

AFFORDABLE HOUSING LOAN AGREEMENT

by and between

OXNARD COMMUNITY DEVELOPMENT COMMISSION

and

E.D., LLC, a California limited liability company

and

KOH, LLC, a Delaware limited liability company

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AFFORDABLE HOUSING LOAN AGREEMENT

This AFFORDABLE HOUSING LOAN AGREEMENT ("Agreement") is entered into as of _____, 2009, by and between the OXNARD COMMUNITY DEVELOPMENT COMMISSION, a public body, corporate and politic ("Commission"), and E.D., LLC, a California limited liability company, and KOH, LLC, a Delaware limited liability company (collectively, the "Developer"). Commission and Developer hereby covenant and agree as follows:

ARTICLE 1. SUBJECT OF AGREEMENT

1.1 Purpose of Agreement

The purpose of this Agreement is to implement the Redevelopment Plan ("Redevelopment Plan") for the Historic Enhancement and Revitalization of Oxnard Redevelopment Project ("Project Area") in the City of Oxnard and to increase and improve the supply of affordable housing within the City of Oxnard by providing for the development of certain real property in the City of Oxnard ("Property") and construction thereon of approximately 132 dwelling units (15% of which shall be Affordable Units). The Property is depicted on the Site Plan attached hereto as Exhibit B and incorporated herein by this reference. The Property is more particularly described on Exhibit A, which is attached hereto and incorporated herein by this reference.

The Property is part of the larger RiverPark development and is subject to the terms and conditions of the hereinafter defined OPA, Development Agreement, Agreement Containing Covenants and Specific Plan. Nothing herein is intended to or shall modify, amend, limit or in any way change the OPA, Development Agreement, Agreement Containing Covenants or Specific Plan, except that the Agreement Containing Covenants shall be modified as expressly set forth in the Fourth Amendment to Agreement Containing Covenants.

Commission's financial assistance for development of the Affordable Units will be provided in the form of the hereinafter defined Loan to Developer, subject to all of the terms and conditions of this Agreement. Commission has determined that the hereinafter defined Project, constructed and operated in accordance with the terms and conditions set forth herein, would implement elements of City's approved housing strategy and that the financial assistance provided herein is necessary to make the project financially feasible. The development of the Project pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City of Oxnard and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of the applicable federal, state and local laws and requirements under which the Project is to be undertaken and is being assisted.

1.2 **Redevelopment Plan**

This Agreement is authorized by and made in furtherance of the Redevelopment Plan, which was approved and adopted by City's City Council on April 7, 1998, by Ordinance No. 2462.

1.3 **Project**

The Project consists of the development and construction of approximately 132 dwelling units on the Property, of which a minimum of at least 15% shall be Affordable Units. Of the 15% minimum required Affordable Units, a minimum of at least 40% of such Affordable Units shall be available at an Affordable Rent to and occupied by Very Low Income Households and a maximum of 60% of such Affordable Units shall be available at an Affordable Rent to and occupied by either Low Income Households or Moderate Income Households. The bedroom mix of the Affordable Units shall be proportional to the bedroom mix of the market rate units in the Project. The Affordable Units shall be of equal or better quality (interior and exterior) and amenities as the market rate units in the Project. The parties agree that for determining the total overall number of required Affordable Units and the minimum number of Very Low Income Household units and the maximum number of Low or Moderate Income Household units, for rounding purposes, any number below .5 shall be rounded down and any number above .5 shall be rounded up.

1.4 **Definitions**

"Affiliate" shall mean (i) any Person directly or indirectly controlling, controlled by or under common control with another Person, (ii) any Person owning or controlling 50% or more of the outstanding voting securities of such other Person or (iii) if that other Person is an officer, director, member or partner, then any company for which such Person acts in any such capacity. The term "control" as used in the immediately preceding sentence shall mean the power to direct the management or the power to control election of the board of directors. It shall be a presumption that control with respect to a corporation or limited liability company is the right to exercise or control, directly or indirectly, more than 50% of the voting rights attributable to the controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity or association, control is the possession, indirectly or directly, of the power to direct or cause the direction of the management or policies of the controlled entity.

"Affordable Rent" shall mean rent that meets the requirements of California Health and Safety Code Section 50053, as specifically set forth in the Agreement Containing Covenants.

"Affordable Unit" shall mean each of the rental dwelling units on the Property to be restricted in accordance with the Agreement Containing Covenants.

"Agreement Containing Covenants" shall mean that certain Agreement Containing Covenants Affecting Real Property dated June 12, 2001 and recorded against the Property on June 18, 2001 as Instrument No. 2001-0114394-00 in the Ventura County

Recorder's Office, as amended by (a) that certain First Amendment to Agreement Containing Covenants Affecting Real Property dated as of November 19, 2002 and was recorded against the Property on November 27, 2002, as Instrument No. 2002-0299634-00 in the Ventura County Recorder's Office, (b) that certain Second Amendment to Agreement Containing Covenants Affecting Real Property dated as of February 1, 2005 and recorded against the Property on February 3, 2005, as Instrument No. 20050203-0026767 in the Ventura County Recorder's Office, and (c) that certain Third Amendment to Agreement Containing Covenants Affecting Real Property dated as of August 7, 2007 by and between the Commission and RiverPark A., L.L.C., a Delaware limited liability company.

"Area Median Income" shall mean the area median income for the County of Ventura ("County") as published annually by the California Department of Housing and Community Development and determined in accordance with the U.S. Department of Housing and Urban Development published criteria from time to time in effect. For purposes of this Agreement, the qualifying limits shall be those limits for the County, as set forth in Title 25, California Code of Regulations, Section 6932, as that section may be amended, modified or recodified from time to time. If the California Code of Regulations is amended or modified during the term of this Agreement so that such regulations do not specify the area median income for the County, then Commission and Developer shall negotiate in good faith to determine an equivalent authoritative source which determines median income for the County.

"City" shall mean the City of Oxnard.

"Construction Loan Closing" shall mean the point in time when a deed of trust is recorded against any portion of the Property by any construction lender for the Project.

"Deed of Trust" shall mean a Deed of Trust, Security Agreement and Fixture Filing securing the Loan, in substantially the form attached hereto as Exhibit 5 and incorporated herein by this reference, to be recorded against the Property on or before the Loan Closing.

"Development Agreement" shall mean that certain Development Agreement dated as of August 27, 2002 and recorded against the Property on September 10, 2002 as Instrument No. 2002 02164590 in the Ventura County Recorder's Office, as amended by (a) that certain First Amendment to Development Agreement dated as of December 14, 2004 and recorded against the Property on December 23, 2004 as Instrument No. 2004 1223 0339920 in the Ventura County Recorder's Office and re-recorded against the Property on January 24, 2005 as Instrument No. 20050124 0017504 in the Ventura County Recorder's Office, and by (b) that certain Second Amendment to Development Agreement recorded against the Property on August 21, 2007 in the Ventura County Recorder's Office as Instrument No. 20070821 00163617-0.

"Director" shall mean Commission's Executive Director or designee.

"Fourth Amendment to Agreement Containing Covenants" shall mean the Fourth Amendment to Agreement Containing Covenants Affecting Real Property (Including Rental Restrictions), in substantially the form attached hereto as Exhibit C and incorporated herein by this reference, to be entered into by and between Commission and Developer, which shall be

recorded against the Property on or before the Loan Closing.

“Hazardous Materials” shall mean any substance, material or waste which is or becomes regulated by the United States government, the State of California or any local or other governmental authority, including, without limitation, any material, substance or waste which is (i) defined as a “hazardous waste”, “acutely hazardous waste”, “restricted hazardous waste” or “extremely hazardous waste” under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, (iii) defined as a “hazardous material”, “hazardous substance” or “hazardous waste” under Section 25501 of the California Health and Safety Code, (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, (v) petroleum, (vi) asbestos, (vii) a polychlorinated biphenyl, (viii) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to Article 11 of Title 22 of the California Code of Regulations, Chapter 20, (ix) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317), (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. Section 6903), (xi) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601) or (xii) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any governmental requirements either requires special handling in its use, transportation, generation, collection, storage, treatment or disposal, or is defined as “hazardous” or is harmful to the environment or capable of posing a risk of injury to public health and safety.

“Loan” shall mean the predevelopment loan to be made by Commission to Developer in the principal amount of One Million Two Hundred Fifty Thousand Dollars (\$1,250,000) to pay for a portion of the predevelopment costs for the development of the Affordable Units.

“Loan Closing” shall mean the point in time when all conditions precedent to the disbursement of the Loan for predevelopment costs have been satisfied as set forth in Section 2.3.

“Low Income Household” shall mean households earning 51% to 80% of the Area Median Income, adjusted for family size.

“Moderate Income Household” shall mean households earning 81% to 120% of the Area Median Income, adjusted for family size.

“Note” shall mean the Promissory Note evidencing the Loan in substantially the form attached hereto as Exhibit D and incorporated herein by this reference, executed by Developer in favor of Commission on or before the Loan Closing.

“Notice of Affordability Restrictions on Transfer of Property” shall mean the Notice of Affordability Restrictions on Transfer of Property, in substantially the form attached hereto as Exhibit F and incorporated herein by reference, to be executed by Commission and recorded on or before the Loan Closing.

"OPA" shall mean that certain Owner Participation Agreement dated as of June 12, 2001, as amended by (a) that certain First Amendment to Owner Participation Agreement dated as of November 19, 2002, (b) that certain Second Amendment to Owner Participation Agreement dated as of December 14, 2004, (c) that certain Third Amendment to Owner Participation Agreement dated on or about August 23, 2007, and (d) that certain Fourth Amendment to Owner Participation Agreement dated on or about November 20, 2007.

"Permitted Mortgage" means that certain deed of trust to secure an indebtedness of \$3,650,000 recorded October 10, 2007 as Instrument No. 20071010-00192006-0 in the Official Records of Ventura County Recorder's Office.

"Permitted Mortgagee" means the holder of the Permitted Mortgage.

"Permitted Mortgage Loan" means the obligations secured by the Permitted Mortgage.

"Permitted Transfer" means an assignment of this Agreement and all of Developer's interests in the Property to a corporation, limited partnership or limited liability company in which Developer or an Affiliate owns a majority interest and is the controlling and managing partner or member with control over day-to-day management. The documentation evidencing any such transfer shall be subject to the reasonable approval of the Director in accordance with the standards set forth in the respective provisions of this Agreement.

"Person" shall mean and include a natural person or a partnership, limited partnership, trust, estate, association, corporation, limited liability company or other entity, domestic or foreign.

"Relocation Laws" shall mean all applicable state and local relocation laws, including, without limitation, the California Relocation Assistance Law, California Government Code Section 7260 *et seq.* and the implementing regulations thereto in the California Code of Regulations, Title 24, Section 6000 *et seq.* and the local implementing regulations thereto, and all applicable federal relocation laws, including, without limitation, the Uniform Relocation Assistance and Real property Acquisition Policies Act of 1970, 42 U.S.C. 4201-4655, and 49 CFR Part 24, the acquisitions and eminent domain laws in California Government Code Section 7267 *et seq.* and Code of Civil Procedure Section 1240.000 *et seq.* and any other applicable federal, state or local enactment, regulation or practice providing for relocation assistance and benefits, acquisition and/or compensation of property interests (including, without limitation, goodwill and furnishings, fixtures and equipment, leasehold bonus value, and moving expenses).

"Specific Plan" shall mean the RiverPark Specific Plan adopted by the City Council on September 10, 2002, as amended.

"Title Company" shall mean First American Title Insurance Company or another title insurance company reasonably acceptable to both parties hereto.

"Title Policy" shall mean a standard ALTA lender's policy of title insurance issued by the Title Company in favor of Commission in the amount of the Loan insuring the

Deed of Trust as a lien against the Property, subordinate only to the Permitted Mortgage and other matters affecting the Property shown in the Title Report, with such endorsements as may be requested by the Director.

"Title Report" shall mean that certain Title Report dated as of June 16, 2009 Order No. VNH3322641 (18) prepared by the Title Company.

"Transfer" shall mean any assignment, sale, lease, conveyance or other transfer of the Property or any portion thereof or interest therein, by any means or method.

"Very Low Income Household" shall mean households earning less than 50% of the Area Median Income, adjusted for family size.

1.5 **Parties to Agreement**

1.5.1 **Commission**

Commission is a public body, corporate and politic, exercising governmental functions and powers. The address of Commission for purposes of receiving notices pursuant to this Agreement is:

Oxnard Community Development Commission
214 South C Street
Oxnard, California 93030
Attention: Community Development Director
Phone: (805) 385-7407
Fax: (805) 385-7408

"Commission" as used in this Agreement includes the Oxnard Community Development Commission, and any assignee of or successor to its rights, powers and responsibilities.

1.5.2 **Developer**

Developer is comprised of E.D., LLC, a California limited liability company and KOH, LLC, a Delaware limited liability company. The address of Developer for purposes of receiving notices pursuant to this Agreement is:

750 W. Gonzales Road, #120
Oxnard, California 93030
Attention: Dave O. White
Phone: (805) 981-3877
Fax: (805) 981-3875

With a copy to:

304 S. Broadway, Suite 400
Los Angeles, California 90013
Attention: Paul Keller
Phone: (213) 437-0470
Fax: (213) 437-0474

“Developer” as used in this Agreement includes Developer and any assignee of or successor to its rights, powers and responsibilities under this Agreement, provided such assignees or successors have been approved by Commission to the extent required by the provisions of this Agreement.

1.6 Assignments and Transfers

a. Developer represents and agrees that its undertakings pursuant to this Agreement are for the purpose of redevelopment of the Property and not for speculation in land holding. Developer further recognizes that the qualifications and identity of Developer and its principals are of particular concern to the community, City and Commission, in view of: (i) the importance of the redevelopment of the Property to the general welfare of the community, (ii) the public assistance that has been made available by law and by the government for the purpose of making such redevelopment possible and (iii) the fact that a change in ownership or control of Developer or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership or control of Developer or the degree thereof, is for practical purposes a Transfer or disposition of the property then owned by Developer. Developer further recognizes that it is because of such qualifications and identity that Commission is entering into this Agreement with Developer. Therefore, no voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement except as expressly set forth in this Agreement.

b. Prior to the reconveyance in full of the Deed of Trust, Developer shall not Transfer all or any part of the Property, or any interest therein or any portion thereof, and/or this Agreement, or any interest herein, without the prior written approval of Director.

c. All Transfers, including Permitted Transfers, shall be evidenced by Developer's, the assignee's, and Commission's execution of an assignment and assumption agreement in form and content acceptable to the Director whereby the assignee expressly assumes the rights and obligations thereby transferred and to keep and perform all covenants, conditions and provisions of this Agreement, the Note, the Deed of Trust and the Agreement Containing Covenants.

d. Developer represents and agrees for itself and any successor in interest that prior to reconveyance in full of the Deed of Trust, unless the prior written approval of Director is obtained, there shall be no significant change in the ownership or control of Developer or with respect to the identity of the parties in control of Developer, by any method or means, except Permitted Transfers. Permitted Transfers shall be subject to Director's review and approval of documentation evidencing the Permitted Transfer.

e. Prior to reconveyance in full of the Deed of Trust, Developer shall

promptly notify Commission of any and all changes whatsoever in the identity of the parties in control of Developer, or the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information. This Agreement may be terminated by Commission if, in violation of this Agreement (1) there is any significant change (voluntary or involuntary) in membership, management or control, of Developer, or the persons in control of Developer or (2) a Transfer of all or any part of the Property, or any interest therein or any portion thereof, and/or this Agreement, or any interest herein.

f. Consent by Director to one or more Transfers of this Agreement shall not operate as a waiver or estoppel to the future enforcement by Commission of its rights pursuant to the provisions of this Agreement.

g. If, except as provided in this Section 1.6, there is an assignment of this Agreement, or change in the management or control of Developer which the Director does not approve, then such action shall be *ipso facto* null and void, and no voluntary or involuntary successor to any interest of Developer under such a transfer shall acquire any rights pursuant to this Agreement. Commission may take such reasonable action as Commission may deem appropriate to ensure that the purposes of this Agreement will be carried out, including, without limiting the generality of the foregoing, terminating this Agreement and exercising any rights set forth in this Agreement, the Note, the Deed of Trust and the Agreement Containing Covenants.

h. The restrictions of this Section 1.6 shall terminate upon the reconveyance in full of the Deed of Trust.

i. No sale, transfer, conveyance or assignment of this Agreement or the Property (or any portion thereof), or approval by Director of any such sale, transfer, conveyance or assignment, shall be deemed to relieve the original nor any successor Developer or any other party from any obligations under this Agreement unless Director provides a specific written agreement of release.

j. The conditions precedent to any Commission approval of any transfer, change of ownership or hypothecation of this Agreement or Developer's interest in and at the Property, or any part thereof, which requires Commission's approval hereunder (collectively, an "Action") are as follows:

i. At the time of such proposed Action, this Agreement shall be in full force and effect and no default shall then exist with respect to this Agreement, the Note, the Deed of Trust, the Agreement Containing Covenants, the OPA, or the Development Agreement;

ii. Commission determines that the proposed transferee has demonstrated qualifications and experience equal to or greater than the qualifications and experience of Developer as of the original date of this Agreement in all material respects, including, without limitation, (A) financial strength, (B) experience in the successful development, marketing, operation and maintenance of the type, size and quality of improvements on the Property that is the subject of the proposed Action and (C) the ability to perform all of the agreements, undertakings and covenants of this Agreement, the Note, the Deed of Trust and the Agreement Containing Covenants, and all other agreements entered into by

Developer which relate to the development, management, operation and maintenance of the Property and of the improvements thereon;

iii. Such evidence as may be reasonably satisfactory to Director documenting the financial wherewithal of the proposed transferee to successfully develop and operate the improvements and Property subject to the proposed Action;

iv. The proposed transferee shall have executed the assignment and assumption agreement in form and content acceptable to the Director and Commission legal counsel and the documents executed in connection therewith arising on and after the effective date of the Action. If requested by Commission, the assignment and assumption agreement shall be in a form recordable among the land records of Ventura County. The acceptance of such document for recording by the Ventura County Recorder is not a condition precedent for approval of the proposed Action; and

v. The proposed Action is consistent with the requirements of this Agreement, including, without limitation, this Section.

k. Commission shall investigate and consider any proposed Action as follows:

i. In the event that Developer requests Director's written consent to a proposed Action pursuant to this Agreement, Developer agrees to provide Director with such information, including, without limitation, financial statements, as Director may reasonably require in order to evaluate the solvency, financial responsibility and relevant business acumen and experience of any proposed transferee. Such information shall include, without limitation, a balance sheet of the proposed transferee as of a date within 90 days of the request for Director's consent and statements of income or profit and loss of the proposed transferee for the 2-year period preceding the request for Director's consent, if the same are available (or such other similar information as shall be available at the time the request for approval of the Action is made), a written statement in reasonable detail as to the business and experience of the proposed transferee during the 5 years preceding the request for Director's consent.

ii. Within 30 days after the receipt of Developer's written notice requesting Director approval of an Action, Director shall respond in writing by stating what further information, if any, Director reasonably requires in order to determine whether or not to approve the requested Action. Upon receipt of such a response, Developer shall promptly furnish to Director such further information as may be reasonably requested.

iii. Any entity formation agreements and documents (or changes therein) related to an Action, as well as the agreements and documents effectuating any Action, shall be subject to the approval of Director in connection with its approval of the Action. If Director consents to any Action pursuant to this Agreement, then such consent shall not be effective unless and until Developer gives Director notice of the Action and a copy of any documents effecting and/or evidencing such Action.

iv. Developer agrees to reimburse Commission for Commission's

reasonable costs and attorneys' fees incurred in connection with the processing and documentation of any requested Action. The acceptance by Commission of any payment due hereunder from any other person shall not be deemed to be a waiver by Commission of any provision of this Agreement or to be a consent to any Action.

