



Office of the City Manager

CONSEENT CALENDAR  
May 21, 2024

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Scott Gilman, Interim Director, Health, Housing and Community Services  
Subject: Contract No. 6252 Amendment: Extending the Term and Assigning the Lease for Ocean View Gardens at 819 Hearst Avenue

RECOMMENDATION

Adopt an Urgency Ordinance authorizing the City Manager to execute a second amendment to Contract No. 6252 for the real property located at 819 Hearst Avenue (alternative address at 813 Delaware Street), Berkeley, for the purposes of assigning the ground lease from the current owner, Ocean View LLC, to Orbach Affordable Housing Solutions (OAHS) Ocean View LP, and extending the ground lease term to June 30, 2089.

FISCAL IMPACTS OF RECOMMENDATION

The lease requires annual payments to the City equal to fifty percent of the project cash flow to the owner after all operating expenses have been paid. This second amendment maintains the rental provisions of the original ground lease, and the City shall continue to receive rental payments accordingly. The Housing and Community Services Division of the Department of Health, Housing and Community Services applies the Ocean View Garden lease payments to fund community services and housing activities.

CURRENT SITUATION AND ITS EFFECTS

Ocean View Gardens Apartments is a 62-unit multifamily, affordable housing development currently owned by Ocean View Gardens LLC who is under contract to sell the property to OAHS Ocean View LP, an affordable housing developer and operator based in New Jersey. OAHS applied for, and in December 2023, was awarded 4% tax credit financing and a CalHFA bond allocation to purchase and rehabilitate Ocean View Gardens. With the tax credit and bond proceeds, OAHS will invest approximately \$7 million in renovating the individual units and upgrading the property's major systems. Upon acquisition, OAHS will also secure a 20-year extension of the existing Project-Based Section 8 contract administered by the San Francisco Department of Housing and Urban Development.

OAHS is scheduled to acquire the property on May 31, 2024, and has requested the City execute a second amendment to approve the extension of the ground lease term and assignment of the lease. The lease amendment will extend the affordability term by 30 years, ending June 30, 2089. The current term ends March 29, 2059. The urgency ordinance is needed to help OAHS meet the acquisition deadline imposed by CalHFA, the issuer of the bond. The project may lose its bond allocation and along with that, the acquisition and rehabilitation financing for the project, if OAHS does not meet the closing deadline.

### BACKGROUND

In September 30, 1982, the City of Berkeley (formerly the Redevelopment Agency of the City of Berkeley) and the original owner, E&I Development Associates entered into a ground lease with a term ending September 29, 2037. E&I Development Associates developed Ocean View Gardens Apartments using tax credits and bond financing, and entered into a lease which required the property to provide 61 units to low-income households. In January 2004, Ocean View Gardens LLC acquired the property from E&I Development Associates and executed a *First Amendment for Lease Extension of Term and Assignment*, which extended the lease to March 29, 2059 and designated Ocean View Gardens LLC as the new lessee.

OAHS Ocean View LP is in the process of acquiring the property and has secured the funds necessary for the acquisition and rehabilitation of the development. The California Housing Finance Agency (CalHFA) issued a Multifamily Tax-Exempt Mortgage-backed Bond to support Oceanview Gardens Apartments, and together with the bond allocation, OAHS secured tax credit financing for the project. OAHS is requesting the City execute a second lease amendment and related documents required by California Tax Credit Allocation Committee and CalHFA. The main purpose of the lease amendment is to extend the lease term to June 30, 2089, and to change the name of the Lessee. The property will continue to make lease payments to the City equal to fifty percent of project cash flow after all operation costs, including hard debt payments, have been paid. No major revisions to the lease have been proposed.

Since its inception in 1982, Ocean View Gardens Apartments has operated as an affordable housing development serving lower income households. The development consists of larger units with multiple bedrooms, and is home to extremely low and very low-income families in Berkeley. Although the lease requires the owner to provide units to low-income households whose incomes are at 80% Area Median Income (AMI), the property serves lower income residents whose household incomes currently range from 0% AMI to 47% AMI, or a household income of less than \$73,000 for a family of four. The development is able to serve extremely low and very low-income households because it receives rental subsidies through a U.S. Department of Housing and Urban Development Project-Based Section 8 Housing Assistance Payments Renewal Contract.

Upon acquisition of the property, OAHS will secure a 20-year extension of the existing Project-Based Section 8 rental subsidy contract administered by the San Francisco Department of Housing and Urban Development. The rental subsidy contract with option to renew in 20-year increments will allow OAHS to continue to serve lower income families and individuals for at least another 40 years and through the end of the lease term, June 30, 2089.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects, climate impacts, or sustainability opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

If adopted, this second amendment to the lease will extend the affordability term of Ocean View Gardens Apartments for another 65 years. Without the lease amendment, OAHS Ocean View LP will lose the bond allocation and tax credit financing, and the sale of the property would not go through. The City would lose the opportunity to support the rehabilitation and preservation of 61 affordable housing units for very low and extremely low-income families in Berkeley.

ALTERNATIVE ACTIONS CONSIDERED

The City could decline to approve the transfer to OAHS Ocean View LP. Ocean View Gardens LLC would maintain ownership, but would be unable to complete necessary repairs to the property.

