

AFFORDABLE HOUSING LOAN AGREEMENT

by and between

**THE CITY OF SAN LEANDRO,
a municipal corporation**

and

**EDEN SURF ASSOCIATES, L.P.,
a California limited partnership**

January __, 2012

Exhibits

- A Legal Description of the Property
- B Form of Promissory Note (\$100,000)
- B-1 Form of Amended and Restated Note (existing City loan)
- C Form of Deed of Trust
- D Form of Regulatory Agreement
- E Financing Plan
- F Federal Requirements

THIS AFFORDABLE HOUSING LOAN AGREEMENT (this “**Agreement**”) is entered into effective as of January __, 2012 (“**Effective Date**”) by and between the City of San Leandro, a municipal corporation (“**City**”) and Eden Surf Associates, L.P., a California limited partnership (“**Borrower**”). City and Borrower are hereinafter collectively referred to as the “**Parties.**”

RECITALS

A. Borrower owns or has a contractual right to acquire that certain real property located in the City of San Leandro at 15320 Tropic Court, known as Alameda County Assessor’s Parcel No. 412-0006-007, and more particularly described in Exhibit A attached hereto (the “**Property**”). The Property is currently improved with forty-six units of multi-family rental housing (the “**Improvements**”).

B. Borrower intends to acquire the Property, rehabilitate the Improvements, and operate the Improvements as an affordable multi-family residential rental project (the “**Project**”).

C. Subject to the terms and conditions set forth in this Agreement, City has agreed to provide a loan to Borrower in the amount of One Hundred Thousand Dollars (\$100,000) (the “**Loan**”) in order to provide partial financing for the rehabilitation of the Project.

D. Borrower has agreed to restrict thirty-two (32) of the residential units in the Project for occupancy by Eligible Households at Affordable Rents (defined below) in accordance with an Affordable Housing Regulatory Agreement.

E. Concurrently with the execution of this Agreement, among other documents, Borrower shall execute: (a) a secured promissory note in the amount of the Loan, (b) a deed of trust which will provide City with a security interest in the Project and the Property, and (c) an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants which will require Project rents to be affordable to low-, and very low-income households.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

DEFINITIONS

1. Definitions. The following terms shall have the meanings set forth in the Sections referenced below whenever used in this Agreement and the Exhibits attached hereto. Additional terms are defined in the Recitals and text of this Agreement.

“**Affordable Rent**” is defined in the Regulatory Agreement.

“**Area Median Income**” is defined in the Regulatory Agreement.

“**City**” means the City of San Leandro, a municipal corporation.

“**City Council**” means the City Council of the City of San Leandro.

“**City Documents**” means collectively, this Agreement, the Restated Note, the Note, the Deed of Trust, and the Regulatory Agreement.

“**Claims**” is defined in Section 3.15.

“**Closing Date**” means the date that escrow closes for Borrower’s acquisition of the Property and the closing for the Loan.

“**Conditions of Approval**” is defined in Section 3.2.

“**Construction Plans**” is defined in Section 3.10.

“**Deed of Trust**” is defined in Section 4.3.

“**Eligible Household**” is defined in the Regulatory Agreement.

“**Environmental Laws**” is defined in Section 8.4.

“**Financing Plan**” is defined in Section 3.6.

“**Hazardous Materials**” is defined in Section 8.3.

“**Improvements**” is defined in Recital A.

“**Indemnitees**” is defined in Section 3.15.

“**Loan**” is defined in Recital C and further described in Section 4.1.

“**Note**” is defined in Section 4.1.

“**Official Records**” means the Official Records of Alameda County.

“**Partnership Agreement**” is defined in Section 6.3.

“**Permitted Exceptions**” is defined in Section 4.5.

“**Project**” is defined in Recital B.

“**Property**” is defined in Recital A.

“**Regulatory Agreement**” is defined in Section 5.1.

“**Restated Note**” is defined in Section 4.2.1.

“**Title Policy**” is defined in Section 4.6.

“**Transfer**” is defined in Section 6.2.

“**Very Low-Income**” is defined in the Regulatory Agreement.

ARTICLE II

REPRESENTATIONS; COMPLIANCE WITH FEDERAL REQUIREMENTS

2.1 Borrower’s Representations. Borrower represents and warrants to City as follows, and Borrower covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.1 not to be true, Borrower shall immediately give written notice of such fact or condition to City. Borrower acknowledges that City shall rely upon Borrower’s representations made herein notwithstanding any investigation made by or on behalf of City.

(i) Authority; General Partner. Borrower is a limited partnership, duly organized and in good standing under the laws of the State of California. Borrower’s general partner is Eden Surf LLC, a California limited liability company whose managing member is Eden Investments, Inc., a California nonprofit public benefit corporation that is duly organized and in good standing under the laws of the State of California and tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. Borrower has the full right, power and authority to undertake all obligations of Borrower as provided herein, and the execution, performance and delivery of this Agreement by Borrower has been duly authorized by all requisite actions. The persons executing this Agreement on behalf of Borrower have been duly authorized to do so. This Agreement and the other City Documents constitute valid and binding obligations of Borrower, enforceable in accordance with their respective terms.

(ii) No Conflict. Borrower’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 Borrower is a party or by which it is bound.

(iii) No Litigation or Other Proceeding. No litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of Borrower to perform its obligations under this Agreement.

(iv) No Borrower Bankruptcy. Borrower is not the subject of a bankruptcy or insolvency proceeding.

2.2 Compliance with Federal Requirements. Borrower acknowledge that the funding to be provided pursuant to this Agreement is in part derived from Community Development Block Grant (CDBG) funding provided by the U.S. Department of Housing and Urban Development (HUD) pursuant to Title I of the Housing and Community Development Act of 1974. Borrower agrees to comply with all requirements applicable to the use of such funds, including without limitation, the regulations set forth in 24 CFR 570 *et seq.* (the “CDBG Regulations”) and the provisions set forth in Exhibit F attached hereto and incorporated herein by this reference.

ARTICLE III

REHABILITATION OF THE PROJECT

3.1 The Property. Borrower represents and warrants that as of the Effective Date: (i) Borrower possesses or has the contractual right to acquire fee simple title to the Property, and (ii) the Property is subject to no covenant, condition, restriction or agreement that would prevent the development and operation of the Project in accordance with this Agreement. If at any time the foregoing statements become untrue, the City shall have the right to terminate this Agreement upon written notice to Borrower. In the event that Borrower does not acquire fee simple title to the Property by January 31, 2012, this Agreement shall terminate and be of no further force or effect.

3.2 Scope of Development. Borrower shall rehabilitate the Improvements in accordance with the terms and conditions of this Agreement and in compliance with the terms and conditions of all approvals, entitlements and permits that the City or any other governmental body or agency with jurisdiction over the Project or the Property has granted or issued as of the date hereof or may hereafter grant or issue in connection with the Project, including without limitation, all mitigation measures imposed in connection with environmental review of the Project and all conditions of approval imposed in connection with any entitlements, approvals or permits (all of the foregoing approvals, entitlements, permits, mitigation measures and conditions of approval are hereafter collectively referred to as the “**Conditions of Approval**”).

3.3 Permits and Approvals; Cooperation. Borrower acknowledges that the execution of this Agreement by City does not relieve Borrower from the obligation to apply for and to obtain from City and all other agencies with jurisdiction over the Property, all necessary approvals, entitlements, and permits necessary for the rehabilitation of the Project (including without limitation any required approval of the Project in compliance with CEQA and if applicable, NEPA), nor does it limit in any manner the discretion of the City or any other agency in the approval process. Prior to the Closing, Borrower shall have obtained all entitlements, permits, licenses and approvals required for the rehabilitation and operation of the Project, including without limitation, building permits and use permits or shall provide evidence satisfactory to City that receipt of such permits and approvals is subject only to such conditions as City may reasonably approve. City staff shall work cooperatively with Borrower to assist in coordinating the expeditious processing and consideration of all permits, entitlements and approvals necessary for the rehabilitation and operation of the Project as contemplated by this Agreement.

3.4 Fees. Borrower shall be solely responsible for, and shall promptly pay when due, all customary and usual fees and charges of City in connection with obtaining building permits and other approvals for the Project, including without limitation, those related to the processing and consideration of amendments, if any, to the current entitlements, any related approvals and permits, environmental review, architectural review, historic review, and any subsequent approvals for the Project or the development of the Property.

3.5 Cost of Acquisition, Rehabilitation and Management. Except as expressly set forth herein, Borrower shall be solely responsible for all direct and indirect costs and expenses

incurred in connection with the acquisition of the Property, the rehabilitation of the Improvements, and the maintenance, management and operation of the Project, and none of such costs and expenses shall be the obligation of the City.

3.6 Financing Plan. As set forth in the attached Exhibit E, Borrower has provided City with a financing plan for the Project (“**Financing Plan**”) which, among other items, describes: (i) the estimated costs of the Project, including acquisition costs and hard and soft rehabilitation costs, (ii) identification of all sources of acquisition, rehabilitation, and permanent financing, (iii) projected rehabilitation and absorption periods. By its execution of this Agreement, City hereby approves the Financing Plan. The Parties agree that the Financing Plan may be modified by mutual written agreement of the Parties. The Parties each agree that they will not unreasonably withhold consent to a modification of the Financing Plan, provided that Borrower demonstrates to the reasonable satisfaction of City that such changes are necessary due to changes in market conditions, development and operating costs, rehabilitation costs, interest rates or availability of mortgage financing.

3.7 Development Schedule. Borrower shall commence and complete rehabilitation of the Improvements, and shall satisfy all other obligations of Borrower under this Agreement within the time periods set forth herein, as such time periods may be extended upon the mutual written consent of the Parties. Borrower shall commence work on the rehabilitation of the Improvements within sixty (60) days following the Effective Date, and Borrower shall diligently prosecute to completion the rehabilitation of the Project within twelve (12) months following the Effective Date. Subject to force majeure, Borrower’s failure to commence or complete rehabilitation of the Improvements in accordance with the time periods specified in this Section 3.7 foregoing shall be an Event of Borrower Default hereunder.