1.7 No Encumbrances Except Permitted Mortgage

Except for the Permitted Mortgage, Developer may not cause or allow any security instruments to be recorded against the Property prior to reconveyance in full of the Deed of Trust. Developer promptly shall notify Commission of any mortgage, deed of trust, sale and lease-back or other financing conveyance, encumbrance or lien that has been created or attached thereto, whether by voluntary act of Developer or otherwise. The words "mortgage" and "deed of trust," as used herein, include all other appropriate modes of financing real estate acquisition, construction and land development.

1.8 Representations and Warranties of Developer

As an inducement to Commission to enter into this Agreement and to make the Loan, Developer hereby represents and warrants to Commission, which representations and warranties are true and correct as of the date of this Agreement and which shall survive the recording and reconveyance of the Deed of Trust:

a. Developer has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby;

b. This Agreement and all documents required hereby to be executed by Developer are, and shall be, valid, legally binding obligations of and enforceable against Developer in accordance with their terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium laws or similar laws or equitable principles affecting or limiting the rights of contracting parties generally;

c. Neither the execution and delivery of this Agreement and documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which Developer is a party or affecting the Property or the Project;

d. To the best of Developer's knowledge, there are no pending, threatened or contemplated actions, suits, arbitrations, claims or proceedings, at law or in equity, affecting the Property or in which Developer is, or to the best of Developer's knowledge will be, a party by reason of Developer's ownership of the Property or the Project, including, without limitation, judicial, municipal or administrative proceedings in eminent domain, unlawful detainer or tenant evictions, collections, alleged building code, health and safety or zoning violations, employment

discrimination or unfair labor practices, or workers' compensation, personal injuries or property damages alleged to have occurred at the Property or the Project or by reason of the condition or use of the Property or the Project;

e. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending or threatened against Developer, nor are any of such proceedings contemplated by Developer;

f. To the best of Developer's knowledge, there are no violations of any governmental regulations relating to the Property or the Project;

g. Developer is the legal fee simple titleholder of the Property (E.D., LLC owns 50% and KOH, LLC owns 50%) and has and will continue to have good, marketable and insurable title to the Property;

h. Any reports, documents, instruments, information and forms of evidence delivered to Commission concerning or required by this Agreement are accurate, correct and sufficiently complete to give Commission true and accurate knowledge of their subject matter, and do not contain any misrepresentation or omission;

i. No representation, warranty or statement of Developer in this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements or facts contained therein not misleading; and

j. The Affordable Units to be provided hereunder are in addition to the affordable housing units required to be developed pursuant to the OPA and Development Agreement.

Developer's representations and warranties made in this Section 1.8 shall be continuing and shall be true and correct as of the Loan Closing with the same force and effect as if remade by Developer in a separate certificate at that time. The truth and accuracy of Developer's representations and warranties made herein shall constitute a condition for the benefit of Commission to the disbursement of the Loan.

ARTICLE 2. LOAN

2.1 Loan

In furtherance of the Redevelopment Plan, and in accordance with and subject to all the terms, conditions and covenants of this Agreement, Commission agrees to lend, and Developer agrees to borrow, an amount not to exceed One Million Two Hundred Fifty Thousand Dollars (\$1,250,000). The Commission's obligation to make the Loan in accordance with this Article 2 shall be subordinate to the Commission's existing bonded indebtedness and bond issuance(s) and the refunding or refinancing thereof and any future bonds the Commission may issue and the bonded indebtedness incurred in connection therewith, provided that the Director determines at the time of issuance of any such future bonds that such issuance and indebtedness will not adversely affect the Commission's ability to perform its obligations under this Article 2. Bonded

indebtedness includes any indebtedness incurred by the Commission for bonds, notes, interim certificates, debentures, certificates of participation or other obligations issued by the Commission. The Commission's obligation to make the Loan is not and shall not be construed as a "pledge" of property tax revenues for purposes of Section 33671.5 of the Community Redevelopment Law.

2.2 Terms of Loan

- a. The Loan shall be evidenced by the Note and secured by the Deed of Trust.
- b. The Deed of Trust and Agreement Containing Covenants shall be senior to any liens, encumbrances, covenants, restrictions, easements, leases, taxes or other encumbrances or defects except as shown on the Title Report.
- c. The terms of repayment of the Loan are set forth in the Note.
- d. The proceeds of the Loan shall be used exclusively to pay predevelopment costs for the development of the Affordable Units. No portion of the Loan may be used to pay any development (predevelopment or otherwise) or construction costs attributable to any portion of the Project other than the Affordable Units.

2.3 Conditions Precedent to Loan Closing

The following are conditions precedent to the Loan Closing:

- a. Developer shall be the fee simple owner of the Property and no monetary encumbrances or liens shall be recorded against the Property, except the Permitted Mortgage, and the Property shall be free and clear of all other liens, encumbrances, covenants, restrictions, easements, leases, taxes or other encumbrances or defects except as shown on the Title Report;
- b. Developer shall have executed and delivered to Commission the Note, Deed of Trust, and Fourth Amendment to Agreement Containing Covenants, and the Deed of Trust and Fourth Amendment to Agreement Containing Covenants shall have been recorded against the Property senior to any liens, encumbrances, covenants, restrictions, easements, leases, taxes or other encumbrances or defects except as shown on the Title Report, in accordance with the terms and conditions of this Agreement;
- c. The Notice of Affordability Restrictions on Transfer shall have been recorded against the Property;
- d. The Permitted Mortgagee shall have executed (in recordable form) an agreement in form and content satisfactory to the Director and Commission legal counsel as described by California Health and Safety Code section 33334.14(a)(4) and such agreement shall have been recorded against the Property;
- e. Developer's representations and warranties set forth in Section 1.8 shall be

true and correct as of the Loan Closing;

f. Title Company shall be unconditionally committed to issue to Commission, at Developer's sole cost and expense, the Title Policy;

g. This Agreement shall be in full force and effect and Developer shall not be in default of any of its obligations under this Agreement;

h. An amendment to the Specific Plan shall have been approved by the City to the extent required to permit development of the Project on the Property;

i. Developer shall have delivered to Commission and the Director shall have approved a current appraisal of the Property; and

j. The Director shall have determined that the development of the Affordable Units is in compliance with Commission Resolution No. 111.

Commission, at its option, may terminate this Agreement if any of the conditions precedent set forth above are not satisfied by Developer or waived in writing by Commission by December 31, 2009.

2.4 Conditions Precedent to Disbursement of Loan Proceeds

Commission shall not be obligated to make any disbursement of the Loan unless all of the following conditions precedent are and remain satisfied at the time of each such disbursement:

a. All conditions precedent to the Loan Closing shall have been satisfied and the Loan Closing shall have occurred in accordance with this Agreement;

b. This Agreement, the Note, the Deed of Trust, the Agreement Containing Covenants, the OPA, and the Development Agreement shall be in full force and effect and Developer shall not be in default of any of its obligations under hereunder or thereunder.

2.5 Disbursement Procedures

a. Disbursements shall be made upon submission of a written itemized request from Developer not more frequently than monthly ("Application for Payment").

b. All Loan funds disbursed pursuant to this Agreement shall be spent exclusively on reimbursement for predevelopment costs for the development of the Affordable Units and for no other purpose.

c. Each Application for Payment shall set forth:

i. A description of the work performed, material supplied and/or predevelopment cost incurred or due for which disbursement is requested;

ii. The total amount incurred, expended and/or due for each requested item of predevelopment cost, less prior disbursements; and

iii. The total amount approved by Developer for each requested item of predevelopment cost, and the amount of the other funds, if any, previously disbursed or to be disbursed concurrently with the Commission's disbursement.

d. Each Application for Payment shall be accompanied, to the extent applicable, by copies of invoices for costs paid with the proceeds of the prior Application for Payment (except for the first Application for Payment), which invoices shall be considered a part of each Application for Payment.

e. Within five (5) business days after receipt of an Application for Payment, the Director shall determine the amount of the Application for Payment to be approved.

f. Commission shall have the right to inspect the Property. Inspection of the Property shall be for the sole purpose of protecting the security of Commission and is not to be construed as a representation by Commission that there has been compliance with the plans approved for the Project or that the Project will be free of faulty materials or workmanship. The Developer may make or cause to be made such other independent inspections as the Developer may desire for its own protection.

g. Commission shall disburse the approved amount to reimburse eligible predevelopment costs for the development of the Affordable Units promptly upon approval of the applicable Application for Payment.

h. The Commission shall have the right to condition any disbursement upon the receipt and approval of such documentation, evidence or information that the Director may reasonably request, including, but not limited to, estimated or final closing or settlement statements, vouchers, and invoices.

i. All other costs of the Project shall be the responsibility of Developer.

2.6 Relationship of Commission and Developer

Nothing contained in this Agreement or in any other document or instrument made in connection with this Agreement shall be deemed or construed to create a partnership, tenancy in common, joint tenancy, joint venture or co-ownership by or between Commission and Developer. Commission shall not be in any way responsible or liable for the debts, losses, obligations or duties of Developer with respect to the Property, or any portion thereof, or otherwise.

ARTICLE 3. DEVELOPMENT

3.1 Subdivision Map Act

Developer shall, at no cost or expense to Commission, ensure that the Property is subdivided as may be required by the Subdivision Map Act (California Government Code §66410 *et seq.*) to permit development of the Project.

3.2 Scope of Development

a. Developer shall develop the Project (including the Affordable Units) on the Property in accordance with this Agreement. Developer shall cause all work performed in connection with the Project to be performed in compliance with (i) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter, including, without limitation, any laws, rules or regulations pertaining to the payment of prevailing wages, and (ii) all directions, rules and regulations of any fire marshal, health officer, building inspection, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and the Developer shall be responsible for the procurement and maintenance thereof, as may be required of the Developer and all entities engaged in work on the Project. All construction work and professional services shall be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work or service in the State of California.

b. The Project shall meet all City ordinances, conditions, rules and regulations and shall be required to have approval of the City of Oxnard Planning Commission and City Council as provided by City ordinances, resolutions, and other applicable requirement. Nothing in this Agreement requires City to exercise its police or regulatory power in a certain manner.

c. Affordable Unit location, size, building materials (interior and exterior) and amenities must be pre-approved in writing by the Director.

3.3 Entitlements

It is the responsibility of Developer, without cost to Commission, to ensure that zoning of the Property and all applicable City land use requirements will be such as to permit development of the Property and construction of the Project and the use, operation and maintenance of the Project in accordance with the provisions of this Agreement. Nothing contained herein shall be deemed to entitle Developer to any City permit or other City approval necessary for the development of the Property, or waive any applicable City requirements relating thereto. This Agreement does not (a) grant any land use entitlement to Developer, (b) supersede, nullify or amend any condition which may be imposed by City in connection with approval of the development described herein, (c) guarantee to Developer or any other party any profits from the development of the Property or (d) amend any City laws, codes or rules. This

Agreement is not a development agreement as provided in California Government Code Section 65864 *et seq.*

3.4 **Cost of Construction; Relocation**

a. The costs to develop and construct the Project, including, without limitation, any and all public improvements and permit conditions required by City, shall be the responsibility of and paid by Developer.

b. Relocation

i. All right(s) to possession of all portions of the Property necessary for construction and operation of the Project shall be cleared by Developer at Developer's sole cost and expense. The relocation of any occupants or businesses, if any, required for construction and operation of the Project, including provisions of relocation assistance and benefits pursuant to Relocation Laws, shall be the sole financial responsibility of Developer. Relocation obligations, if any, which arise from the Property, Project and/or this Agreement shall be administered by Commission (or its designee, a qualified relocation consultant chosen by Commission) in conformity with the Relocation Laws, with such administration paid by Developer.

ii. Any costs and expenses incurred or to be incurred by Developer to cause the vacating of the Property and/or relocation of any occupants and businesses from the Property for construction and operation of the Project (including, without limitation, payments made to displaced persons and businesses, pre- or post-relocation rental payments, fees and actual expenses of attorneys, relocation consultants and other experts employed to effect the relocation of occupants and businesses, *etc.*) shall be the sole financial responsibility of Developer. Any costs arising related in any respect to such displacement, such as, but without limitation, claims for loss of business goodwill, payment for furniture, fixtures and equipment, payment for leasehold bonus value, and any other compensable interest under Relocation Laws shall be the sole financial responsibility of Developer, and administered and reviewed by Commission (or its designee).

iii. Developer hereby covenants and agrees to indemnify, save, protect, hold harmless, pay for and defend Commission, City and their respective elected officials, officers, employees, agents, consultants, contractors, attorneys and representatives (collectively, the "Indemnified Parties") from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, penalties, fines and monetary sanctions), losses, costs or expenses, including, without limitation, reasonable consultants' and reasonable attorneys' fees, or relocation benefits claimed or payable under the Relocations Laws which may now or in the future be incurred or suffered by the Commission, City, and/or the Indemnified Parties by reason of, or resulting from, in full or in part, or in any respect whatsoever from the displacement of businesses or other occupants of the Property. The foregoing indemnity shall survive termination of this Agreement and shall not be merged with any other document.

3.5 Development Schedule

Within twelve (12) months following the date of this Agreement, Developer shall submit to the City a permitting submittal for the Project (including the Affordable Units). Thereafter, Developer shall commence construction of the Project (including the Affordable Units) contemplated herein within 24 months following the date of this Agreement, and shall diligently complete construction of the Project (including the Affordable Units) within 24 months after commencement of construction. Developer shall provide the Commission with monthly progress reports regarding the status of the construction of the Project.

3.6 Insurance; Indemnification

a. Insurance.

i. Developer shall obtain and maintain during the construction of the Project the insurance coverages as specified in Exhibit G, attached hereto and incorporated herein by this reference, issued by a company satisfactory to the City Risk Manager, unless the City Risk Manager waives, in writing, the requirement that Developer obtain and maintain such insurance coverages.

ii. Developer shall, prior to commencement of any construction on the Property, file with the City Risk Manager evidence of insurance coverage as specified in Exhibit G. Evidence of insurance coverage shall be forwarded to the City Risk Manager, addressed as specified in Exhibit G.

iii. Maintenance of proper insurance coverages by Developer is a material element of this Agreement. Developer's failure to maintain or renew insurance coverages or to provide evidence of renewal may be considered as a material breach of this Agreement.

b. Indemnification. As a material part of the consideration for this Agreement, and to the maximum extent permitted by law, Developer agrees to and shall defend, indemnify, protect and hold harmless the Commission, City, and the Indemnified Parties from and against any and all loss, liability, damage, claims, costs and expenses (including reasonable attorneys' fees, court and litigation costs and fees of expert witnesses) resulting or arising from or in any way connected to this Agreement including, without limitation, the following, provided, however, that Developer shall not be responsible to the extent of (and such indemnity shall not apply to) any gross negligence or willful misconduct of the Commission, City or Indemnified Parties:

i. Developer's pre-development, development, construction, use, maintenance, marketing, sale, ownership or operation of the Property or Project in any way;

ii. The existence, release, presence or disposal on, in, under, about or adjacent to the Property of any Hazardous Materials;

iii. Any plans or designs for the development of the Project prepared

by or on behalf of Developer, including without limitation any errors or omissions with respect to such plans or designs;

iv. The death of any person or any accident, injury, loss or damage whatsoever caused to any person or the property of any person which shall occur on or adjacent to the Property, or in connection with the activities of the Developer under this Agreement; or

v. Any loss or damage to Commission, City and/or Indemnified Parties resulting from any inaccuracy in or breach of any representation or warranty of Developer, or resulting from any breach or default by Developer under this Agreement.