CONTACT PERSON

Lourdes Chang, Senior Community Development Project Coordinator, Health, Housing and Community Services, (510) 981-5263

Attachments:

1: Urgency Ordinance

Exhibit A: DRAFT Second Amendment to Lease Extension and Assignment

Exhibit B: First Amendment to Lease Extension and Agreement, January 20, 2004

Exhibit C: Original Lease and Disposition Agreement, September 30, 1982

ORDINANCE NO. X,XXX N.S.

AUTHORIZING THE CITY MANAGER OR HER DESIGNEE TO AMEND THE GROUND LEASE AND EXECUTE ANY NECESSARY DOCUMENTS RELATED TO THE TRANSFER OF OCEAN VIEW GARDENS, BERKELEY, LOCATED AT 819 HEARST AVENUE, BERKELEY, CA TO ORBACH AFFORDABLE HOUSING SOLUTIONS OCEAN VIEW GARDENS, LP.

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The City Council finds as follows:

- a. The City of Berkeley is facing a growing housing and homelessness crisis, in part exacerbated by the acute lack of affordable housing and supportive housing for people experiencing homelessness; and
- b. Under a ground lease with the City of Berkeley originally executed on September 30, 1982 (Exhibit A), and as amended in 2004, Ocean View Gardens Apartments has operated as an affordable housing development providing 61 units to low-income households; and
- c. On January 20, 2004, the ground lease was amended to extend the lease term to March 2059, when a new owner, Ocean View Gardens, LLC, acquired the property and assumed the City's ground lease; and
- d. In May 2024, Ocean View Gardens, LLC, intends to transfer the property to Orbach Affordable Housing Solutions (OAHS) Ocean View Gardens, LP, and OAHS Ocean View Gardens has agreed to assume and extend the City's ground lease term by 30 years to June 30, 2089, and continue to operate the property as an affordable housing development providing housing to low income households through the end of the term; and
- e. In December 2023, OAHS Ocean View Gardens, LP, secured tax credit financing and a multifamily, tax-exempt bond allocation from California Housing Finance Agency (CalHFA), and intends to invest approximately \$7 million in renovating the property, including updating the individual units; and
- f. OAHS Ocean View Gardens, LP, must complete the acquisition by May 31, 2024, or risk losing their bond allocation from CalHFA and related tax credit project financing secured for the renovation of the property; and
- g. This urgency ordinance is required to assist OAHS Ocean View Gardens LP, meet the May 31, 2024, acquisition deadline, in order to preserve and rehabilitate the existing 61 affordable units at Ocean View Gardens Apartments; thus, advancing the City's goal to maintain affordable housing for our most vulnerable community members.

Section 2. The City Manager or her designee is hereby authorized to execute a SECOND AMENDMENT TO LEASE EXTENSION OF TERM AND ASSIGNMENT and other documents associated with the transfer of Ocean View Gardens, extending the lease term to June 30, 2089, and assigning to Orbach Affordable Housing Solutions (OASH) Ocean View LP the lease for real property located at 819 Hearst Avenue on substantially the same terms as set forth in the draft agreement in Exhibit B.

Section 3. This Ordinance is adopted as an urgency ordinance pursuant to the Charter of the City of Berkeley, Article XIV, Section 93 and shall be effective immediately. The City Council finds and determines that the adoption of this Ordinance as an urgency ordinance is necessary for the immediate preservation of the public peace, health and safety of the residents of the City of Berkeley.

Section 4. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way within fifteen calendar days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on May 21, 2024, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes:

Noes:

Absent:

Exhibits

A: DRAFT Second Amendment to Lease Extension and Assignment

B: First Amendment to Lease Extension and Agreement, January 20, 2004

C: Original Lease and Disposition Agreement, September 30, 1982

**SECOND AMENDMENT TO LEASE  
EXTENSION OF TERM AND ASSIGNMENT**

This Second Amendment to Lease (this “**Second Amendment**”) is made as of \_\_\_\_, 2024, by and among the REDEVELOPMENT AGENCY OF THE CITY OF BERKELEY (“**Lessor**”), OCEAN VIEW GARDENS, LLC, a California limited liability company (“**Ocean View**”), and OAHS OCEAN VIEW LP (“**Lessee**”) who agree as follows:

*This Amendment is made with reference to the following facts and objectives:*

A. Lessor is the owner in fee simple of that certain land located in Berkeley, California, and further described on Exhibit A attached hereto and incorporated herein by this reference (“**Land**”). Ocean View currently holds title to the improvements thereon, including the buildings situated upon the land, as set forth in Section 4.2 of the Original Lease (as defined below) (the “**Improvements**” and collectively with the Land, the “**Premises**”).

B. Lessor and Ocean View’s successor in interest, E&I Development Associates (“**E&I**”) entered into that certain Lease and Disposition Agreement dated September 10, 1982 and commencing on September 30, 1982 (the “**Original Lease**”) as amended by that certain First Amendment to Lease Extension of Term and Assignment made as of January 20, 2004 between Lessor, E&I and Ocean View (“**First Amendment**” and collectively with the Original Lease, the “**Lease**”), whereby E&I assigned its right, title and interest in, to and under the Original Lease to Ocean View. Pursuant to the Lease, Lessor leased the Land to Ocean View for a term ending September 29, 2037 (“**Original Term**”) pursuant to the terms and conditions of the Lease.

C. The Original Lease was recorded on September 30, 1982 as Instrument No. 82-149148 and re-recorded on January 17, 1984 as Instrument No. 84-009853 in the Official Records of Alameda County, California (the “**Official Records**”) and the First Amendment was recorded on March 3, 2004 as Instrument No. 2004091380 in the Official Records.

