

LOAN AGREEMENT

by and between

THE CITY OF WATSONVILLE,
a California municipal corporation

and

EDEN FREEDOM INVESTORS, L.P.,
a California limited partnership

_____, 2024

THIS LOAN AGREEMENT (“**Agreement**”) is entered into effective as of _____, 2024 (“**Effective Date**”) by and between the CITY OF WATSONVILLE, a municipal corporation (“**City**”) and EDEN FREEDOM INVESTORS, L.P., a California limited partnership (“**Developer**”). City and Developer are hereinafter collectively referred to as the “**Parties**” and individually as a “**Party**”

RECITALS

A. Developer owns a fee interest in that real property located in in the City of Watsonville, County of Santa Cruz, State of California (“**Property**”), as more particularly described on Exhibit A attached hereto and incorporated herein by this reference.

B. Developer is developing a fifty-three (53) unit multifamily residential apartment building rented at an affordable housing cost to low, very-low, and extremely-low income households (“**Project**”).

C. City has received grant funding from the California Department of Housing and Community Development (“**HCD**”) under the Permanent Local Housing Allocation (“**PLHA**”) program pursuant to a Standard Agreement between City and HCD dated June 13, 2023 (Contract No. 22-PLHA-17794) (“**PLHA Grant**”).

D. Developer has requested, and City has agreed, to provide a loan to Developer in the amount of One Million and 00/100 Dollars (\$1,000,000) from City’s PLHA Grant (“**Loan**”) to assist in the development of the Project pursuant to the terms and conditions set forth herein.

E. A material inducement to City to enter into this Agreement is the agreement by Developer to develop the Property within the time periods specified herein and in accordance with the provisions hereof, and City would be unwilling to enter into this Agreement in the absence of an enforceable commitment by Developer to complete the Project in accordance with such provisions and within such time periods.

F. Concurrently herewith: (i) Developer shall execute a Secured Promissory Note (“**Note**”) in the amount of the Loan and a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (“**Deed of Trust**”), which shall provide City with a security interest in the Property and the Project, and (ii) Developer and City shall execute an Affordable Housing Regulatory Agreement (“**Regulatory Agreement**”), which shall be recorded against the Property and which shall require Project rents to be affordable to low, very low, and extremely-low income households for a term of not less than fifty-five (55) years. The Note, Regulatory Agreement and Deed of Trust are collectively hereinafter referred to as “**City Documents**.”

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.

ARTICLE I DEFINITIONS

1.1. 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.

- (a) **“City Documents”** is defined in Recital F.
- (b) **“Claims”** is defined in Section 7.10.
- (c) **“Commence”**, **“Commencement”** and the like are defined in Section 3.14.
- (d) **“Complete”**, **“Completion”** and the like are defined in Section 3.15.
- (e) **“Conditions of Approval”** is defined in Section 3.3.
- (f) **“Construction Plans”** means those plans and specifications prepared by Developer and approved in writing by City pursuant to which Developer will construct the Improvements and Project.
- (g) **“Environmental Laws”** is defined in Section 9.4.
- (h) **“Financial Capacity”** is defined in Section 12.17.
- (i) **“Governmental Capacity”** is defined in Section 12.17.
- (j) **“Hazardous Materials”** is defined in Section 9.3.
- (k) **“Improvements”** is defined in Section 3.7.
- (l) **“Indemnitees”** is defined in Section 7.10.
- (m) **“Loan”** is defined in Recital D .
- (n) **“Note”** is defined in Recital F.
- (o) **“Project”** is defined in Recital B and further described in Section 3.2.
- (p) **“Regulatory Agreement”** is defined in Recital F.

ARTICLE II REPRESENTATIONS; EFFECTIVE DATE AND TERM

2.1. Developer’s Representations. Developer represents and warrants as follows, and Developer 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, Developer shall immediately give written notice of such fact or

condition to City. Developer acknowledges that City shall rely upon Developer's representations made herein notwithstanding any investigation made by or on behalf of City.

(a) Authority. Developer is a California limited partnership duly organized and in good standing under the laws of the State of California. Developer has the full right, power and authority to undertake all obligations of Developer as provided herein, and Developer's execution, performance and delivery of this Agreement, the Regulatory Agreement, and the other City Documents have been duly authorized by all requisite actions.

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

(c) 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 Developer to perform its obligations under this Agreement.

(d) No Developer Bankruptcy. Developer is not the subject of a bankruptcy or insolvency proceeding.

(e) Payment and Performance Bonds. The performance and payment bonds or letter of credit delivered to City by Developer prior to commencement of construction of the Project remain in effect and continue to secure one hundred percent (100%) of the currently scheduled cost of construction of the Project.