The foregoing indemnity shall survive termination of this Agreement and shall not be merged with any other document.

3.7 Construction Requirements

a. Before commencement of construction of any portion of the Project, Developer shall obtain or cause to be obtained any and all permits which may be required by City or any other governmental agencies affected by such construction, development, or work. Developer shall obtain all zone changes, permits, licenses and other approvals that may be necessary in order to legally proceed with the project. Nothing in this Agreement shall be construed to require or obligate the City to approve any zone changes, to issue any conditional use permits, to issue any building permits, or other permits, to approve any tentative or final maps regarding the Project, or to give or issue any other approvals regarding the Project. Any application by Developer for any such permits and/or approvals shall be processed as any other applications for similar permits or approvals are processed under applicable laws.

b. Developer shall provide all construction management for the Project, including design development, bid solicitation, contract award, construction supervision and all other usual and customary services of a general contractor.

c. Work on the Project shall be performed by contractors, licensed under the laws of the State of California, as Developer may employ from time to time to execute such work. Developer agrees that it shall call for bids in connection with the Project. All work shall be performed in a workmanlike and quality fashion, free of encumbrances and liens, in full compliance with all applicable requirements of the Uniform Building Code and the Oxnard City Code. In addition to all other obligations of Developer as set forth in this Agreement, Developer shall seek and obtain all necessary governmental approvals for the Project and shall pay all permit application fees and development exactions then prescribed by local ordinance or resolution at the time of submittal, unless such fees or exactions are waived by Commission. Nothing herein excuses compliance by Developer with any or all ordinances, resolutions, or development procedures or standards in connection with development of the Project. Developer shall comply with all applicable labor laws and laws requiring the payment of prevailing wages or Davis Bacon Act wages.

d. Developer shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which Developer or its agents, or both, perform the

services required of it by the terms of this Agreement for the development of the Project. Developer has and hereby retains the right to exercise full control of employment, direction, compensation and discharge of all persons assisting in the performance of services hereunder. In regard to the development of the Project, Developer acknowledges and agrees to be solely responsible for all matters relating to payment of its employees, including wage laws, compliance with Social security, withholding and all other laws and regulations governing such matters, and shall include requirements in each contract that contractors shall be solely responsible for similar matters relating to their employees, Developer agrees to be solely responsible for its own acts and those of its agents and employees.

3.8 Rights of Access

Representatives of Commission shall have the reasonable right of access to the Property at normal hours during the period of development for the purposes of this Agreement, including, without limitation, the inspection of the work being performed.

3.9 Local, State and Federal Laws

Developer shall carry out development and construction (as defined by applicable law) of the Project on the Property, including, without limitation, any and all public works, (as defined by applicable law), if any, in conformity with all applicable local, state and federal laws, including, without limitation, all applicable federal and state labor laws (including, without limitation, any applicable requirement to pay state prevailing wages). Developer hereby agrees that Developer shall have the obligation to provide any and all disclosures, representations, statements, rebidding, and/or identifications which may be required by California Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. Developer hereby agrees that Developer shall have the obligation to provide and maintain any and all bonds to secure the payment of contractors (including the payment of wages to workers performing any public work) which may be required by the California Civil Code, California Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. Developer shall indemnify, protect, defend and hold harmless Commission, City and their respective officers, employees, contractors and agents, with counsel reasonably acceptable to Commission and City, from and against any and all loss, liability, damage, claim, cost, expense, and/or "increased costs" (including labor costs, penalties, reasonable attorneys fees, court and litigation costs and fees of expert witnesses) which, in connection with the development and/or construction (as defined by applicable law) of the Project, including, without limitation, any and all public works (if any) (as defined by applicable law) results or arises in any way from any of the following: (i) the noncompliance by Developer of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages), (ii) the implementation of Chapter 804, Statutes of 2003, (iii) the implementation of Sections 1726 and 1781 of the California Labor Code, as the same may be enacted, adopted or amended from time to time, or any other similar law, (iv) failure by Developer to provide any required disclosure representation, statement, rebidding and/or identification which may be required by California Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other

provision of law and/or (v) failure by Developer to provide and maintain any and all bonds to secure the payment of contractors (including the payment of wages to workers performing any public work) which may be required by the California Civil Code, California Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. Developer hereby expressly acknowledges and agrees that neither City nor Commission has ever previously affirmatively represented to Developer or its contractor(s) for the Project in writing or otherwise, that the work to be covered by the bid or contract is not a "public work," as defined in Section 1720 of the California Labor Code. It is agreed by the parties hereto that, in connection with the development and construction (as defined by applicable law) of the Project, including, without limitation, any public work (as defined by applicable law), if any, Developer shall bear all risks of payment or non-payment of state prevailing wages and/or the implementation of Chapter 804, Statutes of 2003 and/or California Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, and/or any other provision of law. "Increased costs" as used in this Section shall have the meaning ascribed to it in California Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time. The foregoing indemnity shall survive termination of this Agreement, shall continue after reconveyance in full of the Deed of Trust and shall not be merged with any other document.

3.10 Nondiscrimination

Developer, for itself, its successors and assigns, agrees that in regards to the development provided for in this Agreement, it will not discriminate against any employee or applicant for employment because of race, religion, creed, color, national origin, ancestry, handicap, sex, sexual orientation, marital status, age or any other protected classification.

3.11 Disclaimer by Commission

Commission shall not undertake or assume or have any responsibility or duty to Developer or to any third party to review, inspect, supervise, pass judgment upon or inform Developer or any third party of any matter in connection with the development of the Property, whether regarding the quality, adequacy or suitability of the plans, any labor, service, equipment or material furnished to the Property, any person furnishing the same or otherwise. Developer and all third parties shall rely upon its or their own judgment regarding such matters, and any review, inspection, supervision, exercise of judgment or information supplied to Developer or to any third party by Commission in connection with such matter is for the public purpose of improving affordable housing in the City of Oxnard and neither Developer nor any third party is entitled to rely thereon.

3.12 Hazardous Materials

a. Developer's Warranty

Developer hereby represents and warrants that the development, construction and uses of the Property permitted under this Agreement shall comply with all applicable environmental laws. As part of the development of the Property, Developer shall conduct such tests as Developer may deem necessary or appropriate. Developer shall, at its sole

cost and expense, remove, remediate and/or abate any Hazardous Materials on the Property, as required by applicable governmental entities and/or requirements, as part of the development contemplated herein.

b. **Developer's Release**

By execution of this Agreement, Developer hereby waives, releases and discharges Commission, City, and the Indemnified Parties, from any and all present and future claims, demands, suits, legal and administrative proceedings, and from all liability for damages, losses, costs, liabilities, fees and expenses (including, without limitation, attorneys' fees) arising out of or in any way connected with the predevelopment, development, construction, use, maintenance, ownership or operation of the Property, any Hazardous Materials on the Property, or the existence of Hazardous Materials contamination in any state on the Property, however the Hazardous Materials came to be placed there, except to the extent arising out of the gross negligence or willful misconduct of Commission, City, or the Indemnified Parties. Developer acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

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

To the extent of the release set forth in this Section 3.12, Developer hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

Developer's Initials

Developer's Initials

3.13 **Encumbrances and Liens**

Developer shall not place or allow to be placed on the Property, or on any portion thereof, any mortgage, trust deed, encumbrance or lien (other than the Permitted Mortgage) and Developer shall remove, or shall have removed, any levy or attachments made on the Property (or any portion thereof), or shall assure the satisfaction thereof within a reasonable time. Developer shall pay, or cause to be paid, prior to delinquency, all taxes, assessments, charges and levies imposed by any public authority or utility company which are or may become a lien affecting the Property or Project.

3.14 **Holder Not Obligated to Construct Project**

The Permitted Mortgagee shall in no way be obligated by the provisions of this Agreement to complete the Project, or to guarantee the completion of the Project. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Property to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

3.15 **Right of Commission to Satisfy Liens on Property**

In the event of a default or breach by the Developer of the Permitted Mortgage or any other lien or encumbrance on the Property, and the Permitted Mortgagee has not commenced to complete the development, the Commission may cure the default prior to completion of any foreclosure. In such event, the Commission shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the Commission in curing the default. The Commission shall also be entitled to a lien upon the Property in accordance with California Civil Code section 2881 be a lien to the extent of such costs and disbursements. Any such lien shall be subordinate and subject to the Permitted Mortgage.

ARTICLE 4. USE OF PROPERTY

4.1 Affordability Restrictions

As a material part of the consideration for this Agreement, Developer covenants and agrees (for itself, its successors, its assigns, and every successor in interest to the Property or any part thereof) that in accordance with the Agreement Containing Covenants:

- a. At least 15% of the dwelling units developed on the Property shall be Affordable Units.
- b. Of the 15% minimum required Affordable Units, a minimum of at least 40% of such Affordable Units shall be available at an Affordable Rent to and occupied by Very Low Income Households.
- c. Of the 15% minimum required Affordable Units, a maximum of 60% of such Affordable Units shall be available at an Affordable Rent to and occupied by either Low Income Households or Moderate Income Households.
- d. The bedroom mix of the Affordable Units shall be proportional to the bedroom mix of the market rate units in the Project. The Affordable Units shall be of equal or better quality (interior and exterior) and amenities as the market rate units in the Project.
- e. The parties agree that for determining the total overall number of required Affordable Units and the minimum number of Very Low Income Household units and the maximum number of Low Income Household or Moderate Income Household units, for rounding purposes, any number below .5 shall be rounded down and any number above .5 shall be rounded up.
- f. Developer shall not permit any of the Affordable Units to be used on a transient basis (i.e., on a term of less than 30 days) and shall not permit the rental of any Affordable Unit for a period of less than 30 days.
- g. Developer shall use commercially reasonable efforts to rent all Affordable Units so that any rent-ready Affordable Unit does not become or remain vacant for any longer period than is necessary in the ordinary course of business.

h. Developer shall maintain complete and accurate records pertaining to (i) the occupancy of each Affordable Unit and (ii) the maintenance, management, operation, preservation and repair of each Affordable Unit. Developer agrees to permit the Director to inspect and audit the books and records of Developer pertaining to the Affordable Units. In furtherance of this requirement, Developer shall require tenants or managers to submit to the Director an annual report (the "Annual Report") required by California Health and Safety Code section 33418, as amended from time to time, or any successor statute thereto. The Annual Report shall contain for each Affordable Unit the rental rate and the income and family size of the occupants. The income information required by Section 33418 and this subsection shall be supplied by each tenant in a certified statement on a form provided by the Director.

i. Developer shall manage and operate the Affordable Units in accordance with a written "Management Plan" approved in writing by the Director as described in Section 4.2, below.

j. Prior to occupancy of any of the Affordable Units, Developer shall submit a written plan describing the proposed Affordable Unit tenant selection process to Commission for the Director's written approval.

k. Prior to occupancy of any of the Affordable Units, Developer shall submit the proposed rental rate of each Affordable Unit to Commission for the Director's written approval.

l. The maximum incomes of residential tenants eligible to rent the Affordable Units shall be determined on the basis of the Area Median Income, subject to the following:

i. All proposed tenants must be income-eligible.

ii. The maximum rents that may be charged to tenants for the Affordable Units, including a reasonable utility allowance, shall not exceed the Affordable Rent.

4.2 Management

a. As a material part of the consideration for this Agreement, Developer covenants and agrees (for itself, its successors, its assigns, and every successor in interest to the Property or any part thereof) that Developer, such successors, and such assigns shall manage and operate the Affordable Units in accordance with a management plan prepared by Developer and submitted to and approved in writing by the Director as provided herein (the "Management Plan"), including such amendments as may be requested by Developer and approved by the Director from time to time. The Management Plan shall include, at a minimum, the following components:

i. Management Agent. Developer shall submit to the Director for review and approval in writing the name and qualifications of the proposed management agent. The Director shall approve or disapprove the proposed management agent in writing based on the experience and qualifications of the management agent; and

ii. **Management Plan.** Developer shall submit to the Director for review and approval in writing a copy of the proposed management plan specifying the amount of the management fee, and the relationship and division of responsibilities between Developer and management agent.

b. **Required Change in Management.** As a material part of the consideration for this Agreement, Developer covenants and agrees (for itself, its successors, its assigns, and every successor in interest to the Property or any part thereof) that if, at any time, the Director determines that the Affordable Units are not being managed or maintained in accordance with the approved Management Plan, Developer shall change the management agent or the practices complained of, upon receipt of written notice from the Director. The Director may require Developer to change management practices or to terminate the management contract and designate and retain a different management agent, to be approved by the Director. The Management Plan shall provide that it is subject to termination by Developer without penalty, upon 30 days' prior written notice, at the direction of the Director. Within 10 days following a direction of the Director to replace the management agent, Developer shall select another management agent or make other arrangements satisfactory to the Director for continuing management of the Affordable Units.

4.3 **Obligation to Refrain from Discrimination**

As a material part of the consideration for this Agreement, Developer covenants and agrees (for itself, its successors, its assigns, and every successor in interest to the Property or any part thereof) that there shall be no discrimination against or segregation of any person, or groups of persons, on account of sex, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, and Developer itself (for any person claiming under or through it) shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property.

4.4 **Form of Nondiscrimination and Nonsegregation Clauses**

As a material part of the consideration for this Agreement, Developer covenants and agrees (for itself, its successors, its assigns, and every successor in interest to the Property or any part thereof) that Developer shall refrain from restricting the rental, sale or lease of the Property, or any portion thereof, on the basis of sex, marital status, race, color, religion, creed, ancestry or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

a. In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in 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 premises herein

conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

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

b. In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

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

c. In contracts: The foregoing provisions shall be binding upon and shall obligate the contracting party or parties and any subcontracting party or parties, or other transferees under this Agreement.

4.5 Effect and Duration of Covenants

The covenants established in this Agreement shall, without regard to technical classification and designation, be binding on Developer and any successor in interest to the Property, or any part thereof, the Project or any part thereof for the benefit and in favor of Commission and its successors and assigns. From and after the execution of the Fourth Amendment to Agreement Containing Covenants by the Commission, “Agreement Containing Covenants” as used in this Agreement shall mean and refer to the Agreement Containing Covenants as amended by the Fourth Amendment to Agreement Containing Covenants.

Commission and City shall each be the beneficiary of the covenants contained in this Article 4 and the Agreement Containing Covenants.

ARTICLE 5. DEFAULTS, REMEDIES AND TERMINATION

5.1 Defaults - General

a. Subject to the extensions of time set forth in Section 6.4, failure or delay by Commission or Developer to perform any term or provision of this Agreement to be performed by such party hereto constitutes a default under this Agreement. The party hereto in default must immediately commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence.

b. The complaining party shall give written notice of default to the party in default. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, any failures or delays by either party hereto in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by either party hereto in asserting any of its rights and remedies shall not deprive either party hereto of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

c. If a monetary event of default occurs, then prior to exercising any remedies hereunder, the aggrieved party shall give the party in default written notice of such default. Except for a different cure period provided herein, the party in default shall have a period of 10 days after such notice is given within which to cure the default.

d. If a non-monetary event of default occurs, then prior to exercising any remedies hereunder, the aggrieved party shall give the party in default notice of such default. Except for a different cure period provided herein, if the default is reasonably capable of being cured within 30 days, the party in default shall have such period to effect a cure prior to exercise of remedies by the aggrieved party. Except for a different cure period provided herein, if the default is such that it is not reasonably capable of being cured within 30 days, and the party in default (i) initiates corrective action within said period and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, then the party in default shall have such additional time as is reasonably necessary to cure the default, but no longer than 90 days or shorter period of time if Commission's rights become or are about to become materially jeopardized by any failure to cure a default or the default.

e. In no event shall Commission be precluded from exercising remedies if its rights become or are about to become materially jeopardized by any failure to cure a default.

5.2 Institution of Legal Actions

Subject to the notice and cure provisions of Section 5.1, in addition to any other rights or remedies (and except as otherwise provided in this Agreement), either party hereto may institute legal action to cure, correct or remedy any default, to obtain the specific performance of

obligations hereunder to enjoin, abate or prevent any further violation or default, to appoint a receiver to operate the Affordable Units, to require Developer to return any rent amounts received by Developer in excess of the amounts permitted hereunder, to recover damages for any default or to obtain any other remedy available at law or in equity consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of Ventura County, State of California, in any other appropriate court of that county, or in the United States District Court for the Central District of California.

5.3 Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

5.4 Acceptance of Service of Process

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

b. In the event that any legal action is commenced by Commission against Developer, service of process on Developer shall be made by personal service upon an officer, general partner or managing member of Developer and shall be valid whether made within or without the State of California, or in such manner as may be provided by law.

5.5 Rights and Remedies Are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties hereto are cumulative, and the exercise by either party hereto of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party hereto.

5.6 Damages

If a default is not cured within the time provided in Section 5.1, then the defaulting party shall be liable to the non-defaulting party for any damages caused by such default, and the non-defaulting party may thereafter (but not before) commence an action for damages against the defaulting party with respect to such default.

5.7 Specific Performance

If a default is not cured within the time provided in Section 5.1, then the non-defaulting party, at its option, may thereafter (but not before) commence an action for specific performance of the terms of this Agreement pertaining to such default.