D. Ocean View now desires to assign its right, title and interest in, to and under the Lease and the Premises to Lessee, and Lessee accepts that assignment on, and subject to, all of the terms and conditions in this Second Amendment.

E. In order to provide the funds necessary for the acquisition, rehabilitation and equipping of the Development (as defined in the Lease), the California Housing Finance Agency (“CHFA”) has authorized the issuance of its Limited Obligation Multifamily Tax-Exempt Mortgage-backed Bonds (Oceanview Gardens Apartments) (M-TEBS) 2024 Issue J (the “Bonds”). CHFA will use the proceeds of the Bonds to make a loan to the Borrower, evidenced by a promissory note, to finance the acquisition, rehabilitation and equipping of the Development. In addition, Lessee also expects to receive low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code.

F. Except as otherwise modified herein, defined terms shall have the meanings ascribed to them in the Lease.

**1. ASSIGNMENT AND ASSUMPTION.**

a. Ocean View assigns to Lessee, all of its right, title and interest in, to, and under the Lease and the Premises. Lessee accepts this assignment, assumes all of Ocean View’s obligations under the Lease, and agrees to be bound by all of the provisions of the Lease and to perform all of the obligations of the Lessee under the Lease as a direct obligation to Lessor from and after the effective date of this assignment. This assignment and assumption is made on, and is subject to, all of the terms, conditions and covenants of this Second Amendment.

b. Lessor consents to this assignment. However, any future assignment is expressly prohibited unless Lessor provides written consent pursuant to Section 3.8 of the Lease.

c. Lessor is a third-party beneficiary of this assignment. As such, the provisions of this assignment inure to the benefit of, and are enforceable by, Lessor.

**2. TERM.** As of the date of this Second Amendment, the Lease Term is hereby extended to June 30, 2089 (“Lease Expiration Date”). Unless terminated earlier under the terms of the Lease, the Lease will expire on the Lease Expiration Date.

**3. AMENDMENTS TO LEASE TERMS.** The following provisions of the Lease are amended as follows:

a. The term “**Construction Loan**” as defined in Subsection 1.1(g) of the Lease shall mean the proceeds of the construction loan to be provided by PNC Bank, National Association (“**Construction Lender**”), and its successors and assigns to Lessee as evidenced by the documents executed and delivered in connection with the Construction Loan, including, without limitation, the promissory note and mortgage evidencing the Construction Loan.

b. The term “**Mortgage Loan**” as defined in Subsection 1.1(s) of the Lease shall mean collectively, those certain documents executed by Lessee for the benefit of (i) CHFA and titled “Bond Loan Note” and secured by that certain Indenture of Trust and related security agreements and financing statements all of which will be executed and recorded contemporaneously with this Amendment[ and (ii) Berkadia Commercial Mortgage LLC (the “**Permanent Lender**”) entitled “Multifamily Note” and secured by that certain Multifamily Deed to Secure Debt, Assignment of Leases and Rents, Security Agreement and Fixture Filing, together

with all riders and exhibits, securing the Permanent Loan, executed by the Borrower in favor of the Permanent Lender, as the same may be amended from time to time; and

c. The term “**Regulatory Agreement**” as defined in Subsection 1.1(w) shall mean that certain Regulatory Agreement and Declaration of Restrictive Covenants.

d. The following new Section 9.7 shall be added to the Lease:

Section 9.7 Notice. If Lessee is in default under the terms of this Lease, Lessor shall not exercise any right or remedy on account thereof, which it holds under this Lease or applicable law, unless and until Lessor gives written notice thereof to the Tax Credit Investor and in such event Lessor shall accept or reject any cure of any default made or tendered by the Tax Credit Investor within the time allowed for Lessee’s cure herein. In no event shall this right of Lender and Tax Credit Investor to cure be construed as expanding the rights or remedies of Lessee upon a default.

e. Section 10.3 (2) is amended to change Lessee’s address for notice to:

(2) OAHs Ocean View LP c/o Orbach Affordable Housing Solutions, LLC, 980 Sylvan Avenue, Englewood Cliffs, New Jersey 07632 and c/o Columbia Housing SLP Corporation (“**Tax Credit Investor**”) 121 SW Morrison Street, Suite 1300 Portland, Oregon 97204-3143  
Attn: Fund Manager.

#### 4. **MISCELLANEOUS PROVISIONS**

a. Lease In Full Force and effect; Integration of Second Amendment and Lease. Except as specifically provided herein, the Lease shall remain unmodified and in full force and effect. This Second Amendment and the Lease shall be deemed to be, for all purposes, one instrument. In the event of any conflict between the terms and provisions of this Second Amendment and the terms and provisions of the Lease, the terms and provisions of this Second Amendment shall, in all instances, control and prevail.

b. Counterparts. This Second Amendment may be executed in two or more counterparts, each of which shall be deemed and original, and all such counterparts together shall constitute one and the same instrument.

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IN WITNESS WHEREOF, Lessor, Ocean View and Lessee have executed this Amendment as of the date written on the first paragraph above.