2.2. City Representations. City represents and warrants to Developer and 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 2.2 not to be true, City shall immediately give written notice of such fact or condition to Developer. City acknowledges that Developer shall rely upon City's representations made herein notwithstanding any investigation made by or on behalf of Developer.

(a) Authority. City is a California municipal corporation, duly organized and in good standing under the laws of the State of California. City has the full right, power and authority to undertake all of the respective obligations as provided herein, and the execution, performance and delivery of this Agreement by City has been duly authorized by all requisite actions on the part of each such entity. The persons executing this Agreement on behalf of City has been duly authorized to do so. This Agreement constitutes a valid and binding obligation of City.

(b) No Conflict. City's execution, delivery and performance of its respective obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which City is a party or by which either is bound.

(c) 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 City to perform their obligations under this Agreement.

(d) No Bankruptcy. City is not the subject of a bankruptcy or insolvency proceeding.

2.3. Effective Date. The obligations of Developer and City hereunder shall be effective as of the Effective Date.

ARTICLE III DEVELOPMENT OF THE PROJECT

3.1. The Property. Developer represents and warrants that as of the Effective Date: (i) Developer holds title to the Property in fee simple, and (ii) to the best knowledge of Developer after reasonable inquiry, the Property is subject to no covenant, condition, restriction or agreement that would hinder or prevent Developer's performance of its obligations under this Agreement, the Regulatory Agreement, and the other City Documents. If at any time the foregoing statements become untrue, City shall have the right to terminate this Agreement upon written notice to Developer.

3.2. Affordable Housing. Developer covenants and agrees for itself, its successors and assigns that fifty-two (52) of the residential units developed within the Project shall be occupied by low, very-low, or extremely-low income households and rented at an affordable rent to households of low, very low, and extremely low-income in accordance with the terms hereof and the Regulatory Agreement which the Parties shall execute concurrently with the execution of this Agreement, and which shall be recorded in the Official Records of Santa Cruz County ("**Official Records**") on the date that Developer acquires the Property.

3.3. Project Approvals. Developer covenants that it shall: (i) obtain all necessary permits and approvals which may be required by City and any other governmental agency having jurisdiction over the construction of the Project or the development of the Property, (ii) comply with all conditions, requirements, and obligations proposed by City on the Project in connection with Developer's applications and submittals for the development of the Project or the Property ("**Conditions of Approval**"), (iii) comply with all mitigation measures, if any, imposed in connection with any environmental review of the Property or the Project, and (iv) not Commence construction of the Project prior to issuance of building permits.

3.4. Fees. Developer 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 and Construction. Except as expressly set forth herein, Developer shall be solely responsible for all direct and indirect costs and expenses incurred in connection with the acquisition of the Property, the design, development and construction of the Project and compliance with the Conditions of Approval, including without limitation the installation and construction of all off-site or on-site improvements required by City in connection therewith, and none of such costs and expenses shall be the obligation of City.

3.6. Rights of Access; Books and Records. For the purpose of ensuring that the Project is developed in compliance with this Agreement, Developer shall permit representatives of City to enter upon the Property to inspect the Project following 48-hours' written notice (except in the case of emergency in which case such notice as may be practical under the circumstances shall be provided). Upon request, Developer shall permit City to inspect at reasonable times and on a confidential basis those books, records and all other documents of Developer necessary to determine Developer's compliance with the terms of this Agreement.

3.7. City Disclaimer. Developer acknowledges that City is under no obligation, and neither City undertakes or assumes any responsibility or duty to Developer or to any third party, to in any manner review, supervise, or inspect the progress of construction or the operation of the Project. Developer 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 construction and operation of the Project. Any review or inspection undertaken by City is solely for the purpose of determining whether Developer is properly discharging its obligations under this Agreement, and shall not be relied upon by Developer or any third party as a warranty or representation by City as to the quality of the design or construction of the Project and other improvements constructed on the Property (collectively, the "**Improvements**") or otherwise.

3.8. Financing Plan. City acknowledges that Developer provided City with a preliminary financing plan for the Project ("**Financing Plan**") which described (i) the estimated costs of Project development, including acquisition costs, and hard and soft construction costs, (ii) an operating pro forma which describes projected revenue and expenses for the Project, and (iii) identification of sources of construction and permanent financing. In connection with this Agreement, Developer shall deliver to City an update of such Financing Plan reflecting all material changes to the prior Financing Plan.

3.9. Equal Opportunity. During the construction of the Project, there shall be no discrimination on the basis of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged in construction of the Project, and Developer shall direct its contractors and subcontractors to refrain from discrimination on such basis.

