

**FIRST AMENDMENT TO
AFFORDABLE HOUSING LOAN AGREEMENT**

This FIRST AMENDMENT TO AFFORDABLE LOAN AGREEMENT (“**First Amendment**”), is entered into as of _____, 2009, by and among the 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 individually by name and collectively as the “**Developer**”.
- E. The Lot 3 Property, the Lot 11 Property, and the Lot 12 Property may be referred to herein individually by name or as “**Lot**” and collectively as the “**Property**” and is depicted in Exhibit D.
- 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, ED and KOH entered into that certain Affordable Housing Loan Agreement dated as of July 21, 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 pay a portion of predevelopment costs for the Affordable Units (as defined in the ED/KOH Loan Agreement) required in connection

with the development of the Lot 3 Property, subject to all of the terms and conditions of the ED/KOH Loan Agreement.

- H. In furtherance of the Redevelopment Plan, the Commission and ED 2 entered into that certain Affordable Housing Loan Agreement dated as of July 21, 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 pay a portion of predevelopment costs for the Affordable Units (as defined in the ED 2 Loan Agreement) required in connection with the development of the Lot 11 Property, subject to all of the terms and conditions of the ED 2 Loan Agreement.

In furtherance of the Redevelopment Plan, the Commission and KOH 12-17 entered into that certain Affordable Housing Loan Agreement dated as of July 21, 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 pay a portion of predevelopment costs for the Affordable Units (as defined in the KOH 12-17 Loan Agreement) required in connection with the development of the Lot 12 Property, subject to all of the terms and conditions of the KOH 12-17 Loan Agreement.

- I. The ED/KOH Loan Agreement, ED 2 Loan Agreement and KOH 12-17 Loan Agreement may be referred to herein individually by name and collectively as the “**Loan Agreement**” or collectively as the “**Loan Agreements.**” The Commission and Developer now desire to amend the Loan Agreement to provide flexibility as to the siting of the Affordable Units required under the Loan Agreement, the real property to be used as collateral to secure each Loan, the disbursement of Loan proceeds for hereinafter defined Predevelopment Costs that are inseparable from the planning and design of unrestricted dwellings, and similar changes necessary and appropriate to facilitate implementation of the Project (as defined in the Loan Agreements).

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

1. Purpose of this First Amendment. This First 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”) and the Redevelopment Plan, and its specific purpose is to revise the ED/KOH Loan Agreement, the ED 2 Loan Agreement, and the KOH 12-17 Loan Agreement as to the matters contained herein.

2. Revisions to the Loan Agreement.

a. The language of Section 1.3 of each respective Loan Agreement is hereby revised to read as follows:

(1) ED/KOH Loan Agreement:

“1.3 Project

a. **Scope.** The Project shall consist of the development and construction of 40 dwelling units (the number of units which is presently authorized under the Specific Plan) (“Unit Base”) unless an impending amendment to the Specific Plan (“SPA”) is Approved by the City, in which case, the Project shall consist of the development and construction of the total number of dwellings that are authorized for development on the Property under the Specific Plan, as amended by the SPA.

b. **Number of Affordable Units.** Notwithstanding the outcome of the SPA, the Project shall include the development and construction of a minimum of at least 14 Affordable Units, subject to increase as set forth in Section 1.3.b.(i) below.

(i) **If SPA Approval**

(A) **If Phase 2 Loan Draw Accepted.** If and only if the SPA is Approved by the City and additional units are authorized beyond the Unit Base, Developer (at its sole option) may accept the hereinafter defined Phase 2 Loan Draw subject to the terms and conditions of Section 2.2.b.(ii). If Developer accepts the Phase 2 Loan Draw, rather than a minimum of 14 Affordable Units, the Affordable Unit requirement for the Project shall be computed as the greater of: (i) at least 15% of the total number of dwellings that are authorized for development on the Property under the Specific Plan, as amended by the SPA; or (ii) 14 dwelling units.

(B) **If Phase 2 Loan Draw Declined.** If the SPA is Approved by the City and additional units are authorized beyond the Unit Base, Developer (at its sole option) may decline to accept the Phase 2 Loan Draw subject to the terms and conditions of Section 2.2.b.(ii). In such event, the Affordable Unit requirement for the Project shall be computed as the greater of: (i) 15% of the incremental increase in the number of dwelling units Approved by the City under the SPA above the Unit Base; or (ii) 14 dwelling units.

(ii) **If No SPA Approval.** In the event that the SPA is not Approved by the City and/or no additional units are authorized beyond the Unit Base, then Developer shall not have access to the Phase 2 Loan Draw. In such event, Developer shall still be obligated to provide a minimum of 14 Affordable Units.

c. **Affordable Housing Development.** At Developer’s option, and subject to the prior written approval of the Commission as set forth in Section 1.7, all or a portion of the Affordable Units may be constructed on the Lot 3 Property, Lot 11 Property or Lot

12 Property. Of the total Affordable Units required in connection with development of the Project, 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. Where any or all of the Affordable Units are constructed on the same site with unrestricted market rate units, the Affordable Units shall be of equal or better quality (interior and exterior) and amenities as the market rate units in the Project. The size and interior features of Affordable Units, when not constructed on the same site with unrestricted market rate dwellings, need not be the same as or equivalent to those in non-restricted units in the Project so long as: (i) the Affordable Units are of like size relative to numbers of bedrooms and bathrooms as the unrestricted market rate dwellings; and (ii) the building exterior and site amenities are of comparable quality and appearance to the unrestricted market rate dwellings. 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.”