3.8 Inspections. For the purpose of ensuring compliance with this Agreement, Borrower shall permit representatives of the City to enter upon the Property to inspect the Improvements following forty-eight (48) hours prior written notice (except in the case of emergency in which case such notice as may be practical under the circumstances shall be provided).

3.9 City Disclaimer. Borrower acknowledges that the City is under no obligation, and City neither undertakes nor assumes any responsibility or duty to Borrower or to any third party, to in any manner review, supervise, or inspect the progress of work or the operation of the Project. Borrower and all third parties shall rely entirely upon its or their own supervision and inspection in determining the quality and suitability of the materials and work, the performance of architects, subcontractors, and material suppliers, and all other matters relating to the rehabilitation of the Improvements and operation of the Project. Any review or inspection undertaken by the City is solely for the purpose of determining whether Borrower is properly discharging its obligations under this Agreement, and shall not be relied upon by Borrower or any third party as a warranty or representation by the City as to the quality of the design or construction of the Improvements or otherwise.

3.10 Construction Plans. Borrower shall submit to City’s Building Department detailed construction plans for the rehabilitation of the Improvements (the “**Construction Plans**”). As used herein “**Construction Plans**” means all construction documents upon which

Borrower and Borrower's contractors shall rely in rehabilitating the Improvements (including the landscaping, parking, and common areas). Provided that the Construction Plans are consistent with the requirements of this Agreement, approval of the Construction Plans by City shall be deemed approval thereof by City.

3.11 Construction Pursuant to Plans. Borrower shall rehabilitate the Improvements in accordance with the approved Construction Plans (as such plans may be modified consistent with this Agreement and approved by City), and pursuant to the Conditions of Approval, and all other permits and approvals granted by the City and/or the City pertaining to rehabilitation of the Project. Borrower shall comply with all directions, rules and regulations of any fire marshal, health officer, building inspector or other officer of every governmental agency having jurisdiction over the Property or the Project. Each element of the work shall proceed only after procurement of each permit, license or other authorization that may be required for such element by any governmental agency having jurisdiction. All design and construction work on the Project shall be performed by licensed contractors, engineers or architects, as applicable.

3.12 Change in Construction Plans. If Borrower desires to make any material change in the approved Construction Plans, Borrower shall submit the proposed change in writing to the City for their written approval, which approval shall not be unreasonably withheld or delayed if the Construction Plans, as modified by any proposed change, conform to the requirements of this Agreement and any approvals issued by City after the Effective Date. If a proposed change is neither approved nor denied by City within thirty (30) days following the date the proposed change is received by City as evidenced by City's written acknowledgement, it shall be deemed approved. If rejected, the previously approved Construction Plans shall continue to remain in full force and effect. Any change in the Construction Plans required in order to comply with applicable codes shall be deemed approved, so long as such change does not substantially nor materially change the architecture, design, function, use, or amenities of the Project as shown on the latest approved Construction Plans. Approval of changes to the Construction Plans by City shall be deemed approval thereof by City. Nothing in this Section is intended to or shall be deemed to modify the City's standard plan review procedures.

3.13 Defects in Plans. City shall not be responsible to Borrower or to any third party for any defect in the Construction Plans or for any structural or other defect in any work done pursuant to the Construction Plans. Borrower shall indemnify, defend (with counsel reasonably approved by City) and hold harmless the Indemnitees from and against all Claims arising out of, or relating to, or alleged to arise from or relate to defects in the Construction Plans or defects in any work done pursuant to the Construction Plans whether or not any insurance policies shall have been determined to be applicable to any such Claims. Borrower's indemnification obligations set forth in this Section shall survive the expiration or earlier termination of this Agreement and the recordation of a Certificate of Completion. It is further agreed that City does not, and shall not, waive any rights against Borrower which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Borrower's deposit with City of any of the insurance policies described in this Agreement. Borrower's indemnification obligations pursuant to this Section shall not extend to Claims arising due to the gross negligence or willful misconduct of the Indemnitees.

3.14 Equal Opportunity. During the rehabilitation of the Improvements, there shall be no discrimination on the basis of race, color, religion, creed, sex, sexual orientation, disability, age, marital status, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged in work on the Project, and Borrower shall direct its contractors and subcontractors to refrain from discrimination on such basis. Borrower shall comply with all applicable requirements described in the Equal Employment Opportunity section in Exhibit F.

3.15 Prevailing Wage Requirements. To the full extent required by all applicable state and federal laws, rules and regulations, Borrower and its contractors and agents shall comply with the federal Davis Bacon Act and implementing regulations (40 U.S.C. 3141-3148) and with California Labor Code Section 1720 *et seq.* and the regulations adopted pursuant thereto (collectively, all of the foregoing are referred to herein as the “**Prevailing Wage Laws**”), and shall be responsible for carrying out the requirements of such provisions. If applicable, Borrower shall submit to City a plan for monitoring payment of prevailing wages and shall implement such plan at Borrower’s expense.

Borrower shall indemnify, defend (with counsel reasonably approved by City) and hold the City, the City, and their respective elected and appointed officers, officials, employees, agents, consultants, and contractors (collectively, the “**Indemnitees**”) harmless from and against all liability, loss, cost, expense (including without limitation attorneys’ fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively “**Claims**”) which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages (including without limitation, all claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code Sections 1726 and 1781) or the requirement of competitive bidding in the rehabilitation of the Improvements, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to the Prevailing Wage Laws, or any act or omission of Borrower related to this Agreement with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that City does not and shall not waive any rights against Borrower which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Borrower’s deposit with City of any of the insurance policies described in this Agreement. The provisions of this Section 3.15 shall survive the expiration or earlier termination of this Agreement. Borrower’s indemnification obligations set forth in this Section shall not apply to Claims arising from the gross negligence or willful misconduct of the Indemnitees.

3.16 Compliance with Laws. Borrower shall carry out and shall cause its contractors to carry out the rehabilitation of the Project in conformity with all applicable federal, state and local laws, rules, ordinances and regulations, including without limitation, all applicable federal and state labor laws and standards, applicable provisions of the California Public Contracts Code (if any), the City zoning and development standards, building, plumbing, mechanical and electrical codes, all other provisions of the City’s Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*,

Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.* Borrower shall indemnify, defend (with counsel reasonably approved by City) and hold harmless the Indemnitees from and against any and all Claims arising in connection with the breach of Borrower's obligations set forth in this Section whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that City does not and shall not waive any rights against Borrower which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Borrower's deposit with City of any of the insurance policies described in this Agreement. Borrower's indemnification obligations set forth in this Section shall not apply to Claims arising from the gross negligence or willful misconduct of the Indemnitees. Borrower's defense and indemnification obligations set forth in this Section 3.16 shall survive the expiration or earlier termination of this Agreement.

3.17 Liens and Stop Notices. Until the expiration of the term of the Regulatory Agreement and full repayment of the Loan, Borrower shall not allow to be placed on the Property or any part thereof any lien or stop notice on account of materials supplied to or labor performed on behalf of Borrower. If a claim of a lien or stop notice is given or recorded affecting the Project, Borrower shall within thirty (30) days of such recording or service: (a) pay and discharge (or cause to be paid and discharged) the same; or (b) effect the release thereof by recording and delivering (or causing to be recorded and delivered) to the party entitled thereto a surety bond in sufficient form and amount; or (c) provide other assurance satisfactory to City that the claim of lien or stop notice will be paid or discharged. Nothing contained herein shall impair Borrower's or any Project lenders' right to contest, in accordance with all applicable laws, any lien or stop notice that Borrower reasonably believes to have been inappropriately filed against the Property.

3.18 Right of City to Satisfy Liens on the Property. If Borrower fails to satisfy or discharge any lien or stop notice on the Property pursuant to and within the time period set forth in Section 3.17 above, the City shall have the right, but not the obligation, to satisfy any such liens or stop notices at Borrower's expense and without further notice to Borrower and all sums advanced by City for such purpose shall be part of the indebtedness secured by the Deed of Trust. In such event Borrower shall be liable for and shall immediately reimburse City for such paid lien or stop notice. Alternatively, the City may require Borrower to immediately deposit with City the amount necessary to satisfy such lien or claim pending resolution thereof. The City may use such deposit to satisfy any claim or lien that is adversely determined against Borrower. Borrower shall file a valid notice of cessation or notice of completion upon cessation of work on the Improvements for a continuous period of thirty (30) days or more, and shall take all other reasonable steps to forestall the assertion of claims or liens against the Property or the Improvements. The City may (but has no obligation to) record any notices of completion or cessation of labor, or any other notice that the City deems necessary or desirable to protect its interest in the Property and the Improvements.

3.19 Performance and Payment Bonds. Prior to commencement of rehabilitation of the Improvements, Borrower shall cause its general contractor to deliver to the City copies of payment bond(s) and performance bond(s) issued by a reputable insurance company licensed to do business in California, each in a penal sum of not less than one hundred percent (100%) of the scheduled cost of rehabilitation of the Improvements. The bonds shall name the City as co-

obligees. In lieu of such performance and payment bonds, subject to City's approval of the form and substance thereof, Borrower may submit evidence satisfactory to the City of the contractor's ability to commence and complete rehabilitation of the Improvements in the form of an irrevocable letter of credit, pledge of cash deposit, certificate of deposit, or other marketable securities held by a broker or other financial institution, with signature authority of the City required for any withdrawal, or a completion guaranty in a form and from a guarantor acceptable to City. Such evidence must be submitted to City in approvable form in sufficient time to allow for City's review and approval prior to the scheduled construction start date.