3.10. Prevailing Wage Requirements. To the extent, and only if required by applicable federal and state laws, rules and regulations, Developer and its contractors and agents shall comply with California Labor Code Section 1720 *et seq.* and applicable federal labor laws and standards, and the regulations adopted pursuant thereto ("**Prevailing Wage Laws**"), and shall be responsible for carrying out the requirements of such provisions.

3.11. Compliance with Laws. Developer shall carry out and shall cause its contractors to carry out the construction 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, City zoning and development standards, building, plumbing, mechanical and electrical codes, all other provisions of 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.*

3.12. Liens and Stop Notices. Until the expiration of the term of the Regulatory Agreement and full repayment of the Loan, Developer 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 Developer. If a claim of a lien or stop notice is given or recorded affecting the Project, Developer 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 provide other assurance satisfactory to City that the claim of lien or stop notice will be paid or discharged.

3.13. Right of City to Satisfy Liens on the Property. If Developer fails to satisfy or discharge any lien or stop notice on the Property pursuant to Section 3.12 above, City shall have the right, but not the obligation, to satisfy any such liens or stop notices at Developer's expense and without further notice to Developer. In such event Developer shall be liable for and shall immediately reimburse City for such paid lien or stop notice. Alternatively, City may require Developer to immediately deposit with City the amount necessary to satisfy such lien or claim pending resolution thereof. City may use such deposit to satisfy any claim or lien that is adversely determined against Developer. Developer shall file a valid notice of cessation or notice of completion upon cessation of construction of 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. City may (but has no obligation to) record any notices of completion or cessation of labor, or any other notice that City deems necessary or desirable to protect its interest in the Property and the Improvements.

3.14. Commencement and Completion of Construction. Developer agrees that it has Commenced construction of the Improvements and Project and shall Complete construction of the Improvements and Project by no later than June 30, 2024. As used herein, the terms "**Commence**", "**Commencement**" and the like shall mean that Developer commenced rough grading of the Project and the terms "**Complete**", "**Completion**" and the like shall mean that Developer has obtained a Certificate of Occupancy ("**COO**") issued by City.

ARTICLE IV CITY FINANCIAL ASSISTANCE

4.1. Loan. Using PLHA funds, the City shall provide the Loan in the amount of One Million and 00/100 Dollars (\$1,000,000) to Developer upon the terms and conditions and for the purposes set forth in this Agreement. The Loan shall be evidenced by the Note secured by the Deed of Trust executed by Developer as Trustor and recorded against the Property subordinate only to such liens as City shall approve in writing. The outstanding principal balance of the Note will accrue three percent (3%) simple annual interest commencing upon the date of disbursement. Provided that Developer has complied with all conditions precedent to disbursement of the Loan set forth in Section 4.5, the proceeds of the Loan ("Loan Proceeds") shall be disbursed in accordance with Section 4.4 hereof. The Parties agree that City shall disburse Loan Proceeds only for the purposes set forth in Section 4.4.

4.2. Payment Dates; Maturity Date. All payments on the loan shall be made in accordance with the terms of the Note, and shall be due on the Maturity Date as defined in the Note.

4.3. Security. As security for repayment of the Note, Developer shall execute 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 recorded in the Official Records on the date of the Loan Closing (as defined in Section 4.5). The Deed of Trust may be subordinated only to such liens and subject only to such title exceptions as City may approve in writing. City acknowledges that Developer's construction and permanent lender(s) may require the subordination of the Deed of Trust and City shall subordinate the Deed of Trust to deeds of trust or other security instruments approved by City.

4.4. Use and Disbursement of Proceeds. The Loan Proceeds shall be used solely to fund acquisition of the Property and/or construction of the Project, and closing, escrow and other costs approved by City.

4.5. Conditions to Disbursement of Loan Proceeds. City's obligation to fund the Loan through a "**Closing**" and disburse the proceeds thereof is conditioned upon the satisfaction of all of the following conditions:

(a) Developer's delivery to City of each of the following: (i) certificate of good standing, certified by the Secretary of State indicating that Developer is properly organized, in good standing, and authorized to do business in the State of California, and (ii) a certified resolution indicating that Developer has authorized this transaction and that the persons executing this Agreement, the Regulatory Agreement, and the City Documents on Developer's behalf have been duly authorized to do so.

(b) Developer's delivery to City of evidence of insurance coverage in accordance with the requirements set forth in Section 11.2.

(c) Developer's delivery of the Regulatory Agreement and each of the City Documents, each fully-executed and acknowledged as applicable.

