

FIRST AMENDED AND RESTATED AFFORDABLE HOUSING AND LOAN  
AGREEMENT

Cabrillo Economic Development Corporation  
457 West Gonzales Road

This FIRST AMENDED AND RESTATED AFFORDABLE HOUSING AND LOAN AGREEMENT (the "Agreement") is entered into this 23<sup>rd</sup> day of February 2010, between the City of Oxnard, a municipal corporation, (hereafter referred to as the "City") on the one hand, and Cabrillo Economic Development Corporation (hereafter referred to as "Developer") on the other hand. It amends and restates in its entirety the Affordable Housing and Loan Agreement dated October 14, 2008.

RECITALS

Developer is engaged in the development of forty-three rental housing units and related improvements (the "Project") on a two-acre site (the "Property") on West Gonzales Road in the City of Oxnard. A legal description of the Property is attached hereto as Exhibit A. Developer has requested that City loan to Developer funds necessary to proceed with the development of the Project. City is willing to loan funds under the terms set forth in this Agreement.

AGREEMENT

A. Definitions

1. As used in this agreement, unless a different meaning is apparent from the context or is specified elsewhere in this Agreement, the following words and terms shall have the same meaning given or attributed to them in the California Health and Safety Code and in Title 25 of the California Code of Administrative Regulations.

- a. housing costs;
- b. family;
- c. household;
- d. monthly adjusted income;
- e. monthly income;
- f. rent;
- g. very low income household or family;

2. For purposes of this agreement a very low-income household or family, is a household or family with income not greater than 50% of the Ventura County Metropolitan Statistical Area Median Income, adjusted for family size appropriate for the unit in question as set forth in California Administrative Code Section 6932 ("AMI"). For a very low-income household or family an "affordable rent" is a monthly rent that does not exceed 30% of 50% of the monthly AMI.

B. Project Description and Affordability Requirements/Farmworkers

1. This Agreement provides funds for development of forty-three (43) affordable rental units (collectively the "affordable units"). The affordable units shall be made available to and shall be restricted for occupancy by very low income families at an affordable rent to such families as provided in this Agreement. All units shall be made available to families earning 50% or less of the AMI. Units shall be made available at affordable rents to such families. The affordability covenant contained herein shall remain effective for 55 years after the date of the first occupancy of an affordable unit in the Project. In addition, to the extent permitted by applicable law, not less than eighteen (18) units in the Project shall only be made available for rent to families in which at least one wage earning adult is a Farm Worker. Farm Workers, for purposes of the Agreement, shall be those persons defined as Farm Workers by the United States Department of Agriculture Rural Development Program, unless the parties hereto agree in writing upon another definition. Not less than twenty-five (25) of the units in the Project shall only be made available for rent to families that qualify as special needs under the HUD 811 Supportive Housing for Persons with Disabilities program, to the extent permitted by applicable law.

2. 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 requirements. Nothing in this Agreement requires City to exercise its police or regulatory power in a certain manner.

3. Developer will execute a First Amended and Restated Regulatory Agreement ("Regulatory Agreement") in the form and substance attached hereto as Exhibit B, restricting rental of the affordable units as set forth above. The restrictions of this Regulatory Agreement are in addition to and independent of restrictions imposed by any other funding or regulatory agency.

4. To the extent permitted by applicable law, Developer will establish preferences for rental of the affordable units as follows: For eighteen (18) of the units, units will be first made available to Farm Worker families who reside in Oxnard, then to Farm Worker families with members who work in Oxnard, but reside elsewhere, and finally, units will be made available to all other Farm Worker families. To the extent permitted by applicable law, for the remaining twenty-five (25) units, units will be made available to families who qualify as low-income and disabled under the HUD 811 program, first to families who reside in Oxnard, then to families who work in Oxnard, but reside elsewhere, and finally to all other families. Developer will maintain a waiting list of all persons who apply to become tenants, with information sufficient to rank such persons. During the entire period of the Regulatory Agreement that units are rented, units will be made available to persons from the waiting list and other applicants in the order of priority set forth above. For purposes of this paragraph 4 above, a unit shall be considered to have been made available as follows:

- a. A unit shall be considered to have been made available if Developer actually notifies a potential tenant and a period of 48 hours elapses after such actual notice is given.

- b. At any time during such 48 hour availability period, the potential tenant may notify Developer of his/her election to rent the unit. In such event, Developer and tenant shall negotiate in good faith for rental of the unit, at the price for which it has been offered,

C. Project Funding

1. Loan Amount. City has made advances to developer and will make advances in the total sum of one million six hundred twenty three thousand eight hundred forty dollars (\$1,623,840), as necessary for and to be used only for development of this Project. This funding will be provided from "In Lieu Fees" collected by City pursuant to the provisions of City of Oxnard Ordinances Nos. 2545 and 2615. Such funding is referred to herein as "the Loan". The Loan shall bear interest as provided herein. The Loan shall be evidenced by this Agreement, by a First Amended and Restated Promissory Note in the form and substance of Exhibit C attached hereto ("Promissory Note"), secured by a First Amended and Restated Deed of Trust in the form and substance of Exhibit D attached hereto ("Deed of Trust"). If requested to do so by City, Developer shall execute security instruments granting to City or security interest in personal property, plans and specifications, relating to the Project, which shall have the same priority as the Deed of Trust.

2. Repayment Terms, Failure to Complete Project. If the Project has not commenced on or before five years from the date of this agreement, the Loan shall be repayable with interest at the rate of 4% per annum in one lump sum payment due 30 days after demand for payment is made. If the Project is not completed as evidenced by certificates of occupancy for all units within 10 years or later of the date Developer has obtained title to the Property or the date utility services have been made available to the Property, the Loan shall be repayable with interest at the rate of 4% per annum in one lump sum payment due 30 days after demand for payment is made.

3. Repayment Terms, Final Payment Date. Provided that the Project is completed as provided in Paragraph C.2. as evidenced by certificates of occupancy for all units, all Loan amounts then outstanding shall be due and payable no later than the earlier of 55 years from the date of first occupancy of a unit in the Project or December 31, 2063, provided that the loan has not been accelerated pursuant to other provisions of this Agreement. If the loan is accelerated, the loan shall be payable, with interest, according to the terms of this Agreement and of the Promissory Note evidencing the loan.

4. Project Completion Adjustment. Notwithstanding anything to the contrary contained in this Agreement, upon completion of the Project, Developer shall cause Lundquist, von Husen & Joyce or another independent certified public accountant chosen by Developer subject to the reasonable approval of City to prepare a cost certification of the "Total Development Costs of the Project" in accordance with the requirements of Internal Revenue Service Form 8609. in the event the sources of funds (including this Loan, and all other loans, and the limited partners capital contribution available to pay such costs) exceed Total Development Costs, Borrower shall use any such excess to repay the Promissory Note. Developer agrees to provide City with such audited cost

certification within twelve months (12) after issuance of the last certificate of occupancy for the Project.

“Total Development Costs of the Project” shall include all hard and soft development costs, a developer fee, all costs related to the tax credit syndication of the Project, an audit, and funding any reserves required to be capitalized.

If Developer wishes to include in Total Development Costs an Expense of more than \$10,000.00 for an owner construction upgrade over the design plans approved by the City of Oxnard Planning Commission and the City of Oxnard City Council, as articulated in the plans and specifications to be submitted to the City’s Development Services Department (which shall be consistent with the design plans), Developer shall seek approval of the City’s Housing Director, which approval shall not unreasonably be withheld.