3.20 Insurance Requirements. Borrower shall maintain and shall cause its contractors to maintain all applicable insurance coverage specified in Article X.

ARTICLE IV

CITY FINANCIAL ASSISTANCE

4.1 Loan and Note. In order to increase the affordability of the Project, City agrees to provide a loan to Borrower in the principal amount of One Hundred Thousand Dollars (\$100,000) (the "**Loan**") upon the terms and conditions and for the purposes set forth in this Agreement. To fund the Loan, the City will use Sixty-Five Thousand Dollars (\$65,000) in funds from the City's Affordable Housing Trust Fund, and contingent upon HUD approval of an amendment to the City's Fiscal Year 2011-2012 Consolidated Annual Action Plan, Thirty-Five Thousand Dollars (\$35,000) in Community Development Block Grant (CDBG) funds. The Loan shall be evidenced by a secured promissory note in the amount of the Loan (the "**Note**"), executed by Borrower substantially in the form attached hereto as Exhibit B.

4.2 Interest Rate; Payment Dates; Maturity Date. The outstanding principal balance of the Note will bear interest at a rate equal to three percent (3%) simple annual interest commencing upon the date of disbursement. Annual payments shall be due and payable on a residual receipts basis in accordance with the formula set forth in the Note. The entire outstanding principal balance of the Loan together with accrued interest and all other sums due under the City Documents shall be payable in full on the date (the "**Maturity Date**") which is the fifty-fifth (55th) anniversary of the Loan origination date. Notwithstanding the foregoing, the City shall have the right to accelerate the Maturity Date and declare all sums payable under the Note immediately due and payable upon the expiration of all applicable cure periods following the occurrence of an Event of Borrower Default.

4.2.1 Original City Loan; Existing Agency Loan. As additional consideration for the Loan, Borrower agrees to execute and deliver to City an Amended and Restated Secured Promissory Note (the "**Restated Note**") substantially in the form attached hereto as Exhibit B-1, which shall supersede in its entirety that certain Secured Promissory Note in the original principal amount of Seven Hundred Thousand Dollars (\$700,000), dated as of May 6, 2002, executed by Citizen's Housing Corporation for the benefit of City, and subsequently assumed by Borrower. The Restated Note shall be payable on a residual receipts basis as set forth in the Restated Note and shall be secured by the Deed of Trust described in Section 4.3. In addition, Borrower agrees that following repayment of all sums due to City pursuant to the Restated Note, on an annual basis, Borrower shall pay sixty percent (60%) of Surplus Cash (as defined in the

Restated Note) to the Redevelopment Agency of the City of San Leandro (the “**Agency**”) or its successor in interest to reduce the outstanding balance payable to the Agency pursuant to that certain Secured Promissory Note in the original principal amount of Three Hundred Thousand Dollars (\$300,000), dated as of May 6, 2002, executed by Citizen’s Housing Corporation for the benefit of the Agency, and subsequently assumed by Borrower (the “**Agency Note**”). Upon repayment of all sums due pursuant to the Restated Note and all sums due pursuant to the Agency Note, Borrower shall make payments on the Note in accordance with the terms set forth in the Note.

4.3 Security. As security for repayment of the Note and the Restated Note, Borrower shall execute an Amended and Restated Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing for the benefit of City substantially in the form attached hereto as Exhibit C (the “**Deed of Trust**”) pursuant to which City shall be provided a lien against the Property and the Improvements. The Deed of Trust shall be dated as of the Closing Date, and shall be recorded in the Official Records on the Closing Date.

4.4 Closing Costs. Borrower shall pay all recording fees, transfer taxes, escrow fees and closing costs incurred in connection with the transactions contemplated hereby. Borrower shall pay for the cost of any lender’s policy of title insurance that City elects to acquire in connection with the transactions contemplated hereby.

4.5 Use and Disbursement of Proceeds. The Loan Proceeds shall be used solely to fund rehabilitation of the Improvements and such other expenses related to the Project as City shall approve. Upon satisfaction of the conditions set forth in Section 4.6, provided that Borrower has provided City with written requisition(s) specifying the amount and use of the requested Loan Proceeds accompanied by copies of bills and invoices from third parties and such other documentation as City may reasonably require, City will disburse the Loan Proceeds to Borrower (or will authorize such disbursement from escrow). Subsequent disbursements shall be made to Borrower no more than once per calendar month, upon City’s receipt of written requisitions and supporting documentation as described in this Section. City reserves the right to enter into an intercreditor or other agreement governing construction inspection and disbursement of the Loan Proceeds.

4.6 Conditions to Disbursement of Loan Proceeds. City’s obligation to fund the Loan and disburse the Loan Proceeds is conditioned upon the satisfaction of all of the following conditions:

(i) Borrower’s execution and delivery to City of this Agreement, the Restated Note, the Note, the Deed of Trust, and the Regulatory Agreement.

(ii) The conveyance of the Property to Borrower.

(iii) Recordation of the Deed of Trust and the Regulatory Agreement in the Official Records.

(iv) The issuance by an insurer satisfactory to City of an A.L.T.A. lender’s policy of title insurance (“**Title Policy**”) for the benefit of City in the amount of the Loan, insuring that the lien of the Deed of Trust is subject only to exceptions numbers 7 through 11

identified in that certain Preliminary Report (Order No. 54605-980412-09) issued by North American Title Insurance Company and dated October 27, 2011 (provided that taxes and assessments are paid current as of the closing date), deeds of trust and regulatory agreements executed for the benefit of the California Housing Finance Agency (CalHFA), and such other defects, liens, conditions, encumbrances, restrictions, easements and exceptions as City may approve in writing (collectively, the “**Permitted Exceptions**”) and containing such endorsements as City may reasonably require, with the cost of such Title Policy to be paid by Borrower.

(v) Borrower’s delivery to the City of evidence of property and liability insurance coverage in accordance with the requirements set forth in Section 10.2.

(vi) Borrower’s delivery to City of evidence reasonable satisfactory to City that there are no mechanics’ liens or stop notices related to the Property or the Project, and Borrower’s provision to City of full waivers or releases of lien claims if required by City.

(vii) Borrower’s delivery to City of each of the following: (i) certificate of good standing, certified by the Secretary of State indicating that Borrower is properly organized and authorized to do business in the State of California, (ii) a certified resolution indicating that Borrower’s managing general partner has authorized this transaction and that the persons executing the City Documents on behalf of Borrower have been duly authorized to do so, (iii) copy of Borrower’s LP-1 and partnership agreement, certified as accurate and complete by an authorized officer of Borrower’s general partner; and (iv) for Borrower’s general partner and its manager -- certified copies of the articles of incorporation/articles of organization, bylaws/operating agreement and verification of tax-exempt status, as applicable.

(viii) No material adverse change as determined by City in its reasonable judgment shall have occurred in the condition of the Property or in the financial or other condition of Borrower since the date of this Agreement.

(ix) City’s receipt of a copy of the executed purchase and sale agreement for Borrower’s acquisition of the Property and the final settlement statement showing the acquisition price, closing costs and all other amounts paid in connection with Borrower’s acquisition of the Property.

(x) Satisfaction of all of the following: (a) Borrower’s delivery to City of evidence reasonably satisfactory to City that Borrower has obtained all necessary entitlements, permits (including without limitation building permits), licenses, and approvals required to develop the Project, or that the receipt of such permits is subject only to such conditions as City shall reasonably approve; (b) City shall have approved the final plans and specifications for the Project; (c) Borrower’s financing for rehabilitation of the Project shall have closed or shall close concurrently with City’s disbursement of funds or deposit of funds into escrow, and Borrower shall have delivered to City evidence reasonably satisfactory to City that Borrower has secured binding commitments, subject only to commercially reasonable conditions, for all Project construction and permanent financing, (d) Borrower’s delivery to City approval of all of the following: (1) Project construction and operating budgets; (2) payment and performance bonds or other assurance of completion reasonably acceptable to City pursuant to the requirements set

forth in Section 3.19; (3) construction schedule; (4) City's receipt of a written requisition from Borrower specifying the amount and use of the requested funds, accompanied by copies of third-party invoices, evidence of Borrower's payment for services rendered in connection with the Project, and (5) copies of such other documents related to the acquisition, rehabilitation and financing of the Project as City may reasonably request.

(xi) With respect to the portion of the Loan Proceeds to be funded with CDBG funds, HUD approval of an amendment to the City's Fiscal Year 2011-2012 Consolidated Annual Action Plan authorizing use of such funds for the Loan.

4.7 No Obligation to Disburse Proceeds Upon Default. Notwithstanding any other provision of this Agreement, the City shall have no obligation to disburse or authorize the disbursement of any portion of the Loan Proceeds following:

- (i) the failure of any of Borrower's representations and warranties set forth in this Agreement or in connection with the Loan to be true and correct in all material respects;
- (ii) the termination of this Agreement by mutual agreement of the Parties;
- (iii) the occurrence of an Event of Default under any City Document which remains uncured beyond any applicable cure period, or the existence of any condition, event or act which upon the giving of notice or the passage of time or both would constitute an Event of Default under any City Document.

4.8 Prepayment; Acceleration.

(a) Prepayment. Borrower shall have the right to prepay the Loan at any time and from time to time, without penalty or premium, provided that any prepayment of principal must be accompanied by interest accrued but unpaid to the date of prepayment. Prepayments shall be applied first to accrued but unpaid interest and then to principal. Any such prepayment shall have no effect upon Borrower's obligations under the Regulatory Agreement which shall survive for the full term of the Regulatory Agreement.

(b) Due On Transfer or Default. The entire outstanding principal balance of the Loan shall be due in full on the earliest to occur of: (i) the date of any Transfer in violation of the Loan Documents, (ii) the date of any Event of Borrower Default (after any applicable cure period), or (iii) the repayment date(s) specified in the Note.