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

(e) 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 such defects, liens, conditions, encumbrances, restrictions, easements and exceptions as City may approve in writing and containing such endorsements as City may reasonably require, with the cost of the Title Policy to be paid by Developer.

(f) Reasonable written confirmation that all other Project acquisition and construction costs required by the updated Financing Plan (or otherwise) are (or will be subject to the Closing and funding of the Loan) available to Developer.

(g) City's receipt of a written requisition for disbursement of funds from Developer specifying the amount and use of the requested funds, accompanied by the title company's estimated settlement statement showing the acquisition price, closing costs and all other amounts due in escrow for Developer's acquisition of the Property.

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

- (a) the failure of any of Developer's representations and warranties made in this Agreement or in connection with the Loan to be true and correct in all material respects;
- (b) the termination of this Agreement by mutual agreement of the Parties;
- (c) the conditions to disbursement of the Loan set forth in Section 4.5 have not been satisfied within the time frame set forth in Section 3.1, unless an extension of such date is approved by City in writing; or
- (d) the occurrence of an Event of Developer Default (as defined in Section 10.1) under this Agreement, the Regulatory Agreement, any of the City Documents which remains uncured beyond any applicable cure period.

4.7. Prepayment; Acceleration.

(a) Prepayment. Developer 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 Developer's obligations under the Regulatory Agreement which shall survive for the full term of the Regulatory Agreement.

(b) Due On Sale or Encumbrance. Unless City agrees otherwise in writing, such agreement not to be unreasonably withheld, the entire unpaid principal balance and all interest and other sums accrued under the Note shall be due and payable upon the Transfer (as defined in Section 7.2) absent the prior written consent of City of all or any part of or interest in the Property except for a Transfer permitted under Section 7.3 of this Agreement or as otherwise permitted pursuant to this Agreement.

4.8. Nonrecourse. Except as expressly provided in this Section 4.8, Developer and its partners shall have no personal liability for payment of the principal of, or interest on the Note, and the sole recourse of City with respect to the payment of the principal of, and interest on the Note shall be to the Property and the Improvements and any other collateral held by City as security for the Note; provided however, nothing contained in the foregoing limitation of liability shall: (i) limit or impair the enforcement against all such security for the Note of all the rights and remedies of City thereunder; (ii) be deemed in any way to impair the right of City to assert the unpaid principal amount of the Note as demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto; or (iii) be deemed in any way to limit the rights of City to obtain specific

performance by Developer of its covenants under City Documents, other than the covenants to pay City principal and interest due under the Note.

The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the Note; nothing contained herein is intended to relieve Developer of its obligation to indemnify City under this Agreement, or liability for: (i) fraud or willful misrepresentation by Developer; (ii) the failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by Developer other than in accordance with the Deed of Trust; and/or (iv) the misappropriation of any proceeds by Developer under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Development.

4.9. PLHA Grant Matters. In addition to all of its other commitments in City Documents, and whether or not Developer directly signs the PLHA Grant, Developer:

- (a) shall comply with all applicable obligations in the PLHA Grant;
- (b) shall timely provide City with all documents and information (to the extent in the possession of or reasonably obtainable by Developer) to permit City to comply with the applicable City's obligations under the PLHA Grant;
- (c) agrees that a Developer default under the PLHA Grant is an Event of Developer Default under this Agreement; and
- (d) acknowledges that City is executing the PLHA Grant and entering into the City Documents in reliance on Developer's commitments in this Section 4.9, and would not do so in the absence of this Section 4.9.

ARTICLE V INTENTIONALLY OMITTED

ARTICLE VI USE OF THE PROPERTY

6.1. Use; Affordable Housing. Developer covenants and agrees for itself and its successors and assigns that the Property shall be used for the development and operation of the Project in accordance with the terms and conditions of this Agreement and the Regulatory Agreement.

6.2. Maintenance. Developer 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, Developer 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. Developer 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 in good condition and repair.

6.3. Taxes and Assessments. Developer 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 Developer, 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 Developer shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event Developer exercises its right to contest any tax, assessment, or charge, Developer, 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. Developer shall have the right to apply for all applicable tax exemptions, including, without limitation, the welfare exemption from property tax for low-income housing.

6.4. Obligation to Refrain from Discrimination. Developer 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. Developer 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 Developer or any person claiming under or through Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in, of, or for the Property or part thereof. Developer shall include such provision in all deeds, leases, subleases, contracts and other instruments executed or agreed to by Developer, and shall enforce the same diligently and in good faith.