If the Housing Director, within seven business days, disapproves the upgrade, the Housing Director shall state the reason for disapproval, and the upgrade shall not be included as part of the Total Development Cost of the Project for the Purposes of this paragraph. If the Housing Director does not act or approves the upgrade, the upgrade may be added to the Total Development Costs.

5. Information Requests. If requested in writing to do so by the City’s Housing Director, Developer shall, upon request of the City promptly (and in no event later than 30 days from request) provide all documentation required by City necessary and appropriate to audit expenditure of the funds loaned under this agreement, including invoices, purchase orders, and documents showing proof of payment.

6. Fidelity Bond. Developer, if the City in writing so requests, shall obtain a blanket fidelity bond from a bonding company acceptable to the City covering all officers and employees of Developer for loss of Loan funds caused by dishonesty in an amount not less than the Loan. Should such a loss of Loan funds occur, Developer agrees to diligently pursue recovery under the bond and to assign or remit to the City all funds recovered. If a Fidelity Bond is required, the cost of such Fidelity Bond shall be added to development costs for purposes of this Agreement.

7 Subordination. The City agrees to subordinate the obligations of this Agreement, and the attached Regulatory Agreement and Deed of Trust to be recorded on the Property, to construction or permanent financing obligations as provided in this Paragraph C.7. Developer shall make a written request for subordination, which written request shall include an appraisal of the value of the Project (including improvements to be constructed thereon). Developer shall supply the Housing Director with information relating to the Project as requested by the Housing Director. If the Housing Director determines by examining such information as the Housing Director deems appropriate concerning the value of the property, the value of improvements, and the nature and extent of institutional loan and tax credit and bond financing sources for the Project, that the City’s secured interests will not be jeopardized by subordination, the Housing Director shall execute subordination agreements pursuant to this paragraph. City will not

subordinate its interest if Developer is in default hereunder unless the default will be cured in the transaction for which subordination is requested.

8. Additional Conditions Precedent to Funding. Developer shall not obligate or request disbursement of funds, and City shall not be required to disburse funds to Developer, until the City is provided with environmental studies sufficient to demonstrate to the City that the Property is free of environmental defects or impairments which in City's sole discretion and judgment require remediation or other action under, local, State; or federal law, or which in City's sole discretion and judgment, represent health hazards.

9. Loan Fund Disbursement. Any Loan funds shall be disbursed only upon presentation of an invoice or other document requesting disbursement and identifying the purpose of the request with sufficient detail so that City may determine that the request is for purposes of development of the Project permitted by this Agreement. City shall have the right to determine in its reasonable discretion whether funds requested are for the purposes of development. Funds for payment of architects, engineers and construction contractors shall prima facie be considered expenditures for development. The City shall not be obligated to make any disbursements until Developer becomes the owner of the Property. Before making a disbursement to Developer for expenses incurred by Developer, the City may in its discretion (1) require proof that payment has been made by Developer for the expenses claimed, (2) require that the disbursement be made in the form of a check jointly payable to Developer and the third party to whom Developer owes payment; and (3) require evidence to demonstrate that the payment is reasonable.

D. Schedule of Performance.

Subject to the provisions of Paragraph F. 16 of this Agreement, the construction of the Project shall be completed no later than the dates shown below; provided, however, that any delay caused by City's failure to perform an obligation imposed on City's under this Agreement shall extend the date of completion shown by the same number of days as any such delay caused by City.

EVENT	PERFORMANCE DATE
Commencement of construction of The Project	Five years from the date of this agreement.
Completion of construction	Ten years from the later of the date of Property acquisition or the date utility service is made available to the Property

A failure to meet the dates for performance shall be a default under this Agreement. In any event, notwithstanding any other provisions of this Agreement, and in addition to any

other defaults, failure to complete the Project within the time period provided shall be a default.

E. Assumption and Assignment.

This Agreement, together with the Regulatory Agreement, the Promissory Note, and the Deed of Trust may not be assigned to any party without city's written consent. Such consent shall not be unreasonably withheld so long as City's interests in the Project are not placed at risk by such assignment. The City agrees to consent to such assignment and assumption to a limited partnership in which the Developer or its affiliate is the managing general partner.

F. Other Project Agreements.

1. Construction Requirements. Developer shall provide all construction management for the Project, including design development, bid solicitation, contract award, construction supervision and all other usual and customary service of an owner or general contractor.

2. Construction Requirement. All 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 shall comply with all federal, state and local laws and regulations pertaining to construction of the Project, including laws relating to competitive bidding and payment of prevailing wages, to the extent the same may be applicable. 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 City. Nothing herein excuses compliance by Developer with any or all City ordinances, resolutions, or development procedures and standards in connection with development of the Project. Developer shall comply with all applicable laws governing construction of the Project, including, if applicable state and federal laws governing payment of prevailing wages.

3. Maintenance and Repairs. Developer shall, at all times during the term of this Agreement, cause the Property and the Project to be maintained in good condition and repair regardless of the cause of the disrepair. Developer shall be fully and solely responsible for costs of maintenance, repair, addition and improvements. City, and any of its employees, agents, contractors or designees shall have the right to enter upon the Project at reasonable times and in a reasonable manner to inspect the Project. Developer shall not be responsible for maintenance of property dedicated to the public after the dedication has been accepted.

4. Monitoring Performance. 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 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. Developer shall be responsible for payment of any expense associated with relocating existing occupants of the Property.

Notwithstanding the foregoing, at the written request of City, its agents, employees, or attorneys, Developer shall (1) promptly 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, (2) provide City a photocopy of the certified financial statements of Developer for the past two years, (3) at all reasonable times during normal business hours, provide access to and the right to inspect, copy, audit, and examine all such books, records, and other documents of Developer until two years after the expiration of this Agreement.

5. Annual Reports; Records.

- a. By July 31<sup>st</sup> of each year, beginning on the first July after which any units of the Project are occupied, and continuing thereafter, Developer shall submit in writing an annual status report to City providing all of the following information:
  - i. The total number of tenants in the Project during the preceding year;
  - ii. The household size and income of each tenant in the Project;
  - iii. The rent charged or collected from each tenant during the preceding year.
- b. Developer understands and agrees that City may, at any time, request additional information that may be required for the purpose of making necessary and appropriate reports to the Department of Housing and Urban Development and State Department of Housing and Community Development, or for otherwise evaluating Developer's progress and performance pursuant to this Agreement. In the event of such requests, Developer shall comply by providing the appropriate data within 15 working days from the date of any such request.
- c. Developer further understands and agrees that the records and additional information described in this paragraph are required to be retained on a continuing basis for a period of 5 years after this Agreement has expired.

- d. Developer further understands and agrees that its failure to comply with any and all reporting and data submission requirements of this Paragraph F.5 may be deemed by City to be evidenced of cessation of operation under the Regulatory Agreement or conversion to an unapproved change in use, requiring recovery of loan funds pursuant to the Regulatory Agreement, attached hereto as Exhibit B, provided, however, that a failure to comply with the reporting and data submission requirements shall not be deemed to be cessation of operation under the Regulatory Agreement or a conversion to an unapproved change unless Developer has failed to cure such failure to comply within 30 days after City gives Developer a "notice to cure," or if the failure cannot be cured within 30 days, fails to commence to cure within 30 days and thereafter diligently pursue such cure.
- e. All financial transactions must be supported by complete and verifiable source documents. Records shall provide a clear audit trail.