**LESSOR:**

**BERKELEY REDEVELOPMENT  
AGENCY**

APPROVED AS TO FORM:

By:

\_\_\_\_\_  
Deputy City Attorney

\_\_\_\_\_  
Executive Director

REGISTERED BY:

ATTEST:

\_\_\_\_\_  
City Auditor

\_\_\_\_\_  
Deputy City Clerk

**OCEAN VIEW:**

OCEAN VIEW GARDENS, LLC,  
a California limited liability company

By: EHM Partners, L.P.,  
a California limited partnership,  
its Managing Member

By: A.F. Evans Company, Inc.,  
a California corporation,  
its Managing General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: G.A. Hyson and Associates,  
LLC,  
its General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LESSEE:**

OAHS OCEAN VIEW LP,  
a California limited partnership

By: Kingdon Oceanview Garden, LLC,  
a California nonprofit public benefit  
corporation,  
its Managing General Partner

By: Kingdom Development, Inc.,  
a California nonprofit public  
benefit corporation,  
its Sole Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT A  
LEGAL DESCRIPTION

CONTRACT NO. 6252  
VENDOR COPY SENT 2/2/04

**Free recording requested  
Pursuant to Government Code  
Section 27383**

Recording requested by and when  
recorded return to:

Berkeley Redevelopment Agency  
2118 Milvia Street, 3<sup>rd</sup> fl.  
Berkeley, CA 94704  
Attn: Redevelopment Coordinator

**FIRST AMENDMENT TO LEASE  
EXTENSION OF TERM AND ASSIGNMENT**

This lease amendment ("Amendment") is made as of January 20, 2004,  
between the REDEVELOPMENT AGENCY OF THE CITY OF BERKELEY ("Lessor"), E&I  
DEVELOPMENT ASSOCIATES ("E&I"), and OCEAN VIEW GARDENS, LLC, a California  
limited liability company ("Ocean View" or "Lessee") who agree as follows:

*This Amendment is made with reference to the following facts and objectives:*

A. Lessor is the owner in fee simple of that certain land located in Berkeley, California,  
and further described on Exhibit A attached hereto and incorporated herein by this reference ("Land").  
E&I currently holds title to the improvements thereon, including the buildings situated upon the land,  
as set forth in section 4.2 of the Lease agreement described below. These are collectively referred to  
herein as the "Premises."

B. There is currently a Lease between Lessor and E&I for the Land for a fifty-five (55)  
year term, beginning on September 30, 1982 and ending on September 29, 2037 (the "Lease"), for the  
primary purpose of operating a low and moderate income housing development, as set forth in Section  
3.5 of the Lease. The Lease is titled "Lease and Disposition Agreement By and Between the  
Redevelopment Agency of the City of Berkeley and E&I Development Associates Regarding the  
West Berkeley Redevelopment Project" and was recorded on September 30, 1982 as Instrument No.  
82-149148 and re-recorded on January 17, 1984 as Instrument No. 84-009853 in the Official Records  
of Alameda County, California.

C. E&I desires to assign its right, title and interest in, to, and under the Lease and the  
Premises to Ocean View, and Ocean View desires to accept that assignment on, and subject to, all of  
the terms and conditions in this Amendment.

D. Ocean View wishes to extend the term of the current Lease. This amendment extends the term to March 29, 2059.

E. Since the lease was executed, new City legislation in the form of ordinances and a resolution has come into effect that applies to the leasing of public property. These provisions are also included in the Amendment.

F. The California Housing Finance Agency ("CHFA") will be financing the acquisition of the Premises by Ocean View and will be replacing its existing mortgage and regulatory agreements on the Premises with new mortgages, regulatory agreement and related documents. Ocean View also expects to receive low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code. The Lessor and Ocean View also desire to amend the Lease to make it clear that the Lessor's and Ocean View's interests in the Land and Premises are subject and subordinate to the new CHFA mortgages, regulatory agreement and related documents.

1. **ASSIGNMENT AND ASSUMPTION.**

a. E&I, assigns to Ocean View, all of its right, title and interest in, to, and under the Lease and the Premises. Ocean View accepts this Assignment, assumes all of Lessee's obligations under the Lease, and agrees to be bound by all of the provisions of the Lease and to perform all of the obligations of the Lessee under the Lease as a direct obligation to Lessor from and after the effective date of this assignment. This assignment and assumption is made on, and is subject to, all of the terms, conditions and covenants of this assignment.

b. Lessor consents to this assignment. However, any future assignment is expressly prohibited unless Lessor provides written consent pursuant to Section 3.8 of the Lease.

c. Lessor is a third party beneficiary of this assignment. As such, the provisions of this assignment inure to the benefit of, and are enforceable by, Lessor.

2. **TERM.** Pursuant to Section 3.2 of the Lease, the Lease Term is currently scheduled to expire on September 29, 2037 (Lease Expiration Date). As of the date of this Amendment, the Lease Term is hereby extended to March 29, 2059 (Revised Lease Expiration Date). Unless terminated earlier under the terms of the Lease, the Lease will expire on the Revised Lease Expiration Date.

3. **ADDITIONAL LEASE TERMS.** The following provisions are added to the Lease:

**Section 10.19 NON-DISCRIMINATION AGAINST PERSONS WITH DISABILITIES**

a. If Lessee provides any aid, service or benefit to others on Lessor's behalf, Lessee shall, in the provision of such aid, service or benefit, observe and comply with all applicable provisions of Title II of the Americans with Disabilities Act of 1990 and any amendments thereto. Lessee shall further observe and comply with all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination against individuals with disabilities or ensuring that individuals with disabilities are not excluded from participating in or receiving benefits, services or activities of Lessor.

b. If Lessee is or becomes a "public accommodation" as defined in Title III of the Americans with Disabilities Act of 1990, Lessee shall observe and comply with all applicable provisions of the Act and any amendments thereto, and all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations offered by the Lessee. All Lessee's activities must be in accordance with these laws, ordinances, codes, and regulations, and Lessee shall be solely responsible for complying therewith.