ARTICLE VII LIMITATIONS ON CHANGE IN OWNERSHIP, MANAGEMENT AND CONTROL OF DEVELOPER

7.1. Change Pursuant to this Agreement. Developer has represented that it possesses 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 Developer is of particular concern to City. It is because of these qualifications, experience, financial capacity and expertise that City has entered into this Agreement with Developer. No voluntary or involuntary successor, assignee or transferee of Developer shall acquire any rights or powers under this Agreement, except as expressly provided herein.

7.2. Prohibition on Transfer. Prior to the expiration of the term of the Regulatory Agreement, Developer 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. Any such attempt to assign this Agreement without 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, Developer 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 forty-nine percent (49%) in aggregate of the present ownership and /or control of Developer, taking all transfers into account on a cumulative basis; provided however, neither the admission of an investor limited partner(s), nor the transfer by the investor limited partner(s) to subsequent limited partner(s) shall be restricted by this provision.

7.3. Permitted Transfers. Notwithstanding any contrary provision hereof, the prohibitions set forth in this Article shall not be deemed to prevent: (i) the granting of utility 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 units 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 updated Financing Plan and subject to the requirements of Article VIII, 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 entity which is under the direct control or under common control with Eden Investments, Inc., which includes but is not limited to Eden Housing, Inc. and Baywood Apartments, Inc. (“**Controlled Affiliate**”); additionally, City hereby consents to any transfers, sales or assignments of limited partnership interests in Developer to U.S. Bancorp Community Development Corporation, its successors and assigns (collectively, “USBCDC”) and any affiliate of USBCDC, and any entity in which USBCDC, or an affiliate, is the manager or managing general partner and agrees that such transfers shall not constitute defaults under the Loan Documents; and (vi) any transfer or assignment of Developer’s fee interest in the Property if permitted by City in writing as described in Section 7.4. Notwithstanding anything the above or anything to the contrary in this Agreement, the replacement of Developer’s general partner in accordance with the terms of Developer’s partnership agreement shall not be prohibited and shall not constitute a default under any of the Loan Documents or accelerate the maturity of the Loan. Notwithstanding any provision of this Section 7.3, no permitted transaction under this Section 7.3 will alter any obligation under the Regulatory Agreement.

7.4. Requirements for Proposed Transfers. 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 7.4 shall not apply to Transfers described in Sections 7.3(i) through (v) or the last sentence of Section 7.2):

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

(b) Developer 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 City may reasonably request.

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

(d) The Transfer shall be effectuated pursuant to a written instrument satisfactory to 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 the City rejects a proposed Transfer, City, as applicable, shall provide the reasons for such rejection in writing within thirty (30) days following receipt of written request by Developer, and representatives of City shall meet with Developer and the proposed transferee to discuss in good faith the reasons for the rejection and Developer's and transferee's responses thereto.

7.5. Effect of Transfer without City Consent.

(a) No Relief. In the absence of specific written agreement by City, no Transfer by Developer shall be deemed to relieve Developer or any other party from any obligation under this Agreement or the Regulatory Agreement.

(b) Termination. Without limiting any other remedy City may have under this Agreement, or under law or equity, this Agreement may be terminated by City if without the prior written approval of City, Developer assigns or Transfers this Agreement or the Property prior to City's issuance of a COO. This Section 7.5.2 shall not apply to Transfers described in clauses (i) through (iv) of Section 7.3.

7.6. Recovery of City Costs. Developer shall reimburse City for all costs, including but not limited to 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 Developer of an invoice detailing such costs. This Section 7.6 shall not apply to Transfers described in clauses (i) through (iv) of Section 7.3.

ARTICLE VIII
SECURITY FINANCING AND RIGHTS OF MORTGAGEES

8.1. 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 by City for the purpose of financing the acquisition of the Property, the design and construction of the Improvements, other expenditures reasonably necessary for development of the Property pursuant to this Agreement, and the rehabilitation and/or refinancing of the Project. Developer 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.

(a) Regulatory Agreement to be Senior to Mortgages. City agree that if required by construction and/or permanent lenders, this Agreement, the Deed of Trust, and the Regulatory Agreement may be subordinated to deeds of trust or other security instruments approved by City pursuant to a written instrument conforming to the requirements of California Health and Safety Code Section 33334.14(a)(4) and including without limitation, the provisions set forth in Section 8.4.

8.2. Holder Not Obligated to Construct. The holder of any mortgage, deed of trust authorized by this Agreement shall not be obligated to construct or complete the Improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed to permit or authorize any such holder to devote the Property or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or Improvements provided for or authorized by this Agreement.

8.3. 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 City to provide such notice to such holder. Each such holder shall have the right, but not the obligation, at its option, to cure or remedy any such default or breach.