6. Enforcement of the Agreement. The affordability requirements Paragraph B1 of this Agreement, and in the Regulatory Agreement constitute covenants, Conditions and restrictions that run with the land and are enforceable by means of the Deed of Trust. Subject to the provisions of Paragraph F. 16 below, if Developer fails to Perform any obligation under this Agreement, the Regulatory Agreement, the Promissory Note, or the Deed of Trust securing performance of the Regulatory Agreement (or fails to Cause the Regulatory Agreement and Deed of Trust to be recorded against the Property as soon as Developer becomes the owner of the Property) and fails to cure the default within thirty (30) days after City has notified Developer in writing of the default or if the default cannot be cured within thirty (30) days, fails to commence to cure within thirty (30) days and thereafter diligently pursue such cure, City shall have the right to enforce this Agreement by any or all of the following actions:

- a. Foreclosure Under Deed of Trust and Recovery of Loan Funds. City May declare a default, terminate this Agreement, and proceed to recover the amount of Loan Funds disbursed under the Regulatory Agreement (Exhibit B), Deed of Trust (Exhibit D), and Promissory Note (Exhibit C).
- b. Action to Compel Performance or for Damages. City may bring an action at law or in equity to compel Developer's performance of its obligations under this Agreement, and/or for damages.
- c. Remedies provided under Loan Documents. City may exercise any other remedy provided under this Agreement, the Regulatory Agreement, Deed of Trust, and Promissory Note.

7. Insurance. With respect to any Project activity and before taking any Action under this Agreement, Developer shall obtain and maintain in full force and effect throughout the period of this Agreement, the minimum insurance coverages set forth in the attached Exhibit INS-A

8. Hold Harmless, Indemnification. During the period commencing with execution of this Agreement by City, and continuing until such time as the Developer no longer owns any portion of the Property, Developer agrees to and shall defend, indemnify and hold harmless City, and their respective council members, commissioners, directors, officers, employees, contractors and agents from and against all claims, liability, loss, damage, costs or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused by any person or to the property of any person which shall occur on or adjacent to the Property, or in connection with the activities of Developer under this Agreement, and which shall be directly or indirectly caused by any acts done or any errors or omissions of Developer or its officer, employees, contractors or agents, save and except claims or litigation arising through the sole negligence or wrongdoing and/or sole willful misconduct of City or any other indemnitee. Developer is not obligated to indemnify City or others for claims based upon their use of information provided by Developer, provided the information itself is accurate. Developer shall at all times indemnify and hold harmless City, its officers and employees, from all loss, litigation, liability, damage, or expenses, including, without limitation, potential tenant relocation costs arising under this Agreement and/or any subcontract which Developer enters into relating to implementation of the Project.

9. Sale of Property/Change of Use. Developer agrees and declares that the Property and the Project shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, operated sold, and approved subject to all obligations set forth or incorporated in this Agreement, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Property and the Project. All of the obligations set forth or incorporated in this Agreement shall constitute covenants which run with the land and shall be binding on Developer and its successors and assigns, and all parties having or acquiring any right, title or interest in, or to any part of the Property or Project. Developer further understands and agrees that the loan funds provided to Developer under this Agreement are made on the condition that Developer and all subsequent owners, or other successors and assigns of the Property and/or Project lease and rent the Units in accordance with the terms and conditions stipulated in Paragraph B.1 of this Agreement, and in the Regulatory Agreement (Exhibit B) for a term of 55 consecutive years commencing upon the date that the Project is first occupied. In the event that Developer or any of its successors and assigns violates any of these covenants, following reasonable notice and opportunity to cure, the total amount of Loan Funds shall become immediately due and payable.

10. Developer Transfer. Developer shall not assign or transfer all or any part of this Agreement without the prior written approval of City. City agrees to give such approval if: (1) the change is to a joint venture entity or limited partnership for financing in which the original Developer or its affiliate remains the managing general partner or possesses controlling ownership and management; (2) in the reasonable determination of City, the proposed reconstituted Developer is comparable in all material respects (including experience, character and financial capability) to change (or assignment of this Agreement in connection therewith) shall be by instruments reasonably satisfactory to the City Attorney of City. Evidence of the proposed assignees' qualifications to meet the obligations of the Developer under this Agreement shall be subject to the approval of the

Housing Director of the City of Oxnard ("Director") or his designee, which approval is not to unreasonably be withheld.

Developer represents and agrees for itself, each partner and any successor in interest of itself and each partner that prior to issuance by City of a Certificate of Occupancy for all the units to be developed, and without the prior written approval of City, there shall be no significant change in the ownership of Developer or in the relative proportions thereof, or with respect to the identity of the parties in control of Developer or the degree thereof, by any method or means, except a transfer permitted under Paragraph E. of this Agreement.

Developer shall promptly notify City 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 City if without the prior approval of City; there is any significant change (voluntary or involuntary) in membership, management or control of Developer or its associates (other than such changes occasioned by the death or incapacity of any individual) prior to issuance of a Certificate of Occupancy for all units to be developed.

11. Permits and Other Approvals. 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 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.

12. Authority to Bind. By entering into this Agreement, Developer certifies it is qualified and licensed to conduct business in the State of California.

13. Notice. All notices given or required to be given to this Agreement, shall be in writing and may be given by personal delivery or by mail. Notice sent by mail shall be addressed as follows:

TO CITY: City of Oxnard Affordable Housing Program  
435 South D Street  
Oxnard, California 93030  
Attention: Housing Director

TO DEVELOPER: Cabrillo Economic Development Corporation  
702 County Square Drive  
Ventura, CA 93003  
Attention: Executive Director

And, when addressed in accordance with this paragraph, shall be deemed given upon two (2) business days after deposit in the United States mail, postage prepaid. In all other

instances, notices shall be deemed given at the time of actual delivery. Changes may be made in the name and addresses of persons to whom notices are to be given by giving notice in the manner prescribed in this paragraph.

14. Compliance with Law. Developer shall comply with all applicable laws and regulations in the implementation of this Agreement.

15. Contractual Relationship. The contractual relationship between City and Developer is independent and under no circumstances shall Developer be considered an agent, partner, or joint venturer of City.

16. Enforced Delay; Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by any of the parties hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, terrorist attacks, epidemics, quarantine restrictions, freight embargos, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, materials or tools, delays of any contractor, subcontractor or supplier, acts or omissions of another party, acts failures to act of any public or governmental agency or entity (other than the acts or failures to act of City which shall not excuse performance by City), or any other causes beyond the control or without the fault of the party claiming an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from time to time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City's Housing Director and Developer.

17. Benefit of Agreement. This Agreement and every provision hereof are for the exclusive benefit of Developer and City and not for the benefit of any other party. There shall be no incidental or other beneficiaries of any of Developer's or City's obligations under this Agreement.

18. Form and Substance of Exhibits/Other Agreements. Documents in the form and substance of the attached Exhibits are an integral part of this Agreement. Such documents, however, may be changed prior to execution in manners that in the opinion of the City Attorney, do not materially affect the substance of the agreements contained herein. The Housing Director is authorized to and accept documents in the form of the Exhibits, as well as any other documents necessary and appropriate to implement this Agreement.

19. Enforcement of Agreement. In any terms, provisions, conditions or covenants in this Agreement, or the application thereof to any party or circumstances, shall to any extent be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms, provisions, conditions or covenants to persons or circumstances other than those as to whom or which it is held invalid or unenforceable,

shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

20. Governing Law. The terms of this Agreement shall be interpreted according to the laws of the State of California. Should litigation occur, venue shall be in the Superior Court of Ventura County.

21. Modifications. To the extent that any lender to, or equity investor in, the Project requires changes to this Agreement or any document, the form of which is an exhibit to this Agreement, the City agrees to consent to such changes, and the City and the Developer shall cooperate to effect such changes within a reasonable time.