5.8 Termination by Commission

In the event that any of the following occur, and are not cured within the

applicable time provided herein, then, in addition to any other rights or remedies provided herein or provided at law or in equity, this Agreement and any rights of Developer, or any assignee or transferee, may, at the option of Commission, be terminated and rescinded, and thereafter Developer shall have no further rights against Commission with respect to this Agreement or any implementing agreements:

a. Developer fails to timely satisfy any of the conditions precedent to the Loan Closing by December 31, 2009;

b. Developer fails to maintain fee simple title to the Property;

c. Developer (or any successor in interest) Transfers or attempts to Transfer this Agreement or any rights herein or in the Property, or any portion thereof, or in the Project or any portion thereof, in violation of this Agreement;

d. Any representation or warranty by Developer to Commission contained herein proves to be materially false or misleading and Developer does not, after receiving written notice thereof from the Director, initiate and diligently pursue all actions necessary to make such representation or warranty no longer false or misleading;

e. Developer is in breach or default with respect to any other covenant or obligation of Developer under this Agreement, the Note, the Deed of Trust, the Agreement Containing Covenants, the OPA, or the Development Agreement;

f. Any party files a mechanic's lien or materialman's lien against the Property, or any portion thereof, or the Project or any portion thereof and within 30 business days after Developer's receipt of written notice from the Director of the filing thereof, either: (i) the claim set forth therein is not discharged by Developer or (ii) if the amount claimed is disputed in good faith by Developer or Developer's general contractor, then Developer fails to obtain and record in the Official Records of Ventura County, a mechanic's lien release bond, in form and substance and issued by a surety company acceptable to the Director and Commission's legal counsel, in a penal sum equal to 1 and 1/2 times the amount set forth in such claim of lien, whereby the Property, or any portion thereof, and the Project or any portion thereof, will be released from such lien, and from any action brought to foreclose such lien, in accordance with Section 3143 of the California Civil Code, as the same may be amended from time to time; or

g. Developer becomes insolvent or unable to pay its debts as they mature or makes an assignment for the benefit of creditors.

5.9 Attorneys' Fees

Except as more specifically set forth elsewhere in this Agreement, if either party hereto brings any action or files any proceeding to declare the rights granted herein or to enforce any of the terms of this Agreement or as a consequence of any breach by the other party hereto of its obligations hereunder, then the prevailing party in such action or proceeding shall be entitled to have its reasonable attorneys' fees and costs and out-of-pocket expenditures paid by

the losing party. The attorneys' fees and costs so recovered shall include fees and costs for prosecuting or defending any appeal and shall be awarded for any supplemental proceedings until the final judgment is satisfied in full. In addition to the foregoing award of attorneys' fees and costs to the prevailing party, the prevailing party in any lawsuit on this Agreement shall be entitled to its attorneys' fees and costs incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive any termination of this Agreement and the merger of this Agreement into any judgment on this Agreement.

ARTICLE 6. GENERAL PROVISIONS

6.1 Notices

Formal notices, demands and communications between Commission and Developer shall be deemed sufficiently given if dispatched by first class mail, registered or certified mail, postage prepaid, return receipt requested, or by electronic facsimile transmission followed by prompt delivery of a "hard" copy, or by personal delivery (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), to the addresses of Commission and Developer as set forth in Section 1.5 hereof. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail. Any notice that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

6.2 Conflicts of Interest

a. No member, official or employee of Commission shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is, directly or indirectly, interested.

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

6.3 Nonliability of Commission/City Officials and Employees

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

6.4 Force Majeure

In addition to specific provisions of this Agreement, performance by either party hereto hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, Acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, unusually severe weather, acts of the other party or acts or failure to act of any public or governmental agency or entity (except that acts or failures to act by Commission shall not excuse performance by Commission). 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 the party claiming such extension gives notice to the other party, provided notice by the party claiming such extension is sent to the other party within 30 days of knowledge of the commencement of the cause.

6.5 Inspection of Books and Records

Developer shall (a) promptly (and in no event later than thirty (30) days from request) provide documents and provide specific answers to questions upon which information is desired from time to time relative to the income, expenditures, assets, liabilities, contracts, operations and condition of the Project and Property, (b) promptly (and in no event later than thirty (30) days from request) provide Commission a photocopy of the certified financial statements of Developer for the past two years, and (c) at all reasonable times during normal business hours, and upon reasonable notice, provide access to and the right to inspect, copy, audit, and examine all such books, record, and other documents of Developer until two years after the expiration of this Agreement.

In addition, Developer shall, upon request of Commission promptly (and in no event later than thirty (30) days from request) provide all documentation required by Commission necessary and appropriate to audit expenditure of the funds loaned under this Agreement.

6.6 Consents and Approvals

Except as otherwise expressly provided in this Agreement, approvals or consents required of Commission shall be deemed granted by the written approval of the Director. Notwithstanding the foregoing, the Director may, in his or her sole discretion, refer to the governing board of Commission any item requiring Commission approval.

6.7 Real Estate Commissions

Developer represents and warrants to Commission that no broker or finder has been engaged by Developer in connection with any of the transactions contemplated by this Agreement, or to its knowledge is in any way connected with any of such transactions. Developer shall indemnify, save harmless and defend Commission from any liability, cost or expense arising out of or connected with any claim for any commission or compensation made by any person or entity claiming to have been retained or contacted by Developer in connection with any of the transactions contemplated by this Agreement (including, without limitation, the

sale of the Property to Developer). The foregoing indemnity shall survive termination of this Agreement and shall not be merged with any other document.

6.8 Construction and Interpretation of Agreement

a. The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

b. If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by any party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is illegal, invalid, or unenforceable, there be added as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible.

c. The captions of the articles, sections, and subsections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

d. References in this instrument to this "Agreement" mean, refer to and include this instrument as well as any riders, exhibits, addenda and attachments hereto (which are hereby incorporated herein by this reference) or other documents expressly incorporated by reference in this instrument. Any references to any covenant, condition, obligation, and/or undertaking "herein," "hereunder," or "pursuant hereto" (or language of like import) shall mean, refer to, and include the covenants, obligations, and undertakings existing pursuant to this instrument and any riders, exhibits, addenda, and attachments or other documents affixed to or expressly incorporated by reference in this instrument.

e. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

6.9 Time of Essence

Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Agreement.

6.10 **No Partnership**

Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture, or any other relationship between the parties hereto, or cause Commission to be responsible in any way for the debts or obligations of Developer, or any other party.

6.11 **Compliance with Law**

Developer agrees to comply with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities, pertaining to the Property and the Project, as well as operations conducted thereon. The judgment of any court of competent jurisdiction, or the admission of Developer or any lessee or permittee in any action or proceeding against them, or any of them, whether Commission be a party thereto or not, that Developer, lessee or permittee has violated any such ordinance or statute in the use of the premises shall be conclusive of that fact as between Commission and Developer.

6.12 **Binding Effect**

This Agreement, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

6.13 **No Third Party Beneficiaries**

The parties to this Agreement acknowledge and agree that the provisions of this Agreement are for the sole benefit of Commission and Developer, and not for the benefit, directly or indirectly, of any other person or entity, except as otherwise expressly provided herein.

6.14 **Authority to Sign**

Each party hereby represents that the persons executing this Agreement on behalf of such party have full authority to do so and to bind such party to perform pursuant to the terms and conditions of this Agreement.

6.15 **Incorporation by Reference**

Each of the attachments and exhibits attached hereto is incorporated herein by this reference.

6.16 **Counterparts**

This Agreement may be executed by each party on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument.

6.17 **Joint And Several Liability**

This Agreement shall be binding upon E.D., LLC and KOH, LLC jointly and severally and their respective successors and assigns.

ARTICLE 7. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of Commission or Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of Commission and Developer. This Agreement and any provisions hereof may be amended by mutual written agreement by Developer and Commission and such amendment shall not require the consent of any other fee owner, tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under a deed of trust or any other person or entity having an interest in the Property.

The Director shall have the authority, on behalf of the Commission, to make modifications to this Agreement (including any attachments hereto) as may reasonably be requested by the Permitted Mortgagee to comply with SEC regulations pertaining to its Permitted Mortgage so long as such modifications (a) do not increase any Commission obligation or liability under this Agreement (including any exhibits hereto); or (b) affect any right, remedy or interest of the Commission under this Agreement (including any exhibits hereto); and (c) are acceptable to the Commission General Counsel.

This Agreement, including all exhibits and addenda hereto, constitutes the entire understanding and agreement of the parties hereto.

[remainder of page left intentionally blank]

[signatures on following pages]

IN WITNESS WHEREOF, Commission and Developer have executed this Agreement as of the date first set forth hereinabove.

COMMISSION

OXNARD COMMUNITY DEVELOPMENT
COMMISSION

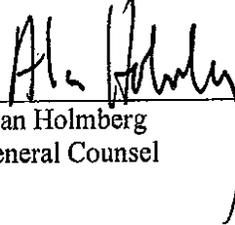
Date: _____

By: _____
Chairman

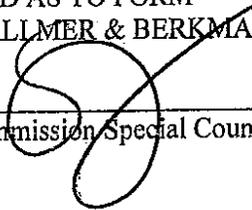
ATTEST:

By: _____
Daniel Martinez
Secretary Designate

APPROVED AS TO FORM:

By: 
Alan Holmberg
General Counsel

APPROVED AS TO FORM
KANE, BALLMER & BERKMAN

By: 
Commission Special Counsel

[remainder of page left intentionally blank]

[signatures on following page]

DEVELOPER

E.D., LLC, a California limited liability company

Date: July 16, 2009

By: 
Name: Dave O. White
Its: Member

Date: _____

By: N/A
Name: _____
Its: _____

KOH, LLC, a Delaware limited liability company

Date: _____

By: _____
Name: _____
Its: _____

Date: _____

By: _____
Name: _____
Its: _____

DEVELOPER

E.D., LLC, a California limited liability company

Date: _____

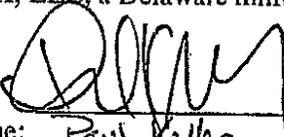
By: _____
Name: _____
Its: _____

Date: _____

By: _____
Name: _____
Its: _____

KOH, LLC, a Delaware limited liability company

Date: July 16, 2009

By: 
Name: Paul Keller
Its: Managing Member

Date: _____

By: _____
Name: _____
Its: _____

EXHIBIT A
LEGAL DESCRIPTION

[behind this page]

LEGAL DESCRIPTION

Real property in the City of Oxnard, County of Ventura, State of California, described as follows:

LOT 3 OF TRACT NO. 5352-1, IN THE CITY OF OXNARD, COUNTY OF VENTURA, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 150, PAGES 76 THROUGH 92 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM ALL OILS, GAS, MINERALS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND, WITHOUT, HOWEVER, THE RIGHT OF SURFACE ENTRY TO A DEPTH OF 500 FEET BELOW THE SURFACE AND SUBSURFACE AS RESERVED IN DEEDS RECORDED JUNE 16, 1954 IN BOOK 1209, PAGE 182; DECEMBER 21, 1954 IN BOOK 1252, PAGE 429; BOOK 4723, PAGE 472 AND DECEMBER 8, 1986 AS INSTRUMENT NOS 86-175822, 86-175823, 86-175824, 86-175827 AND 86-175828 ALL OF OFFICIAL RECORDS.

APN 132-0-110-155

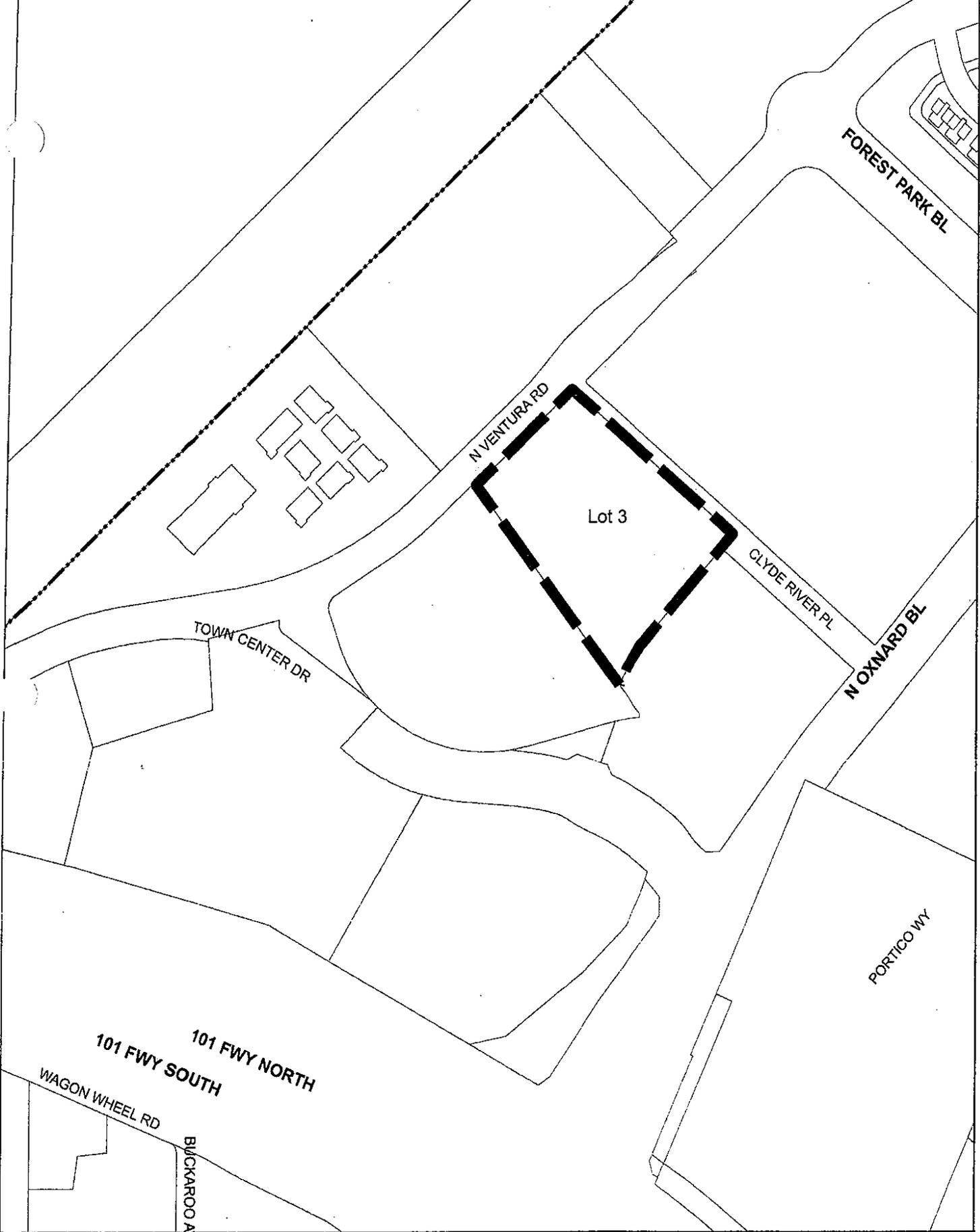
ATTACHMENT 1
EXHIBIT A
PAGE 41 OF 101

EXHIBIT B

SITE PLAN

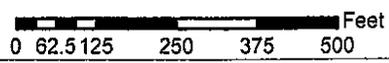
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ATTACHMENT 1
EXHIBIT B
PAGE 42 OF 101



Oxnard Planning
July 16, 2009

Riverpark
Lot 3
Resonate Apartments Project



ATTACHMENT 1
EXHIBIT B

EXHIBIT C

FOURTH AMENDMENT TO AGREEMENT CONTAINING COVENANTS

[behind this page]

OFFICIAL BUSINESS
Document entitled to free
Recording per Government Code
Sections 6103 and 27383

Recording Requested By
And When Recorded Return To:
OXNARD COMMUNITY
DEVELOPMENT COMMISSION
214 South C Street
Oxnard, California 93030
Attention: Community Development Director

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**FOURTH AMENDMENT TO AGREEMENT CONTAINING COVENANTS
AFFECTING REAL PROPERTY (INCLUDING RENTAL RESTRICTIONS)**

This FOURTH AMENDMENT TO AGREEMENT CONTAINING COVENANTS AFFECTING REAL PROPERTY (INCLUDING RENTAL RESTRICTIONS) ("**Fourth Amendment**"), is entered into as of _____, 2009, by and among OXNARD COMMUNITY DEVELOPMENT COMMISSION, a public body, corporate and politic ("**Commission**"), E.D., LLC, a California limited liability company ("**ED**"), KOH, LLC, a Delaware limited liability company ("**KOH**"), E.D. 2, LLC, a California limited liability company ("**ED 2**"), and KOH 12-17, LLC, a California limited liability company ("**KOH 12-17**"), with reference to the following facts:

RECITALS

- A. ED and KOH are the owners of that certain real property located in the City of Oxnard more particularly described in **Exhibit A** which is attached hereto and incorporated herein by this reference ("**Lot 3 Property**").
- B. ED 2 is the owner of that certain real property located in the City of Oxnard more particularly described in **Exhibit B** which is attached hereto and incorporated herein by this reference ("**Lot 11 Property**").
- C. KOH 12-17 is the owner of that certain real property located in the City of Oxnard more particularly described in **Exhibit C** which is attached hereto and incorporated herein by this reference ("**Lot 12 Property**").