**Section 10.30 CITY NON-DISCRIMINATION ORDINANCE**

Lessee agrees to comply with the provisions of Berkeley Municipal Code Chapter 13.26 as amended from time to time. In the performance of this Lease, the Lessee agrees as follows:

a. Lessee shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

b. Lessee shall permit the Landlord access to records of employment advertisements, application forms, EEO-I forms, affirmative action plans and any other documents which, in the opinion of the Landlord, are necessary to monitor compliance with this non-discrimination provision, and will, in addition, fill-out in a timely fashion, forms supplied by the Landlord to monitor these non-discrimination provisions.

**Section 10.21 NUCLEAR FREE BERKELEY**

Lessee agrees to comply with Berkeley Municipal Code Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

**Section 10.22 OPPRESSIVE STATES**

a. In accordance with Resolution No. 59,853-N.S., Lessee certifies that it has no contractual relations with, and agrees during the term of this Lease to forego contractual relations to provide personal services to or to purchase, sell, lease or distribute commodities in the conduct of business with, the following entities:

- (1) The governing regime in any Oppressive State.
- (2) Any business or corporation organized under the authority of the governing regime of any Oppressive State.
- (3) Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of its agreement with Lessor), for the express purpose of

assisting in business operations or trading with any public or private entity located in any Oppressive State.

b. For purposes of this lease, the Tibet Autonomous Region and the provinces of Abo, Kham, and U-Tsang shall be deemed oppressive states.

c. Assignee's failure to comply with this section shall constitute a default of this Lease and Lessor may terminate this Lease pursuant to Sections 9.1-9.6. In the event that Lessor terminates this Lease due to a default under this provision, Lessor may deem Lessee a non-responsible bidder for five (5) years from the date this Lease is terminated.

**Section 10.23 BERKELEY LIVING WAGE ORDINANCE**

a. Lessee agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance. If Lessee employs six (6) or more part-time, full-time or stipend employees, and generates Three Hundred Fifty Thousand Dollars (\$350,000) or more in annual gross receipts, Lessee will be required to provide all eligible employees with City mandated minimum compensation during the term of this Lease, as defined in B.M.C. Chapter 13.27, and well as comply with the terms enumerated herein.

b. Lessee shall be required to maintain all reasonable records and documents that would establish whether Lessee is subject to Berkeley's Living Wage Ordinance (LWO). If Lessee is subject to the LWO, as defined therein, Lessee shall be further required to maintain monthly records of those employees located on the leased premises. These records shall include the total number of hours worked, the number of hours spent providing service on the leased property, the hourly rate paid, and the amount paid by Lessee for health benefits, if any, for each of its employees providing services under the lease. The records described in this Section shall be made available upon Lessor's request. The failure to produce these records upon demand shall be considered a default, subject to the provisions contained in Sections 9.1-9.6 herein.

c. If Lessee is subject to the LWO, Lessee shall include the requirements of the ordinance, as defined in B.M.C. Chapter 13.27, in any and all subleases in which Lessee enters with regard to the subject premises. Sublessees shall be required to comply with this ordinance with regard to any employees who spend twenty-five percent (25%) or more of their compensated time on the leased property.

d. If Lessee fails to comply with the requirements of the LWO and this Lease, Lessor shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Lessee's failure to comply with this Section shall constitute default of the lease, upon which City may terminate this Lease pursuant to Sections 9.1-9.6.

In addition, at Lessor's sole discretion, Lessee may be responsible for liquidated damages in the amount of Fifty Dollars (\$50) per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Lessee's failure to pay any

of its eligible employees at least the applicable living wage rate will result in damages being sustained by Lessor, that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for Lessee's breach.

**Section 10.24 BERKELEY EQUAL BENEFITS ORDINANCE**

a. Lessee hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Lessee is currently subject to the Berkeley Equal Benefits Ordinance, Lessee will be required to provide all eligible employees with City mandated equal benefits during the term of this lease, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.

b. If Lessee is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Lessee agrees to supply Lessor with any records the City deems necessary to determine compliance with this provision. Failure to do so shall be considered a default, subject to the provisions of Sections 9.1-9.6 of this Lease.

c. If Lessee fails to comply with the requirements of this Section, Lessor shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Lessee's failure to comply with this Section shall constitute default of the lease, upon which Lessor may terminate this lease pursuant to Sections 9.1-9.6.

In addition, at Lessor's sole discretion, Lessee may be responsible for liquidated damages in the amount of Fifty Dollars (\$50) per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Lessee's failure to provide its employees with equal benefits will result in damages being sustained by Lessor; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Lessee's breach.