8.4. City Right to Cure Defaults. In the event of a breach or default by Developer under a mortgage or deed of trust secured by the Property, City may (but has no obligation to) cure the default, without acceleration of the subject loan, following prior notice thereof to the holder of such instrument and Developer. In such event, Developer shall be liable for, and City shall be entitled to reimbursement from Developer 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 Deed of Trust.

8.5. Holder to be Notified. Developer, for itself, its successors and assigns hereby warrants and agrees that each term contained herein dealing with security financing and rights of holders shall be either inserted into the relevant deed of trust or mortgage or acknowledged by the holder prior to its creating any security right or interest in the Property.

8.6. 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.

8.7. Estoppel Certificates. Any Party shall, at any time, and from time to time, within thirty (30) 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 IX ENVIRONMENTAL MATTERS

9.1. No City Liability; Developer'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, if any, existing or occurring on the Property or any portion thereof, and Developer shall be solely responsible for all actions and costs associated with any such activities required by any regulatory agency with jurisdiction over the Property and/or 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, Developer (as long as Developer 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. Developer hereby covenants and agrees that:

(a) Developer 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 any previously disclosed existing conditions on the Property and cleaning supplies and other materials customarily used in construction, rehabilitation, use or maintenance of residential property and used, stored and disposed of in compliance with Hazardous Materials Laws, and

(b) Developer 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 Hazardous Materials Laws.

9.2. Environmental Indemnification. Developer shall indemnify, defend (with counsel 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 Developer, Developer's employees, agents, contractors, subcontractors, or any person acting on behalf of any of the foregoing to comply with Hazardous Materials Laws or the covenants set forth in Section 9.1. 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 Hazardous Materials Laws. The provisions of this Section 9.2 shall survive the issuance of a COO for the Project and the expiration or earlier termination of this Agreement. Developer's indemnification obligation under this Section 9.2 shall not apply to acts described in clause (i) above caused by the gross negligence or willful misconduct of an Indemnitee.

9.3. No Limitation. Developer hereby acknowledges and agrees that Developer's duties, obligations and liabilities under this Agreement, including, without limitation, under Section 9.2 above, are in no way limited or otherwise affected by any information City may have concerning the Property and/or the presence in, on, under or about the Property of any Hazardous Materials, whether City obtained such information from Developer or from its own investigations. It is further agreed that City do not and shall not waive any rights against Developer 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 Developer, of any of the insurance policies described in this Agreement.

9.4. 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. 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. 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.

9.5. 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. 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. 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 X DEFAULTS, REMEDIES AND TERMINATION

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

- (a) Developer fails Complete construction of the Project within the time set forth in Section 3.14, or subject to force majeure, abandons or suspends construction of the Project prior to Completion for a period of sixty (60) days or more;
- (b) Developer fails to construct and Complete the Improvements in substantial conformance with the Construction Plans.
- (c) Developer fails to pay when due the principal and interest (if any) payable under the Note and such failure continues for thirty (30) days after City notifies Developer thereof in writing;

(d) A Transfer occurs, either voluntarily or involuntarily, in violation of Article VII;

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

(f) Subject to Developer's right to contest the following charges pursuant to Section 6.3, if Developer 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 Developer fails to cure such default within 30 days of date of delinquency, but in all events upon the imposition of any such tax or other lien;

(g) A default is declared in writing 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;

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

(i) 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**"), Developer (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Developer in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Developer; (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;

(j) A court of competent jurisdiction shall have made or entered any decree or order (1) adjudging Developer to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of Developer or seeking any arrangement for Developer 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 Developer in bankruptcy or insolvency or for any of its properties, or (4) directing the winding up or liquidation of Developer;

(k) Developer 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;

(l) Developer shall have voluntarily suspended its business or Developer shall have been dissolved or terminated;

(m) An event of default arises under this Agreement, the Regulatory Agreement, or any City Document and remains uncured beyond any applicable cure period; or

(n) Developer defaults in the performance of any term, provision, covenant or agreement contained in this Agreement other than an obligation enumerated in this Section 10.1 and unless a shorter cure period is specified for such default, the default continues for thirty (30) 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 Developer; provided however, if the default is of a nature that it cannot be cured within thirty (30) days, an Event of Developer Default shall not arise hereunder if Developer 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 ninety (90) days after receipt of notice of the default or such longer period as City may allow.

Developer's limited partners, as described in the applicable Limited Partnership Agreement (the "**Limited Partners**") shall have the right to cure any default of Developer hereunder and any of the Loan Documents upon the same terms and conditions afforded to Developer. Provided that City has been given written notice of the address for delivery of notices to the Limited Partners, City shall provide any notice of default hereunder to the Limited Partners concurrently with the provision of such notice to Developer, and as to the Limited Partners, the cure periods specified herein shall commence upon the date of delivery of such notice in accordance with Section 12.3.