22. Property Subdivision. The parties anticipate that the Property will be subdivided into two parcels for two separate affordable housing projects to be constructed on the Property, the farm worker project and the HUD 811 project. The Lender agrees to consent to any subdivision proposed by Borrower to accomplish such division provided that the principal amount of the Loan associated with each parcel shall be the original principal amount of the Loan multiplied by the ratio derived by dividing the square footage of that parcel by the total square footage of both parcels, that the Deed of Trust remains as a first lien on both parcels except as otherwise provided in this Agreement and that the Borrower is not then in default under the Loan Documents. The parties anticipate that there may need to make some minor revisions to the Loan documents at the time the Property is a subdivided to affect such changes and agree to work cooperatively to so modify the Loan Documents while maintaining the initial intent and purpose of such documents.

CITY OF OXNARD

CABRILLO ECONOMIC  
DEVELOPMENT CORPORATION

By: \_\_\_\_\_  
Dr. Thomas E. Holden, Mayor

By:     *K. Jack*    

ATTEST:

\_\_\_\_\_  
Daniel Martinez, City Clerk

APPROVED AS TO FORM:

*Alan Holmberg*

Alan Holmberg, City Attorney

APPROVED AS TO INSURANCE:

Jim Cameron, Finance Director

## EXHIBIT LIST

A - Legal Description

B - Regulatory Agreement

C - Promissory Note

D - Deed of Trust

INS-A

EXHIBIT A

All that certain real property situated in the County of Ventura, State of California, described as follows:

PARCEL 1:

Those portions of Subdivisions 12 and 21 of the Rancho El Rio De Santa Clara O' La Colonia, in the city of Oxnard, County of Ventura, State of California, as per Partition Map filed in the Office of the County Clerk of said County n an entitled "Thomas A. Scott, et al., Plffs. Vs. Rafael Gonzales, et al., Defts.", also being a portion of Lot of the Resubdivision of Subdivision 12 of said Rancho as shown on Licenses surveyor's map filed in Book 2, Page 28 of Record of Surveys, in the office of the County Recorder of said County, described as follows:

Beginning at a point in the Westerly line of the lands described in the Deed recorded in Book 2390, Page 99 of Official Records, from which said point the most Southwesterly corner thereof bears South 00° 12' 35" East 27 feet distant; thence from said Point of Beginning and along said Westerly line,

1<sup>st</sup>: North 00° 12' 35" West 257.42 feet to a point in a line parallel with a distant Southerly 435 feet from the Northerly line of said lands; thence along said parallel line,

2<sup>nd</sup>: South 89° 56' 23" East 340 feet to a point in a line parallel with the said Westerly line of said land; thence along said parallel line,

3<sup>rd</sup>: South 00° 12' 35" East 257.52 feet to a point in a line parallel with a distant Northerly 27 feet from the Southerline line of said lands; thence along said parallel line,

4<sup>th</sup>: North 89° 55' 25" West 340 feet to the Point of Beginning.

Said land is also shown as Parcel "B" of Parcel map recorded in Book 5, Page 37 of parcel maps.

EXCEPT THEREFROM all oil, gas, minerals and other hydrocarbon substances in, on, or under said land without the right of surface entry and without the right of subsurface entry except at a depth of more than 500 feet below the surface of said land as reserved by Andrew J. Borchard, by Deed recorded September 10, 1963, in Book 2390, Page 99 of Official records.

PARCEL 2:

A non-exclusive easement for roadway over and across the Southerly 20.00 of the Northerly 45.00 feet of Parcel "C", as said Parcel "C" delineated on that certain map filed in Book 5, Page 37 of Parcel maps, in the Office of the County Recorder of said Ventura County.

Assessor's Parcel Number: 130-0-250-035

EXHIBIT B

Recording Requested by and  
When Recorded Return to:

City of Oxnard  
305 West Third Street  
Oxnard, California 93030

No Recording Fee Required in Accordance  
With California Government code Section 6103

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SPACE ABOVE THISLINE FOR RECORDER USE

FIRST AMENDED AND RESTATED REGULATORY AGREEMENT  
(CITY OF OXNARD)

THIS FIRST AMENDED AND RESTATED REGULATORY AGREEMENT (CITY OF OXNARD) ("Regulatory Agreement") is entered into effective February 23, 2010, by Cabrillo Economic Development Corporation ("Developer") in favor of the City of Oxnard ("City") pursuant to and in evidence of an "Affordable Housing and Loan Agreement" executed by Borrower concurrently herewith (the "Agreement"). It amends and restates in its entirety that certain Regulatory Agreement dated October 14, 2008.

WHEREAS, Developer is or will be the owner of that certain real property in the City of Oxnard ("City"), County of Ventura, State of California ("Property") described in Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, Developer and city have entered into the Agreement in which Developer has agreed to purchase and operate the Property as an affordable housing project, and city has loaned \$1,623,840 to assist development of the affordable housing project (the "Project");

NOW, THEREFORE, IN CONSIDERATION FOR CITY'S ASSISTANCE, DEVELOPER COVENANTS AND AGREES FOR THE BENEFIT OF CITY AS FOLLOWS:

AGREEMENT

1. Definitions

- a. As used in this Regulatory Agreement, unless a different meaning is apparent from the context or is specified elsewhere in this Regulatory

Agreement, the following words and terms shall have the same meaning given or attributed to them in Title 25 of the Code of Regulations.

housing costs;  
family;  
household;  
monthly adjusted income;  
monthly income;  
rent;  
very low income household or family.

- b. Farm workers shall be those persons defined as farm workers by the United States Department of Agriculture Rural Development Program, or such other definition upon which City and Developer may mutually agree in writing.
  - c. For the purposes of this Regulatory Agreement a very low-income household or family, is a household or family with income not greater than 50% of the Ventura County Metropolitan Statistical Area median Income, adjusted for family size appropriate for the unit in question as set forth in California Administrative code Section 6932 ("AMI"). For an extremely low-income household or family an "affordable rent" is a monthly rent that does not exceed 30% of 50% of the monthly AMI.
2. Term. The provisions of this Regulatory Agreement shall remain in effect for a period of 55 years from the date of first occupancy of a unit in the Project.
  3. City Contributions. The City has provided funds for development costs of approximately forty-three (43) affordable apartment units.
  4. City Conditions. The Project shall meet all City conditions rules and regulations and shall be required to have approval of the Oxnard Planning Commission and City Council as required by City ordinances, resolutions, regulations and requirements.
  5. Affordability Requirement, Farmworkers. All units shall be made available and rented only to very low income households or families earning 50% or less of AMI which may include extremely low income households or families. The units will be rented at rents which are not greater than 30% of 50% of the AMI. To the extent permitted by applicable law Eighteen (18) of the units shall be rented to persons or families at least one wage-earning adult of which is a farmworker. To the extent permitted by applicable law Twenty-five units shall be rented to families where one member of the family qualifies as disabled, under the HUD 811 Supportive Housing Program.

6. Oxnard Preference. To the extent permitted by applicable law, Developer will establish a preference for rental of the units. Preference will be established as follows:
- a. For Eighteen (18) of the units
    - i. Farm worker families who reside in Oxnard;
    - ii. Farm Worker families who work in Oxnard, but reside elsewhere;
    - iii. Other Farm Worker families.
  
  - b. For the remaining twenty-five (25) of the units, families that qualify under the HUD 811 Program:
    - i. Families who live in Oxnard;
    - ii. Families who work in Oxnard and live elsewhere;
    - iii. All other families.

Developer will maintain a waiting list of all persons who apply to become tenants, with information sufficient to rank such persons.

During the entire period of the Regulatory Agreement that units are rented, units will be made available to persons from the waiting list and among other applicants in the order of priority set forth above.