(2) ED 2 Loan Agreement:

“1.3 Project

a. Scope. The Project shall consist of the development and construction of 75 dwelling units (the number of units which is presently authorized under the Specific Plan) (“Unit Base”) unless an impending amendment to the Specific Plan (“SPA”) is Approved by the City, in which case, the Project shall consist of the development and construction of the total number of dwellings that are authorized for development on the Property under the Specific Plan, as amended by the SPA.

b. Number of Affordable Units. Notwithstanding the outcome of the SPA, the Project shall include the development and construction of a minimum of at least 5 Affordable Units, subject to increase as set forth in Section 1.3.b.(i) below.

(i) If SPA Approval

(A) If Phase 2 Loan Draw Accepted. If and only if the SPA is Approved by the City and additional units are authorized beyond the Unit Base, Developer (at its sole option) may accept the hereinafter defined Phase 2 Loan Draw subject to the terms and conditions of Section 2.2.b.(ii). If Developer accepts the Phase 2 Loan Draw, rather than a minimum of 5 Affordable Units, the Affordable Unit requirement for the Project shall be computed as the greater of: (i) at least 15% of the total number of dwellings that are authorized for development on the Property under the Specific Plan, as amended by the SPA; or (ii) 5 dwelling units.

(B) **If Phase 2 Loan Draw Declined.** If the SPA is Approved by the City and additional units are authorized beyond the Unit Base, Developer (at its sole option) may decline to accept the Phase 2 Loan Draw subject to the terms and conditions of Section 2.2.b.(ii). In such event, the Affordable Unit requirement for the Project shall be computed as the greater of: (i) 15% of the incremental increase in the number of dwelling units Approved by the City under the SPA above the Unit Base; or (ii) 5 dwelling units.

(ii) **If No SPA Approval.** In the event that the SPA is not Approved by the City and/or no additional units are authorized beyond the Unit Base, then Developer shall not have access to the Phase 2 Loan Draw. In such event, Developer shall still be obligated to provide a minimum of 5 Affordable Units.

c. **Affordable Housing Development.** At Developer's option, and subject to the prior written approval of the Commission as set forth in Section 1.7, all or a portion of the Affordable Units may be constructed on the Lot 3 Property, Lot 11 Property or Lot 12 Property. Of the total Affordable Units required in connection with development of the Project, 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. Where any or all of the Affordable Units are constructed on the same site with unrestricted market rate units, the Affordable Units shall be of equal or better quality (interior and exterior) and amenities as the market rate units in the Project. The size and interior features of Affordable Units, when not constructed on the same site with unrestricted market rate dwellings, need not be the same as or equivalent to those in non-restricted units in the Project so long as: (i) the Affordable Units are of like size relative to numbers of bedrooms and bathrooms as the unrestricted market rate dwellings; and (ii) the building exterior and site amenities are of comparable quality and appearance to the unrestricted market rate dwellings. 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."

(3) **KOH 12-17 Loan Agreement:**

"1.3 **Project**

a. **Scope.** The Project shall consist of the development and construction of 75 dwelling units (the number of units which is presently authorized under the Specific Plan) ("Unit Base") unless an impending amendment to the Specific Plan ("SPA") is Approved by the City, in which case, the Project shall consist of the development and construction of the total number of dwellings that are authorized for development on the Property under the Specific Plan, as amended by the SPA.

b. **Number of Affordable Units.** Notwithstanding the outcome of the SPA, the Project shall include the development and construction of a minimum of at least 5 Affordable Units, subject to increase as set forth in Section 1.3.b.(i) below.

(i) **If SPA Approval**

(A) **If Phase 2 Loan Draw Accepted.** If and only if the SPA is Approved by the City and additional units are authorized beyond the Unit Base, Developer (at its sole option) may accept the hereinafter defined Phase 2 Loan Draw subject to the terms and conditions of Section 2.2.b.(ii). If Developer accepts the Phase 2 Loan Draw, rather than a minimum of 5 Affordable Units, the Affordable Unit requirement for the Project shall be computed as the greater of: (i) at least 15% of the total number of dwellings that are authorized for development on the Property under the Specific Plan, as amended by the SPA; or (ii) 5 dwelling units.

(B) **If Phase 2 Loan Draw Declined.** If the SPA is Approved by the City and additional units are authorized beyond the Unit Base, Developer (at its sole option) may decline to accept the Phase 2 Loan Draw subject to the terms and conditions of Section 2.2.b.(ii). In such event, the Affordable Unit requirement for the Project shall be computed as the greater of: (i) 15% of the incremental increase in the number of dwelling units Approved by the City under the SPA above the Unit Base; or (ii) 5 dwelling units.

(ii) **If No SPA Approval.** In the event that the SPA is not Approved by the City and/or no additional units are authorized beyond the Unit Base, then Developer shall not have access to the Phase 2 Loan Draw. In such event, Developer shall still be obligated to provide a minimum of 5 Affordable Units.

c. **Affordable Housing Development.** At Developer's option, and subject to the prior written approval of the Commission as set forth in Section 1.7, all or a portion of the Affordable Units may be constructed on the Lot 3 Property, Lot 11 Property or Lot 12 Property. Of the total Affordable Units required in connection with development of the Project, 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. Where any or all of the Affordable Units are constructed on the same site with unrestricted market rate units, the Affordable Units shall be of equal or better quality (interior and exterior) and amenities as the market rate units in the Project. The size and interior features of Affordable Units, when not constructed on the same site with unrestricted market rate dwellings, need not be the same as or equivalent to those in non-restricted units in the Project so long as: (i) the Affordable Units are of like size relative to numbers of bedrooms and bathrooms as the unrestricted market rate dwellings; and (ii) the building exterior and site amenities are of comparable quality and appearance to the unrestricted market rate dwellings. 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.”

b. As to the terms and definitions appearing below, the language of Section 1.4 is hereby revised for each Loan Agreement to read as follows:

““Affordable Unit” shall mean each of the rental dwelling units developed as part of the Project in accordance with all of the terms and conditions of this Agreement either on the Lot 3 Property, the Lot 11 Property and/or the Lot 12 Property and restricted in accordance with the Agreement Containing Covenants.”