- D. ED, KOH, ED 2, and KOH 12-17 may be referred to herein collectively as the **"Developer"**.
- E. The Lot 3 Property, the Lot 11 Property, and the Lot 12 Property may be referred to herein collectively as the **"Property"**. This Fourth Amendment shall apply only to the Property.
- F. The Property is within the Historic Enhancement and Revitalization of Oxnard (**"HERO"**) Redevelopment Project area and is subject to the provisions of the Redevelopment Plan for the HERO Redevelopment Project approved and adopted by the City Council of the City of Oxnard on April 7, 1998 by Ordinance No. 2462, as amended (**"Redevelopment Plan"**).
- G. In furtherance of the Redevelopment Plan, the Commission and Developer's predecessors-in-interest entered into that certain Owner Participation Agreement dated as of June 12, 2001, as amended by (a) that certain First Amendment to Owner Participation Agreement dated as of November 19, 2002, (b) that certain Second Amendment to Owner Participation Agreement dated as of December 14, 2004, (c) that certain Third Amendment to Owner Participation Agreement dated on or about August 23, 2007, and (d) that certain Fourth Amendment to Owner Participation Agreement dated on or about November 20, 2007 (collectively, the **"OPA"**). The OPA provides for the development of a first quality commercial, retail, hotel, restaurant, office and residential project, as more particularly set forth in the OPA. The OPA is incorporated herein by this reference.
- H. In connection with the OPA, the Commission and Developer's predecessors-in-interest entered into that certain Agreement Containing Covenants Affecting Real Property dated June 12, 2001 and recorded against the Property on June 18, 2001 as Instrument No. 2001-0114394-00 in the Ventura County Recorder's Office (**"Original Agreement Containing Covenants"**), as amended by (a) that certain First Amendment to Agreement Containing Covenants Affecting Real Property dated as of November 19, 2002 and was recorded against the Property on November 27, 2002, as Instrument No. 2002-0299634-00 in the Ventura County Recorder's Office (**"First Amendment to Agreement Containing Covenants"**), (b) that certain Second Amendment to Agreement Containing Covenants Affecting Real Property dated as of February 1, 2005 and recorded against the Property on February 3, 2005, as Instrument No. 20050203-0026767 in the Ventura County Recorder's Office (**"Second Amendment to Agreement Containing Covenants"**), and (c) that certain Third Amendment to Agreement Containing Covenants Affecting Real Property dated as of August 7, 2007 by and between the Commission and RiverPark A., L.L.C., a Delaware limited liability company (collectively, the **"Agreement Containing Covenants"**). The Agreement Containing Covenants is incorporated herein by this reference.
- I. In furtherance of the Redevelopment Plan, the Commission, ED and KOH entered into that certain Affordable Housing Loan Agreement dated as of _____, 2009 (**"ED/KOH Loan Agreement"**). The ED/KOH Loan Agreement is incorporated herein by this reference. The ED/KOH Loan Agreement provides for a loan from the

Commission to ED/KOH in the amount of \$1,250,000 to a pay a portion of predevelopment costs for the Affordable Units (as defined in the ED/KOH Loan Agreement) to be developed and constructed on the Lot 3 Property, subject to all of the terms and conditions of the ED/KOH Loan Agreement.

- J. In furtherance of the Redevelopment Plan, the Commission and ED 2 entered into that certain Affordable Housing Loan Agreement dated as of _____, 2009 (“ED 2 Loan Agreement”). The ED 2 Loan Agreement is incorporated herein by this reference. The ED 2 Loan Agreement provides for a loan from the Commission to ED 2 in the amount of \$875,000 to a pay a portion of predevelopment costs for the Affordable Units (as defined in the ED 2 Loan Agreement) to be developed and constructed on the Lot 11 Property, subject to all of the terms and conditions of the ED 2 Loan Agreement.
- K. In furtherance of the Redevelopment Plan, the Commission and KOH 12-17 entered into that certain Affordable Housing Loan Agreement dated as of _____, 2009 (“KOH 12-17 Loan Agreement”). The KOH 12-17 Loan Agreement is incorporated herein by this reference. The KOH 12-17 Loan Agreement provides for a loan from the Commission to KOH 12-17 in the amount of \$875,000 to a pay a portion of predevelopment costs for the Affordable Units (as defined in the KOH 12-17 Loan Agreement) to be developed and constructed on the Lot 12 Property, subject to all of the terms and conditions of the KOH 12-17 Loan Agreement.
- L. The Commission and Developer now desire to amend the Agreement Containing Covenants to reflect the provisions contained in the ED/KOH Loan Agreement, the ED 2 Loan Agreement, and the KOH 12-17 Loan Agreement.
- M. This Fourth Amendment is entered into and recorded to ensure that the Property is used for the purposes intended by the parties in the ED/KOH Loan Agreement, the ED 2 Loan Agreement, and the KOH 12-17 Loan Agreement, and to provide for covenants and conditions that run with the land.

NOW, THEREFORE, THE COMMISSION AND DEVELOPER COVENANT AND AGREE AS FOLLOWS:

- Purpose of this Fourth Amendment. This Fourth Amendment is in furtherance of and is subject to requirements of the provisions of the California Community Redevelopment Law (California Health and Safety Code Sections 33000 *et seq.*) (“CRL”), the Redevelopment Plan, and the ED/KOH Loan Agreement, the ED 2 Loan Agreement, and the KOH 12-17 Loan Agreement.
- Corrections to the First Amendment to Agreement Containing Covenants and Second Amendment to Agreement Containing Covenants. The Commission and Developer acknowledge and agree that due to a typographical error, Section 1 of the First Amendment to Agreement Containing Covenants incorrectly referenced “Section 2 of the Agreement Containing Covenants, Use of Property and Paragraph a. thereof” as the applicable section of the Original Agreement Containing Covenants intended to be modified by Section 1 of the First

Amendment to Agreement Containing Covenants. The correct reference should have been, and is hereby deemed to have been, to "Section 1 of the Agreement Containing Covenants, Use of Property and Paragraph a. thereof".

The Commission and Developer further acknowledge and agree that due to the typographical error contained in the First Amendment to Agreement Containing Covenants, as discussed above, a typographical error was also made in the Second Amendment to Agreement Containing Covenants. Accordingly, all references to (a) "Section 2" (and its various subsections) in Section 1 of the Second Amendment to Agreement Containing Covenants should have been, and is hereby deemed to have been, to "Section 1" (and its various subsections), and (b) "Section 3" (and its various subsections) in Sections 2, 3 and 4 of the Second Amendment to Agreement Regarding Covenants should have been, and is hereby deemed to have been, to "Section 2" (and its various subsections).

3. Use of the Property. Section 1.a. of the Agreement Containing Covenants is hereby amended by adding new Sections 1.a.3.1 and 1.a.3.2 as follows:

"3.1 Additional Affordable Housing Obligations. Commission, E.D., LLC, a California limited liability company ("ED"), and KOH, LLC, a Delaware limited liability company ("KOH"), entered into that certain Affordable Housing Loan Agreement dated as of _____, 2009 ("ED/KOH Loan Agreement"), which pertains to a portion of the Property which is legally described in the Fourth Amendment to this Agreement ("Lot 3 Property"). The Commission and E.D. 2, LLC, a California limited liability company ("ED 2"), entered into that certain Affordable Housing Loan Agreement dated as of _____, 2009 ("ED 2 Loan Agreement"), which pertains to a portion of the Property which is legally described in the Fourth Amendment to this Agreement ("Lot 11 Property"). The Commission and KOH 12-17, LLC, a California limited liability company ("KOH 12-17"), entered into that certain Affordable Housing Loan Agreement dated as of _____, 2009 ("KOH 12-17 Loan Agreement"), which pertains to a portion of the Property which is legally described in the Fourth Amendment to this Agreement ("Lot 12 Property").

In addition to, and without modifying, amending, limiting or in any way changing the affordable housing requirements set forth in Section 1.a.3., above, as a material part of the consideration for the ED/KOH Loan Agreement, the ED 2 Loan Agreement, and the KOH 12-17 Loan Agreement (as applicable): as to the Lot 3 Property, ED and KOH covenant and agree for themselves, their successors, their assigns, and every successor in interest to the Lot 3 Property or any part thereof, as to the Lot 11 Property, ED 2 covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Lot 11 Property or any part thereof, and, as to the Lot 12 Property, KOH 12-17 covenants and agrees for itself, its successors, its assigns, and every successor in interest

to the Lot 12 Property or any part thereof, that for a period of fifty-five (55) years commencing upon the issuance of a certificate of occupancy by the City for the Affordable Units all of the following shall apply to the Lot 3 Property, Lot 11 Property, and Lot 12 Property (as applicable):

- a. (i) At least 15% of the dwelling units developed on the Lot 3 Property shall be Affordable Units (as defined in the ED/KOH Loan Agreement).
- (ii) At least 15% of the dwelling units developed on the Lot 11 Property shall be Affordable Units (as defined in the ED 2 Loan Agreement).
- (iii) At least 15% of the dwelling units developed on the Lot 12 Property shall be Affordable Units (as defined in the KOH 12-17 Loan Agreement).
- b. Of the 15% minimum required Affordable Units, a minimum of at least 40% of such Affordable Units shall be available at a hereinafter defined Affordable Rent to and occupied by hereinafter defined Very Low Income Households.
- c. Of the 15% minimum required Affordable Units, a maximum of 60% of such Affordable Units shall be available at an Affordable Rent to and occupied by either hereinafter defined Low Income Households or Moderate Income Households.
- d. The bedroom mix of the Affordable Units shall be proportional to the bedroom mix of the market rate units in the Project (as separately defined in each the ED/KOH Loan Agreement, the ED 2 Loan Agreement, and the KOH 12-17 Loan Agreement). The Affordable Units shall be of equal or better quality (interior and exterior) and amenities as the market rate units in the Project (as separately defined in each the ED/KOH Loan Agreement, the ED 2 Loan Agreement, and the KOH 12-17 Loan Agreement).
- e. For determining the total overall number of required Affordable Units and the minimum number of Very Low Income Household units and the maximum number of Low Income Household or Moderate Income Household units, for rounding purposes, any number below .5 shall be rounded down and any number above .5 shall be rounded up.
- f. Participant shall not permit any of the Affordable Units to be used on a transient basis (i.e., on a term of less than 30 days) and shall

not permit the rental of any Affordable Unit for a period of less than 30 days.

- g. Participant shall use commercially reasonable efforts to rent all Affordable Units so that any rent-ready Affordable Unit does not become or remain vacant for any longer period than is necessary in the ordinary course of business.
- h. Participant shall maintain complete and accurate records pertaining to (i) the occupancy of each Affordable Unit and (ii) the maintenance, management, operation, preservation and repair of each Affordable Unit. Participant agrees to permit the Commission's Executive Director or designee to inspect and audit the books and records of Participant pertaining to the Affordable Units. In furtherance of this requirement, Participant shall require tenants or managers to submit to the Commission's Executive Director or designee an annual report (the "Annual Report") required by CRL Section 33418, as amended from time to time, or any successor statute thereto. The Annual Report shall contain for each Affordable Unit the rental rate and the income and family size of the occupants. The income information required by Section 33418 and this subsection shall be supplied by each tenant in a certified statement on a form provided by the Commission's Executive Director or designee.
- i. Participant shall manage and operate the Affordable Units in accordance with a written "Management Plan" approved in writing by the Commission's Executive Director or designee as described in Section 1.a.3.2, below.
- j. Prior to occupancy of any of the Affordable Units, Participant shall submit a written plan describing the proposed Affordable Unit tenant selection process to Commission for the Commission's Executive Director's or designee's written approval.
- k. Prior to occupancy of any of the Affordable Units, Participant shall submit the proposed rental rate of each Affordable Unit to Commission for the Commission's Executive Director's or designee's written approval.
- l. The maximum incomes of residential tenants eligible to rent the Affordable Units shall be determined on the basis of the hereinafter defined Area Median Income, subject to the following:
 - i. All proposed tenants must be income-eligible.

- ii. The maximum rents that may be charged to tenants for the Affordable Units, including a reasonable utility allowance, shall not exceed the Affordable Rent.
- m. "Affordable Rent" shall mean for purposes of this Section 1.a.3.1:
 - (i) As to Very Low Income Households, annual Affordable Rent shall not exceed 30% of 50% of Area Median Income, adjusted for family size appropriate to the Affordable Unit.
 - (ii) As to Low Income Households, annual Affordable Rent shall not exceed 30% of 60% of Area Median Income, adjusted for family size appropriate to the Affordable Unit.
 - (iii) As to Moderate Income Households, annual Affordable Rent shall not exceed 30% of 110% of Area Median Income, adjusted for family size appropriate to the Affordable Unit.
- n. "Area Median Income" shall mean the area median income for the County of Ventura ("County") as published annually by the California Department of Housing and Community Development and determined in accordance with the U.S. Department of Housing and Urban Development published criteria from time to time in effect. Qualifying limits shall be those limits for the County, as set forth in Title 25, California Code of Regulations, Section 6932, as that section may be amended, modified or recodified from time to time. If the California Code of Regulations is amended or modified so that such regulations do not specify the area median income for the County, then Commission and Participant shall negotiate in good faith to determine an equivalent authoritative source which determines median income for the County.
- o. "Low Income Household" shall mean households earning between 51% to 80% of Area Median Income, adjusted for family size.
- p. "Moderate Income Household" shall mean households earning between 81% to 120% of the Area Median Income, adjusted for family size.
- q. "Very Low Income Household" shall mean households earning less than 50% of the Area Median Income, adjusted for family size.

- r. The provisions of Section 1.a.3.(iv), above, shall also apply to the Affordable Units except that the provisions thereunder shall apply for a period of fifty-five (55) years commencing upon the issuance of a certificate of occupancy by the City for the Affordable Units on the Lot 3 Property, the Lot 11 Property, and the Lot 12 Property (as applicable).

3.2 In addition to, and without modifying, amending, limiting or in any way changing the affordable housing requirements set forth in Section 1.a.3., above, as a material part of the consideration for the ED/KOH Loan Agreement, the ED 2 Loan Agreement, and the KOH 12-17 Loan Agreement (as applicable): as to the Lot 3 Property, ED and KOH covenant and agree for themselves, their successors, their assigns, and every successor in interest to the Lot 3 Property or any part thereof, as to the Lot 11 Property, ED 2 covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Lot 11 Property or any part thereof, and, as to the Lot 12 Property, KOH 12-17 covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Lot 12 Property or any part thereof, that, for a period of fifty-five (55) years commencing upon the issuance of a certificate of occupancy by the City for the Affordable Units on the Lot 3 Property, the Lot 11 Property, and the Lot 12 Property (as applicable), Participant, such successors, and such assigns shall manage and operate the Affordable Units in accordance with a management plan prepared by Participant and submitted to and approved in writing by the Commission's Executive Director or designee as provided herein (the "Management Plan"), including such amendments as may be requested by Participant and approved by the Commission's Executive Director or designee from time to time.

- a. The Management Plan shall include, at a minimum, the following components:
 - (i) Management Agent. Participant shall submit to the Commission's Executive Director or designee for review and approval in writing the name and qualifications of the proposed management agent. The Commission's Executive Director or designee shall approve or disapprove the proposed management agent in writing based on the experience and qualifications of the management agent; and
 - (ii) Management Plan. Participant shall submit to the Commission's Executive Director or designee for review and approval in writing a copy of the proposed management plan specifying the amount of the

management fee, and the relationship and division of responsibilities between Participant and management agent.

- b. Required Change in Management. As a material part of the consideration for the ED/KOH Loan Agreement, the ED 2 Loan Agreement, and the KOH 12-17 Loan Agreement (as applicable): as to the Lot 3 Property, ED and KOH covenant and agree for themselves, their successors, their assigns, and every successor in interest to the Lot 3 Property or any part thereof, as to the Lot 11 Property, ED 2 covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Lot 11 Property or any part thereof, and, as to the Lot 12 Property, KOH 12-17 covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Lot 12 Property or any part thereof, that, for a period of fifty-five (55) years commencing upon the issuance of a certificate of occupancy by the City for the Affordable Units on the Lot 3 Property, the Lot 11 Property, and the Lot 12 Property (as applicable), if, at any time, the Commission's Executive Director or designee determines that the Affordable Units are not being managed or maintained in accordance with the approved Management Plan, Participant shall change the management agent or the practices complained of, upon receipt of written notice from the Commission's Executive Director or designee. The Commission's Executive Director or designee may require Participant to change management practices or to terminate the management contract and designate and retain a different management agent, to be approved by the Commission's Executive Director or designee. The Management Plan shall provide that it is subject to termination by Participant without penalty, upon 30 days' prior written notice, at the direction of the Commission's Executive Director or designee. Within 10 days following a direction of the Commission's Executive Director or designee to replace the management agent, Participant shall select another management agent or make other arrangements satisfactory to the Commission's Executive Director or designee for continuing management of the Affordable Units."

4. Non-Discrimination Covenants. Sections 3 and 4 of the Agreement Containing Covenants are hereby deleted in their entireties and replaced with the following:

- "3. Obligation to Refrain from Discrimination. Participant hereby covenants and agrees on behalf of itself and any successors and assigns in the Property or any portion thereof or any improvements thereon or any interest therein that there shall be no discrimination against or segregation of any person, or groups of persons, on account of sex, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease,

sublease, transfer, use, occupancy, tenure or enjoyment of the Property, and Participant itself (for any person claiming under or through it) shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property.

4. Form of Nondiscrimination and Nonsegregation Clauses. Participant hereby covenants and agrees on behalf of itself and any successors and assigns in the Property or any portion thereof or any improvements thereon or any interest therein that Participant shall refrain from restricting² the rental, sale or lease of the Property or the Project, or any portion thereof, on the basis of sex, marital status, race, color, religion, creed, ancestry or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

- a. In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in 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 premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

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

- b. In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

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

- c. In contracts: The foregoing provisions shall be binding upon and shall obligate the contracting party or parties and any subcontracting party or parties, or other transferees under this Agreement."

5. Term. The last sentence of Section 9 of the Agreement Containing Covenants is hereby deleted in its entirety and replaced with the following:

"Every other covenant and condition and restriction (other than those set forth in Section 1.a.3.1. and Section 1.a.3.2., which shall remain in effect for the respective periods set forth therein) contained in the Amended OPA shall remain in effect until the expiration of the Redevelopment Plan (April 7, 2028)."