For purposes of this paragraph 6, units shall be considered to have been made available as follows:

- a. A unit shall be considered to have been made available if Developer actually notifies a potential tenant and a period of 48 hours elapses after such actual notice is given.
  - b. At any time during such 48 hour availability period, the potential tenant may notify Developer of his/her election to rent the unit. In such event, Developer and tenant shall negotiate in good faith for rental of the unit.
7. Construction. All 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 shall comply with all federal, State and local laws and regulations pertaining to construction of the Project, including laws relating to competitive bidding and payment of prevailing wages, to the extent the same may be applicable. 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 Regulatory 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 city ordinance or resolution at the time of submittal, unless such fees or exactions are waived by City. Nothing herein excuses compliance by Developer with any or all City ordinances, resolutions or procedures in connection with development of the Project.

8. Maintenance. Developer shall, at all times during the term of this Regulatory Agreement, cause the Property and the Project to be maintained in good condition and repair regardless of cause of the disrepair. Developer shall be fully and solely responsible for costs of maintenance, repair, addition and improvements. City, and any of its employees, agents, contractors or designees shall have the right to enter upon the Project at reasonable times and in reasonable manner to inspect the project.
9. Reports. Developer will provide City with reports and records as follows:
  - a. Developer understands and agrees that City may, at any time, request information that may be required for the purpose of making necessary reports to the Department of Housing and Urban Development and State Department of Housing and Community Development, or for otherwise evaluating Developer's progress and performance pursuant to this Regulatory Agreement. In the event of such requests, Developer shall comply by providing the appropriate data within 15 working days from the date of any such request.
  - b. Developer further understands and agrees that the records and additional information described in this paragraph are required to be retained on a continuing basis for a period of 5 years after this Regulatory Agreement has expired.
  - c. Developer further understands and agrees that its failure to comply with any and all reporting and data submission requirements of this paragraph 9 may be deemed by City to be evidence of cessation of operation under the Regulatory Agreement or conversion to an unapproved change in use, requiring recovery of loan funds pursuant to the Regulatory Agreement, provided, however, that a failure to comply with the reporting and data submission requirements shall not be deemed to be cessation of operation under the Regulatory Agreement or a conversion to an unapproved change unless Developer has failed to cure such failure to comply within 30 days after City gives Developer a "notice to cure", or if the failure cannot be cured within 30 days, fails to commence to cure within 30 days and thereafter diligently pursue such cure.
  - d. All financial transactions must be supported by complete and verifiable source documents. Records shall provide a clear audit trail.

- e. Without limiting the foregoing, Developer shall provide each an all of the reports described in Paragraph F.5. of the Loan Agreement.

The affordability requirements contained in this Regulatory Agreement constitute covenants, conditions and restrictions that run with the land. Subject to the provisions of paragraph 17 below, if Developer fails to perform any obligation under this Regulatory Agreement, and fails to cure the default within 30 days after City has notified Developer in writing of the default or if the default cannot be cured within 30 days, fails to commence to cure within 30 days and thereafter diligently pursue such cure, City shall have the right to enforce this Regulatory Agreement by any means permitted by law, including an action at law or in equity to compel Developer's performance of its obligations, and/or for damages.

10. Hold Harmless Indemnification.

- a. Developer shall at all times defend, indemnify and save City, the City of Oxnard Community Development Commission and the City of Oxnard Housing Authority, including their boards, council members, commissioners, agencies, departments, officers, employees, agents and volunteers, harmless against any and all claims, lawsuits, judgment, demands and liability against City, CDC, or the City of Oxnard Housing Authority, all of their boards, council members, commissioners, agencies, departments, officers, employees, agents and volunteers, including those arising from injuries or death of persons and for damages to property, arising directly or indirectly out of the operations conducted or subsidized in whole or in part by City related to this Regulatory Agreement, save and except claims or litigation arising through the sole negligence or wrongdoing and/or sole willful misconduct of City or any other indemnitee. Developer is not obligated to indemnify City or others for claims based upon their use of information provided by Developer, provided the information itself is accurate. Developer shall at all times indemnify and hold harmless City, its officers and employees, from all loss, litigation, liability, damage, or expense, including, without limitation, potential tenant relocation costs arising under this Regulatory Agreement and/or any subcontract which Developer enters into relating to implementation of the Project.
- b. Developer's obligation to defend shall arise when a claim, demand or action is made or filed, whether or not such claim, demand or action results in a determination of liability or damages as to which Borrower is obligated to indemnify and hold harmless.

11. Modifications. This Regulatory Agreement is subject to written modification and termination as necessary by City in accordance with requirements contained in any future federal legislation and regulations. All other modifications must be in written form and approved by both parties. To the extent that any lender to, or equity investor in, the



15. Compliance With Law. Developer shall comply with all applicable laws and regulations in the implementation of this Regulatory Agreement.

16. Contractual Relationship. The contractual relationship between City and Developer is independent and under no circumstances shall Developer be considered an agent or partner of City.

17. Enforced Delay; Extension Of Times Of Performance. In addition to specific provisions of this Regulatory Agreement, performance by any of the parties hereunder shall not be deemed to be in default, and all performance and other dates specified in this Regulatory Agreement shall be extended, where delays or defaults are due to: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargos, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, materials or tools, delays of any contractor, subcontractor or supplier, acts or omissions of another party, acts or failures to act of any public or governmental agency or entity (other than the acts or failures to act of City which shall not excuse performance by City), or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. Notwithstanding anything to the contrary in this Regulatory Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Regulatory Agreement may also be extended in writing by the mutual agreement of City's Housing Director and Developer.

18. Benefit Of Agreement. This Regulatory Agreement and every provision hereof is for the exclusive benefit of Developer and City and not for the benefit of any other party. There shall be no incidental or other beneficiaries of any of Developer's or City's obligations under this Regulatory Agreement.

19. Enforcement Of Agreement. If any terms, provisions, conditions or covenants in this Regulatory Agreement, or the application thereof to any party or circumstances, shall to any extent be held invalid or unenforceable, the remainder of this Regulatory Agreement, or the application of such terms, provisions, conditions or covenants to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Regulatory Agreement shall be valid and enforceable to the fullest extent permitted by law.

20. Governing Law. The terms of this Regulatory Agreement shall be interpreted according to the laws of the State of California.

21. Rights of Mortgage Holders. The provisions of these Covenants do not limit the right of the holder of any mortgage, deed of trust or other lien or encumbrance to exercise any of its remedies for the enforcement of any pledge or lien upon the Property, recorded

prior in time to this Regulatory Agreement or to which this Regulatory Agreement has been subordinated in writing. In the event of any foreclosure under any such mortgage, deed of trust, or other lien or encumbrance, or a sale pursuant to any power of sale included in any such mortgage or deed of trust, the purchaser or purchasers and their successors and assigns and the Property shall not be subject to conditions, restrictions and covenants contained in Paragraphs 5, 6, and 9 hereinabove.

22. City Successors. City, its successors and assigns, is deemed the beneficiary of the covenants contained herein, without regard to technical classification and designation. The covenants shall run in favor of City, its successors and assigns, without regard to whether City has been, remains, or is an owner of any land or interest therein.

23. Modification. City and its successors and assigns, and Developer and its successors and assigns shall have the right to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants or restrictions contained in these covenants without the consent of any tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under a deed of trust or any other person or entity having any interest less than a fee in the Property: provided, however, that the obligations set forth in paragraph 21 shall not be subject to modification without the consent of any affected lienholder.