4.9 Nonrecourse. Except as expressly provided in Section 3.9 of the Note, the Note shall be non-recourse to Borrower.

ARTICLE V

USE OF THE PROPERTY

5.1 Affordable Housing. Borrower covenants and agrees for itself, its successors and assigns that (A) the Property will be subject to recorded covenants that will restrict use of the

Property to operation of a residential rental multi-family project, (B) for a term of not less than fifty-five (55) years commencing on the Effective Date, not less than ten (10) of the residential units in the Project shall be rented at Affordable Rent to Eligible Households whose income is no greater than 60% of Area Median Income, and (C) until June 30, 2058 the following additional units shall be subject to the following restrictions: not less than two (2) additional units shall be rented at Affordable Rent to Eligible Households whose income is no greater than thirty-five percent (35%) of Area Median Income, no fewer than nine (9) additional units shall be rented at Affordable Rents to Eligible Households of Very Low-Income, and not less than eleven (11) additional units shall be rented at Affordable Rents to Eligible Households whose income is no greater than sixty percent (60%) of Area Median Income, all in accordance with the terms hereof and the Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (the “**Regulatory Agreement**”) that the Parties shall execute substantially in the form attached hereto as Exhibit D concurrently with the execution of this Agreement, and which shall be recorded in the Official Records on the Closing Date.

5.2 Preference for Displacees. Borrower shall provide Eligible Households who have been displaced by the rehabilitation of the Project a priority in renting units in the Project.

5.3 Relocation. Households residing in the Project as of the Effective Date shall not be displaced before suitable replacement housing is available either in the residential units undergoing rehabilitation, or in comparable replacement housing. Borrower shall ensure that all occupants of the Property receive all notices, benefits and assistance to which they are entitled in accordance with California Relocation Assistance Law (Government Code Section 7260 *et seq.*), all state and local regulations implementing such law, and all other applicable local, state and federal laws and regulations (collectively “**Relocation Laws**”) relating to the displacement and relocation of eligible persons as defined in such Relocation Laws. Any and all costs incurred in connection with the temporary and/or permanent displacement and/or relocation of occupants of the Property, including without limitation payments to a relocation consultant, moving expenses, and payments for temporary and permanent relocation benefits pursuant to Relocation Laws shall be paid by Borrower. Borrower shall indemnify, defend (with counsel approved by City) and hold harmless the Indemnitees from and against any and all Claims arising in connection with the breach of Borrower’s obligations set forth in this Section whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that City does not and shall not waive any rights against Borrower which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Borrower’s deposit with City of any of the insurance policies described in this Agreement. Borrower’s indemnification obligations set forth in this Section shall not apply to Claims arising from the gross negligence or willful misconduct of the Indemnitees. Borrower’s obligations set forth in this Section 5.3 shall survive the expiration or earlier termination of this Agreement.

5.4 Maintenance. Borrower shall at its own expense, maintain the Property, the Improvements and related landscaping and common areas in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Borrower agrees to maintain the Project and the Property (including without limitation, the residential units, common areas, landscaping, driveways, parking areas, and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti,

disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property or at the Project. Borrower shall prevent and/or rectify any physical deterioration of the Property and the Project and shall make all repairs, renewals and replacements necessary to keep the Property and the improvements located thereon in good condition and repair.

5.5 Taxes and Assessments. Borrower shall pay all real and personal property taxes, assessments and charges and all franchise, income, payroll, withholding, sales, and other taxes assessed against the Property and payable by Borrower, 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 Borrower shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event the Borrower exercises its right to contest any tax, assessment, or charge, the Borrower, 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.

5.6 Obligation to Refrain from Discrimination. Borrower shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Borrower covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition 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, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Borrower or any person claiming under or through Borrower 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, of, or for the Property or part thereof. Borrower shall include such provision in all deeds, leases, contracts and other instruments executed by Borrower, and shall enforce the same diligently and in good faith.

All deeds, leases or contracts made or entered into by Borrower, its successors or assigns, as to any portion of the Property or the Improvements shall contain the following language:

(a) In Deeds, the following language shall appear:

“(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of a person or of a 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, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee 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 herein conveyed. The foregoing covenant shall run with the land.

“(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).”

(b) In Leases, the following language shall appear:

“(1) The lessee herein covenants by and for the lessee and lessee’s heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through the lessee 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 property herein leased.

“(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).”

(c) In Contracts, the following language shall appear:

“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, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to selection, location, number, use or occupancy of tenants, lessee, subtenants, sublessees or vendees of the land.”

ARTICLE VI

LIMITATIONS ON CHANGE IN OWNERSHIP, MANAGEMENT AND CONTROL OF BORROWER

6.1 Change Pursuant to this Agreement. Borrower and its principals have represented that they possess the necessary expertise, skill and ability to carry out the development of the Project on the Property pursuant to this Agreement. The qualifications, experience, financial capacity and expertise of Borrower and its principals are of particular concern to the City. It is because of these qualifications, experience, financial capacity and expertise that the City has entered into this Agreement with Borrower. No voluntary or involuntary successor, assignee or transferee of Borrower shall acquire any rights or powers under this Agreement, except as expressly provided herein.

6.2 Prohibition on Transfer. Prior to the expiration of the term of the Regulatory Agreement, Borrower shall not, except as expressly permitted by this Agreement, directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, “**Transfer**”) of the whole or any part of the Property, the Project, the Improvements, or this Agreement, without the prior written approval of City, which approval shall not be unreasonably withheld. Any such attempt to assign this Agreement without the City’s consent shall be null and void and shall confer no rights or privileges upon the purported assignee. In addition to the foregoing, prior to the expiration of the term of the Regulatory Agreement, except as expressly permitted by this Agreement, Borrower shall not undergo any significant change of ownership without the prior written approval of City. For purposes of this Agreement, a “significant change of ownership” shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Borrower, taking all transfers into account on a cumulative basis; provided however, neither the admission of an investor limited partner, nor the transfer by the investor limited partner to subsequent limited partners shall be restricted by this provision.

6.3 Permitted Transfers. Notwithstanding any contrary provision hereof, the prohibitions set forth in this Article shall not be deemed to prevent: (i) the granting of temporary easements or permits to facilitate development of the Property; (ii) the dedication of any property required pursuant to this Agreement; (iii) the lease of individual residences to tenants for occupancy as their principal residence in accordance with the Regulatory Agreement; (iv) assignments creating security interests for the purpose of financing the acquisition, construction or permanent financing of the Project or the Property in accordance with the approved Financing Plan and subject to the requirements of Article VII, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; (v) a Transfer to an entity which is under the direct control of Eden Housing, Inc., a California nonprofit public benefit corporation (“**Controlled Affiliate**”); (vi) the admission of limited partners and any transfer of limited partnership interests in accordance with Borrower’s agreement of limited partnership (the “**Partnership Agreement**”), provided that the Partnership Agreement and/or the instrument of Transfer provides for development and operation of the Property and Project in a manner consistent with this Agreement; (vii) the removal of the general partner by the investor limited partner for a default under the Partnership Agreement, provided

the replacement general partner is Alliant Capital, Ltd., an affiliate thereof or an entity reasonably satisfactory to City; or (viii) the transfer of the General Partner's interest to a nonprofit entity that is tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986 as amended, provided such replacement general partner is reasonably satisfactory to City.

6.4 Requirements for Proposed Transfers. The City may, in the exercise of its sole discretion, consent to a proposed Transfer of this Agreement, the Property or portion thereof if all of the following requirements are met (provided however, the requirements of this Section 6.4 shall not apply to Transfers described in clauses (i) through (vi) of Section 6.3):

(i) The proposed transferee demonstrates to the City's satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the City to competently complete rehabilitation of the Improvements and to otherwise fulfill the obligations undertaken by the Borrower under this Agreement.

(ii) The Borrower and the proposed transferee shall submit for City review and approval all instruments and other legal documents proposed to effect any Transfer of this Agreement, the Property or interest therein together with such documentation of the proposed transferee's qualifications and development capacity as the City may reasonably request.

(iii) The proposed transferee shall expressly assume all of the rights and obligations of the Borrower under this Agreement and the City Documents arising after the effective date of the Transfer and all obligations of Borrower arising prior to the effective date of the Transfer (unless Borrower expressly remains responsible for such obligations) and shall agree to be subject to and assume all of Borrower's obligations pursuant to the Conditions of Approval and all other conditions, and restrictions set forth in this Agreement and the Regulatory Agreement.

(iv) The Transfer shall be effectuated pursuant to a written instrument satisfactory to the City in form recordable in the Official Records.

Consent to any proposed Transfer may be given by the City Manager unless the City Manager, in his or her discretion, refers the matter of approval to the City Council. If a proposed Transfer has not been approved by City in writing within thirty (30) days following City's receipt of written request by Borrower, it shall be deemed rejected.

6.5 Effect of Transfer without City Consent.

6.5.1 In the absence of specific written agreement by the City, no Transfer by Borrower shall be deemed to relieve the Borrower or any other party from any obligation under this Agreement.

6.5.2 Without limiting any other remedy City may have under this Agreement, or under law or equity, it shall be an Event of Borrower Default hereunder entitling City to terminate this Agreement if without the prior written approval of the City, Borrower assigns or Transfers this Agreement or the Property prior to the expiration of the term of the Regulatory Agreement. This Section 6.5.2 shall not apply to Transfers described in clauses (i) through (vi) of Section 6.3.

6.6 Recovery of City Costs. Borrower shall reimburse City for all City costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to affect a Transfer under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee within ten (10) days following City's delivery to Borrower of an invoice detailing such costs.