““Construction Loan Closing” shall mean the point in time when a deed of trust is recorded against any portion of the Property, Affordable Housing Site, Collateral Site, or other property by any construction lender for the Project or funds are disbursed 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, to be recorded on the Property (or Collateral Site, as applicable) in the priority as set forth in this Agreement.”

““Loan Closing” shall mean each of two points in time when all conditions precedent to the disbursement of the Phase 1 Loan Draw or Phase 2 Loan Draw, as applicable, have been satisfied as set forth in Section 2.3.”

““Permitted Mortgage” shall mean:

(a) as to the Lot 3 Property, that certain deed of trust to secure an indebtedness of \$3,650,00 recorded October 10, 2007, as Instrument No. 20071010-00192006-0 in the Official Records of Ventura County Recorder’s Office; and

(b) as to the Lot 11 Property or the Lot 12 Property, that certain deed of trust to secure an indebtedness of \$5,000,000 recorded February 24, 2005, as Instrument No. 20050224-0042890 in the Official Records of Ventura County Recorder’s Office. The existing deed of trust on the Lot 11 Property and the Lot 12 Property may be bifurcated. In such event, the \$5,000,000 amount of the Permitted Mortgage on the Lot 11 Property and the Lot 12 Property shall be reduced to \$2,500,000 for each property.”

““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 Phase 1 Loan Draw or Phase 2 Loan Draw, as applicable, insuring the Deed of Trust as a lien against the Property (or Collateral Site, as applicable), subordinate only to the Permitted Mortgage and other matters affecting the Property (or Collateral Site, as applicable) 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.”

c. Section 1.4 is hereby revised for each Loan Agreement by adding new definitions to read as follows:

“Affordable Housing Site” shall mean the real property on which the Affordable Units are constructed and shall be either the Lot 3 Property, the Lot 11 Property, and/or the Lot 12 Property.”

“Approved by the City” as used herein shall mean that no challenge, appeal, claim, lawsuit, or similar action related to the adoption or approval of the SPA has been timely filed or, if filed, that such challenge, appeal, claim, lawsuit, or other action has been finally resolved.”

“Collateral Site” shall mean the alternative real property which may be used to secure the Loan as set forth in this Agreement and shall be either the Lot 3 Property, the Lot 11 Property, and/or the Lot 12 Property.”

“Loan Coverage Threshold” shall mean an amount not to exceed ninety percent (90%) of the Value of the Collateral Site.”

“Value” shall mean the fair market value of the Collateral Site as of July 15, 2009, based on an appraisal approved in writing by the Director and which is prepared at Developer’s expense by an independent certified M.A.I. appraiser with at least ten years relevant experience who is acceptable to the Director, subject to the provisions of Section 1.7.a.(9).”

d. Section 1.4 is hereby revised for each Loan Agreement by adding a new definition of “Predevelopment Costs” to read as follows and any and all references to “predevelopment cost” or “predevelopment costs” in the Loan Agreements and any exhibits thereto shall be revised to mean “Predevelopment Costs” as defined in this First Amendment:

(1) ED/KOH Loan Agreement:

“Predevelopment Costs” shall mean and include predevelopment costs for the development of the Affordable Units required to be developed and constructed as part of the Project as set forth in this Agreement which are approved by the Director, including: (i) specialized studies (e.g., environmental site assessment, geotechnical, etc.), (ii) planning and design, including architecture and engineering, (iii) legal and accounting expenses, (iv) permit processing and development fees, (v) options to purchase land and holding costs of land that has been acquired (e.g., property management, taxes, insurance, and finance charges), (vi) appraisals, title insurance and escrow fees, and (vii) other preliminary expenses approved by the Director. Unless and until the Affordable Unit requirement is increased as set forth in Section 1.3.b.(i), then when disbursing any portion of the Loan, the Commission can only disburse Loan proceeds to pay Predevelopment Costs for 10 Affordable Units. Where Predevelopment Costs for the Affordable Units are inseparable from costs associated with the non-restricted dwellings (as in

the case where the Project is planned, designed and constructed as an integral whole on the same site), then the Loan proceeds shall be disbursed on a prorated basis as to that percentage that the Affordable Units represent of the total number dwellings developed as part of the Project, subject to the provisions of Section 5.e, of the Promissory Note, Exhibit D of the Loan Agreement. As an example, and for illustrative purposes only, if the number of Affordable Units in the Phase 1 Loan Draw is 10% of the Unit Base (as such term is defined in Section 1.3.a.) and professional design fees total \$200,000, then the amount of Loan proceeds payable for Predevelopment Costs associated with those Affordable Units would be \$20,000 (i.e., 10% x \$200,000); if the number of Affordable Units in the Phase 2 Loan Draw is 15% of the total Project dwellings (after Approval by City of the SPA) and professional design fees total \$200,000, then the amount of Loan proceeds payable for Predevelopment Costs associated with those Affordable Units would be \$30,000 (i.e., 15% x \$200,000)." Notwithstanding the foregoing, until it is finally determined on which real property the Affordable Units will be built (the Lot 3 Property, the Lot 11 Property and/or the Lot 12 Property) as provided herein in Section 1.7, the foregoing prorated disbursement calculation shall not be used to disburse any of the Loan proceeds."