24. No Discrimination. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, national origin, sex, age, disability, marital status, sexual preference, creed, ancestry, familial status, medical condition, or retaliation for having filed a discrimination complaint, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Developer itself or any person claiming under or through it, establish or permit any such practice or practices or discrimination or segregation with reference to the selection, location, number use or occupancy of buyers, tenants, lessees, subtenants, sublessees, or vendees of the Property.

The Developer shall refrain from restricting the rental, sale or lease of the Property to any person on the basis of race, color, religion, ancestry, familial status, national origin, sex, age, disability, marital status, sexual preference, creed, ancestry, medical condition, or retaliation for having filed a discrimination complaint. All deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

“The transferee 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 12955.0 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.”

**IN WITNESS WHEREOF**, City and Developer have executed this Regulatory Agreement.

**(NOTARIZATION REQUIRED)**

**City:**

THE CITY OF OXNARD

\_\_\_\_\_  
Dr. Thomas E. Holden, Mayor

**Developer:**

CABRILLO ECONOMIC  
DEVELOPMENT CORPORATION,  
A CALIFORNIA NONPROFIT  
PUBLIC BENEFIT  
CORPORATION

By: \_\_\_\_\_

*K. Clark*

**ATTEST:**

\_\_\_\_\_  
Daniel Martinez, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Alan Holmberg, City Attorney

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of Ventura

On Feb 17, 2010 before me, Laurie Ann Loreda, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Karen Flock  
Name(s) of Signer(s)

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 Laurie Ann Loreda  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

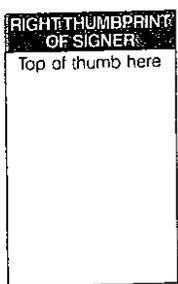
Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

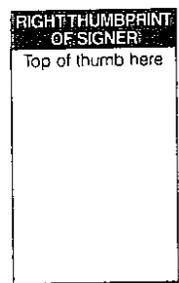
**Capacity(ies) Claimed by Signer(s)**

- Signer's Name: \_\_\_\_\_
- Individual
  - Corporate Officer — Title(s): \_\_\_\_\_
  - Partner —  Limited  General
  - Attorney in Fact
  - Trustee
  - Guardian or Conservator
  - Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

- Signer's Name: \_\_\_\_\_
- Individual
  - Corporate Officer — Title(s): \_\_\_\_\_
  - Partner —  Limited  General
  - Attorney in Fact
  - Trustee
  - Guardian or Conservator
  - Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

EXHIBIT C

FIRST AMENDED AND RESTATED  
PROMISSORY NOTE  
Affordable Housing Assistance  
(Secured by Deed of Trust)

\$1,623,840

Oxnard, California  
February 23, 2010

This "Amended and Restated Promissory Note, amends, restated, and supercedes the Promissory Note secured by Deed of Trust, executed October 14, 2008 by the herein referenced borrower and increases the amount of the Loan described therein to an amount of One Million Six Hundred Twenty Three Thousand Eight Hundred Forty Dollars (\$1,623,840).

**FOR VALUE RECEIVED**, the undersigned, Cabrillo Economic Development Corporation, a California nonprofit public benefit corporation ("Borrower"), hereby promises to pay to the order of the City of Oxnard, a California municipal corporation ("Lender"), the principal sum of One Million Six Hundred Twenty Three Thousand Eight Hundred Forty Dollars (\$1,623,840) with interest on the unpaid balance thereof from the date of each advance evidenced by this Note set forth above until repaid at the rate of four percent (4%) per annum (except as otherwise provided herein). The term Loan as used herein, means the Loan evidenced by this Note. The loan is made pursuant to the terms of Affordable Housing and Loan Agreement (the "Loan Agreement") and Regulatory Agreement ("Regulatory Agreement") both dated October 14, 2008 and an Amendment and Restated Affordable Housing and Loan Agreement, executed concurrently herewith between Borrower and Lender. Both principal and interest are payable as hereinafter provided, to Lender at 300 W. Third Street, Oxnard, California 93030, Attention: Finance Director, or at such other place as from time to time may be designated by the holder of this Seconded Amended and Restated Promissory Note ("Note").

All of the provisions of this Note are agreements which are secured by the Deed of Trust securing this Note. A default in observance of any of the provisions is a default with consequences under the Deed of Trust. All terms not otherwise defined in this Note have the meaning assigned to such terms in the Agreement.

1. **DEFINITIONS.** The following definitions apply to this Note:

- A. **Borrower:** Cabrillo Economic Development Corporation;
- B. **Lender:** The City of Oxnard, California, a municipal corporation;
- C. **Property:** Certain real property and improvements located in the City of Oxnard, known as those portions of Subdivisions 12 and 21, of the Rancho El Rio De Santa Clara O' La Colonia, in the City of Oxnard, County of Ventura, State of California; and a non-exclusive

1  
26 35

easement for roadway over and across the southerly 20.00 of the Northerly 45.00 feet of Parcel "C", as said Parcel "C" delineated on that certain map filed in Book 5, Page 37 of parcel maps, in the Office of the County Recorder of said Ventura County.

D. Deed of Trust: The Second Amended and Restated Deed of Trust, of even date with this Note, which deed of trust secures performance of Borrower's obligations under this Note;

E. Note: This promissory note;

F. Defined Net Cash Flow: means, in a particular calendar year, the amount by which Gross Revenue (as defined below) exceeds Annual Operating Expenses (as defined below).

(a) Gross Revenue. "Gross Revenue," with respect to a particular calendar year, shall mean all revenue, income, receipts, and other consideration actually received from operation and leasing of the Project. "Gross Revenue" shall include, but not be limited to: all rents, fees and charges paid by tenants, Section 8 payments or other rental subsidy payments received for the dwelling units, deposits forfeited by tenants, all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements resulting in actual income; proceeds from vending and laundry room machines; the proceeds of business interruption or similar insurance; the proceeds of casualty insurance to the extent not utilized to repair or rebuild the Project (or applied toward the cost of recovering such proceeds); and condemnation awards for a taking of part or all of the Project for a temporary period. "Gross Revenue" shall not include tenants' security deposits, loan proceeds, capital contributions or similar advances.

(b) Annual Operating Expenses. "Annual Operating Expenses" with respect to a particular calendar year shall mean the following costs reasonably and actually incurred for operation and maintenance of the Project: property taxes and assessments imposed on the Project; debt service and issuer fee, if any, currently due on a non-optional basis (excluding debt service due from residual receipts, net cash flow, or surplus cash of the Project) on loans the proceeds of which were used for acquisition and development of the Project; property management fees and reimbursements, premiums for property damage and liability insurance; utility services not paid for directly by tenants, including water, sewer, and trash collection; maintenance and repair; any annual license or certificate of occupancy fees required for operation of the Project; security services; advertising and marketing; cash deposited into reserves for capital replacements of the Project, cash deposited into an operating reserve; partnership management fees (including any asset management fee) payable to any partner or affiliate of any partner of Borrower, (allowable only if the Project receives

a low income housing tax credit allocation and only for the fifteen (15) year compliance period as described in Section 42(i)(1) of the Internal Revenue Code of 1986, as amended); extraordinary operating costs specifically approved in advance and in writing by the Lender, special property management fee for resident services, if any, with prior Lender approval of scope of services and amount of fee; payments of deductibles in connection with casualty insurance claims not normally paid from reserves; the amount of uninsured losses actually replaced, repaired or restored, and not normally paid from reserves; and other ordinary and reasonable operating expenses approved in advance by the Lender and not listed above. Annual Operating Expenses shall not include the following: depreciation, amortization, depletion or other non-cash expenses or any amount expended from a reserve account.

