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AND WHEN RECORDED MAIL TO:

CITY OF OXNARD
214 South C Street
Oxnard, California 93030
Attention: Community Development Director

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SEVENTH AMENDMENT TO AGREEMENT CONTAINING COVENANTS AFFECTING
REAL PROPERTY

This SEVENTH AMENDMENT TO AGREEMENT CONTAINING COVENANTS AFFECTING REAL PROPERTY ("**Seventh Amendment to Agreement Containing Covenants**"), is entered into as of _____, 2012, by and between the CITY OF OXNARD, a municipal corporation of the State of California (the "**City**"), and E.D. 2, LLC, a California limited liability company, and KOH 12-17, LLC, a California limited liability company ("**Owner**"), with reference to the following facts:

RECITALS

A. Owner is the owner 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 ("**Property**").

B. 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 ("**Redevelopment Plan**").

C. In furtherance of the Redevelopment Plan, the Oxnard Community Development Commission Successor Agency's ("**Successor Agency**") and Owner's predecessor in interest entered into that certain Owner Participation Agreement dated as of June 12, 2001 (the "**Original OPA**"). The Original OPA was amended by (i) that certain First Amendment to Owner Participation Agreement dated as of November 19, 2002 (the "**First Amendment to OPA**"), (ii) that certain Second Amendment to Owner Participation Agreement dated as of December 14, 2004 (the "**Second Amendment to OPA**"), (iii) that certain Third Amendment to Owner Participation Agreement dated on or about August 7, 2007 (the "**Third Amendment to**

OPA”), (iv) that certain Fourth Amendment to Owner Participation Agreement dated on or about November 20, 2007 (the “**Fourth Amendment to OPA**”), and (v) that certain Fifth Amendment to Owner Participation Agreement dated on or about May 18, 2010 (the “**Fifth Amendment to OPA**”) (the Original OPA, together with the First Amendment to OPA, the Second Amendment to OPA, the Third Amendment to OPA, the Fourth Amendment to OPA, and the Fifth Amendment to OPA, and any other administrative extensions or amendments are referred to herein collectively as the “**OPA**”). The OPA provides for the development of a first quality commercial, retail, hotel, office and residential project, as more particularly set forth in the OPA.

D. In addition, in conjunction with the development of the Project, the City of Oxnard (“**City**”) and Owner’s predecessors in interest entered into that certain Development Agreement dated as of August 27, 2002, and which was recorded against the Property (as well as other areas) on September 10, 2002 as Instrument No. 2002 0216450 in the Ventura County Recorder’s Office (the “**Original Development Agreement**”), as amended by that certain First Amendment to Development Agreement dated as of December 14, 2004 and recorded against the Property on December 23, 2004 as Instrument No. 2004 1223 0339920 in the Ventura County Recorder’s Office and re-recorded against the Property on January 24, 2005 as Instrument No. 20050124 0017504 in the Ventura County Recorder’s Office (the “**First Amendment to Development Agreement**”), as further amended by that certain Second Amendment to Development Agreement recorded against the Property on August 21, 2007 in the Ventura County Recorder’s Office as Instrument No. 20070821 00163617-0 (the “**Second Amendment to Development Agreement**”), as further amended by that certain Third Amendment to Development Agreement recorded against the Property on October 13, 2010 in the Ventura County Recorder’s Office as Instrument No. 20101013 00157737-0 and on October 28, 2010 in the Ventura County Recorder’s Office as Instrument No. 20101028 00167309-0 (the “**Third Amendment to Development Agreement**”), and as further amended by that certain Fourth Amendment to Development Agreement dated as of _____, 2012 and recorded against the Property on or about the date of recordation of this Seventh Amendment to Agreement Containing Covenants in the Ventura County Recorder’s Office (the “**Fourth Amendment to Development Agreement**”). The Original Development Agreement as amended by the First Amendment to Development Agreement, the Second Amendment to Development Agreement, the Third Amendment to Development Agreement, and the Fourth Amendment to Development Agreement together with any extensions or amendments approved administratively, are referred to herein collectively as the “**Development Agreement**.” The Development Agreement encumbers more real property than the Property.