10.2. 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 Developer 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.

10.3. City's Right to Terminate Agreement. If an Event of Developer 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 Developer 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 Developer under this Agreement, shall expire and terminate.

10.4. City's Remedies and Rights Upon an Event of Developer Default. Upon the occurrence of an Event of Developer Default and the expiration of any applicable cure period, City shall have all remedies available to it under law or equity, including, but not limited to the following, City may, at its election, without notice to or demand upon Developer, except for

notices or demands required by law or expressly required pursuant to this Agreement, the Regulatory Agreement, or City Documents, exercise one or more of the following remedies:

- (a) Accelerate and declare the balance of the Note and interest accrued thereon immediately due and payable;
- (b) Seek specific performance to enforce the terms of the Regulatory Agreement;
- (c) Foreclose on the Property pursuant to the Deed of Trust; and
- (d) Pursue any and all other remedies available under law to enforce the terms of the this Agreement, the Regulatory Agreement, and City Documents and City's rights thereunder.

10.5. Developer's Remedies Upon an Event of City Default. Upon the occurrence of an City Event of City Default, in addition to pursuing any other remedy allowed at law or in equity or otherwise provided in this Agreement, Developer 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.

10.6. 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 any 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.

10.7. Inaction Not a Waiver of Default. No failure or delay by any 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 any 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.

ARTICLE XI INDEMNITY AND INSURANCE.

11.1. Indemnity. Developer shall indemnify, defend (with counsel 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 Developer's or Developer'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 Developer's performance under this Agreement. Developer's indemnification obligations under this Section 11.1 shall not extend to Claims resulting from the gross negligence or willful misconduct of Indemnitees. The

provisions of this Section 11.1 shall survive the issuance of a COO for the Project and the expiration or earlier termination of this Agreement. It is further agreed that City do not and shall not waive any rights against Developer 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 Developer, of any of the insurance policies described in this Agreement.

11.2. Liability and Workers Compensation Insurance.

(a) Developer and all contractors working on behalf of Developer on the Project shall maintain a commercial general liability policy in the amount of Two Million Dollars (\$2,000,000) combined single limit, Four Million Dollars (\$4,000,000) annual aggregate, or such other policy limit as City may require in their 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) Developer and all contractors working on behalf of Developer 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 Developer and any contractor with whom Developer 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 and continuing until issuance of a COO, Developer and all contractors working on behalf of Developer 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 a loss payee.

(d) Developer 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 a 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-VIII. 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 a loss payee.

(f) Prior to closing of the Loan, Developer 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, Developer 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 Developer's expense, and Developer shall promptly reimburse City for such expense upon receipt of billing from City.

(h) Coverage provided by Developer 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 City. Developer shall furnish the required certificates and endorsements to City prior to the commencement of construction of the Project, and shall provide City with certified copies of the required insurance policies upon request of City.

ARTICLE XII MISCELLANEOUS PROVISIONS

12.1. 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.

12.2. Enforced Delay; Extension of Times of Performance. Subject to the limitations set forth below, performance by any 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 Parties, acts or failures to act of 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 Parties within thirty (30) days of the commencement of the cause and such extension is not rejected in writing by the other Parties within ten (10) days of receipt of the notice. None of the Parties 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 Developer and City (acting in the discretion of its City Manager unless he or she determine in his or her discretion to refer such matter to City Council). City and Developer 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 12.2. 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.

12.3. 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; (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: 275 Main Street,
Watsonville, CA 95076
Attention: City Manager

With a copy to: City of Watsonville
275 Main Street,
Watsonville, CA 95076
Attention: City Attorney

Developer: Eden Freedom Investors, L.P.
c/o Eden Investment's Inc.
22645 Grand Street
Hayward, CA 94541
Attention: Chief of Real Estate Development

With a copy to: Gubb & Barshay LLP.
235 Montgomery Street
San Francisco, CA 94104
Attention: Evan Gross, Esq.

With a copy to: U.S. Bancorp Community Development Corporation
1307 Washington Avenue, Suite 300
Mail Code: SL MO RMCD
St. Louis, MO 63103
Attn.: Director of LIHTC Asset Management

Phone: (314) 335-2600

With a copy to: Kutak Rock LLP
1650 Farnam Street
Omaha, Nebraska 68102
Attn: Jill H. Goldstein, Esq.