(2) ED 2 Loan Agreement:

““Predevelopment Costs” shall mean and include predevelopment costs for the development of the Affordable Units required to be developed and constructed as part of the Project as set forth in this Agreement which are approved by the Director, including: (i) specialized studies (e.g., environmental site assessment, geotechnical, etc.), (ii) planning and design, including architecture and engineering, (iii) legal and accounting expenses, (iv) permit processing and development fees, (v) options to purchase land and holding costs of land that has been acquired (e.g., property management, taxes, insurance, and finance charges), (vi) appraisals, title insurance and escrow fees, and (vii) other preliminary expenses approved by the Director. Unless and until the Affordable Unit requirement is increased as set forth in Section 1.3.b.(i), then when disbursing any portion of the Loan, the Commission can only disburse Loan proceeds to pay Predevelopment Costs for 5 Affordable Units. Where Predevelopment Costs for the Affordable Units are inseparable from costs associated with the non-restricted dwellings (as in the case where the Project is planned, designed and constructed as an integral whole on the same site), then the Loan proceeds shall be disbursed on a prorated basis as to that percentage that the Affordable Units represent of the total number dwellings developed as part of the Project, subject to the provisions of Section 5.e, of the Promissory Note, Exhibit D of the Loan Agreement. As an example, and for illustrative purposes only, if the number of Affordable Units in the Phase 1 Loan Draw is 10% of the Unit Base (as such term is defined in Section 1.3.a.) and professional design fees total \$200,000, then the amount of Loan proceeds payable for Predevelopment Costs associated with those Affordable Units would be \$20,000 (i.e., 10% x \$200,000); if the number of Affordable Units in the Phase 2 Loan Draw is 15% of the total Project dwellings (after Approval by City of the SPA) and professional design fees total \$200,000, then the amount of Loan proceeds payable for Predevelopment Costs associated with those Affordable Units would be \$30,000 (i.e., 15% x \$200,000)." Notwithstanding the foregoing, until it is finally determined on which real property the Affordable Units will be built (the Lot 3 Property, the Lot 11 Property and/or the Lot 12 Property) as provided herein in Section 1.7, the foregoing prorated disbursement calculation shall not be used to disburse any of the Loan proceeds.”

(3) KOH 12-17 Loan Agreement:

““Predevelopment Costs” shall mean and include predevelopment costs for the development of the Affordable Units required to be developed and constructed as part of the Project as set forth in this Agreement which are approved by the Director, including: (i) specialized studies (e.g., environmental site assessment, geotechnical, etc.), (ii) planning and design, including architecture and engineering, (iii) legal and accounting expenses, (iv) permit processing and development fees, (v) options to purchase land and holding costs of land that has been acquired (e.g., property management, taxes, insurance, and finance charges), (vi) appraisals, title insurance and escrow fees, and (vii) other preliminary expenses approved by the Director. Unless and until the Affordable Unit requirement is increased as set forth in Section 1.3.b.(i), then when disbursing any portion of the Loan, the Commission can only disburse Loan proceeds to pay Predevelopment Costs for 5 Affordable Units. Where Predevelopment Costs for the Affordable Units are inseparable from costs associated with the non-restricted dwellings (as in the case where the Project is planned, designed and constructed as an integral whole on the same site), then the Loan proceeds shall be disbursed on a prorated basis as to that percentage that the Affordable Units represent of the total number dwellings developed as part of the Project, subject to the provisions of Section 5.e, of the Promissory Note, Exhibit D of the Loan Agreement. As an example, and for illustrative purposes only, if the number of Affordable Units in the Phase 1 Loan Draw is 10% of the Unit Base (as such term is defined in Section 1.3.a.) and professional design fees total \$200,000, then the amount of Loan proceeds payable for Predevelopment Costs associated with those Affordable Units would be \$20,000 (i.e., 10% x \$200,000); if the number of Affordable Units in the Phase 2 Loan Draw is 15% of the total Project dwellings (after Approval by City of the SPA) and professional design fees total \$200,000, then the amount of Loan proceeds payable for Predevelopment Costs associated with those Affordable Units would be \$30,000 (i.e., 15% x \$200,000).” Notwithstanding the foregoing, until it is finally determined on which real property the Affordable Units will be built (the Lot 3 Property, the Lot 11 Property and/or the Lot 12 Property) as provided herein in Section 1.7, the foregoing prorated disbursement calculation shall not be used to disburse any of the Loan proceeds.”

e. Contact information appearing in Section 1.5.2 is hereby revised for each respective Loan Agreement to read as follows:

(1) ED/KOH Loan Agreement:

“2291 North Patterson Road
Oxnard, California 93030
Attn: Dave O. White
Phone: (805) 981-3877
Fax: (805) 981-3875”

(2) ED 2 Loan Agreement:

“2291 North Patterson Road
Oxnard, California 93030
Attn: Dave O. White
Phone: (805) 981-3877
Fax: (805) 981-3875”

(3) KOH 12-17 Loan Agreement: No change.

f. The title and language of Section 1.7 is hereby revised for each Loan Agreement to read as follows:

“1.7 Collateral Site; Affordable Housing Site; No Encumbrances Except Permitted Mortgage.

a. Collateral Site. Except or unless pre-approved in writing by the Director, which approval shall not be unreasonably withheld, the Property shall serve as the Collateral Site. Developer may request the Director’s prior written approval to use real property (other than the Property) as the Collateral Site subject to and contingent upon satisfaction of all of the conditions set forth in clauses (1) through (10) below:

(1) The Collateral Site shall be limited to the Lot 3 Property, the Lot 11 Property and/or the Lot 12 Property;

(2) The owner of the Collateral Site shall consent to the encumbrance and agree to be subject to the applicable provisions of this Agreement in the form, substance and content required by the Commission General Counsel;