4. **AMENDMENTS TO LEASE TERMS.** The following provisions of the Lease are amended as follows:

a. The term "Mortgage Loan" as defined in Subsection 1.1(s) shall mean those certain documents executed by Lessee and titled "California Housing Finance Agency, Promissory Note, CalHFA Development No. 03-037-N First Loan (Permanent Financing)" in the approximate face amount of Three Million One Hundred Sixty Thousand Dollars (\$3,160,000) and secured by that certain "California Housing Finance Agency, Permanent Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing, CalHFA Development No. 03-037-N First Loan (Permanent Financing)" and that certain "California Housing Finance Agency, Promissory Note, CalHFA Development No. 03-037-N Second Loan (Permanent Financing)" in the approximate face amount of One Million One Hundred Ninety-Five Thousand (\$1,195,000) and secured by that certain "California

Housing Finance Agency, Permanent Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing, Development No. 03-037-N Second Loan (Permanent Financing)" and related security agreements and financing statements all of which will be executed and recorded contemporaneously with this Amendment.

b. The term "Regulatory Agreement" as defined in Subsection 1.1(w) shall mean that certain document titled "California Housing Finance Agency, Regulatory Agreement, CalHFA Development No. 03-037-N" which will be executed and recorded contemporaneously with this Amendment.

c. The first paragraph of Section 4.4 shall be amended as follows:

Maintenance of the Development and the Land. During the Term of this Lease, the Lessee or its designee shall perform, or cause to be performed, all maintenance and repair necessary to maintain the Development and Land in good repair and tenantable conditions. Lessee hereby consents to inspections of the Dwelling Units and Land by the City of Berkeley's Housing Inspectors on a regular and continuing basis. Lessee or its designee shall meet with tenants and/or a duly elected tenant-representative of the Dwelling Units on a regular and continuing basis. Lessee or its designee shall ensure that the tenant survey developed by Lessor's staff which seeks to solicit input from tenants of the Dwelling Units be completed within thirty (30) days from the date of execution of the First Lease Amendment and the results communicated to Lessor.

d. Section 5.3 shall be amended in its entirety as follows:

CHFA Loans Superior to Lease and Fee. The Lessor acknowledges and covenants that the Mortgage Loan and Regulatory Agreement shall be superior to any rights which the Lessor and Lessee have in the Land and Premises and the Lessor's fee simple interest, and the Lease shall be subordinate to the Mortgage Loan and Regulatory Agreement.

e. Section 5.6 shall be amended in its entirety as follows:

Subordination by Lessor. At such time or times as Lessee places, extends, renews, refinances and/or replaces any loan with CHFA or any other lender, and so long as such refinancing, extension, renewal or replacement does not violate the terms of this Lease, Lessor agrees to promptly join in (and execute, acknowledge and deliver), in the manner required, such Construction Loan or Mortgage Loan (and/or all related agreements, instruments and documents, exclusive of notes, bonds or other undertakings imposing any financial liability on Lessor) solely for the purpose of mortgaging the leasehold in the Land and subjecting the right, title and interest of Lessor in the Land to the lien or the continuation or replacement of the lien of such construction loan or mortgage loan but without imposing any personal liability on the partners of the Lessee or the Lessor, all subject to approval by CHFA, if required, or any subsequent lender, provided such subordination shall be in conformity with the provisions of this Lease.

**The provisions of this Section and Section 5.3 shall survive the termination of this Lease.**

f. Section 9.1 shall be amended in its entirety as follows:

Events of Default. Failure or delay by any Party to perform any term or provision of this Lease in a timely manner constitutes an event of default under this Lease. In addition, in the event that Lessee shall default on the Mortgage Loan or Regulatory Agreement, and CHFA shall declare a default pursuant to such Agreements, such default shall constitute an event of default under this Lease.

The nondefaulting Party should give notice of default to the Party in default, specifying the alleged default. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. If CHFA declares a default pursuant to the Mortgage Loan and/or Regulatory Agreement, CHFA shall give to Lessor the same notice of default that it is required to provide to the Lessee under such Agreements and shall accept a cure of such default from Lessor. If necessary for Lessor to effectuate such a cure, CHFA shall not object to Lessor acquiring ownership of Lessee's interest in or possession of the Development provided that such acquisition does not violate any of HUD's requirements pertaining to the Development. The provisions of this Section shall survive termination of this Lease.

The Party who so commits an event of default must, within thirty (30) days, commence to cure, correct or remedy such event of default, and shall complete such cure, correction or remedy with reasonable diligence. Failure to commence to cure, correct or remedy an event of default within thirty (30) days or to complete the cure, correction or remedy an event of default with reasonable diligence shall be cause for the nondefaulting party to terminate this Lease.

Except as otherwise expressly provided in this Agreement, any failure or delay by any Party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by any Party of one or more such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other Party.

g. Section 10.3 shall be amended to state CHFA's address as 1415 L Street, Suite 500, Sacramento, California 95814.

This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same instrument.

LESSEE:

ASSIGNEE:

E & I DEVELOPMENT ASSOCIATES, a California limited partnership

OCEAN VIEW GARDENS, LLC, a California limited liability company

By: C.R.H.C., Incorporated  
Its: General Partner

By: E.H.M. Partners, L.P., a California Limited partnership,  
Its: Managing Member

By: Michael F. Murphy  
Name: Michael F. Murphy  
Its: Senior Vice President

By: A. F. Evans Company, Inc., a California corporation  
Its: Managing General Partner

By: G.A. Hyson and Associates  
Its: General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Greg A. Hyson  
Its: President

By: G.A. Hyson and Associates  
Its: General Partner

By: \_\_\_\_\_  
Arthur F. Evans, its General Partner

By: \_\_\_\_\_  
Name: Greg A. Hyson  
Its: President

By: James E. Roberts - Obayashi Corporation  
Its: General Partner

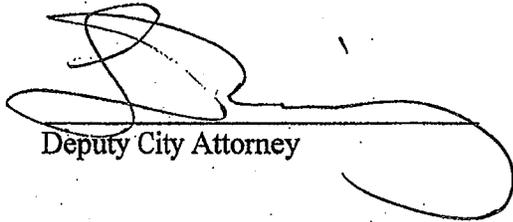
By: \_\_\_\_\_  
Name: Larry R. Smith  
Its: President

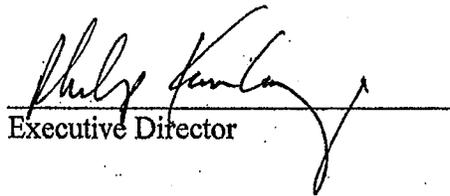
IN WITNESS WHEREOF, Lessor, Lessee and Assignee have executed this Amendment as of the date written on the first paragraph above.