E. In connection with the OPA, the Successor Agency’s and Owner’s predecessors in interest entered into an Agreement Containing Covenants dated June 12, 2001 and recorded against the Property on June 18, 2001 as Instrument No. 2001-0114394-00 in the Recorder’s Office (the “**Original Agreement Containing Covenants**”). The Original Agreement Containing Covenants was amended by (i) that certain First Amendment to Agreement Containing Covenants Affecting Real Property dated as of November 19, 2002 and was recorded against the Property on November 27, 2002, as Instrument No. 2002-0299634-00 in the Recorder’s Office (“**First Amendment to Agreement Containing Covenants**”), (ii) that certain Second Amendment to Agreement Containing Covenants Affecting Real Property dated as of January 31, 2005 and was recorded against the Property on February 3, 2005, as Instrument No. 20050203-0026767 in the Recorder’s Office (“**Second Amendment to Agreement**

Containing Covenants”), (iii) that certain Third Amendment to Agreement Containing Covenants Affecting Real Property dated as of August 7, 2007 and recorded against the Property on August 29, 2007, as Instrument No. 20070829-00169024 in the Recorder’s Office (the **“Third Amendment to Agreement Containing Covenants”**), (iv) that certain Fourth Amendment to Agreement Containing Covenants Affecting Real Property dated as of February 10, 2010 and recorded against portions of the Site, as described therein, on March 22, 2010, as Instrument No. 20100322-00044098-0 in the Recorder’s Office (the **“Fourth Amendment to Agreement Containing Covenants”**), (v) that certain Fifth Amendment to Agreement Containing Covenants Affecting Real Property dated as of June 29, 2010 and recorded against portions of the Site, as described therein, on July 2, 2010, as Instrument No. 20100702-00097700-0 in the Recorder’s Office (the **“Fifth Amendment to Agreement Containing Covenants”**), and (vi) that certain Sixth Amendment to Agreement Containing Covenants Affecting Real Property dated as of June 29, 2010 and recorded against portions of the Site, as described therein, on July 2, 2010, as Instrument No. 20100702-00097702-0 in the Recorder’s Office (the **“Sixth Amendment to Agreement Containing Covenants”**) (the Original Agreement Containing Covenants, together with the First Amendment to Agreement Containing Covenants, the Second Amendment to Agreement Containing Covenants, the Third Amendment to Agreement Containing Covenants, the Fourth Amendment to Agreement Containing Covenants, the Fifth Amendment to Agreement Containing Covenants, the Sixth Amendment to Agreement Containing Covenants, and any other amendments are referred to herein collectively as the **“Agreement Containing Covenants”**). Certain amendments to the Agreement Containing Covenants affect only certain portions of the Site as set forth in the applicable amendment and such amendments neither create nor impose any covenants, obligations or burdens with respect to the Site not otherwise described therein.

F. The parties hereto now desire to amend the Agreement Containing Covenants to reflect the revisions contained in the Fourth Amendment to Development Agreement.

G. This Seventh Amendment to Agreement Containing Covenants is entered into and recorded to ensure that the Property is used for the purposes intended by the parties and to provide for covenants and conditions that run with the land.

NOW, THEREFORE, THE PARTIES HERETO COVENANT AND AGREE AS FOLLOWS:

Section 1. Section 1.a.3.3 of the Agreement Containing Covenants is hereby added as follows:

“3.3 Additional Affordable Housing Units.

The City amended the Specific Plan to increase the maximum permitted number of dwelling units to be constructed within the Specific Plan area. The additional residential units (the **“Additional Dwelling Units”**) permitted by such Specific Plan amendment include Dwelling Units constructed in the RiverPark Specific Plan area on Lots 16 and 17 of Tract 5352-1, (**“Lots 16 & 17”**), in excess of an aggregate of 300 Dwelling Units.

Any Riverpark Participant that constructs Additional Dwelling Units shall be responsible for providing a portion of such Additional Dwelling Units as affordable units as provided in this Section 1.a.3.3, below, rather than the rates set forth in Sections 1.a.3, 1.a.3.1, or 1.a.3.2.