6. Covenants Run with the Land. In accordance with California Civil Code Section 1461 *et seq.*, all conditions, covenants and restrictions contained in the Agreement Containing Covenants shall be covenants running with the land. The parties acknowledge and agree that the conditions, covenants and restrictions directly benefit the Property and benefit property the Commission

and/or City owns or will own (including, without limitation, underlying interests in streets) within the Project Area and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by Commission, City and their respective successors and assigns and any property the Commission and/or City owns or will own (including, without limitation, underlying interests in streets) within the Project Area, against Developer, its successors and assigns, to or of the Property or any portion thereof or any interest therein, and any party in possession or occupancy of said Property or portion thereof. Commission and the City shall be deemed the beneficiaries of the covenants, conditions and restrictions of the Agreement Containing Covenants both for and in their own rights and for the purposes of protecting the interests of the community. The covenants, conditions, and restrictions shall run in favor of the Commission and the City, without regard to whether the Commission or City has been, remains, or is an Developer of any land or interest therein in the Property or the Project Area. Except as provided in the preceding sentences and in applicable law (as now exists or as hereinafter may be amended), the covenants, conditions and restrictions contained herein shall not be enforceable by any third party.

In addition to the authority provided under California Civil Code Section 1461 *et seq.*, the parties hereto acknowledge and agree that the CRL (including, without limitation, CRL Sections 33435, 33436, 33437, and 33439) provide legal authority, separate and apart from California Civil Code Section 1461 *et seq.*, for establishing the covenants running with the land set forth in the Agreement Containing Covenants. The Commission deems the covenants, conditions and restrictions in the Agreement Containing Covenants to be necessary to prevent speculation and to carry out the purposes of the CRL.

7. Counterparts. This Fourth Amendment may be executed in counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. The signature pages of one or more counterpart copies may be removed from such counterpart copies and all attached to the same copy of this Fourth Amendment, which, with all attached signature pages, shall be deemed to be an original agreement.

8. Agreement Containing Covenants in Full Force and Effect. Except as otherwise expressly modified herein, the terms and conditions of the Agreement Containing Covenants shall remain unmodified and in full force and effect. From and after the effective date of this Fourth Amendment, all references to the Agreement Containing Covenants Affecting Real Property shall mean the Agreement Containing Covenants Affecting Real Property as amended by this Fourth Amendment.

9. Date of this Fourth Amendment. The effective date of this Fourth Amendment shall be the date this Fourth Amendment is executed by the Commission.

[reminder of page left intentionally blank]

[signatures on following pages]

IN WITNESS WHEREOF, Commission and Developer have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized, as of the date first set forth hereinabove.

Commission

**OXNARD COMMUNITY DEVELOPMENT
COMMISSION**

By: _____
Executive Director

APPROVED AS TO FORM:

By: _____
Alan Holmberg
General Counsel

[reminder of page left intentionally blank]

[signatures on following pages]

DEVELOPER

E.D., LLC, a California limited liability company

Date: _____

By: _____

Name: _____

Its: _____

Date: _____

By: _____

Name: _____

Its: _____

E.D. 2, LLC, a California limited liability company

Date: _____

By: _____

Name: _____

Its: _____

Date: _____

By: _____

Name: _____

Its: _____

[reminder of page left intentionally blank]

[signatures on following page]

KOH, LLC, a Delaware limited liability company

Date: _____

By: _____

Name: _____

Its: _____

Date: _____

By: _____

Name: _____

Its: _____

KOH 12-17, LLC, a California limited liability company

Date: _____

By: _____

Name: _____

Its: _____

Date: _____

By: _____

Name: _____

Its: _____

EXHIBIT A

LEGAL DESCRIPTION OF LOT 3 PROPERTY

[behind this page]

LEGAL DESCRIPTION

Real property in the City of Oxnard, County of Ventura, State of California, described as follows:

LOT 3 OF TRACT NO. 5352-1, IN THE CITY OF OXNARD, COUNTY OF VENTURA, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 150, PAGES 76 THROUGH 92 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM ALL OILS, GAS, MINERALS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND, WITHOUT, HOWEVER, THE RIGHT OF SURFACE ENTRY TO A DEPTH OF 500 FEET BELOW THE SURFACE AND SUBSURFACE AS RESERVED IN DEEDS RECORDED JUNE 16, 1954 IN BOOK 1209, PAGE 182; DECEMBER 21, 1954 IN BOOK 1252, PAGE 429; BOOK 4723, PAGE 472 AND DECEMBER 8, 1986 AS INSTRUMENT NOS 86-175822, 86-175823, 86-175824, 86-175827 AND 86-175828 ALL OF OFFICIAL RECORDS.

APN 132-0-110-155

ATTACHMENT 1
EXHIBIT C
PAGE 61 OF 101

EXHIBIT B

LEGAL DESCRIPTION OF LOT 11 PROPERTY

[behind this page]

LEGAL DESCRIPTION

Real property in the City of Oxnard, County of Ventura, State of California, described as follows:

LOT 11 OF TRACT NO. 5352-1, IN THE CITY OF OXNARD, COUNTY OF VENTURA, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 150, PAGES 76 THROUGH 92 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM ALL OILS, GAS, MINERALS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND, WITHOUT, HOWEVER, THE RIGHT OF SURFACE ENTRY TO A DEPTH OF 500 FEET BELOW THE SURFACE AND SUBSURFACE AS RESERVED IN DEEDS RECORDED JUNE 16, 1954 IN BOOK 1209, PAGE 182; DECEMBER 21, 1954 IN BOOK 1252, PAGE 429; BOOK 4723, PAGE 472 AND DECEMBER 8, 1986 AS INSTRUMENT NOS 86-175822, 86-175823, 86-175824, 86-175827 AND 86-175828 ALL OF OFFICIAL RECORDS.

APN 132-0-110-065

ATTACHMENT 1
EXHIBIT 2
PAGE 63 OF 101

EXHIBIT C

LEGAL DESCRIPTION OF LOT 12 PROPERTY

[behind this page]

LEGAL DESCRIPTION

Real property in the City of Oxnard, County of Ventura, State of California, described as follows:

LOT 12 OF TRACT NO. 5352-1, IN THE CITY OF OXNARD, COUNTY OF VENTURA, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 150, PAGES 76 THROUGH 92 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM ALL OILS, GAS, MINERALS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND, WITHOUT, HOWEVER, THE RIGHT OF SURFACE ENTRY TO A DEPTH OF 500 FEET BELOW THE SURFACE AND SUBSURFACE AS RESERVED IN DEEDS RECORDED JUNE 16, 1954 IN BOOK 1209, PAGE 182; DECEMBER 21, 1954 IN BOOK 1252, PAGE 429; BOOK 4723, PAGE 472 AND DECEMBER 8, 1986 AS INSTRUMENT NOS 86-175822, 86-175823, 86-175824, 86-175827 AND 86-175828 ALL OF OFFICIAL RECORDS.

APN 132-0-110-075

ATTACHMENT 1
EXHIBIT a
PAGE 65 OF 101

EXHIBIT D
PROMISSORY NOTE

[behind this page]

INSERT LAIF (AS OF THE DATE OF THIS PROMISSORY NOTE) PLUS 1% per annum, simple interest, which shall begin to accrue from the date of this Promissory Note as set forth above until the Loan is repaid in full (including interest) to the Commission.

4. Term of Promissory Note. The term of this Promissory Note shall be the earlier of: (a) three (3) years commencing upon the date of this Promissory Note as set forth above; or (b) the Construction Loan Closing (the "Term").
5. Acceleration. The unpaid principal amount and all accrued and unpaid interest under this Promissory Note shall become immediately due and payable upon the occurrence of any one of the following events ("Event of Acceleration"):
 - a. The termination of the Loan Agreement pursuant to the Loan Agreement;
 - b. The date the Property and/or the Project, or any portion thereof or interest therein is sold, transferred, or assigned in violation of the Loan Agreement;
 - c. Borrower fails to pay when due any sums payable under this Promissory Note; or
 - d. Any other default in performance or breach by Borrower of any provision of the Loan Agreement or any document executed in connection therewith (including, without limitation, this Promissory Note, and the Deed of Trust), the OPA, the Development Agreement, the Agreement Containing Covenants, or the Permitted Mortgage Loan, which is not cured within the respective time period provided herein or therein.

After an Event of Acceleration has occurred, amounts declared due and payable under this Promissory Note shall thereafter bear interest at the "Default Interest Rate" until paid in full. For purposes of this Promissory Note, the "Default Interest Rate" shall be the higher of (i) the interest rate payable hereunder, or (ii) LAIF (as of the date the Event of Acceleration has occurred) plus 5% per annum, simple interest. Notwithstanding the foregoing or any other provision of this Promissory Note, in no event shall the Default Interest Rate or any other rate of interest under this Promissory Note exceed the maximum rate permitted by law; and if such rate of interest, computed in the amount provided for in this Promissory Note, should exceed said maximum legal rate, then the rate of interest shall be automatically reduced to such maximum legal rate. The imposition of the Default Interest Rate shall be in addition to and not in lieu of any other rights and remedies provided for in the Deed of Trust or otherwise by law. The remedies of a holder of this Promissory Note as provided herein and in the Deed of Trust shall be cumulative and concurrent and may be pursued singularly, successively or together, at the sole discretion of the holder, and may be exercised as often as occasion therefor may arise under the terms of such documents.

6. Payment. Except in an Event of Acceleration, the unpaid principal amount and all accrued and unpaid interest under this Promissory Note shall be due and payable upon the expiration of the Term. Upon the occurrence of any Event of Acceleration, the unpaid principal amount and all accrued and unpaid interest under this Promissory Note shall be due and payable within ten (10) days following the occurrence of such Event of Acceleration.

7. Default.

- a. Commission shall give written notice of default of this Promissory Note, the Deed of Trust, the OPA, the Development Agreement, the Agreement Containing Covenants, or the Permitted Mortgage Loan to Borrower specifying the default complained of by Commission. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.
- b. Any failures or delays by Commission in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by Commission in asserting any of its rights and remedies shall not deprive Commission of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.
- c. If a monetary default occurs, then prior to exercising any remedies hereunder, Commission shall give Borrower written notice of such default. Subject to subsection (f) below, Borrower shall have a period of 10 days after such notice is given within which to cure the default.
- d. If a non-monetary default occurs, then prior to exercising any remedies hereunder, Commission shall give Borrower written notice of such default. Subject to subsection (f) below, if the default is reasonably capable of being cured within 30 days, then Borrower shall have such period to effect a cure prior to exercise of remedies by Commission. Subject to subsection (f) below, if the default is such that it is not reasonably capable of being cured within 30 days, and Borrower (i) initiates corrective action within said period and (ii) diligently, continually and in good faith works to effect a cure as soon as possible, then Borrower shall have such additional time as is reasonably necessary to cure the default prior to any exercise of remedies by Commission, but no longer than 90 days or shorter period of time if Commission's rights become or are about to become materially jeopardized by any failure to cure an Default.
- e. Formal notices, demands and communications to Borrower shall be deemed sufficiently given if dispatched by first class mail, registered or certified mail,

postage prepaid, return receipt requested, or by electronic facsimile transmission followed by prompt delivery of a "hard" copy, or by personal delivery (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), to the address of Borrower as set forth in Section 1.5 of the Loan Agreement. Such written notices, demands and communications may be sent in the same manner to such other addresses as Borrower may from time to time designate by mail. Any notice that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

- f. There shall be no additional cure periods under this Promissory Note for defaults under the Deed of Trust, the OPA, the Development Agreement, the Agreement Containing Covenants, or the Permitted Mortgage Loan. Any cure periods shall be deemed to run concurrently.
8. Non-Waiver. Failure to exercise or delay in exercising any right the Commission may have or be entitled to, in a default hereunder, shall not constitute a waiver of such right or any other right in the event of a subsequent default.
9. Borrower's Waivers. Borrower hereby waives diligence, presentment, protest and demand, notice of protest, dishonor and nonpayment of this Promissory Note, and expressly agrees that, without in any way affecting the liability of Borrower hereunder, the Commission may extend any maturity date or the time for payment of any installment due hereunder, accept additional security, release any party liable hereunder and release any security now or hereafter securing this Promissory Note. Borrower further waives, to the full extent permitted by law, the right to plead any and all statutes of limitations as a defense to any demand on this Promissory Note, or on any deed of trust, security agreement, guaranty or other agreement now or hereafter securing this Promissory Note. Borrower shall pay to Commission all sums owing under this Promissory Note without deduction, offset or counterclaim of any kind.
10. Governing Law. This Promissory Note shall be governed by the laws of the State of California.
11. Severability. In the event that any provision or clause of this Promissory Note conflicts with applicable law, such conflict will not affect other provisions of this Promissory Note which can be given effect without the conflicting provision, and to this end the provisions of the Promissory Note are declared to be severable.

12. Amendment of Promissory Note. No modification, rescission, waiver, release or amendment of any provision of this Promissory Note shall be made except by a written agreement executed by Borrower and the duly authorized representative of the Commission.
13. Assignment by Commission Permitted. The Commission may, in its sole and absolute discretion, assign its rights under this Promissory Note and/or its right to receive repayment of the Loan without obtaining the consent of Borrower.
14. Assignment by Borrower Prohibited. In no event shall Borrower assign or transfer any portion of this Promissory Note or any rights herein without the prior express written consent of the Commission, which consent the Commission may give or withhold in its sole and absolute discretion. This provision shall not affect or diminish the Commission's right to assign all or any portion of its rights under this Promissory Note or to the proceeds of the Loan hereunder.
15. Attorneys' Fees. In the event that any action is instituted to enforce payment or performance under this Promissory Note, or otherwise in connection with this Promissory Note, the parties agree that the prevailing party shall be reimbursed by the other party for all costs and all attorneys' fees incurred by the prevailing party in such action. In addition, Borrower agrees to reimburse the Commission for costs of collection, costs, and expenses, and attorneys' fees paid or incurred in connection with the collection or enforcement of this Promissory Note, whether or not suit is filed.
16. Captions. The captions and headings in this Promissory Note are for convenience only and are not to be used to interpret or define the provisions hereof.
17. Joint and Several Liability. The undersigned, if more than one, shall be jointly and severally liable hereunder.
18. Successors Bound. This Promissory Note shall be binding upon the parties hereto and their respective heirs, successors and assigns.

[remainder of page left intentionally blank]

[signatures on following page]

IN WITNESS WHEREOF Borrower has executed this Promissory Note as of the day and year set forth above.

BORROWER:

E.D., LLC, a California limited liability company

Date: _____

By: _____

Name: _____

Its: _____

Date: _____

By: _____

Name: _____

Its: _____

KOH, LLC, a Delaware limited liability company

Date: _____

By: _____

Name: _____

Its: _____

Date: _____

By: _____

Name: _____

Its: _____

EXHIBIT E

DEED OF TRUST

[behind this page]

OFFICIAL BUSINESS
Document entitled to free
Recording per Government Code
Sections 6103 and 27383

Recording Requested By and
When Recorded Mail to:

Oxnard Community
Development Commission
214 South C Street
Oxnard, California 93030
Attention: Community Development
Director

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**DEED OF TRUST,
SECURITY AGREEMENT AND FIXTURE FILING RECORDED AGAINST
PROPERTY
(WITH ASSIGNMENT OF RENTS)**

This Deed of Trust, Security Agreement and Fixture Filing Recorded Against Property (With Assignment of Rents) is made as of _____, 20__ by E.D., LLC, a California limited liability company, and KOH, LLC, a Delaware limited liability company (collectively, the "**Trustor**"), whose address is _____, Attention: _____, with a copy to FIRST AMERICAN TITLE INSURANCE COMPANY ("**Trustee**"), for the benefit of the OXNARD COMMUNITY DEVELOPMENT COMMISSION, a public body, corporate and politic ("**Beneficiary**"), whose address is Oxnard Community Development Commission, 214 South C Street, Oxnard, California 93030, Attention: Community Development Director.