(3) The Phase 1 Loan Draw and/or Phase 2 Loan Draw, as applicable, does not cause the Collateral Site to exceed the Loan Coverage Threshold;

(4) The Collateral Site is not encumbered by any liens, encumbrances, covenants, restrictions, easements, leases, taxes or other encumbrances or defects except as shown on the Title Report;

(5) The owner of the Collateral Site shall have executed and delivered to Commission a Deed of Trust (with the addition of such waivers of non-borrower trustors as may be required by the Commission General Counsel), and such Deed of Trust shall have been recorded against the Collateral Site 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;

(6) Title Company shall be unconditionally committed to issue to Commission, at Developer’s sole cost and expense, the Title Policy;

(7) This Agreement shall be in full force and effect and Developer shall not be in default of any of its obligations under this Agreement, including any exhibits hereto;

(8) The owner of the Collateral Site shall not be in default of any of its obligations under any agreement entered into with the Commission, including any attachments or exhibits thereto;

(9) Developer shall have delivered to Commission and the Director shall have approved in writing a then current appraisal of the Collateral Site which has been prepared at Developer's expense by an independent certified M.A.I. appraiser with at least ten years relevant experience who is acceptable to the Director, provided, however, that an appraisal shall only be required where total Loan amount secured on the Collateral Site exceeds \$1,250,000 for the Lot 3 Property, \$875,000 for the Lot 11 Property or \$875,000 for the Lot 11 Property; and

(10) The Commission General Counsel has determined that the use of the Collateral Site does not result in any increased financial risk to the Commission and does not otherwise materially impair the Commission's interests.

b. Affordable Housing Site. Except or unless pre-approved in writing by the Director, which approval shall not be unreasonably withheld, the Property shall serve as the Affordable Housing Site. Developer may request the Director's prior written approval to use real property (other than the Property) as the Affordable Housing Site subject to and contingent upon satisfaction of all of the conditions set forth in clauses (1) through (7) below; provided, however, that following commencement of construction of any of the Affordable Units, the then Affordable Housing Site may not thereafter change:

(1) The Affordable Housing Site shall be limited to the Lot 3 Property, the Lot 11 Property and/or the Lot 12 Property;

(2) The owner of the Affordable Housing Site shall consent and agree to be subject to the applicable provisions of this Agreement in the form, substance and content required by the Commission General Counsel;

(3) The Affordable Housing Site is not encumbered by any liens, encumbrances, covenants, restrictions, easements, leases, taxes or other encumbrances or defects except as shown on the Title Report;

(4) The Fourth Amendment to Agreement Containing Covenants Affecting Real Property (including any necessary modifications thereto) shall have been recorded against the Affordable Housing Site 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;

(5) This Agreement shall be in full force and effect and Developer shall not be in default of any of its obligations under this Agreement, including any exhibits hereto;

(6) The owner of the Affordable Housing Site shall not be in default of any of its obligations under any agreement entered into with the Commission, including any attachments or exhibits thereto; and

(7) The Commission General Counsel has determined that the use of the Affordable Housing Site does not result in any risk to development of and/or the affordability restrictions for the Affordable Units and does not otherwise materially impair the Commission's interests.

If the Director approves an alternative Affordable Housing Site in accordance with this Section 1.7 for one hundred percent (100%) of the Affordable Units required by Section 1.3 of this Agreement and, as a result, no Affordable Units will be required to be developed on the Property but instead one hundred percent (100%) of the Affordable Units required by Section 1.3 of this Agreement will be developed on another Lot, then, upon written request from the Developer and only following issuance by the City of Oxnard of certificates of occupancy for one hundred percent (100%) of the Affordable Units required by Section 1.3 of this Agreement, the Director shall execute such documents as may be necessary to remove the Notice of Affordability Restrictions from title to the Property and to release the applicable affordable housing covenants in the Fourth Amendment to Agreement Containing Covenants Affecting Real Property, all in such form, substance and content as approved by the Commission General Counsel.

If and to the extent the Director approves an alternative Affordable Housing Site in accordance with this Section 1.7, then it is the parties intent that the proportionate Loan amount associated with the Affordable Units which will now be developed on another Lot shall be payable to the owner of such alternative Affordable Housing Site rather than to the Developer. As an example, and by way of illustration only, if the Developer transfers all of the Affordable Unit requirements of this Agreement to the Lot 3 Property, then the entire amount of the Developer's Loan shall be payable to the owner of the Lot 3 Property. Such transfer shall be evidenced in writing by the Developer to the Commission and appropriate covenants shall be recorded on Developer's Lot and/or the receiver Lot to securitize the transfer. In such event, the parties agree to negotiate in good faith any revisions to this Agreement (including any exhibits hereto) which might be required to implement this intent that a proportionate amount of the Loan proceeds follow the Affordable Units regardless of on which Lot the transferred Affordable Units are developed. The Director shall have the authority on behalf of the Commission to make any such revisions without further consideration or approval by the Commission provided that (i) any such revisions are agreed to by the Director and Commission General Counsel, (ii) any such revisions do not result in any increased financial risk to the Commission and do not otherwise materially impair the Commission's interests, (iii) in no event may the cumulative amount loaned by the Commission pursuant to the Loan Agreements exceed \$3,000,00; and (iv) any such revisions are consistent with this Agreement. Any revisions that do not comply with the

requirements set forth in the preceding sentence shall be submitted to the Commission for approval..

c. 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 or Collateral Site (if different than the Property) prior to reconveyance in full of any and all Deeds of Trust on the Property and Collateral Site. 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."

g. The language of Section 2.2 is hereby reorganized and revised for each Loan Agreement to read as follows:

"2.2 Terms of Loan

a. General Provisions

i. The Loan shall be evidenced by two separate Notes, one for the Phase 1 Loan Draw and one for the Phase 2 Loan Draw (if accepted by Developer) (hereinafter described in Section 2.2.b.) and each secured by a separate Deed of Trust which meets all of the requirements of this Agreement.

ii. The Deeds 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.

iii. The terms of repayment of the Loan are set forth in each Note.

iv. The proceeds of the Loan shall be used exclusively to pay Predevelopment Costs incurred for the development of the Affordable Units. In specific regard to the Phase 1 Loan Draw only, Loan proceeds may be used for reimbursing Predevelopment Costs incurred prior to the date of execution of this Agreement; provided, however, that finance charges incurred prior to said date shall not be allowed. 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. As used herein, the term "incurred" means and includes obligations, encumbrances and expenditures evidenced by contracts, purchase orders, invoices and comparable documentation.

v. Prior to the Phase 1 Loan Draw or the Phase 2 Loan Draw, Developer, at its option, may designate the precise number and location of Affordable Units for which it is obligated under this Agreement including, without limitation, the development of all such Affordable Units on a single Lot so as to clearly separate Predevelopment Costs of the Affordable Units from the balance of the Project. In such event, the designation shall be

incorporated into the Notice of Affordability Restrictions on Transfer of Property and recorded on the Affordable Housing Site prior to the first disbursement of Loan funds in the Phase 1 Loan Draw or the Phase 2 Loan Draw (as applicable). If Developer designates that only Affordable Units will be built on any Lot and no market rate units will be built on such Lot, then Developer shall be entitled to claim one-hundred percent (100%) of Predevelopment Costs associated with such Lot. If before the Deeds of Trust on the Property and Collateral Site are reconveyed in full both of the following occur: (i) market rate units are developed on any Lot, and (ii) Developer is paid one hundred percent (100%) of Predevelopment Costs associated with such Lot or is paid more than the appropriate prorata share of Predevelopment Costs for such Lot in accordance with this Section taking into account the market rate units, such event shall constitute a material default under this Agreement and shall constitute an Event of Acceleration described in Section 5 of the Note, in which case, the unpaid principal amount and all accrued and unpaid interest of the Note shall become immediately due and payable. If after the Deeds of Trust on the Property and Collateral Site (if applicable) are reconveyed in full both of the following occur: (i) market rate units are developed on any Lot, and (ii) Developer is paid one hundred percent (100%) of Predevelopment Costs associated with such Lot or is paid more than the appropriate prorata share of Predevelopment Costs for such Lot in accordance with this Section taking into account the market rate units, such event shall constitute a material default under this Agreement and Developer shall thereafter be obligated to repay to Commission within thirty (30) days following such event such Predevelopment Costs paid to Developer pursuant to this Agreement plus interest from the time of such event until paid in full at the then legal rate. Until paid such reimbursement plus interest shall constitute a lien on the Property in accordance with Civil Code 2881.

b. Loan Disbursement Phasing

The proceeds of the Loan may be disbursed in two phases as follows:

i. Phase 1 Loan Draw. Subject to all of the terms and conditions of this Agreement (including, without limitation, Sections 2.3, 2.4, 2.5 and 2.6), forty-five percent (45%) of the total Loan amount ("Phase 1 Loan Draw") may be disbursed following the effective date of the First Amendment to this Agreement.

ii. Phase 2 Loan Draw. Subject to all of the terms and conditions of this Agreement (including, without limitation, Sections 2.3, 2.4, 2.5 and 2.6), the remaining fifty-five percent (55%) of the total Loan amount ("Phase 2 Loan Draw") may be disbursed if the SPA is Approved by the City and additional units are authorized beyond the Unit Base. In the event that Developer declines to accept the Phase 2 Loan Draw as provided in Section 1.3.b.(i)(B), Developer shall provide written notice to the Director of such rejection within ten (10) days after the SPA is Approved by the City. If a written rejection is not received by the Director within the ten (10) day notice period, Developer shall be presumed to have accepted the Phase 2 Loan Draw, in which event, the required number of Affordable Units shall be computed in the manner set forth in Section 1.3.b.(i)(A)."

h. Section 2.3 is hereby deleted for each Loan Agreement and amended in its entirety to read as follows:

"2.3 Conditions Precedent to Loan Closings

a. Phase 1 Loan Draw Loan Closing. The following are conditions precedent to the Phase 1 Loan Draw Loan Closing:

i. Developer shall be the fee simple owner of the Property and no monetary encumbrances or liens shall be recorded against the Affordable Housing Site or Collateral Site except the Permitted Mortgage, and the Affordable Housing Site and Collateral Site 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;

ii. Developer shall have: (a) executed and delivered to Commission the Note and Deed of Trust for the Phase 1 Loan Draw and the Fourth Amendment to Agreement Containing Covenants, (b) the Deed of Trust for the Phase 1 Loan Draw shall have been recorded against the Collateral Site in second priority lien position 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, and (c) the Fourth Amendment to Agreement Containing Covenants shall have been recorded against the Lot 3 Property, the Lot 11 Property, and the Lot 12 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;

iii. The Notice of Affordability Restrictions on Transfer shall have been recorded against the Lot 3 Property, the Lot 11 Property, and the Lot 12 Property;

iv. All Permitted Mortgagees shall have executed (in recordable form) an agreement in form, substance and content satisfactory to the Director and Commission General Counsel as described by California Health and Safety Code section 33334.14(a)(4) and such agreement shall have been recorded against the Lot 3 Property, the Lot 11 Property, and the Lot 12 Property;

v. Developer's representations and warranties set forth in Section 1.8 shall be true and correct as of the Loan Closing;

vi. Title Company shall be unconditionally committed to issue to Commission, at Developer's sole cost and expense, the Title Policy for the Phase 1 Loan Draw;