Any Riverpark Participant that constructs Additional Dwelling Units on Lots 16 & 17 shall be responsible for the construction of a total of fifteen percent (15%) of the aggregate of such Additional Dwelling Units as affordable housing units, of which a minimum of six percent (6%) of the aggregate of such Additional Dwelling Units shall be at rents or sales prices that are Affordable to Very Low Income Households and the balance of which shall be at rents or sales prices Affordable to Moderate Income Households (collectively the “Additional Affordable Housing Units”). In computing the number of Additional Affordable Housing Units required under this section, fractional numbers shall be rounded off to the nearest whole number, fractions of one-half (0.5) or more being rounded up to the next whole number; provided, however, that if all 212 Additional Dwelling Units are constructed, regardless of any rounding, an aggregate total of at least 32 of the Additional Dwelling Units shall be affordable housing units as set forth herein. The quality and location of Additional Affordable Housing Units shall be reviewed and approved in conjunction with the Riverpark Specific Plan review process. Each Additional Affordable Housing Unit shall be occupied by and made available to Very Low Income Households and Moderate Income Households, as applicable, and rented at rents that are Affordable for a period of fifty-five (55) years following completion and issuance of a final certificate of occupancy for such Additional Affordable Housing Unit. The requirement set forth in this Section for the Additional Affordable Housing Units may be wholly satisfied by the construction, rental and occupancy of the affordable housing units required under the provisions of the Affordable Housing Loan Agreement dated as of July 21, 2009, and subsequently modified by a First and Second Amendment approved on December 15, 2009 and April 26, 2011, respectively, and further revised by Letter Agreements #1, 2 and 3 dated February 10, 2010, November 17, 2011, and February 9, 2012, respectively. In particular, Letter Agreement #3 requires the production of a minimum of 53 affordable units on either or a combination of Lots 3 and 17A as depicted in Exhibit B (attached hereto and incorporated herein by this reference), and those affordable units shall be made available for rent and occupied by households at the income levels required in this Section.

The provisions of Sections 1.a.3 (iv) and (v) shall apply to the Additional Affordable Housing Units.

The provisions of Sections 1.a.3(ii), (iii), (vii) and (viii) shall not apply to the Additional Affordable Housing Units.”

Section 2. Miscellaneous Provisions.

(a) Section Headings. The section headings contained in this Seventh Amendment to Agreement Containing Covenants are for convenience and identification only and shall not be deemed to limit or define the contents to which they relate.

(b) Counterparts. This Seventh Amendment to Agreement Containing Covenants and any modifications hereto may be executed in any number of counterparts with the same force and effect as if executed in the form of a single document.

(c) Waiver. No waiver of any provision of this Seventh Amendment to Agreement Containing Covenants shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought.

(d) Severability. If any term, covenant, condition or provision of this Seventh Amendment to Agreement Containing Covenants, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction or rendered by the adoption of a statute by the State of California or the United States invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Seventh Amendment to Agreement Containing Covenants, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby; provided that the invalidity or unenforceability of such provision does not adversely affect the benefits accruing to, or the obligations imposed upon, any party hereunder.

(e) No Reliance on Other Parties. All parties to this Seventh Amendment to Agreement Containing Covenants declare that, prior to the execution of this Seventh Amendment to Agreement Containing Covenants, they have informed themselves of sufficient relevant data, either through experts or other sources of their own selection, and have sought and obtained legal counsel, in order that they might intelligently exercise their own judgment in evaluating the contents of this Seventh Amendment to Agreement Containing Covenants and making the decision to execute it. The parties each represent and acknowledge that in executing this Seventh Amendment to Agreement Containing Covenants, they do not rely and have not relied upon any representation or statement not set forth herein made by any other party to this Seventh Amendment to Agreement Containing Covenants or their respective legal counsel with regard to the subject matter, basis or effect of this Seventh Amendment to Agreement Containing Covenants.