ARTICLE VII

SECURITY FINANCING AND RIGHTS OF MORTGAGEES

7.1 Mortgages and Deeds of Trust for Development. Mortgages and deeds of trust, or any other reasonable security instrument are permitted to be placed upon the Property only for the purpose of securing loans approved pursuant to the approved Financing Plan for the purpose of financing the acquisition of the Property and the rehabilitation of the Improvements. Borrower shall not enter into any conveyance for such financing without the prior written approval of the City Manager or his or her designee. As used herein, the terms "mortgage" and "deed of trust" shall mean any security instrument used in financing real estate acquisition, construction and land development.

7.2 Subordination. The City agrees that it will not withhold consent to reasonable requests for subordination of the Deed of Trust and the Regulatory Agreement to deeds of trust provided for the benefit of lenders identified in the Financing Plan provided that the instruments effecting such subordination include reasonable protections to the City in the event of default. City agrees that the City Deed of Trust and the Regulatory Agreement may be subordinated to deeds of trust and regulatory agreements executed for the benefit of the California Housing Finance Agency (CalHFA) in connection with the provision of financing for the Project.

7.3 Notice of Default and Right to Cure. Whenever City delivers any notice of default hereunder, City shall concurrently deliver a copy of such notice to each holder of record of any mortgage or deed of trust secured by the Property provided that City has been provided with the address for delivery of such notice. City shall have no liability to any such holder for any failure by the City to provide such notice to such holder. Each such holder shall have the right, but not the obligation, at its option, within sixty (60) days after the receipt of the notice, to cure or remedy any such default or breach. In the event that possession of the Property (or any portion thereof) is required to effectuate such cure or remedy, the holder shall be deemed to have timely cured or remedied the default if it commences the proceedings necessary to obtain possession of the Property within sixty (60) days after receipt of the City's notice, diligently pursues such proceedings to completion, and after obtaining possession, diligently completes such cure or remedy. A holder who chooses to exercise its right to cure or remedy a default or breach shall first notify City of its intent to exercise such right prior to commencing to cure or remedy such default or breach.

7.4 City Right to Cure Defaults. In the event of a breach or default by Borrower under a mortgage or deed of trust secured by the Property, City may cure the default, without acceleration of the subject loan, following prior notice thereof to the holder of such instrument and Borrower. In such event, Borrower shall be liable for, and City shall be entitled to reimbursement from Borrower for all costs and expenses incurred by City associated with and

attributable to the curing of the default or breach and such sum shall constitute a part of the indebtedness secured by the City Deed of Trust.

7.5 Modifications to Agreement. City shall not unreasonably withhold its consent to modifications of this Agreement requested by Project lenders or investors provided such modifications do not alter City's substantive rights and obligations under this Agreement.

7.6 Estoppel Certificates. Either Party shall, at any time, and from time to time, within fifteen (15) days after receipt of written request from the other Party, execute and deliver to such Party a written statement certifying that, to the knowledge of the certifying Party: (i) this Agreement is in full force and effect and a binding obligation of the Parties (if such be the case), (ii) this Agreement has not been amended or modified, or if so amended, identifying the amendments, and (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, describing the nature of any such defaults.

ARTICLE VIII

ENVIRONMENTAL MATTERS

8.1 No City Liability; Borrower's Covenants. City shall not be responsible for the cost of any soil, groundwater or other environmental remediation or other response activities for any Hazardous Materials existing or occurring on the Property or any portion thereof, and Borrower shall be solely responsible for all actions and costs associated with any such activities required for the development of the Project, the Property, or any portion thereof. Upon receipt of any notice regarding the presence, release or discharge of Hazardous Materials in, on or under the Property, or any portion thereof, Borrower (as long as Borrower owns the property which is the subject of such notice) agrees to timely initiate and diligently pursue and complete all appropriate response, remediation and removal actions for the presence, release or discharge of such Hazardous Materials within such deadlines as specified by applicable Environmental Laws. Borrower hereby covenants and agrees that:

(i) Borrower shall not knowingly permit the Project or the Property or any portion of either to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence or release of Hazardous Materials in, on, under, about or from the Project or the Property with the exception of cleaning supplies and other materials customarily used in construction, operation or maintenance of residential property and any commercial uses developed as part of the Project, and used, stored and disposed of in compliance with Environmental Laws, and

(ii) Borrower shall keep and maintain the Project and the Property and each portion thereof in compliance with, and shall not cause or permit the Project or the Property or any portion of either to be in violation of, any Environmental Laws.

8.2 Environmental Indemnification. Borrower shall indemnify, defend (with counsel reasonably approved by City) and hold the Indemnitees harmless from and against any and all Claims including without limitation any expenses associated with the investigation, assessment, monitoring, response, removal, treatment, abatement or remediation of Hazardous Materials and administrative, enforcement or judicial proceedings resulting, arising, or based directly or

indirectly in whole or in part, upon (i) the presence, release, use, generation, discharge, storage or disposal or the alleged presence, release, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Property, or (ii) the failure of Borrower, Borrower's employees, agents, contractors, subcontractors, or any person acting on behalf of any of the foregoing to comply with Environmental Laws or the covenants set forth in Section 8.1. The foregoing indemnity shall further apply to any residual contamination in, on, under or about the Property or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Environmental Laws. The provisions of this Section 8.2 shall survive the expiration or earlier termination of this Agreement.

8.2.1 No Limitation. Borrower hereby acknowledges and agrees that Borrower's duties, obligations and liabilities under this Agreement, including, without limitation, under Section 8.2 above, are in no way limited or otherwise affected by any information the City may have concerning the Property and/or the presence in, on, under or about the Property of any Hazardous Materials, whether the City obtained such information from the Borrower or from its own investigations. It is further agreed that City does not and shall not waive any rights against Borrower that they may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or the deposit with City by Borrower, of any of the insurance policies described in this Agreement.

8.3 Hazardous Materials. As used herein, the term "**Hazardous Materials**" means any substance, material or waste which is or becomes regulated by any federal, state or local governmental authority, and includes without limitation (i) petroleum or oil or gas or any direct or indirect product or by-product thereof; (ii) asbestos and any material containing asbestos; (iii) any substance, material or waste regulated by or listed (directly or by reference) as a "hazardous substance", "hazardous material", "hazardous waste", "toxic waste", "toxic pollutant", "toxic substance", "solid waste" or "pollutant or contaminant" in or pursuant to, or similarly identified as hazardous to human health or the environment in or pursuant to, the Toxic Substances Control Act [15 U.S.C. Section 2601, *et seq.*]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, *et seq.*], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, *et seq.*], the Resource Conservation and Recovery Act [42 U.S.C. Section 6901, *et seq.*], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, *et seq.*], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, *et seq.*], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, *et seq.*], the California Hazardous Waste Act [California Health and Safety Code Section 25100, *et seq.*], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, *et seq.*], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, *et seq.*], as they now exist or are hereafter amended, together with any regulations promulgated thereunder; (iv) any substance, material or waste which is defined as such or regulated by any "Superfund" or "Superlien" law, or any Environmental Law; or (v) any other substance, material, chemical, waste or pollutant identified as hazardous or toxic and regulated under any other federal, state or local

environmental law, including without limitation, asbestos, polychlorinated biphenyls, petroleum, natural gas and synthetic fuel products and by-products.

8.4 Environmental Laws. As used herein, the term “**Environmental Laws**” means all federal, state or local statutes, ordinances, rules, regulations, orders, decrees, judgments or common law doctrines, and provisions and conditions of permits, licenses and other operating authorizations regulating, or relating to, or imposing liability or standards of conduct concerning (i) pollution or protection of the environment, including natural resources; (ii) exposure of persons, including employees and agents, to Hazardous Materials (as defined above) or other products, raw materials, chemicals or other substances; (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities; (iv) the manufacture, use or introduction into commerce of chemical substances, including without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal; or (iv) the use, release or disposal of toxic or hazardous substances or Hazardous Materials or the remediation of air, surface waters, groundwaters or soil, as now or may at any later time be in effect, including but not limited to the Toxic Substances Control Act [15 U.S.C. Section 2601, *et seq.*]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, *et seq.*], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, *et seq.*], the Resource Conservation and Recovery Act [42 U.S.C. Section 6901, *et seq.*], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, *et seq.*], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, *et seq.*], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, *et seq.*], the California Hazardous Waste Act [California Health and Safety Code Section 25100, *et seq.*], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, *et seq.*], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, *et seq.*], as each of the foregoing now exist or are hereafter amended, together with any regulations promulgated thereunder.

ARTICLE IX

DEFAULTS, REMEDIES AND TERMINATION

9.1 Event of Borrower Default. The following events shall constitute an event of default on the part of Borrower (“**Event of Borrower Default**”):

(a) Borrower fails to commence or complete rehabilitation of the Improvements within the times set forth in Section 3.7, or subject to force majeure, abandons or suspends rehabilitation of the Improvements prior to completion for a period of sixty (60) days or more;

(b) Borrower fails to pay when due the principal and interest (if any) payable under the Restated Note or the Note and such failure continues for ten (10) days after City notifies Borrower thereof in writing;

(c) A Transfer occurs, either voluntarily or involuntarily, in violation of Article VI;

(d) Borrower fails to maintain insurance on the Property and the Project as required pursuant to this Agreement, and Borrower fails to cure such default within ten (10) days;

(e) Subject to Borrower's right to contest the following charges pursuant to Section 5.5, if Borrower fails to pay prior to delinquency taxes or assessments due on the Property or the Project or fails to pay when due any other charge that may result in a lien on the Property or the Project, and Borrower fails to cure such default within thirty (30) days of date of delinquency, but in all events upon the imposition of any such tax or other lien;

(f) A default arises under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Property and remains uncured beyond any applicable cure period such that the holder of such security instrument has the right to accelerate repayment of such loan;

(g) Any representation or warranty contained in this Agreement or in any application, financial statement, certificate or report submitted to the City in connection with this Agreement or Borrower's request for the Loan proves to have been incorrect in any material and adverse respect when made and continues to be materially adverse to the City;

(h) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"), Borrower or any general partner thereof (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Borrower or any general partner thereof in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Borrower or any general partner thereof; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due;

(i) A court of competent jurisdiction shall have made or entered any decree or order (1) adjudging the Borrower to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of the Borrower or seeking any arrangement for Borrower under bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (3) appointing a receiver, trustee, liquidator, or assignee of the Borrower in bankruptcy or insolvency or for any of its properties, or (4) directing the winding up or liquidation of the Borrower;

(j) Borrower shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within sixty (60) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period shall apply under this subsection as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution;

(k) The Borrower shall have voluntarily suspended its business or Borrower shall have been dissolved or terminated;

(l) An event of default arises under any City Document and remains uncured beyond any applicable cure period; or

(m) Borrower defaults in the performance of any term, provision, covenant or agreement contained in this Agreement other than an obligation enumerated in this Section 9.1 and unless a shorter cure period is specified for such default, the default continues for ten (10) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which City shall have given written notice of the default to Borrower; provided however, if the default is of a nature that it cannot be cured within thirty (30) days, an Event of Borrower Default shall not arise hereunder if Borrower commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith to completion and in no event later than 120 days after receipt of notice of the default.

