by California law, excepting those provisions dealing with choice of laws.

4.12 Removal of Trustee. The Beneficiary may remove the Trustee or any successor Trustee at any time or times and appoint a successor Trustee by recording a written substitution in the county where the real property covered by this Predevelopment Loan Deed of Trust is located, or in any other manner permitted by law. Upon that appointment, all of the powers, rights and authority of the Trustee will immediately become vested in its successor.

4.13 Inconsistency. The terms of this Predevelopment Loan Deed of Trust, or any modification thereof, shall prevail in the event of any inconsistency with the terms of the DDA, including, but not limited to, any terms of the DDA covering entitlement to or distribution of any insurance or condemnation proceeds or other items referred to in this Predevelopment Loan Deed of Trust.

4.14 Subordination. This Predevelopment Loan Deed of Trust may be made subordinate to and only to the terms and conditions of documents evidencing construction and/or permanent financing as provided in the DDA. The loan documents to which this Predevelopment Loan Deed of Trust shall be subordinate shall include, and subordination hereunder is subject to, the following conditions (alternatively, these conditions may be contained in a separately recorded subordination agreement between the construction and/or permanent financing lender and Beneficiary): (a) the

Beneficiary shall receive copies of any notices of default issued by the lender to the Trustor; (b) the Beneficiary shall have the right to cure any default by the Trustor within ninety (90) days after a notice of default; and (c) the Beneficiary shall have the right to exercise any and all remedies under this Predevelopment Loan Deed of Trust following the expiration of ninety (90) days after delivery of notice of default from the Beneficiary to the lender of a default by Trustor under the Predevelopment Loan Note or this Predevelopment Loan Deed of Trust. The Beneficiary shall be entitled to reimbursement from the Trustor of all direct but reasonable costs and expenses incurred by Beneficiary in curing a default of Trustor.

4.15 Nonrecourse. The Predevelopment Loan Note secured by this Predevelopment Loan Deed of Trust is a nonrecourse note whereby Trustor has no personal liability for repayment of the sums evidenced thereby, and the Beneficiary in the event of default must resort only to income, profits or other funds generated from the exercise of the Beneficiary's rights with respect to the Premises, including any funds which may result from the sale or disposition of the Mortgaged Property subsequent to a foreclosure of this Predevelopment Loan Deed of Trust, or conveyance of a deed to the Mortgaged Property in lieu of such foreclosure, for repayment of any amounts owed hereunder.

The foregoing limitation shall not apply to any and all loss, damage, liability, action, cause of action, cost or expense (including, without limitation, reasonable attorneys' fees and expenses) incurred by the Beneficiary as a result of any (a) fraud or material misrepresentation under or in connection with the loan or any loan document, (b) intentional bad faith waste of the Mortgaged Property, (c) losses resulting from the Trustor's failure to maintain insurance as required under this Predevelopment Loan Deed of Trust, or (d) misappropriation of any rent, security deposits, insurance proceeds, condemnation awards or any other proceeds derived from the Mortgaged Property and actually received by the Trustor. In the event any of the foregoing events (a) through (d) occurs, the Beneficiary shall have the right to proceed directly against the Trustor at the time the event giving rise to the recourse liability occurred to recover any and all loss, damage, liability, action, cause of action, cost or expense (including, without limitation, reasonable attorneys' fees and expenses) incurred by the Beneficiary.

IN WITNESS WHEREOF, the undersigned has executed this Predevelopment Loan Deed of Trust as of the day and year first hereinabove written.

_____, a California

By _____
Title _____

By _____
Title _____

“TRUSTOR”

Trustor's Address:

_____, CA _____