LESSOR  
BERKELEY REDEVELOPMENT AGENCY

APPROVED AS TO FORM:

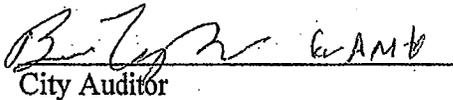
BY:

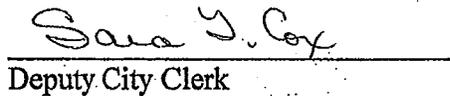
  
Deputy City Attorney

  
Executive Director

REGISTERED BY:

ATTEST:

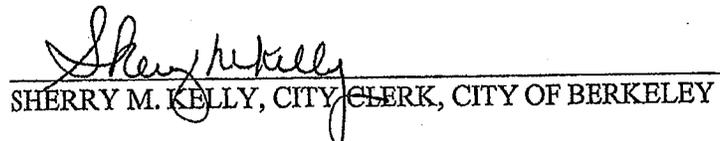
  
City Auditor

  
Deputy City Clerk

State of California  
County of Alameda

On February 9, 2004 before me, the undersigned, City Clerk, City of Berkeley, personally appeared Phil Kamlarz, Executive Director of the Redevelopment Agency and City Manager of the City of Berkeley, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

  
SHERRY M. KELLY, CITY CLERK, CITY OF BERKELEY

LESSEE:

ASSIGNEE:

E & I DEVELOPMENT ASSOCIATES, a California limited partnership

OCEAN VIEW GARDENS, LLC, a California limited liability company

By: C.R.H.C., Incorporated  
Its: General Partner

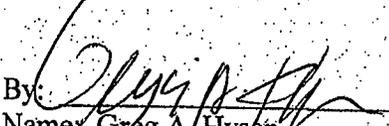
By: E.H.M. Partners, L.P., a California Limited partnership,  
Its: Managing Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: A. F. Evans Company, Inc., a California corporation  
Its: Managing General Partner

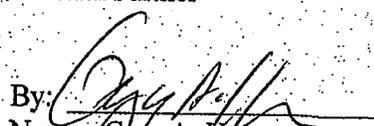
By: G.A. Hyson and Associates  
Its: General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By:   
Name: Greg A. Hyson  
Its: President

By: G.A. Hyson and Associates, *we*  
Its: General Partner

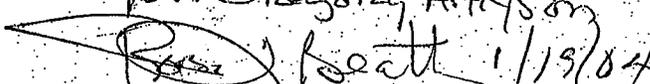
By: \_\_\_\_\_  
Arthur F. Evans, its General Partner

By:   
Name: Greg A. Hyson  
Its: President

By: James E. Roberts - Obayashi Corporation  
Its: General Partner

By: \_\_\_\_\_  
Name: Larry R. Smith  
Its: President

ROSA L. BEATTY  
NOTARY PUBLIC STATE OF MARYLAND  
My Commission Expires December 01, 2005

*for Gregory A. Hyson*  
 1/19/04

LESSEE:

ASSIGNEE:

E & I DEVELOPMENT ASSOCIATES, a California limited partnership

OCEAN VIEW GARDENS, LLC, a California limited liability company

By: C.R.H.C., Incorporated  
Its: General Partner

By: E.H.M. Partners, L.P., a California Limited partnership,  
Its: Managing Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: A. F. Evans Company, Inc., a California corporation  
Its: Managing General Partner

By: G.A. Hyson and Associates  
Its: General Partner

By:   
Name: Arthur F. Evans  
Its: President

By: \_\_\_\_\_  
Name: Greg A. Hyson  
Its: President

By: G.A. Hyson and Associates  
Its: General Partner

By:   
Arthur F. Evans, its General Partner

By: \_\_\_\_\_  
Name: Greg A. Hyson  
Its: President

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Its: General Partner

By: \_\_\_\_\_  
Name: Larry R. Smith  
Its: President

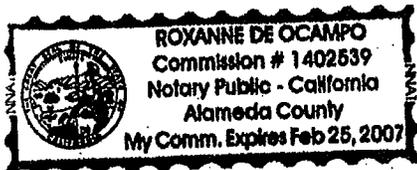
**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
County of Alameda } ss.

On January <sup>date</sup> before me, Roxanne de Ocampo, Notary Public  
Name and Title of Officer (e.g., "Jane Doe, Notary Public")  
personally appeared Arthur F. Evans  
Name(s) of Signer(s)

personally known to me  
 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.



WITNESS my hand and official seal.