9.2 City Default. An event of default on the part of City (“**Event of City Default**”) shall arise hereunder if City fails to keep, observe, or perform any of its covenants, duties, or obligations under this Agreement, and the default continues for a period of thirty (30) days after written notice thereof from Borrower to City, or in the case of a default which cannot with due diligence be cured within thirty (30) days, City fails to commence to cure the default within thirty (30) days of such notice and thereafter fails to prosecute the curing of such default with due diligence and in good faith to completion.

9.3 City’s Right to Terminate Agreement. If an Event of Borrower Default shall occur and be continuing beyond any applicable cure period, then City shall, in addition to other rights available to it under law or this Agreement, have the right to terminate this Agreement. If City makes such election, City shall give written notice to Borrower and to any mortgagee entitled to such notice specifying the nature of the default and stating that this Agreement shall expire and terminate on the date specified in such notice, and upon the date specified in the notice, this Agreement and all rights of Borrower under this Agreement, shall expire and terminate.

9.4 City’s Remedies and Rights Upon an Event of Borrower Default. Upon the occurrence of an Event of Borrower Default and the expiration of all applicable cure periods, City shall have all remedies available to it under this Agreement or under law or equity, including, but not limited to the following, and City may, at its election, without notice to or demand upon Borrower, except for notices or demands required by law or expressly required pursuant to the City Documents, exercise one or more of the following remedies:

(a) Accelerate and declare the balance of the Restated Note and the Note and interest accrued thereon immediately due and payable;

(b) Seek specific performance to enforce the terms of the City Documents;

(c) Foreclose on the Property pursuant to the Deed of Trust;

(d) Pursue any and all other remedies available under this Agreement or under law or equity to enforce the terms of the City Documents and City's rights thereunder.

9.5 Borrower's Remedies Upon an Event of City Default. Upon the occurrence of an Event of City Default, in addition to pursuing any other remedy allowed at law or in equity or otherwise provided in this Agreement, Borrower may bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking to obtain any other remedy consistent with the purpose of this Agreement, and may pursue any and all other remedies available under this Agreement or under law or equity to enforce the terms of the City Documents and Borrower's rights thereunder.

9.6 Remedies Cumulative; No Consequential Damages. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different time, of any other rights or remedies for the same or any other default by the other Party. Notwithstanding anything to the contrary set forth herein, a Party's right to recover damages in the event of a default shall be limited to actual damages and shall exclude consequential damages.

9.7 Inaction Not a Waiver of Default. No failure or delay by either Party in asserting any of its rights and remedies as to any default shall operate as a waiver of such default or of any such rights or remedies, nor deprive either Party of its rights to institute and maintain any action or proceeding which it may deem necessary to protect, assert or enforce any such rights or remedies in the same or any subsequent default.

9.8 Rights of Limited Partners. Provided that City has been given the address for such notices, whenever City delivers any notice of default hereunder, City shall concurrently deliver a copy of such notice to Borrower's limited partner(s) in accordance with Section 11.3. The limited partner(s) shall have the same right as Borrower to cure or remedy any default hereunder.

ARTICLE X

INDEMNITY AND INSURANCE

10.1 Indemnity. Borrower shall indemnify, defend (with counsel reasonably approved by City) and hold Indemnitees harmless from and against any and all Claims, including without limitation, Claims arising directly or indirectly, in whole or in part, as a result of or in connection with Borrower's or Borrower's contractors, subcontractors, agents or employees development, construction, improvement, operation, ownership or maintenance of the Project or the Property, or any part thereof or otherwise arising out of or in connection with Borrower's performance under this Agreement. Borrower's indemnification obligations under this Section 10.1 shall not extend to Claims resulting solely from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 10.1 shall survive the expiration or earlier termination of this Agreement. It is further agreed that City does not and shall not waive any rights against Borrower that they may have by reason of this indemnity and hold harmless

agreement because of the acceptance by City, or the deposit with City by Borrower, of any of the insurance policies described in this Agreement.

10.2 Liability and Workers Compensation Insurance.

(a) Prior to initiating work on the Project and continuing through completion of the rehabilitation of the Project, Borrower and all contractors working on behalf of Borrower on the Project shall maintain a commercial general liability policy in the amount of One Million Dollars (\$1,000,000) each occurrence, Two Million Dollars (\$2,000,000) annual aggregate, together with Three Million Dollars (\$3,000,000) excess liability coverage, or such other policy limits as City may require in its reasonable discretion, including coverage for bodily injury, property damage, products, completed operations and contractual liability coverage. Such policy or policies shall be written on an occurrence basis and shall name the Indemnitees as additional insureds.

(b) Until completion of the rehabilitation of the Project, Borrower and all contractors working on behalf of Borrower shall maintain a comprehensive automobile liability coverage in the amount of One Million Dollars (\$1,000,000), combined single limit including coverage for owned and non-owned vehicles and shall furnish or cause to be furnished to City evidence satisfactory to City that Borrower and any contractor with whom Borrower has contracted for the performance of work on the Property or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law. Automobile liability policies shall name the Indemnitees as additional insureds.

(c) Upon commencement of construction work and continuing completion of the rehabilitation of the Project, Borrower and all contractors working on behalf of Borrower shall maintain a policy of builder's all-risk insurance in an amount not less than the full insurable cost of the Project on a replacement cost basis naming City as loss payee.

(d) Borrower shall maintain property insurance covering all risks of loss (other than earthquake), including flood (if required) for 100% of the replacement value of the Project with deductible, if any, in an amount acceptable to City, naming City as loss payee.

(e) Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A: VII. The Commercial General Liability and comprehensive automobile policies required hereunder shall name the Indemnitees as additional insureds. Builder's Risk and property insurance shall name City as loss payees as their interests may appear.

(f) Prior to commencement of construction work, Borrower shall furnish City with certificates of insurance in form acceptable to City evidencing the required insurance coverage and duly executed endorsements evidencing such additional insured status. The certificates shall contain a statement of obligation on the part of the carrier to notify City of any material adverse change, cancellation, termination or non-renewal of the coverage at least thirty (30) days in advance of the effective date of any such material adverse change, cancellation, termination or non-renewal.

(g) If any insurance policy or coverage required hereunder is canceled or reduced, Borrower shall, within fifteen (15) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, City may, without further notice and at its option, procure such insurance coverage at Borrower's expense, and Borrower shall promptly reimburse City for such expense upon receipt of billing from City.

(h) Coverage provided by Borrower shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by City, and the policies shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the City. Borrower shall furnish the required certificates and endorsements to City prior to the commencement of rehabilitation of the Improvements, and shall provide City with certified copies of the required insurance policies upon request of City.

ARTICLE XI

MISCELLANEOUS PROVISIONS

11.1 No Brokers. Each Party warrants and represents to the other that no person or entity can properly claim a right to a real estate commission, brokerage fee, finder's fee, or other compensation with respect to the transactions contemplated by this Agreement. Each Party agrees to defend, indemnify and hold harmless the other Party from any claims, expenses, costs or liabilities arising in connection with a breach of this warranty and representation. The terms of this Section shall survive the expiration or earlier termination of this Agreement.

11.2 Enforced Delay; Extension of Times of Performance. Subject to the limitations set forth below, performance by either Party shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended where delays are due to: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, governmental restrictions or priority, litigation, including court delays, unusually severe weather, acts or omissions of the other Party, acts or failures to act of the City or any other public or governmental agency or entity (other than the acts or failures to act of City which shall not excuse performance by City), or any other cause beyond the affected Party's reasonable control. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of the commencement of the cause and such extension is not rejected in writing by the other Party within ten (10) days of receipt of the notice. Neither Party shall unreasonably withhold consent to an extension of time pursuant to this Section.

Times of performance under this Agreement may also be extended in writing by the mutual agreement of Borrower and City (acting in the discretion of its Executive Director unless he or she determines in his or her discretion to refer such matter to the governing board of the City). City and Borrower acknowledge that adverse changes in economic conditions, either of

the affected Party specifically or the economy generally, changes in market conditions or demand, and/or inability to obtain financing to complete the work of Improvements shall not constitute grounds of enforced delay pursuant to this Section. Each Party expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Effective Date.