Witnesseth: That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to Trustee, its successors and assigns, in Trust, with POWER OF SALE TOGETHER WITH RIGHT OF ENTRY AND POSSESSION the following property (the "**Trust Estate**"):

(a) That certain real property in the City of Oxnard, County of Ventura, State of California more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof (the "**Subject Property**");

(b) All buildings, structures and other improvements now or in the future located or to be constructed on the Subject Property (the "**Improvements**");

(c) All tenements, hereditaments, appurtenances, privileges, franchises and other rights and interests now or in the future benefitting or otherwise relating to the Subject Property

or the Improvements, including easements, rights-of-way and development rights (the "Appurtenances"). (The Appurtenances, together with the Subject Property and the Improvements, are hereafter referred to collectively as the "Real Property");

(d) Subject to the assignment to Beneficiary set forth in Paragraph 4 below, all rents, issues, income, revenues, royalties and profits now or in the future payable with respect to or otherwise derived from the Trust Estate or the ownership, use, management, operation leasing or occupancy of the Trust Estate, including those past due and unpaid;

(e) All present and future right, title and interest of Trustor in and to all inventory, equipment, fixtures and other goods (as those terms are defined in Division 9 of the California Uniform Commercial Code (the "UCC"), and whether existing now or in the future) now or in the future located at, upon or about, or affixed or attached to or installed in, the Real Property, or used or to be used in connection with or otherwise relating to the Real Property or the use, development, construction, maintenance, management, operation, marketing, leasing or occupancy of the Real Property, including furniture, furnishings, machinery, appliances, building materials and supplies, generators, boilers, furnaces, water tanks, heating ventilating and air conditioning equipment and all other types of tangible personal property of any kind or nature, and all accessories, additions, attachments, parts, proceeds, products, repairs, replacements and substitutions of or to any of such property, but not including personal property that is donated to Trustor ("Goods", and together with the Real Property, the "Property"); and

(f) All present and future right, title and interest of Trustor in and to all accounts, general intangibles, chattel paper, deposit accounts, money, instruments and documents (as those terms are defined in the UCC) and all other agreements, obligations, rights and written material (in each case whether existing now or in the future) now or in the future relating to or otherwise arising in connection with or derived from the Property or any other part of the Trust Estate or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing, occupancy, sale or financing of the Property or any other part of the Trust Estate, including (to the extent applicable to the Property or any other portion of the Trust Estate): (i) permits, approvals and other governmental authorizations, (ii) improvement plans and specifications and architectural drawings, (iii) agreements with contractors, subcontractors, suppliers, project managers, supervisors, designers, architects, engineers, sales agents, leasing agents, consultants and property managers, (iv) warranties, guaranties, indemnities and insurance policies, together with insurance payments and unearned insurance premiums, (v) claims, demands, awards, settlements, and other payments arising or resulting from or otherwise relating to any insurance or any loss or destruction of, injury or damage to, trespass on or taking, condemnation (or conveyance in lieu of condemnation) or public use of any of the Property, (vi) license agreements, service and maintenance agreements, purchase and sale agreements and purchase options, together with advance payments, security deposits and other amounts paid to or deposited with Trustor under any such agreements, (vii) reserves, deposits, bonds, deferred payments, refunds, rebates, discounts, cost savings, escrow proceeds, sale proceeds and other rights to the payment of money, trade names, trademarks, goodwill and all other types on intangible personal property of any kind or nature and (viii) all supplements, modifications,

amendments, renewals, extensions, proceeds, replacements and substitutions of or to any of such property ("**Intangibles**").

Trustor further grants to Trustee and Beneficiary, pursuant to the UCC, a security interest in all present and future right, title and interest of Trustor in and to all Goods and Intangibles and all of the Trust Estate described above in which a security interest may be created under the UCC (collectively, the "**Personal Property**"). This Deed of Trust constitutes a security agreement under the UCC, conveying a security interest in the Personal Property to Trustee and Beneficiary. Trustee and Beneficiary shall have, in addition to all rights and remedies provided herein, all the rights and remedies of a "secured party" under the UCC and other applicable California law. Trustor covenants and agrees that this Deed of Trust constitutes a fixture filing under Section 9313 and 9402(6) of the UCC.

FOR THE PURPOSE OF SECURING, in such order of priority as Beneficiary may elect, the following:

(1) due, prompt and complete observance, performance and discharge of each and every condition, obligation, covenant and agreement contained in the following:

(a) a promissory note in the original principal amount of One Million Two Hundred Fifty Thousand Dollars (\$1,250,000) evidencing the Loan, executed by Trustor ("Borrower" therein) of even date herewith ("**Note**"); and

(b) the Affordable Housing Loan Agreement dated as of _____, 2009, by and between Trustor ("Developer" therein) and Beneficiary ("**Commission**" therein), pertaining to the obligations for the Property therein ("**Loan Agreement**");

(2) payment of indebtedness of the Trustor to the Beneficiary not to exceed One Million Two Hundred Fifty Thousand Dollars (\$1,250,000) according to the terms of the Note;

(3) All present and future obligations of Trustor to Beneficiary under this Deed of Trust; and

(4) All additional present and future obligations of Trustor to Beneficiary under any other agreement or instrument (whether existing now or in the future) which states that it is, or such obligations are, secured by this Deed of Trust; in each case as such other obligations may from time to time be supplemented, modified, amended, renewed and extended, whether evidenced by new or additional documents.

The Note and Loan Agreement (collectively referred to as the "**Secured Obligations**") and all of their terms are incorporated herein by reference and this conveyance shall secure any and all extensions, amendments, modifications or renewals thereof however evidenced, and additional advances evidenced by any note reciting that it is secured hereby. Any capitalized

term that is not otherwise defined in this Deed of Trust shall have the meaning ascribed to such term in the Loan Agreement.

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

1. That Trustor shall pay the Note at the time and in the manner provided therein, and perform the obligations of Trustor as set forth in the Secured Obligations at the time and in the manner respectively provided therein.

2. Reserved.

3. That the Secured Obligations are incorporated in and made a part of this Deed of Trust. Upon default of a Secured Obligation, and after the giving of notice and the expiration of any applicable cure period, Beneficiary, at its option, may declare the whole of the indebtedness secured hereby to be due and payable.

4. That all rents, profits and income from the property covered by this Deed of Trust are hereby assigned to Beneficiary for the purpose of discharging the debt hereby secured. Permission is hereby given to Trustor so long as no default exists hereunder after the giving of notice and the expiration of any applicable cure period, to collect such rents, profits and income for use in accordance with the provisions of the Loan Agreement.

5. That upon default hereunder or under the aforementioned agreements, and after the giving of notice and the expiration of any applicable cure period, Beneficiary shall be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession and protect the property described herein and operate same and collect the rents, profits and income therefrom.

6. That Trustor will keep the Improvements to be constructed on the Subject Property insured against loss by fire and such other hazards, casualties, and contingencies as may reasonably be required in writing from time to time by Beneficiary, and all such insurance shall be evidenced by standard fire and extended coverage insurance policy or policies. In no event shall the amounts of coverage be less than 100% of the insurable value of the Property. Such policies shall be endorsed with standard mortgage clause with loss payable to Beneficiary and certificates thereof together with copies of original policies shall be deposited with Beneficiary.

7. To pay, prior to delinquency, any taxes and assessments affecting said Property; to pay, when due, all encumbrances, charges and liens, with interest, on said Property or any part thereof which appear to be prior or superior hereto; and to pay all costs, fees and expenses of this Deed of Trust.

8. To keep said Property in good condition and repair, subject to ordinary wear and tear, casualty and condemnation, not to remove or demolish any buildings thereon, to complete or, restore promptly and in good and workmanlike manner any building which may be

constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor, to comply with all laws affecting said Property or requiring any alterations or improvements to be made thereon (subject to Trustor's right to contest the validity or applicability of laws or regulations), not to commit or permit waste thereof, not to commit, suffer or permit any act upon said Property in violation of law and/or covenants, conditions and/or restrictions affecting said Property and not to permit or suffer any material alteration of or addition to the buildings or improvements hereafter constructed in or upon said Property without the consent of Beneficiary.

9. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses, including cost of evidence of title and attorneys' fees in a sum, in any such action or proceeding in which Beneficiary or Trustee may appear.

10. Should Trustor fail, after the giving of notice and the expiration of any applicable cure period, to make any payment or do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. Following default, after the giving of notice and the expiration of any applicable cure period, Beneficiary or Trustee being authorized to enter upon said Property for such purposes, may commence, appear in and/or defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, may pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto and, in exercising any such powers, may pay necessary expenses, employ counsel and pay its fees. Notwithstanding the foregoing, in the event of default under this Deed of Trust, Beneficiary may also require Trustor to maintain and submit additional records. Beneficiary shall specify in writing the particular records that must be maintained and the information or reports that must be submitted.

11. Beneficiary shall have the right to pay fire and other property insurance premiums when due should Trustor fail to make any required premium payments. All such payments made by Beneficiary shall be added to the principal sum secured hereby.

12. To pay immediately and without demand all sums so expended by Beneficiary or Trustee, under permission given under this Deed of Trust, with interest from date of expenditure at the highest rate permitted by law.

13. That the funds to be advanced under the Loan Agreement are to be used in accordance with the Secured Obligations and upon the failure of Trustor, after the giving of notice and the expiration of any applicable cure period, to keep and perform all the covenants, conditions and agreements of said agreements, the principal sum and all arrears of interest and other charges provided for in the Note shall at the option of Beneficiary of this Deed of Trust become due and payable, anything contained herein to the contrary notwithstanding.

14. Trustor further covenants that it will not voluntarily create, suffer or permit to be created against the property subject to this Deed of Trust any lien or liens except as permitted by the Secured Obligations or otherwise approved by Beneficiary, and further that it will keep and maintain such property free from the claims of all persons supplying labor or materials which will enter into the construction of any and all buildings now being erected or to be erected on said premises. Notwithstanding anything to the contrary contained in this Deed of Trust, Trustor shall not be obligated to pay any claims for labor, materials or services which Trustor in good faith disputes and is diligently contesting, provided that Trustor shall, at Beneficiary's written request, within 30 days after the filing of any claim or lien (but in any event, and without any requirement that Beneficiary must first provide a written request, prior to foreclosure) record in the Office of the Ventura County Registrar-Recorder/County Clerk ("**County Recorder**") a surety bond in an amount 1½ times the amount of such claim item to protect against a claim of lien, or provide such other security reasonably satisfactory to Beneficiary.

15. That any and all improvements made or about to be made upon the premises covered by this Deed of Trust, and all plans and specifications, comply with all applicable municipal ordinances and regulations and all other applicable regulations made or promulgated, now or hereafter, by lawful promulgation, and that the same will upon completion comply with all such municipal ordinances and regulations and with the rules of the applicable fire rating or inspection organization, bureau, association or office.

16. Trustor herein agrees to pay to Beneficiary or to the authorized loan servicing representative of Beneficiary a charge for providing a statement regarding the obligation secured by this Deed of Trust as provided by Section 2954, Article 2, Chapter 2 Title 14, Division 3, of the California Civil Code.

IT IS MUTUALLY AGREED THAT:

17. Should the Property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, earthquake or in any other manner, then subject to the rights of the Permitted Mortgagee, Beneficiary shall be entitled to all compensation, awards and other payments or relief therefor which are not used to reconstruct, restore or otherwise improve the Property or part thereof that was taken or damaged, and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. Subject to the rights of the Permitted Mortgagee, if any, all such compensation, awards, damages, rights of action and proceeds which are not used to reconstruct, restore or otherwise improve the Property or part thereof that was taken or damaged, including the proceeds of any policies of fire and other insurance affecting said Property, are hereby assigned to Beneficiary. After deducting therefrom all its expenses, including attorneys' fees, the balance of the proceeds which are not used to reconstruct, restore or otherwise improve the Property or part thereof that was taken or damaged, shall be applied to the amount due under the Note. No amount applied to the reduction of the principal shall relieve Trustor from making regular payments as required by the Note.

18. Upon default by Trustor in making any payments provided for in the Note or in this Deed of Trust, or in performing any obligation set forth in any of the Secured Obligations, and if such default is not cured within the respective time provided herein or therein, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale, and of written notice of default and of election to cause the Property to be sold, which notice Trustee shall cause to be duly filed for record and Beneficiary may foreclose this Deed of Trust. Beneficiary shall also deposit with Trustee this Deed of Trust, the Note and all documents evidencing expenditures secured hereby.

19. After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said Property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said Property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to the purchaser its deed conveying the Property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at the sale. Trustee shall apply the proceeds of sale to payment of (i) the expenses of such sale, together with the expenses of this trust including therein Trustee's fees or attorneys' fees for conducting the sale, and the actual cost of publishing, recording, mailing and posting notice of the sale, (ii) the cost of any search and/or other evidence of title procured in connection with such sale and revenue stamps on Trustee's deed, (iii) all sums expended under the terms hereof, not then repaid, with accrued interest at the highest rate permitted by law, (iv) all other sums then secured hereby and (v) the remainder, if any, to the person or persons legally entitled thereto.

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

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

22. Upon written request of Beneficiary stating that all sums secured hereby have been paid and all obligations secured hereby have been satisfied, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment of its fees,

Trustee shall reconvey, without warranty, the Property then held hereunder. The recitals in such reconveyance of any matters or fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto".

23. The trust created hereby is irrevocable by Trustor.

24. This Deed of Trust applies to, inures to the benefit of, and binds all parties described herein, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term "Beneficiary" shall include not only the original Beneficiary hereunder but also any future owner and holder including pledgees, of the Note. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. All obligations of Trustor hereunder are joint and several.

25. Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law, Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action of proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

26. The undersigned Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Trustor at the address set forth on the first page of this Deed of Trust.

27. Trustor agrees at any time and from time to time upon receipt of a written request from Beneficiary, to furnish to Beneficiary detailed statements in writing of income, rents, profits and operating expenses of the premises, and the names of the occupants and tenants in possession, together with the expiration dates of their leases and full information regarding all rental and occupancy agreements, and the rents provided for by such leases and rental and occupancy agreements, and such other information regarding the premises and their use as may be requested by Beneficiary.

28. Trustor agrees that the Loan secured by this Deed of Trust is made expressly for the purpose of financing the predevelopment of the Affordable Units.

29. Trustor agrees that upon sale or refinancing of the Property or any part thereof, the entire principal balance of the debt secured by this Deed of Trust, plus any accrued but unpaid interest thereon, shall at the option of Beneficiary be immediately due and payable.

30. If the rights and liens created by this Deed of Trust shall be held by a court of competent jurisdiction to be invalid or unenforceable as to any part of the obligations described herein, then the unsecured portion of such obligations shall be completely performed and paid prior to the performance and payment of the remaining and secured portion of the obligations, and all performance and payments made by Trustor shall be considered to have been performed

and paid on and applied first to the complete payment of the unsecured portion of the obligations.

31. (a) Failure or delay by Trustor to perform any term or provision required to be performed under the Secured Obligations or this Deed of Trust constitutes a default under this Deed of Trust.

(b) Beneficiary shall give written notice of default to Trustor, specifying the default complained of by Beneficiary. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

(c) Any failures or delays by Beneficiary in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by Beneficiary in asserting any of its rights and remedies shall not deprive Beneficiary of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

(d) Subject to subsection (g) below, if a monetary event of default occurs, then prior to exercising any remedies hereunder, Beneficiary shall give Trustor written notice of such default. Trustor shall have a period of 10 days after such notice is given within which to cure the default.

(e) Subject to subsection (g) below, if a non-monetary event of default occurs, then prior to exercising any remedies hereunder, Beneficiary shall give Trustor written notice of such default. If the default is reasonably capable of being cured within 30 days, then Trustor shall have such period to effect a cure prior to exercise of remedies by Beneficiary. If the default is such that it is not reasonably capable of being cured within 30 days, and Trustor (i) initiates corrective action within said period and (ii) diligently, continually and in good faith works to effect a cure as soon as possible, then Trustor shall have such additional time as is reasonably necessary to cure the default prior to any exercise of remedies by Beneficiary, but no longer than 90 days or shorter period of time if Beneficiary's rights become or are about to become materially jeopardized by any failure to cure a default or the default.

(f) Formal notices, demands and communications to Trustor shall be deemed sufficiently given if dispatched by first class mail, registered or certified mail, postage prepaid, return receipt requested, or by electronic facsimile transmission followed by prompt delivery of a "hard" copy, or by personal delivery (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), to the address of Trustor as set forth above. Such written notices, demands and communications may be sent in the same manner to such other addresses as Trustor may from time to time designate by mail. Any notice that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed

received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

(g) There shall be no additional cure periods under this Deed of Trust for defaults under the Secured Obligations. Any cure periods shall be deemed to run concurrently.

32. This Deed of Trust shall be subordinate and junior only to the lien of the Permitted Mortgage. In the event of a default or breach by Trustor of any security instrument of the Permitted Mortgage, Beneficiary shall have the right to cure the default prior to completion of any foreclosure. In such event, Beneficiary shall be entitled to reimbursement by Trustor of all costs and expenses incurred by Beneficiary in curing the default. The amount of any such disbursements shall be a lien against the Subject Property in accordance with California Civil Code section 2881 and added to the obligation secured by this Deed of Trust until repaid, with interest at the highest rate permitted by law.

33. This Deed of Trust shall be binding upon E.D., LLC and KOH, LLC jointly and severally and their respective successors and assigns.

IN WITNESS WHEREOF Trustor has executed this Deed of Trust as of the day and year set forth above.

TRUSTOR:

E.D., LLC, a California limited liability company

Date: _____

By: _____
Name: _____
Its: _____

Date: _____

By: _____
Name: _____
Its: _____

KOH, LLC, a Delaware limited liability company

Date: _____

By: _____
Name: _____
Its: _____

Date: _____

By: _____
Name: _____
Its: _____

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature: _____ (Seal)

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature: _____ (Seal)

ATTACHMENT 1
EXHIBIT E
PAGE 84 OF 101

EXHIBIT A

LEGAL DESCRIPTION OF SUBJECT PROPERTY

[behind this page]

LEGAL DESCRIPTION

Real property in the City of Oxnard, County of Ventura, State of California, described as follows:

LOT 3 OF TRACT NO. 5352-1, IN THE CITY OF OXNARD, COUNTY OF VENTURA, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 150, PAGES 76 THROUGH 92 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM ALL OILS, GAS, MINERALS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND, WITHOUT, HOWEVER, THE RIGHT OF SURFACE ENTRY TO A DEPTH OF 500 FEET BELOW THE SURFACE AND SUBSURFACE AS RESERVED IN DEEDS RECORDED JUNE 16, 1954 IN BOOK 1209, PAGE 182; DECEMBER 21, 1954 IN BOOK 1252, PAGE 429; BOOK 4723, PAGE 472 AND DECEMBER 8, 1986 AS INSTRUMENT NOS 86-175822, 86-175823, 86-175824, 86-175827 AND 86-175828 ALL OF OFFICIAL RECORDS.