vii. This Agreement shall be in full force and effect and the owners of the Lot 3 Property, Lot 11 Property, and Lot 12 Property shall not be in default of any of its obligations under any agreement entered into with the Commission, including any attachments or exhibits thereto;

viii. Developer shall have delivered to Commission and the Director shall have approved a current appraisal of the Property approved in writing by the Director and which is prepared at Developer's expense by an independent certified M.A.I. appraiser with at least ten years relevant experience who is acceptable to the Director; and

ix. The Director shall have determined that the development of the Affordable Units on the Affordable Housing Site is in compliance with Commission Resolution No. 111. So long as the proposed design and development of the Affordable Units conforms to the provisions of Section 1.3, the Developer shall be deemed to be 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 by January 29, 2010. This deadline may be extended by the Director in writing for good cause shown, provided a written request, including a statement of reasons for the time limit extension request is filed with Commission prior to the expiration date.

b. Phase 2 Loan Draw Loan Closing. The following are conditions precedent to the Phase 2 Loan Draw Loan Closing:

i. Developer shall be the fee simple owner of the Property and no monetary encumbrances or liens shall be recorded against the Affordable Housing Site or Collateral Site except the Permitted Mortgage, and the Affordable Housing Site and Collateral Site 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;

ii. Developer shall have: (a) executed and delivered to Commission the Note and Deed of Trust for the Phase 2 Loan Draw, and (b) the Deed of Trust for the Phase 2 Loan Draw shall have been recorded against the Collateral Site 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;

iii. Developer's representations and warranties set forth in Section 1.8 shall be true and correct as of the Loan Closing;

iv. Title Company shall be unconditionally committed to issue to Commission, at Developer's sole cost and expense, the Title Policy for the Phase 2 Loan Draw;

v. The SPA shall have been Approved by the City and additional units are authorized beyond the Unit Base;

vi. This Agreement shall be in full force and effect and the owners of the Lot 3 Property, Lot 11 Property, and Lot 12 Property shall not be in default of any of its obligations under any agreement entered into with the Commission, including any attachments or exhibits thereto;

vii. Developer shall have delivered to Commission and the Director shall have approved a current appraisal of the Collateral Site approved in writing by the Director and which is prepared at Developer's expense by an independent certified M.A.I. appraiser with at least ten years relevant experience who is acceptable to the Director; and

viii. The Director shall have determined that the development of the Affordable Units on the Affordable Housing Site is in compliance with Commission Resolution No. 111. So long as the proposed design and development of the Affordable Units conforms to the provisions of Section 1.3, the Developer shall be deemed to be 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 by June 30, 2010. This deadline may be extended by the Director in writing for good cause shown, provided a written request, including a statement of reasons for the time limit extension request is filed with Commission prior to the expiration date."

i. The language of Section 2.5, subparagraph b., is hereby revised for each Loan Agreement to read as follows:

"All Loan funds disbursed pursuant to this Agreement shall be spent exclusively for Predevelopment Costs incurred for the development of the Affordable Units and for no other purpose. In specific regard to the Phase 1 Loan Draw only, Loan proceeds may be used for reimbursing Predevelopment Costs incurred prior to the date of execution of this Agreement; provided, however, that finance charges incurred prior to said date shall not be allowed. As used in this Agreement, the term "incurred" means and includes obligations, encumbrances and expenditures evidenced by contracts, purchase orders, invoices and comparable documentation."

j. The first sentence of Section 3.2, subparagraph a., is hereby revised for each Loan Agreement to read as follows:

"Developer shall develop the Project (including the Affordable Units) in accordance with this Agreement."

k. The language of Section 3.3 is hereby revised for each Loan Agreement to read as follows:

"It is the responsibility of Developer, without cost to Commission, to ensure that zoning of the Property and Affordable Housing Site and all applicable City land use requirements will be such as to permit development 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 Project, 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 Project 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.*”

l. The language of Section 3.5 is hereby revised for each Loan Agreement to read as follows:

“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. All time limits may be extended by the Director in writing for good cause shown provided a written request, including a statement of reasons for the time limit extension request is filed with Commission prior to the expiration date.”

m. The term “Property” appearing in Sections 3.13 and 3.15 is hereby revised to read “Property, Affordable Housing Site or Collateral Site.”

n. A new Section 3.16 is hereby added to each Loan Agreement to read as follows:

“In the event that the Affordable Units are not constructed in their entirety on the Property as provided in Section 1.7, then all of the terms and conditions that apply to the Property in this Agreement shall also apply to the Affordable Housing Site.”

o. The language of Section 4.1, subparagraphs a., b., and c, are hereby revised for each Loan Agreement to read as follows:

“a. A prescribed number of dwellings developed as part of the Project shall be Affordable Units as determined by operation of Section 1.3. At the Developer’s option, and subject to the approval requirements of Section 1.7 of this Agreement, all or a portion of the Affordable Units may be constructed on the Lot 3 Property, the Lot 11 Property, and/or the Lot 12 Property.

b. Of the total 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 total 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.”

p. A new graphic, depicting the Property and associated lots, is hereby added as Exhibit D, which is incorporated herein by reference.

q. Any and all references in the Loan Agreements to "the Deed of Trust" shall be amended to read "all Deeds of Trust on the Property and the Collateral Site."