11.3 Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Parties in accordance with this Section. All such notices shall be sent by: (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt; or (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

City: City of San Leandro
835 East 14th Street
San Leandro, CA 94577
Attention: City Manager

Borrower: Eden Surf Associates, L.P.
c/o Eden Housing, Inc.
22645 Grand Street
Hayward, CA 94541-5031
Attention: Executive Director

With a copy to:

Alliant Capital, Ltd.
21600 Oxnard Street, Suite 1200
Woodland Hills, CA 91367
Attention: Brian Goldberg
Telephone: (818) 668-6800
Telecopy: (818) 668-2828

11.4 Attorneys' Fees. If either Party fails to perform any of its obligations under this Agreement, or if any dispute arises between the Parties concerning the meaning or interpretation of any provision hereof, then the prevailing Party in any proceeding in connection with such dispute shall be entitled to the costs and expenses it incurs on account thereof and in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

11.5 Waivers; Modification. No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any other covenant or provision hereof, and no waiver shall be valid unless in writing and executed by the waiving Party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for

performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the Party granting the extension. This Agreement may be amended or modified only by a written instrument executed by the Parties.

11.6 Binding on Successors. Subject to the restrictions on Transfers set forth in Article VI, this Agreement shall bind and inure to the benefit of the Parties and their respective permitted successors and assigns. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any permitted successor and assign of such Party who has acquired an interest in compliance with this Agreement or under law.

11.7 Survival. All representations made by Borrower hereunder and Borrower's obligations pursuant to Sections 3.13, 3.15, 3.16, 5.3, 8.2, 10.1, and 11.1 shall survive the expiration or termination of this Agreement.

11.8 Construction. The headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

11.9 Action or Approval. Whenever action and/or approval by City is required under this Agreement, City Manager or his or her designee may act on and/or approve such matter unless specifically provided otherwise, or unless the City Manager determines in his or her discretion that such action or approval requires referral to the City Council for consideration.

11.10 Entire Agreement. This Agreement, including Exhibits A through F attached hereto and incorporated herein by this reference, together with the other City Documents contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings, representations or statements between the Parties with respect to the subject matter hereof.

11.11 Severability. If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement is defeated by such invalidity or unenforceability.

11.12 No Third Party Beneficiaries. Nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the Parties and their respective successors and assigns, any rights or remedies hereunder.

11.13 Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

11.14 Non-Liability of Officials, Employees and Agents. No officer, official, employee or agent of City shall be personally liable to Borrower or its successors in interest in the event of any default or breach by City or for any amount which may become due to Borrower or its successors in interest pursuant to this Agreement.

11.15 Time of the Essence; Calculation of Time Periods. Time is of the essence for each condition, term, obligation and provision of this Agreement. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is not a business day, in which event the period shall run until the next business day. The final day of any such period shall be deemed to end at 5:00 p.m., local time at the Property. For purposes of this Agreement, a “business day” means a day that is not a Saturday, Sunday, a federal holiday or a state holiday under the laws of California.

11.16 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be filed in the Superior Court of Alameda County, California or in the Federal District Court for the Northern District of California.

11.17 Inspection of Books and Records. Upon request, Borrower shall permit the City to inspect at reasonable times and on a confidential basis those books, records and all other documents of Borrower necessary to determine Borrower’s compliance with the terms of this Agreement.

11.18 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which taken together shall constitute one instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto having additional signature pages executed by the other Party. Any executed counterpart of this Agreement may be delivered to the other Party by facsimile and shall be deemed as binding as if an originally signed counterpart was delivered.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, the Parties have entered into this Agreement effective as of the date first written above.

CITY

CITY OF SAN LEANDRO, a municipal corporation

By: _____

Name: _____

Title: _____

ATTEST:

By: _____,
City Clerk

APPROVED AS TO FORM:

By: _____,
City Attorney

OWNER

EDEN SURF ASSOCIATES L.P., a California limited partnership

By: Eden Surf LLC, a California limited liability company

Its: General Partner

By: Eden Investments, Inc., a California nonprofit public benefit corporation

Its: Managing Member

By: _____
Linda Mandolini, Executive Director

Exhibit A

LEGAL DESCRIPTION OF PROPERTY
(Attach legal description.)

Exhibit B

FORM OF PROMISSORY NOTE
(Attach form of Promissory Note.)

Exhibit B-1

FORM OF RESTATED NOTE
(Attach form of Amended and Restated Note.)

Exhibit C

FORM OF DEED OF TRUST
(Attach form of Deed of Trust.)

Exhibit D

FORM OF REGULATORY AGREEMENT
(Attach form of Regulatory Agreement.)

Exhibit E

FINANCING PLAN
(Attach Financing Plan.)

Exhibit F

FEDERAL REQUIREMENTS

1. GOVERNMENTAL REGULATIONS. To the extent that this Agreement is funded with financial assistance provided by any governmental entity other than the City, Borrower shall comply with all applicable rules and regulations of such funding source. In particular, Borrower agrees to comply with all applicable provisions of the Housing and Community Development Act of 1974 (Public Law 93-383) and regulations promulgated pursuant thereto. Borrower also agrees to carry out activities in compliance with the requirements of Subpart K of 24 CFR 570.

2. RECORDS. Records must be kept accurate and up to date. Borrower's records shall be made available for review by the HUD, the City, or the City's authorized designee. Borrower shall be responsible to maintain, for not less than five (5) years after completion of this Agreement, all records pertaining to this Agreement, including subcontracts and expenditures, and all other financial and property records.

3. AUDITS AND INSPECTIONS.

A. Borrower shall at any time during normal business hours and as often as the City, HUD and the Comptroller General of the United States may deem necessary, make available to their representatives for examination all of Borrower's records with respect to all matters covered by this Agreement and shall permit these representatives to audit, examine and make excerpts or transcripts from such records, and to make audits of all documents and conditions relating to this Agreement. All costs are subject to the eligibility requirements of HUD.

B. Borrower shall permit and facilitate observation and inspection of the work and records at Borrower's principal office and job site by City, its employees and public authorities during reasonable business hours.

4. CONFLICT OF INTEREST.

A. Borrower certifies that no member of, or delegate to the Congress of the United States shall be permitted to share, or take part in this Agreement or in any benefit arising therefrom.

B. Borrower certifies that no member, officer, or employee of the City of San Leandro, or its designees or agents, no member of the San Leandro City Council, and no other public official of the City of San Leandro who exercises any functions or responsibilities with respect to the Community Development Block Grant (CDBG) Program during his or her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with this Agreement.

C. Borrower hereby certifies that no one who has any financial interest in or receives compensation for services by Borrower is related by blood or marriage within the third degree to the Mayor, City Manager, or Community Development Director of the City of San Leandro (or the head of any other City Department that is involved in the services to be delivered pursuant to this Agreement) or any member of the San Leandro City Council.

D. Borrower shall incorporate, or cause to be incorporated, in all subcontracts for work to be performed under this Agreement a provision prohibiting such interest pursuant to the purposes of this section.

5. POLITICAL ACTIVITY PROHIBITED. None of the funds, materials, property or services contributed by the City or Borrower under this Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

6. LOBBYING. Borrower hereby certifies that:

A. To the best of Borrower's knowledge and belief no federally-appropriated funds have been paid or will be paid, by or on behalf of Borrower, to any person for influencing or attempting to influence an officer or employee of any agency, any Member of Congress, any officer or employee of Congress, or any employee of a Member of Congress in connection with the awarding of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement;

B. If any funds other than Federal-appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal contract, grant, loan, or cooperative agreement, Borrower will complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying"; and

C. Borrower will require the language of paragraph (B) above to be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all recipients of subawards Borrowers shall make the certifications and disclosures set forth in this Section 6.

7. RELIGIOUS ACTIVITY PROHIBITED. There shall be no religious worship, instruction proselytization as part of, or in connection with the performance of this Agreement. Borrower shall comply with the provisions of 24 CFR 570.200 (j) (2).

8. EQUAL EMPLOYMENT OPPORTUNITY.

A. Affirmative Action in Employment

1) Borrower shall comply with the Affirmative Action Program and Equal Employment requirements of the City, State and Federal Government.

2) During the performance of this Agreement, Borrower agrees as follows:

a. Borrower will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, handicap, age, or national origin. Borrower will take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment (including, without limitation with respect to hiring, promotion, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of

compensation, and selection for training, including apprenticeship) without regard to their race, color, religion, handicap, sex, sexual orientation, age, or national origin.

b. Borrower will incorporate the above Affirmative Action provisions in all subcontracts for services covered by this Agreement.

B. Minority and Female-owned Business Enterprises

- 1) In connection with the performance of this Agreement, Borrower shall comply with the City and Federal Governments' current policies and shall use its best efforts to obtain the maximum utilization of minority-owned business enterprises based in San Leandro and ensure that minority and female-owned enterprises based in San Leandro shall have maximum practicable opportunity for subcontractor work under this Agreement.
- 2) Borrower shall insert similar provisions in all subcontracts for work covered by this Agreement.
- 3) Reports. Borrower shall provide reports and/or documents as reasonably requested by City demonstrating compliance with the terms of this Section.

C. General Employment Provisions Relating to Handicap/Disability Discrimination for CDBG Contractors

- 1) General prohibitions against employment discrimination.
 - a. No qualified individual with a handicap or a disability shall, solely on the basis of such handicap or disability, be subjected to discrimination in employment by a contractor receiving Federal financial assistance as part of the CDBG program.
 - b. The contractor may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap or disability.
 - c. The prohibition against discrimination in employment by the contractor applies to the following activities: recruitment, advertising, processing of applications for employment; hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, injury or illness, and rehiring; rates of pay or any other form of compensation and changes of compensation; job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists; leaves of absence, sick leave, or any other leave; fringe benefits available by virtue of employment, whether or not administered by Borrower; selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence for training; employer-

sponsored activities, including social or recreational programs; and any other term, condition, or privilege of employment.

- d. The contractor shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a handicap or disability, unless that accommodation would impose an undue hardship on the operation of its program. A contractor may not deny any employment opportunity to a qualified handicapped or disabled employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitation of the employee or applicant.
- e. Reasonable accommodation may include:
 - i) Making facilities used by employees accessible to and usable by individuals with handicaps and disabilities.
 - ii) Job restructuring, job relocation, part-time or modified work schedules, acquisitions or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

2) Contractor's employment criteria.