- (c) Gross Revenue, Operating Expenses, and any other information necessary to establish Defined Net Cash Flow shall be determined or by such other Certified Public Accountants as may be chosen by Borrower and accepted in writing by Lender. Lender's acceptance of accountant chosen by Borrower shall not unreasonably be withheld.

2. **PAYMENT PROVISIONS:** The following payment provisions apply to this Note:

- A. **Promise to Pay.** Borrower promises to pay to the order of Lender the principal sum of One Million Six Hundred Twenty Three Eight Hundred Forty Dollars (\$1,623,840), plus interest thereon and other charges due under this Note, all in the manner provided below. Interest shall accrue at the rate of 4% per annum on funds advanced, commencing on the date of each advance. All payments received shall be applied first to the charges which Lender is entitled to impose under this Note and the Deed of Trust, then to interest, and then to principal.
- B. **Payments.** Borrower promises to pay interest, principal, and all other sums which may become due on the Note as follows:
- (1) All sums outstanding under this Note shall be due and payable 55 years from the date Borrower becomes the owner of the Project and utility service is provided to the Project and in no event later than December 31, 2060.
  - (2) All sums outstanding under this note are payable in accordance with the provisions of paragraphs C.2, C.3, C.4, and C.5. of the Loan Agreement. Paragraphs C.4 and C.5. of the Loan Agreement provide for payments from excess revenue of the Property. Payment pursuant to paragraph C.5. of the Loan Agreement shall be made as provided in Paragraph 2.b.(4) herein below.
  - (3) All sums outstanding under this Note shall without any reduction become

ATTACHMENT NO. 1  
PAGE 28 OF 35

immediately due and payable upon any default under this Note, or upon any transfer (including hypothecation) of the Property securing payment of this Note not permitted by the Loan Agreement, upon any change in ownership or composition of the Borrower not permitted, or upon any breach or default of the Loan Agreement or the Regulatory Agreement.

- (4) All other payments shall be made annually, commencing on January 30 of the year following the issuance of the first Certificate of Occupancy for the Project, and each January 30 thereafter;
- i. Payments shall be in the amount of 11.5% of Defined Net Cash Flow for the year preceding the date on which payment is due; no offsets or credits shall be allowed for quarters in which Defined Net Cash Flow may have been a negative figure; and
  - ii. The first payment shall be due January 30 of the year following the issuance of the first Certificate of Occupancy for the Project and shall be based upon Defined Net Cash Flow calculated for the year in which the City issued the first Certificate of Occupancy for the Project.

3. **PAST DUE PRINCIPAL AND INTEREST.** Any amount of principal or interest on the Loan or any fee or expense or other amount payable hereunder shall, to the extent permitted by law, bear interest from such payments due date until paid at the rate of 10% per annum, which interest shall be immediately due and payable.

4. **NO DEDUCTIONS, NO OFFSETS.** All payments of principal and interest hereunder shall be made without deduction of any present and future taxes, levies, duties, imposts, deductions, charges or withholdings imposed by any existing or future law, rule, regulation, treaty, directive or requirement whether or not having the force of law, which amounts shall be paid by Borrower. Borrower will pay the amounts necessary such that the gross amount of the principal and interest received by Lender is not less than that required by this Note. All stamp and documentary taxes shall be paid by Borrower. If, notwithstanding the foregoing, Lender pays any such taxes, Borrower will reimburse Lender for the amount paid, as additional interest, within five (5) days of Lender's demand for payment. Borrower will furnish Lender official tax receipts or other evidence of payment of all such amounts.

5. **ABSENCE OF USURY.** Borrower and Lender intend that the Loan be exempt from the restrictions contained in the California usury law, or if not exempt, that the Loan shall be in compliance with any applicable usury law. In furtherance thereof, Borrower and Lender agree that none of the terms and provisions contained in this Note, or in any other instrument executed in connection herewith, shall ever be construed to create a contract to pay for the use, forbearance or detention of money, or interest at a rate in excess of the maximum interest rate permitted to be charged by applicable law. Therefore, if a court ultimately determines that the Loan is not exempt from the California usury law, or if a court determines that the usury law of another jurisdiction should be applied to the Loan: (a) neither Borrower nor any endorsers or

ATTACHMENT NO. 1  
PAGE 29 OF 35

other parties now or hereafter becoming liable for payment of this Note shall ever be required to pay interest on this Note at a rate in excess of the maximum interest that may be lawfully charged under applicable law, and the provisions of this Section shall control over all other provisions of this Note and any other instruments now or hereafter executed in connection herewith; (b) if the maturity hereof shall be accelerated for any reason or if the principal of this Note is paid prior to the end of the term of this Note, and as a result thereof the interest received for the actual period of existence of the Loan would be unlawful, the holder of this Note shall refund to Borrower the amount of such excess or shall credit the amount of such excess against the principal balance of the Note then outstanding; and (c) in the event that Lender or any other holder of this Note shall collect monies which are deemed to constitute interest which would increase the effective interest rate on this Note to a rate in excess of that permitted to be charged by applicable law, all such sums deemed to constitute interest in excess of the legal rate shall, upon such determination, at the option of the holder of this Note, be first, credited against the principal balance of this Note then outstanding, and second, returned to the Borrower.

6. **PREPAYMENT.** This Note may be prepaid in whole or in part without penalty or charge.

7. **ATTORNEY'S FEES.** Should the indebtedness represented by this Note or any part thereof be collected at law or in equity or through any bankruptcy (including, without limitation, any action for relief from the automatic stay or any other bankruptcy proceeding) receivership, probate or other court proceedings or by any judicial or non-judicial foreclosure proceeding, or if this Note is placed in the hands of attorneys for collection after default, the Borrower and all endorsers, guarantors and sureties of this Note jointly and severally agree to pay, in addition to the principal and interest due and payable hereon, reasonable attorneys' fees and collection costs and expenses. Should any action be brought to construe, clarify, or obtain a declaration as to the terms of this Note or the parties' obligations under it, the prevailing party in such action shall recover its reasonable attorneys' fees.

8. **WAIVER OF PRESENTMENT.** Borrower, and any and all endorsers, guarantors and sureties of this Note, and all other persons liable or to become liable on this Note, jointly and severally waive presentment for payment, demand, notice of demand and of dishonor and nonpayment of this Note, notice of intention to accelerate the maturity of this Note, protest and notice of protest, diligence in collecting, and the bringing of suit against any other party, and agree to all renewals, extensions, modifications, partial payments, releases or substitutions of security, in whole or in part, with or without notice, before or after maturity. The pleading of any statute of limitations as a defense to any demand against the makers, endorsers, guarantors and sureties is expressly waived by each and all such parties to the extent permitted by law.

9. **LOSS OF NOTE.** Upon notice from any holder to Borrower of the loss, theft, destruction or mutilation of this Note and, upon receipt of indemnity reasonably satisfactory to Borrower from any holder of this note (except that if Lender is the holder of this Note, an indemnification from Lender shall be sufficient) or, in the case of mutilation hereof, upon surrender of the mutilated Note, Borrower will make and deliver a new note of like tenor in lieu of this Note.

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10. **SUCCESSORS AND ASSIGNS.** This Note shall be binding upon and shall inure to the benefit of Borrower and Lender, and their successors and assigns.