3. Revisions to the Fourth Amendment to Agreement Containing Covenants Affecting Real Property (Including Rental Restrictions). The Fourth Amendment to Agreement Containing Covenants Affecting Real Property (Including Rental Restrictions), Exhibit C to each Loan Agreement, is hereby revised as follows and as otherwise necessary to implement the purposes of this First Amendment (as determined by Commission General Counsel):

a. A new Recital N on page 3 is hereby inserted to read as follows:

"N. The ED/KOH Loan Agreement, ED 2 Loan Agreement and KOH 12-17 Loan Agreement may be referred to herein individually by name and collectively as the "**Loan Agreement.**" "Loan Agreement" as used herein shall mean, refer to and include the Loan Agreement, as well as any and all riders, exhibits, addenda, implementation agreements, amendments and exhibits thereto (which are hereby incorporated herein by this reference) or other documents expressly incorporated by reference into the Loan Agreement. Any capitalized term not otherwise defined herein shall have the meaning ascribed to it in the Loan Agreement."

b. The language of Section 1.a.3.1.a. is hereby revised to read as follows:

"a. A prescribed number of dwellings developed on each Lot shall be Affordable Units as determined by operation of Section 1.3 of the Loan Agreement. At a minimum, Developer shall provide 24 Affordable Units on the Lot 3 Property, Lot 11 Property and/or Lot 12 Property. At Developer's option, and subject to the prior written approval of the Commission as set forth in Section 1.7 of the Loan Agreement, all or a portion of the Affordable Units may be constructed on the Lot 3 Property, Lot 11 Property and/or Lot 12 Property."

c. The language of Section 1.a.3.1.b. is hereby revised to read as follows:

"b. At least 40% of the required Affordable Units shall be available at a hereinafter defined Affordable Rent to and occupied by hereinafter defined Very Low Income Households."

d. The language of Section 1.a.3.1.c. is hereby revised to read as follows:

"c. A maximum of 60% of the required Affordable Units shall be available at an Affordable Rent to and occupied by hereinafter defined Low Income Households and Moderate Income Households."

e. A new Section 1.a.3.1.s is hereby added to read as follows:

“s. If the Director approves an alternative Affordable Housing Site in accordance with Section 1.7 of the Loan Agreement for one hundred percent (100%) of the Affordable Units required by Section 1.3 of the Loan Agreement and, as a result, no Affordable Units will be required to be developed on the Property but instead one hundred percent (100%) of the Affordable Units required by Section 1.3 of the Loan Agreement will be developed on another Lot, then, upon written request from the Developer and only following issuance by the City of Oxnard of certificates of occupancy for one hundred percent (100%) of the Affordable Units required by Section 1.3 of the Loan Agreement, the Director shall execute such documents as may be necessary to release the applicable affordable housing covenants in the Fourth Amendment to this Agreement Containing Covenants, all in such form, substance and content as approved by the Commission General Counsel.”

4. Revisions to the Promissory Note. The Promissory Note, Exhibit D to each Loan Agreement, is hereby revised as follows and as otherwise necessary to implement the purposes of this First Amendment (as determined by Commission General Counsel):

a. The principal amount of the Promissory Note described in the heading and in the first paragraph is hereby revised to correspond to the separate amounts of the Phase 1 Loan Draw and Phase 2 Loan Draw as described in Section 2.2.b.

b. Section 3 is hereby revised to read as follows:

“Interest. Except in an Event of Acceleration described in Section 5 below, this Promissory Note shall bear interest at the rate of _____ **[DRAFTING NOTE: INSERT LAIF (AS OF THE DATE OF THIS PROMISSORY NOTE) PLUS 1%]** per annum, simple interest, which shall accrue on the outstanding balance of this Promissory Note until the Loan is repaid in full (including interest) to the Commission.”

c. Section 5 is hereby revised by adding subparagraph e. to read as follows:

“e. If both of the following occur: (i) market rate units are developed on any Lot, and (ii) Borrower is paid one hundred percent (100%) of Predevelopment Costs associated with such Lot or is paid more than the appropriate prorata share of Predevelopment Costs for such Lot in accordance with Section 2.2.a(v) of the Loan Agreement taking into account the market rate units.”

5. Other Revisions to Exhibits. Other revisions shall be made to the exhibits to the Loan Agreements as necessary to implement the purposes of this First Amendment.

6. Counterparts. This First 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 First Amendment, which, with all attached signature pages, shall be deemed to be an original agreement.

7. Loan Agreement in Full Force and Effect. Except as otherwise expressly modified herein, the terms and conditions of the Loan Agreements shall remain unmodified and in full force and effect. From and after the effective date of this First Amendment, all references to the Loan Agreement shall mean the Loan Agreement as amended by this First Amendment.

8. Date of this First Amendment. The effective date of this First Amendment shall be the date that each of the following has occurred: (i) the date this First Amendment is approved and executed by the Commission; and (ii) the date each Loan Agreement and all exhibits thereto are updated to incorporate the revisions set forth herein.

[remainder of page left intentionally blank]

[signatures on following pages]

IN WITNESS WHEREOF, Commission and each 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

APPROVED AS TO FORM:
KANE, BALLMER & BERKMAN

By: _____
Susan Apy
Special Counsel

[remainder of page left intentionally blank]

[signatures on following pages]

DEVELOPER

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

Date: _____

By: [Signature]
Name: _____
Its: _____

Date: _____

By: _____
Name: _____
Its: _____

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

Date: _____

By: [Signature]
Name: _____
Its: _____

Date: _____

By: _____
Name: _____
Its: _____

KOH, LLC, a Delaware limited liability company

Date: _____

By: [Signature]
Name: _____
Its: _____

Date: _____

By: _____
Name: _____
Its: _____

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

Date: _____

By: [Signature]
Name: _____
Its: _____

Date: _____

By: _____
Name: _____
Its: _____

EXHIBIT A
Legal Description – Lot 3

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

EXHIBIT B
Legal Description – Lot 11

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

EXHIBIT C
Legal Description – Lot 12

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

EXHIBIT D

Property Map