- a. A contractor may not use any employment test or other selection criterion that screens out or tends to screen out individuals with handicaps or disabilities or any class or individuals with handicaps or disabilities unless the contractor can demonstrate (1) the test score or other criterion is job-related for the position in question, and (2) that the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

3) Pre-employment inquiries.

- a. A contractor may not make a pre-employment inquiry or conduct a pre-employment medical examination of an applicant to determine whether the applicant is an individual with handicaps or disabilities or the nature of the handicap or disability. The contractor may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.
- b. When the contractor is undertaking affirmative action efforts, voluntary or otherwise, the contractor may invite applicants for employment to indicate whether and to what extent they are handicapped. This may occur if the following conditions are met: the contractor clearly states on any written questionnaire used for this purpose, or makes clear orally, that the information requested is intended for use solely in connection with its

remedial action obligations, or its voluntary or affirmative action efforts; and the contractor states clearly that the information is being requested on a voluntary basis, that it will be kept confidential and in a separate medical records file, that refusal to provide the information will not subject the applicant or employee to any adverse treatment, and that the information will be used only in accordance with this part.

- c. Nothing shall prohibit a contractor from conditioning an offer of employment on the results of a medical examination conducted before the employee's entrance on duty if all entering employees in that category of job classification must take such an examination regardless of handicap.
- d. If the contractor must obtain information concerning medical condition or history of the applicant, it must be collected and maintained on separate forms that are accorded confidentiality as medical records, except that: supervisors and managers may be informed of restrictions on the work or duties of the individual with handicaps and informed of necessary accommodations; first aid and safety personnel may be informed if the condition might require emergency treatment; and government officials investigating compliance with Section 504 shall be provided relevant information upon request.

9. DAVIS-BACON ACT AND LABOR STANDARDS. Borrower agrees to comply with the requirements of the Davis Bacon Act, as amended, the provision of Contract Work Hours, the Safety Standards Act, the Copeland Anti-Kickback Act (40 U.S.C. 276,327-333) and all other applicable Federal, State and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement.

Borrower shall ensure that all contractors engaged in construction funded by the Community Development Block Grant compensate all laborers and mechanics no less than minimum wage rates determined by the Department of Labor to be prevailing for the classes of laborers and mechanics employed on such projects. The provisions of this section apply to all construction projects in excess of \$2,000 except the following:

- A. Property designed for residential use with seven (7) or less units, where the rehabilitation work is funded by CDBG; and
- B. Property designed for residential use with eleven (11) or less units, where the rehabilitation work is funded by HOME Program.

10. USE OF DEBARRED, SUSPENDED OR INELIGIBLE CONTRACTORS.

Borrower shall take provisions to ensure that contracts are not awarded to any contractor or subcontractor during any period of debarment, suspension, or ineligibility status under the provisions of 24 CFR Part 24.

11. SECTION 3. The parties to this Agreement acknowledge, consent and agree that:

- A. If the Loan and other Federal financial assistance provided to Borrower for the Project from the Department of Housing and Urban Development (HUD) exceeds \$200,000, Borrower shall be subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u; the regulations issued pursuant thereto by the Secretary of the Department as set forth in 24 CFR 135, as amended; and all applicable rules and orders of the Department issued thereunder (collectively, "Section 3"). In the event that Section 3 is applicable to Participant, Section 3 shall also apply to any contractor or subcontractor performing work on the Project where the amount of such contract or subcontract exceeds \$100,000. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to Section 3 residents and businesses. A Section 3 resident is defined as a resident of public housing; a very low-income individual or family resident in the metropolitan area, whose income does not exceed 50% of the median family income (adjusted for family size) for the area; or a low-income individual or family resident in the metropolitan area, whose income does not exceed 80% of the median family income (adjusted for family size) for the area. A Section 3 business concern is one that is 51% or more owned by Section 3 residents; or whose permanent full-time employees include at least 30% Section 3 residents currently or within three years of the date of first employment with the business concern; or that provides evidence of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to Section 3 business concerns that meet the resident ownership or employment qualifications.
- B. If applicable to this Agreement, the parties to this Agreement will comply with the provisions of said Section 3 and all applicable rules and orders of the Department issued thereunder. The parties to this Agreement certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- C. Borrower will send to each labor organization or representative of workers with which Borrower has a collective bargaining agreement or other contract or understanding, if any, a notice advising the labor organization or workers' representative of Borrower's commitments under the "Section 3 clause" referenced in 24 CFR 135.38 and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- D. Borrower will include the Section 3 clause in every Section 3 covered contract or subcontract, as defined in 24 CFR 135.6, and will take appropriate action pursuant to the contract or subcontract upon a finding that the contractor or subcontractor is in violation of regulations issued by the Secretary of the Department. Borrower will not subcontract with any subcontractor where it has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

12. ENVIRONMENTAL CONDITIONS AND HISTORICAL PRESERVATION

A. Air and Water

- 1) Borrower agrees to comply with the following regulations insofar as they apply to the performance of this contract:
 - a. Clean Air Act, 42 U.S.C., 1857, et seq.
 - b. Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq. as amended 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
 - c. Environmental Protection Agency (EPA) regulations pursuant to 40 C.F.R., Part 50, as amended.
 - d. National Environmental Policy Act of 1969.
 - e. HUD Environmental Review Procedures (24 CFR, Part 58).
 - f. California Environmental Quality Act.

B. Flood Disaster Protection

Borrower agrees to comply with the requirements of the Flood Disaster Protection Act of 1973 (P.L. 2234) in regard to the sale, lease, or other transfer of land acquired, cleared or improved under the terms of this agreement, as it may apply to the provisions of this agreement.

C. Historic Preservation

Borrower agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR, Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic properties.

In general, the City or Borrower shall obtain concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of properties that are fifty years old or older or that are included on a Federal, State, or local historic property list.

D. Lead-Based Paint

Borrower agrees that all rehabilitation or construction of residential structures with assistance provided under this contract shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, and in particular Sub-Part B thereof. Such regulations pertain to all HUD-assisted housing and require that all owners, prospective owners, and tenants of buildings constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning.

13. RELOCATION/ANTI-DISPLACEMENT. Borrower shall comply with all relocation and displacement regulations and procedures applicable to all HUD assisted programs. Such regulations and procedures are contained in 24 CFR Part 42 and 24 570.606; Sections 104(d), 104(k), 105(a)(11) of the Housing and Community Development Act; and 42 USC 4601.

14. IMPROVEMENTS TO CHURCH-OWNED PROPERTY. Borrowers who use CDBG funds for improvements to church-owned property shall enter into an agreement with the church to provide for the reimbursement of the remaining value of improvements upon cessation of use of the property for public service. The agreement shall require the church to repay the Borrower, or City if the Borrower ceases to exist, an amount not less than the value of the remaining useful life of improvements. Borrower shall remit the funds to the City.

Such agreement between Borrower and church shall follow the requirements set forth in 24 CFR 570.200. City will assist in determining the depreciating value of the improvements.

15. SECTION 504 - PROGRAM ACCESSIBILITY

A. General Prohibition Against Discrimination

No qualified individual with a handicap shall, solely on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise by subjected to discrimination by a contractor receiving Federal assistance as part of the CDBG program.

1) Specific Prohibitions Against Discrimination

A contractor who receives Federal assistance as part of the CDBG program, in providing any service, benefit, aid or housing may not, directly or through contractual, licensing, or other arrangements, solely on the basis of handicap: (a) deny; (b) afford unequal treatment; (c) provide ineffective service, benefit, aid or housing; (d) provide different service, benefit, aid or housing; or (e) limit the enjoyment of any right, privilege, or advantage, to a qualified individual with handicaps the opportunity to participate in, or benefit from, the service, benefit, aid or housing;

B. Provisions Regarding Communications With Individuals With Handicaps

A contractor who receives Federal assistance as part of the CDBG program shall take appropriate steps to ensure effective communication with customers, clients, and other members of the public. Such steps, when appropriate, may include, but are not limited to:

- 1) Furnishing appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity receiving Federal financial assistance. A contractor is not required to provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

- 2) Where a contractor communicates with customers, clients, and other members of the public by telephone, telecommunication devices for deaf persons (TDD's) or equally effective communication systems shall be used.
- 3) A contractor who receives Federal assistance as part of the CDBG program shall adopt and implement procedures to ensure that interested persons (including persons with impaired vision or hearing) can obtain information concerning the existence and location of accessible services, activities and facilities.
- 4) A contractor is not required to take any action that would result in a fundamental alteration in the nature of a program or activity or in undue financial or administrative burden.

16. FINANCIAL MANAGEMENT AND RECORDING SYSTEM. If the Borrower is a government agency, the Borrower shall comply with OMB Circular A-87, "Principles for Determining Costs Applicable to Grants and Contracts with State, Local and Federally-Recognized Indian Tribal Governments," and the sections of 24 CFR 85, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," specified at 24 CFR 570.502(a). If the Borrower is not a government agency, the Borrower shall comply with OMB Circular A-122, "Cost Principles for Non-Profit Organizations" or OMB Circular A-21, "Cost Principles for Educational Institutions," as applicable, and OMB Circular A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations," as specified at 24 CFR 570.502(b). All Contractors shall comply with the applicable provisions under OMB Circular A-133, "Audits of States, Local Governments, and Non-profit Organizations."

If indirect costs are charged the Borrower will develop an indirect cost allocation plan for determining the appropriate Borrower's share of administrative costs and shall submit such plan to the City for approval.

17. PROGRAM INCOME. In the event that the Borrower earns any program income, it shall comply with the requirements set forth in 24 CFR Part 570.504, Subpart J.

18. OFFICE OF MANAGEMENT AND BUDGET STANDARDS. The Borrower shall procure all materials, property, or services in accordance w/ the requirements of 24 CFR 84.40-48.