APN 132-0-110-155

ATTACHMENT 1
EXHIBIT E
PAGE 86 OF 101

EXHIBIT F

NOTICE OF AFFORDABILITY RESTRICTIONS

[behind this page]

Recording Requested By and
When Recorded Mail to:

Oxnard Community
Development Commission
214 South C Street
Oxnard, California 93030
Attention: Community Development
Director

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Notice of Affordability Restrictions on Transfer of Property

NOTICE IS HEREBY GIVEN that pursuant to California Health and Safety Code section 33334.3(f)(3), as amended effective January 1, 2008, the Oxnard Community Development Commission, a public body, corporate and politic ("**Commission**"), is recording this Notice of Affordability Restrictions on Transfer of Property ("**Notice**") with regard to the property located at _____, Oxnard, California 93030 and more particularly described in Exhibit A attached hereto and incorporated herein by reference ("**Property**").

The Property is subject to that certain Affordable Housing Loan Agreement dated as of _____, 2009 by and between Commission and E.D., LLC, a California limited liability company, and KOH, LLC, a Delaware limited liability company (collectively, the "**Developer**") ("**Loan Agreement**"), and that certain Agreement Containing Covenants Affecting Real Property dated June 12, 2001 and recorded against the Property on June 18, 2001 as Instrument No. 2001-0114394-00 in the Ventura County Recorder's Office, as amended by (a) that certain First Amendment to Agreement Containing Covenants Affecting Real Property dated as of November 19, 2002 and was recorded against the Property on November 27, 2002, as Instrument No. 2002-0299634-00 in the Ventura County Recorder's Office, (b) that certain Second Amendment to Agreement Containing Covenants Affecting Real Property dated as of February 1, 2005 and recorded against the Property on February 3, 2005, as Instrument No. 20050203-0026767 in the Ventura County Recorder's Office, (c) that certain Third Amendment to Agreement Containing Covenants Affecting Real Property dated as of August 7, 2007 by and between the Commission and RiverPark A., L.L.C., a Delaware limited liability company, and (d) that certain Fourth Amendment to Agreement Containing Covenants

Affecting Real Property dated as of _____, 2009 by and between the Commission and Developer (collectively, the "Agreement Containing Covenants"). The Fourth Amendment to Agreement Containing Covenants Affecting Real Property is recorded concurrently herewith. Any capitalized terms not defined herein shall have the meaning ascribed to them in the Loan Agreement.

The Loan Agreement restricts the use of the Property as follows:

- a. At least 15% of the dwelling units developed on the Property shall be Affordable Units.
- b. Of the 15% minimum required Affordable Units, a minimum of at least 40% of such Affordable Units shall be available at an Affordable Rent to and occupied by Very Low Income Households.
- c. Of the 15% minimum required Affordable Units, a maximum of 60% of such Affordable Units shall be available at an Affordable Rent to and occupied by either Low Income Households or Moderate Income Households.
- d. The bedroom mix of the Affordable Units shall be proportional to the bedroom mix of the market rate units in the Project. The Affordable Units shall be of equal or better quality (interior and exterior) and amenities as the market rate units in the Project.
- e. The parties agree that for determining the total overall number of required Affordable Units and the minimum number of Very Low Income Household units and the maximum number of Low Income Households and Moderate Income Household units, for rounding purposes, any number below .5 shall be rounded down and any number above .5 shall be rounded up.
- f. Developer shall not permit any of the Affordable Units to be used on a transient basis (*i.e.*, on a term of less than 30 days) and shall not permit the rental of any Affordable Unit for a period of less than 30 days.
- g. Developer shall use commercially reasonable efforts to rent all Affordable Units so that any rent-ready Affordable Unit does not

become or remain vacant for any longer period than is necessary in the ordinary course of business.

- h. Developer shall maintain complete and accurate records pertaining to (i) the occupancy of each Affordable Unit and (ii) the maintenance, management, operation, preservation and repair of each Affordable Unit. Developer agrees to permit the Director to inspect and audit the books and records of Developer pertaining to the Affordable Units. In furtherance of this requirement, Developer shall require tenants or managers to submit to the Director an annual report (the "Annual Report") required by California Health and Safety Code section 33418, as amended from time to time, or any successor statute thereto. The Annual Report shall contain for each Affordable Unit the rental rate and the income and family size of the occupants. The income information required by Section 33418 shall be supplied by each tenant in a certified statement on a form provided by the Director.
- i. Developer shall manage and operate the Affordable Units in accordance with a written "Management Plan" approved in writing by the Director as described in Section 4.2 of the Loan Agreement.
- j. Prior to occupancy of any of the Affordable Units, Developer shall submit a written plan describing the proposed Affordable Unit tenant selection process to Commission for the Director's written approval.
- k. Prior to occupancy of any of the Affordable Units, Developer shall submit the proposed rental rate of each Affordable Unit to Commission for the Director's written approval.
- l. The maximum incomes of residential tenants eligible to rent the Affordable Units shall be determined on the basis of the Area Median Income, subject to the following:
 - i. All proposed tenants must be income-eligible.
 - ii. The maximum rents that may be charged to tenants for the Affordable Units, including a reasonable utility allowance, shall not exceed the Affordable Rent.

- m. "Affordable Rent" shall mean:
- (i) As to Very Low Income Households, annual Affordable Rent shall not exceed 30% of 50% of Area Median Income, adjusted for family size appropriate to the Affordable Unit.
 - (ii) As to Low Income Households, annual Affordable Rent shall not exceed 30% of 60% of Area Median Income, adjusted for family size appropriate to the Affordable Unit.
 - (iii) As to Moderate Income Households, annual Affordable Rent shall not exceed 30% of 110% of Area Median Income, adjusted for family size appropriate to the Affordable Unit.
- n. "Area Median Income" shall mean the area median income for the County of Ventura ("County") as published annually by the California Department of Housing and Community Development and determined in accordance with the U.S. Department of Housing and Urban Development published criteria from time to time in effect. Qualifying limits shall be those limits for the County, as set forth in Title 25, California Code of Regulations, Section 6932, as that section may be amended, modified or recodified from time to time. If the California Code of Regulations is amended or modified so that such regulations do not specify the area median income for the County, then Commission and Developer shall negotiate in good faith to determine an equivalent authoritative source which determines median income for the County.
- o. "Low Income Household" shall mean households earning 51% to 80% of the Area Median Income, adjusted for family size.
- p. "Moderate Income Household" shall mean households earning 81% to 120% of the Area Median Income, adjusted for family size.
- q. "Very Low Income Household" shall mean households earning less than 50% of the Area Median Income, adjusted for family size.

The affordability covenants and restrictions imposed on the Property by the Loan Agreement are scheduled to expire 55 years from issuance of a certificate of occupancy by the City of Oxnard for the Affordable Units.

The current owner of the Property is E.D., LLC, a California limited liability company, and KOH, LLC, a Delaware limited liability company.

This Notice is recorded for the purpose of providing notice only and it in no way modifies the provisions of the Loan Agreement or the Agreement Containing Covenants.

IN WITNESS WHEREOF, the undersigned has duly executed this Notice of Affordability Restrictions on Transfer of Property as of the date indicated above.

COMMISSION

OXNARD COMMUNITY DEVELOPMENT
COMMISSION

Date: _____

By: _____
Executive Director

APPROVED AS TO FORM:

By: _____
Alan Holmberg
General Counsel

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature: _____ (Seal)

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

[behind this page]

LEGAL DESCRIPTION

Real property in the City of Oxnard, County of Ventura, State of California, described as follows:

LOT 3 OF TRACT NO. 5352-1, IN THE CITY OF OXNARD, COUNTY OF VENTURA, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 150, PAGES 76 THROUGH 92 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM ALL OILS, GAS, MINERALS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND, WITHOUT, HOWEVER, THE RIGHT OF SURFACE ENTRY TO A DEPTH OF 500 FEET BELOW THE SURFACE AND SUBSURFACE AS RESERVED IN DEEDS RECORDED JUNE 16, 1954 IN BOOK 1209, PAGE 182; DECEMBER 21, 1954 IN BOOK 1252, PAGE 429; BOOK 4723, PAGE 472 AND DECEMBER 8, 1986 AS INSTRUMENT NOS 86-175822, 86-175823, 86-175824, 86-175827 AND 86-175828 ALL OF OFFICIAL RECORDS.

APN 132-0-110-155

ATTACHMENT 1
EXHIBIT F
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EXHIBIT G

INS Q

[behind this page]

ATTACHMENT 1
EXHIBIT 9
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INSURANCE REQUIREMENTS FOR SUBDIVISION AGREEMENTS

1. Developer shall obtain and maintain during the construction of the Project the following insurance against claims for injuries to persons or damages to property which may arise from or in connection with the development of the Property by Developer, its agents, representatives, or employees.
 - a. Commercial General Liability Insurance, including Contractual Liability, in an amount not less than \$1,000,000 combined single limit for bodily injury and property damage for each claimant for general liability with coverage equivalent to Insurance Services Office Commercial General Liability Coverage (Occurrence Form CG 0001). If a general aggregate limit is used, that limit shall apply separately to the project or shall be twice the occurrence amount;
 - b. Business Automobile Liability Insurance in an amount not less than \$1,000,000 combined single limit for bodily injury and property damage for each claimant for automobile liability with coverage equivalent to Insurance Services Office Automobile Liability Coverage (Occurrence Form CA0001) covering Code No. 1, "any auto;"
 - c. Workers' Compensation Insurance in compliance with the laws of the State of California, and Employer's Liability Insurance in an amount not less than \$1,000,000 per claimant.
2. Developer shall, prior to commencement of any construction on the Property, file with the Risk Manager certificates of insurance with original endorsements effecting coverage required by this Exhibit INS-Q. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on the attached forms or on other forms approved by the Risk Manager. All certificates and endorsements are to be received and approved by the Risk Manager before work commences. City reserves the right to require complete certified copies of all required insurance policies at any time. The certificates of insurance and endorsements shall be forwarded to the Risk Manager, addressed as follows:

City of Oxnard
Risk Manager
Reference No. _____
300 West Third Street, Suite 302
Oxnard, California 93030
3. Developer agrees that all insurance coverages shall be provided by a California admitted insurance carrier with an A.M. Best rating of A:VII or better and shall be endorsed to state that coverage may not be suspended, voided, canceled by either party, or reduced in coverage or limits without 30 days' prior written notice to the Risk Manager. The Risk Manager shall not approve or accept any endorsement if the endorsement contains "best effort" modifiers or if the insurer is relieved from the responsibility to give such notice.
4. Developer agrees that the Commercial General Liability and Business Automobile Liability Insurance policies shall be endorsed to name Commission, its Governing Board, City, its City Council, and their respective officers, employees and volunteers as additional insureds as respects: liability arising out of activities performed by or on behalf of Developer; products and completed operations of Developer; premises owned, occupied or used by Developer; or automobiles owned, leased, hired or borrowed by Developer. The coverage shall contain no special limitations on the scope of protection afforded to Commission, its Governing Board, City, its City Council, and their respective officers, employees and volunteers. **The General Liability Special Endorsement Form and Automobile Liability Special Endorsement Form attached to this Exhibit INS-Q or substitute forms containing the same information and acceptable to the Risk Manager shall be used to provide the endorsements (ISO form CG 2010 11/85 or if not available, CG 2010 with an edition date prior to 01/04 and CG 2037).**
5. The coverages provided to Commission and City shall be primary and not contributing to or in excess of any existing Commission or City insurance coverages (**this must be endorsed**). Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Commission, its Governing Board, City, its City Council, and their respective officers, employees and volunteers. The insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
6. Any deductibles or self-insured retentions must be declared to and approved by the Risk Manager. At the option of the Risk Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Commission, its Governing Board, City, its City Council, and their respective officers, employees and volunteers, or the developer shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

INSTRUCTION FOR SUBMITTING INSURANCE CERTIFICATES AND ENDORSEMENT FORMS

Certificates of Insurance

The sample accord form on the following page is provided to facilitate your preparation and submission of certificates of insurance. You may use this or any industry form that shows coverage as broad as that shown on the attached sample. **Please note the certificate holder address must be as shown on the attached sample accord form with the contract number and insurance exhibit identification information completed.** Improperly addressed certificates may delay the contract start-up date because the City's practice is to return unidentifiable insurance certificates to the insured for clarification as to the contract number. **Cancellation provisions must be endorsed to the policy. Modifying the certificate does not change coverage or obligate the carrier to provide notice of cancellation.**

Endorsement Forms

Original endorsements are required for commercial general liability and business automobile liability insurance policies and must be attached to the applicable certificate of insurance. City preference is that you use the endorsement forms which are attached. Substitute forms will be accepted, however, as long as they include provisions comparable to the attached.

INS-Q.doc

ATTACHMENT 1
EXHIBIT 5
PAGE 98 OF 101

ACCORD CERTIFICATE OF INSURANCE

ISSUE DATE (MM/DD/YY)

PRODUCER

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

CODE SUB-CODE

COMPANIES AFFORDING INSURANCE COVERAGE

INSURED

COMPANY LETTER A SPECIFY COMPANY NAMES IN THIS SPACE
COMPANY LETTER B

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> OWNER'S & CONTRACTOR'S PROT.				GENERAL AGGREGATE \$1,000,000 PRODUCTS COMP/OP AGG. \$1,000,000 PERSONAL & ADV. INJURY \$1,000,000 EACH OCCURRENCE \$1,000,000 FIRE DAMAGE (Any one fire) \$ MED. EXPENSE (Any one person) \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS GARAGE LIABILITY				COMBINED SINGLE LIMIT \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
A	EXCESS LIABILITY UMBRELLA FORM OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ AGGREGATE \$
A	WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY				STATUTORY LIMITS EACH ACCIDENT \$1,000,000 DISEASE-POLICY LIMIT \$1,000,000 DISEASE-EACH EMPLOYEE \$1,000,000
A	OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/RESTRICTIONS/SPECIAL ITEMS

CERTIFICATE HOLDER

City of Oxnard
Attn: Risk Manager
Reference No. _____
300 W. Third Street, Suite 302
Oxnard CA 93030

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

ATTACHMENT 1
EXHIBIT 9
PAGE 99 OF 101

**AUTOMOBILE LIABILITY SPECIAL ENDORSEMENT
FOR THE OXNARD COMMUNITY DEVELOPMENT COMMISSION
(the "Commission") AND THE CITY OF OXNARD (the "City")**

SUBMIT IN DUPLICATE

ENDORSEMENT NO.	ISSUE DATE (MM/DD/YY)
-----------------	-----------------------

PRODUCER

Telephone:

POLICY INFORMATION:
Insurance Company:
Policy No.:
Policy Period: (from) (to)
LOSS ADJUSTMENT EXPENSE Included in Limits
 In Addition to Limits

NAMED INSURED

Deductible Self-Insured Retention (check which) of \$ _____
with an Aggregate of \$ _____ applies to _____
coverage. Per Occurrence Per Claim (which)

APPLICABILITY. This insurance pertains to the operations, products and/or tenancy of the named insured under all written agreements and permits in force with the Commission and/or City unless checked here in which case only the following specific agreements and permits with the Commission and/or City are covered:

COMMISSION AND/OR CITY AGREEMENTS/PERMITS

TYPE OF INSURANCE

COMMERCIAL AUTO POLICY
 BUSINESS AUTO POLICY
 OTHER

OTHER PROVISIONS

LIMIT OF LIABILITY

\$ _____ per accident, for bodily injury and property damage.

CLAIMS: Underwriter's representative for claims pursuant to this insurance.
Name: _____
Address: _____
Telephone: () _____

In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, insurance company agrees as follows:

- 1. INSURED.** The Commission, its Governing Board, City, its City Council, and their respective officers, employees and volunteers are included as insureds with regard to liability and defense of suits arising from the operations, products and activities performed by or on behalf of the named insured.
- 2. CONTRIBUTION NOT REQUIRED.** As respects: (a) work performed by the named insured for or on behalf of the Commission and/or City; or (b) products sold by the named insured to the Commission or City; or (c) premises leased by the named insured from the Commission or City, the insurance afforded by this policy shall be primary insurance as respects the Commission, its Governing Board, City, its City Council, and their respective officers, employees and volunteers; or stand in an unbroken chain of coverage excess of the named insured's scheduled underlying primary coverage. In either event, any other insurance maintained by the Commission, its Governing Board, City, its City Council, and their respective officers, employees and volunteers shall be in excess of this insurance and shall not contribute with it.
- 3. SEVERABILITY OF INTEREST.** This insurance applies separately to each insured against whom claim is made or suit is brought except with respect to the company's limits of liability. The inclusion of any person or organization as an insured shall not affect any right which such person or organization would have as a claimant if not so included.
- 4. CANCELLATION NOTICE.** With respect to the interests of the Commission and City, this insurance shall not be canceled, or materially reduced in coverage or limits except after thirty (30) days prior written notice by receipted delivery has been given to the City.
- 5. PROVISIONS REGARDING THE INSURED'S DUTIES.** Any failure to comply with reporting provisions of the policy or breaches or violations of warranties shall not affect coverage provided to the Commission, its Governing Board, City, its City Council, and their respective officers, employees and volunteers.
- 6. SCOPE OF COVERAGE.** This policy, if primary, affords coverage at least as broad as:
 - insurance Services Office Automobile Liability Coverage, "occurrence" form CA0001, code ("any auto"); or
 - If excess, affords coverage which is at least as broad as the primary insurance form referenced in the preceding section (1).

Except as stated above nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached.

ENDORSEMENT HOLDER

CITY OF OXNARD
Attn: Risk Manager
Reference No. _____
300 W. Third Street, Suite 302
Oxnard, CA 93030

AUTHORIZED REPRESENTATIVE

Broker/Agent Underwriter _____

I _____ (print/type name), warrant that I have authority to bind the above-mentioned insurance company and by my signature hereon do so bind this company to this endorsement.

Signature _____
(original signature required)

Telephone: () _____ Date Signed _____

ATTACHMENT 1
EXHIBIT 9
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