(f) Construction. The provisions of this Seventh Amendment to Agreement Containing Covenants shall be liberally construed to effectuate its purpose. The language of this Seventh Amendment to Agreement Containing Covenants shall be construed simply according to its plain meaning and shall not be construed for or against any party, as each party has participated in the drafting of this Seventh Amendment to Agreement Containing Covenants and has had its legal counsel review it. Whenever the context and construction so require, all words used in the singular shall be deemed to be used in the plural, and vice versa.

(g) Successors and Assigns. This Seventh Amendment to Agreement Containing Covenants shall be binding on and shall inure to the benefit of the parties and their respective legal representatives, successors and assigns.

(h) Governing Law. The validity and interpretation of this Seventh Amendment to Agreement Containing Covenants shall be governed by the laws of the State of California without giving effect to the principles of conflict of laws.

(i) Authorizations. Each party certifies and warrants that all individuals executing this Seventh Amendment to Agreement Containing Covenants and other related documents on its behalf have the capacity and have been duly authorized to do so. Each party shall also indemnify the other parties to this Seventh Amendment to Agreement Containing

Covenants and hold them harmless from any and all damages, costs, attorneys' fees, and other expenses, if a signatory is not so authorized.

(j) Definitions. All terms not specifically defined in this Seventh Amendment to Agreement Containing Covenants shall have the meanings ascribed to them in the OPA or Development Agreement, as applicable.

(k) Impact of Seventh Amendment to Agreement Containing Covenants. Unless otherwise specifically amended by this Seventh Amendment to Agreement Containing Covenants, all provisions of the Agreement Containing Covenants, as previously amended, shall remain in full force.

(l) Interpretation of Participant. For the purpose of this Seventh Amendment to Agreement Containing Covenants, the term "Participant" shall be interpreted to mean that specific authorized entity or its successors or assigns that owns a portion of the Site to which the rights, duties and/or obligations of the Agreement Containing Covenants relate; provided, however, that a party to the Agreement Containing Covenants or its authorized successors or assigns shall not be obligated to meet the obligations of the Agreement Containing Covenants for another owner of a portion of the Site to which the rights, duties and/or obligations of the Agreement Containing Covenants relate.

(m) Successor Agency is Third Party Beneficiary. This Seventh Amendment to Agreement Containing Covenants confers rights and remedies for the benefit of the Successor Agency. The Successor Agency is intended to be and is hereby expressly made an intended third party beneficiary to this Seventh Amendment to Agreement Containing Covenants. Owner acknowledges and agree that no acts or omissions by the Successor Agency shall subject the City, a municipal corporation, to any liability. Liability in that case, if any shall ever exist, shall only be of the Successor Agency and shall only be a special limited obligation, payable solely from Successor Agency funds lawfully available for such purpose and is not and shall not be a pledge of or obligation payable through or from the City's general fund or any other funds of the City. Nothing in this Seventh Amendment to Agreement Containing Covenants shall require or be deemed to require the City to expend or commit to expend monies from the City's general fund on behalf of or for the Successor Agency.

[remainder of page left intentionally blank – signature pages follow]

IN WITNESS WHEREOF, the City and Owner have executed this Seventh Amendment to Agreement Containing Covenants as of the date on which this Seventh Amendment to Agreement Containing Covenants shall have been executed on behalf of the City.

THE CITY:

CITY OF OXNARD, a municipal corporation

Date: _____

By: _____
Dr. Thomas E. Holden,
Mayor

ATTEST:

By: _____
Daniel Martinez
City Clerk

APPROVED AS TO FORM:

By: _____
Alan Holmberg
City Attorney

[Signatures continue on next page]

“Owner”

KOH, LLC,
a California limited liability company

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

By: _____
Name: Paul Keller
Title: Manager

By: _____
Name: Dave White
Title: Manager

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 2012 before me, _____ (here insert name of the officer), Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary Public

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 2012 before me, _____ (here insert name of the officer), Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary Public

EXHIBIT A

Legal Description of Property

(attached)

EXHIBIT B

Lots 3 and 17A