11. **SEVERABLE PROVISIONS.** Every provision of this Note is intended to be severable. If any term or provision hereof is declared by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason whatsoever, such illegality, invalidity or enforceability shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

12. **NOTICES.** Notices, demands, requests, elections, approvals, disapprovals, consents or other communications given under this Note shall be in writing and shall be given by personal delivery, mail or telegram or facsimile and addressed, if to Lender, 435 South "D" Street, Oxnard, California 93030, or if to Borrower, at 702 County Square Drive, Ventura, CA 93003. Notice by personal delivery shall be deemed effective upon the delivery of such notice to the party for whom it is intended at the recipient's address. Notice by mail shall be deemed effective two (2) business days after depositing such notice, certified or registered mail, postage prepaid, properly stamped and sealed, with the United States Postal Service, properly addressed regardless of whether or when the notice is actually received by the addressee. Notice by telegram shall be deemed effective upon the transmission of the telegram, telegraph charges prepaid, to the party for whom it is intended at the recipient's address. Notice by facsimile shall be effective upon transmission. Notice by overnight guaranteed delivery service shall be deemed effective one (1) business day after depositing such notice with said service, charges prepaid and properly addressed. Either party may give notice of any change of address in accordance with the notice procedures described above.

13. **DEFAULT.** Any failure to perform any obligation of Borrower under this Note, the Deed of Trust, the Loan Agreement, or the Regulatory Agreement shall be considered a default hereunder.

14. **JOINT AND SEVERAL.** The obligations of Borrower in this Note shall be joint and several obligations of Borrower and of each Borrower, if more than one, and of each of Borrower's heirs, devisees, legatees, administrators, executors, personal representatives, successors and assigns.

15. **GENDER.** In this Note, whenever the context so requires, the masculine gender includes feminine and/or neuter, and the singular number includes the plural.

16. **TIME OF ESSENCE.** Time is of the essence in this Note and the performance of each of the covenants and agreements contained herein.

17. **GOVERNING LAW.** This Note shall be construed and enforced in accordance with the laws of the State of California.

18. **AUTHORITY.** The person executing this Note represents and warrants that such person has the authority to execute this Note and bind borrower to its provisions.

STATEMENT 1  
PAGE 31 OF 35



EXHIBIT D

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Oxnard  
Affordable Housing & Rehab  
435 South D Street  
Oxnard, CA 93030  
Attn: Program Manager

Request recording without fee. Record for the benefit of the  
City of Oxnard pursuant to Section 6103 of the Government Code.

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(Space above this line for Recorder's use)

FIRST AMENDED AND RESTATED  
DEED OF TRUST WITH ASSIGNMENT OF RENTS  
(This Deed of Trust contains an acceleration clause)  
(Secures Promissory note, Affordable Housing and Loan Agreement, Regulatory Agreement)

This Amended and Restated DEED OF TRUST is made February 23, 2010, between Cabrillo Economic Development Corporation., herein called TRUSTOR, whose address is 702 County Square Drive, Ventura, CA 93003, Chicago Title Company, herein called TRUSTEE, and the City of Oxnard, a California municipal corporation (the "City"), herein called BENEFICIARY,

WITNESSETH: That Trustor grants to Trustee in Trust, with Power of Sale, that property in the County of Ventura, State of California, described as:

Certain real property and improvements located in the City of Oxnard, known as those portions of Subdivisions 12 and 21, of the Rancho El Rio De Santa Clara O' La Colonia, in the City of Oxnard, County of Ventura, State of California; and a non-exclusive easement for roadway over and across the southerly 20.00 of the Northerly 45.00 feet of Parcel "C", as said Parcel "C" delineated on that certain map filed in Book 5, Page 37 of parcel maps, in the Office of the County Recorder of said Ventura County.

Together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues, and profits.

This grant is made for the purpose of securing the performance of each agreement of Trustor incorporated by reference or contained herein; and performance of that certain Affordable Housing and Loan Agreement dated October 14, 2008, that certain Regulatory Agreement dated October 14, 2008, with and that certain Amended and Restated Promissory Note dated concurrently herewith ("Promissory Note"), in the face amount of \$1,623,840 made by Cabrillo Economic Development Corporation. This Deed of Trust secures all obligations of each of the foregoing agreements. Any default in the performance of obligations under any of such agreements is a default under each of the agreements and is a default hereunder, and entitles Beneficiary and Trustee to exercise all rights and remedies herein described.

To protect the security of this Deed of Trust, and with respect to the property above described, Trustor expressly makes each and all of the agreements, and adopts and agrees to perform and be bound by each and all of the terms and provisions set forth in subdivision A, and it is mutually agreed that each and all of the terms and provisions set forth in subdivision B of the fictitious deed of trust recorded in Orange County August 17, 1964, and in all other counties August 18, 1964, in the book and at the page of Official Records in the office of the county recorder of the county where said property is located, noted below opposite the name of such county, namely:

COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE
Alameda	1288	556	Madera	911	136	San Luis Obispo	1311	137
Alpine	3	130-31	Marin	1849	122	San Mateo	4778	175
Amador	133	438	Mariposa	90	453	Santa Barbara	2065	881
Butte	1330	513	Mendocino	667	99	Santa Clara	6626	664
Calaveras	185	338	Merced	1660	753	Santa Cruz	1638	607
Colusa	323	391	Modoc	191	93	Shasta	800	633
Contra Costa	4684	1	Mono	69	302	San Diego Series 5	1964	149774
Del Norte	101	549	Monterey	357	239	Sierra	38	187
El Dorado	704	635	Napa	704	742	Siskiyou	506	762
Fresno	5052	623	Nevada	363	94	Solano	1287	621
Glenn	469	76	Orange	7182	18	Sonoma	2067	427
Humboldt	801	83	Placer	1028	379	Stanislaus	1970	56
Imperial	1189	701	Plumas	166	1307	Sutter	655	585
Inyo	165	672	Riverside	3778	347	Tehama	457	183
Kern	3756	690	Sacramento	5039	124	Trinity	108	595
Kings	858	713	San Benito	300	405	Tulare	2530	108
Lake	437	110	San Bernardino	6213	768	Tuolumne	177	160
Lassen	192	367	San Francisco	A-804	596	Ventura	2607	237
Los Angeles	T-3878	874	San Joaquin	2855	283	Yolo	769	16
						Yuba	398	693

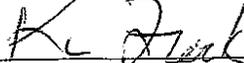
shall inure to and bind the parties hereto, with respect to the property above described. Said Agreements, terms and provisions contained in said subdivisions A and B, (identical in all counties, and attached hereto), are by the within reference thereto, incorporated herein and made a part of this Deed of Trust for all purposes as fully as if set forth at length herein (provided that in the event any said provision is inconsistent with the language in this Deed of Trust, the language of this Deed of Trust shall control), and Beneficiary may charge for a statement regarding the obligation secured hereby; provided the charge therefore does not exceed the maximum allowed by law.

The Trustor acknowledges receipt of a copy of such provisions of such fictitious deed of trust.

If the Trustor shall sell, convey or alienate said property, or any part thereof, or any interest therein, or shall be divested of his title or any interest therein in any manner or way, whether voluntarily or involuntarily, without the written consent of the beneficiary being first had and obtained, beneficiary shall have the right, at its option, except as prohibited by law, to declare any indebtedness or obligations secured hereby, irrespective of the maturity date specified in any note evidencing the same, immediately due and payable.

The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be made to him as his address hereinbefore set forth.

SIGNATURE OF TRUSTOR

  
 \_\_\_\_\_  
 Cabrillo Economic Development Corporation

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Ventura

On Feb 17, 2010 before me, Laurie Ann Loredo, Notary Public

personally appeared Karen Flock

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: [Handwritten Signature]

Place Notary Seal Above

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

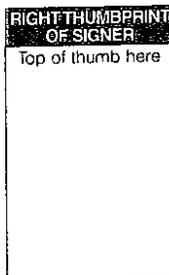
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_