12.4. Attorneys' Fees. If any 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.

12.5. 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 waiving party. This Agreement may be amended or modified only by a written instrument executed by the Parties.

12.6. Binding on Successors. Subject to the restrictions on Transfers set forth in Article VII, 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.

12.7. Construction. The section 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 all of the 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 all Parties had prepared it.

12.8. Action or Approval. Whenever action and/or approval by City is required under this Agreement, the 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.

12.9. Entire Agreement. This Agreement, including the exhibits listed below, which are attached hereto and incorporated herein by this reference, together with the Regulatory Agreement, and 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.

Exhibit A Legal Description of Property

12.10. 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 Parties. Any executed counterpart of this Amendment may be delivered to the other Parties by facsimile and shall be deemed as binding as if an originally signed counterpart was delivered.

12.11. 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.

12.12. 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.

12.13. 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.

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

12.15. 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.

12.16. 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 Santa Cruz County, California or in the Federal District Court for the Northern District of California.

12.17. Financial and Governmental Capacities. Developer agrees that the capacity of City in this Agreement, the Regulatory Agreement, and the other City Documents shall be only as a lender (“**Financial Capacity**”), and that nothing herein or therein shall waive, supersede, condition, limit, modify or affect City’s rights to take (or not take) any action in a governmental capacity, including without limitation enacting laws, inspecting structures, reviewing and issuing permits, and all other legislative, administrative, or enforcement functions pursuant to federal, state or local law (“**Governmental Capacity**”). In addition, nothing in this Agreement, the Regulatory Agreement, and the other City Documents shall supersede or waive any discretionary or regulatory approvals required to be obtained from City under applicable law.

[Signature Pages Follow]

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

CITY:

CITY OF WATSONVILLE,
a California municipal corporation

By: _____
_____,
City Manager

ATTEST:

By: _____
_____,
City Clerk

APPROVED AS TO FORM:

By: _____
_____,
City Attorney

DEVELOPER:

EDEN FREEDOM INVESTORS, L.P.,
a California limited partnership

By: Eden Freedom, LLC,
a California limited liability company,
its general partner

By: Eden Investments, Inc.,
a California nonprofit public benefit corporation,
its sole member/manager

By: _____
Andrea Osgood,
Chief of Real Estate Development

EXHIBIT A
LEGAL DESCRIPTION

That land in the City of Watsonville, County of Santa Cruz, State of California, and more particularly described as follows:

BEING A PART OF THE RANCHO BOLSA DEL PAJARO AND BEGINNING ON THE NORTHEASTERN SIDE OF THE WATSONVILLE SANTA CRUZ HIGHWAY AND ON THE BOUNDARY LINE BETWEEN THE SAID RANCHO BOLSA DEL PAJARO AND THE RANCHO CORRALITOS; SAID POINT OF BEGINNING BEING THE SOUTHWESTERN CORNER OF LANDS OF ONE GEORGE WHITE; AND RUNNING THENCE FROM SAID POINT OF BEGINNING ALONG THE SAID NORTHEASTERN SIDE OF SAID HIGHWAY 38° 18' EAST 168.00 FEET; THENCE LEAVING HIGHWAY NORTH 56° 38' EAST 466.70 FEET TO THE LANDS OF ONE HART; THENCE ALONG THE BOUNDARY OF SAID LANDS OF HART NORTH 25° 23' WEST 248.00 FEET TO THE AFORESAID RANCHO BOUNDARY; AND THENCE ALONG SAID RANCHO BOUNDARY SOUTH 48° WEST 521.40 FEET TO THE PLACE OF BEGINNING.

EXCEPTING THEREFROM THE LAND DEEDED TO THE COUNTY OF SANTA CRUZ PURSUANT TO DEED RECORDED IN VOLUME 341 OF OFFICIAL RECORDS OF THE COUNTY RECORDER OF THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA, AT PAGE 171 THEREOF.

ALSO EXCEPTING THEREFROM THE LANDS CONVEYED TO THE CITY OF WATSONVILLE BY DEED RECORDED JULY 29, 1980 IN VOLUME 3219 PAGE 211 OFFICIAL RECORDS COUNTY OF SANTA CRUZ.

ALSO EXCEPTING THEREFROM THE LANDS CONVEYED TO THE CITY OF WATSONVILLE BY DEED RECORDED MARCH 28, 2006 AS DOCUMENT NO. 2006-17265 OFFICIAL RECORDS, AND AS CORRECTED BY GRANT DEED RECORDED APRIL 10, 2017 AS DOCUMENT NO. 2017-0011836 OFFICIAL RECORDS COUNTY OF SANTA CRUZ.

APN: 019-226-41