[Signature]  
Signature of Notary Public

**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**

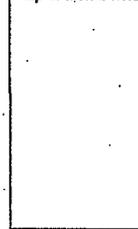
Signer's Name: \_\_\_\_\_

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

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

**RIGHT THUMBPRINT OF SIGNER**

Top of thumb here



LESSEE:

ASSIGNEE:

E & I DEVELOPMENT ASSOCIATES, a California limited partnership

OCEAN VIEW GARDENS, LLC, a California limited liability company

By: C.R.H.C., Incorporated  
Its: General Partner

By: E.H.M. Partners, L.P., a California Limited partnership,  
Its: Managing Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: A. F. Evans Company, Inc., a California corporation  
Its: Managing General Partner

By: G.A. Hyson and Associates  
Its: General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

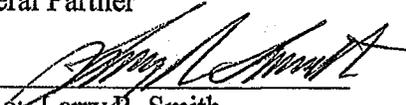
By: \_\_\_\_\_  
Name: Greg A. Hyson  
Its: President

By: G.A. Hyson and Associates  
Its: General Partner

By: \_\_\_\_\_  
Arthur F. Evans, its General Partner

By: \_\_\_\_\_  
Name: Greg A. Hyson  
Its: President

By: James E. Roberts – Obayashi Corporation  
Its: General Partner

By:   
Name: Larry R. Smith  
Its: President

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

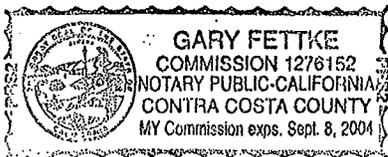
State of California

County of Contra Costa

On January 16, 2004 before me, Gary Fettke, Notary Public

personally appeared Larry R. Smith

[X] personally known to me - OR - [ ] 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.



WITNESS my hand and official seal.

[Signature] SIGNATURE OF NOTARY

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

- [ ] INDIVIDUAL
[ ] CORPORATE OFFICER

- [ ] PARTNER(S) [ ] LIMITED
[ ] GENERAL

- [ ] ATTORNEY-IN-FACT
[ ] TRUSTEE(S)
[ ] GUARDIAN/CONSERVATOR
[ ] OTHER:

SIGNER IS REPRESENTING: NAME OF PERSON(S) OR ENTITY(IES)

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT A

Legal Description

RESOLUTION NO. 1211

APPROVING AN AMENDMENT TO A 55 YEAR GROUND LEASE BETWEEN THE REDEVELOPMENT AGENCY (BRA) AND E&I DEVELOPMENT ASSOCIATES FOR THE OCEAN VIEW GARDENS DEVELOPMENT AT 813 DELAWARE STREET WHICH: 1) EXTENDS THE ORIGINAL LEASE TERM BY 22 YEARS (FROM 2037 TO 2059); 2) ALLOWS ASSIGNMENT OF LEASEHOLD INTEREST TO OCEAN VIEW GARDENS, LIMITED LIABILITY COMPANY (LLC); 3) SUBORDINATES THE FEE INTEREST IN THE LAND TO THE LOAN FOR APPROXIMATELY \$4.3 MILLION BETWEEN THE NEW ASSIGNEE AND THE CALIFORNIA HOUSING FINANCE AGENCY (CALHFA); 4) ALLOWS REGULAR AND CONTINUING CODE INSPECTION OF ALL OF THE UNITS BY AGENCY STAFF; 5) ENSURES THE COMPLETION OF A TENANT SURVEY DEVELOPED BY BRA WHICH SOLICITS INPUT FROM TENANTS ON MANAGEMENT-RELATED ISSUES; AND 6) REQUIRES THAT THE MANAGEMENT COMPANY MEET WITH THE TENANTS ON A REGULAR AND CONTINUING BASIS TO ADDRESS ISSUES OF CONCERN

WHEREAS, E&I Development Associates has held a 55 year lease on the Agency's land beneath the Oceanview Gardens Apartments for the past 21 years, and has requested to amend their lease to add another 22 years (from 2037 to 2059); and

WHEREAS, E&I Development Associates (lessee), with AF Evans as the managing partner, is forming a new entity called Ocean View Gardens, LLC (assignee) to ensure continued affordability, secure a loan from CalHFA, and provide for the continued management and maintenance of the project; and

WHEREAS, legal notice was sent to all Ocean View Gardens' tenants on Friday, December 5, 2003 regarding the West Berkeley Project Area Committee meeting on December 11, 2003, where the Proposed Lease Amendment for Ocean View Gardens was listed as an agenda item; and

WHEREAS, although no residents of Ocean View Gardens Apartments attended the meeting, the West Berkeley Project Area Committee discussed this item at length with a representative of Managing Partner AF Evans Company, Incorporated, and then prepared a Committee report to the Agency on this topic; and

WHEREAS, the West Berkeley Project Area Committee's report recommends that the Agency "Support the City's Housing Element Policy to keep and maintain existing-affordable housing stock in the City of Berkeley with affordable rents assured for as long as possible, and... work with the AF Evans (developer) to assure that the Ocean View Gardens apartments remain as affordable housing, subject to the City Staff/City attorney review of appropriate documents, including the proposed amended lease agreement"; and

WHEREAS, pursuant to Government Code section 6066, the Redevelopment Agency meeting of January 20, 2004 was publicly noticed and published in the Berkeley Voice newspaper once a week for two successive weeks, on January 2 and January 9, 2004, and the staff report and a copy of the

proposed lease and deeds of trust have been available for public review at the Clerk's Office, Redevelopment Office, and Main Library since January 2, 2004; and

WHEREAS, this long-term Lease amendment and the Deed of Trust documents have been analyzed by staff and will provide for the continued management, maintenance, and affordability of the 62 existing units of low-income housing; and

WHEREAS, in addition to the Lease amendment, the Ocean View Gardens LLC is also seeking a new loan from the California Housing Finance Agency (CalHFA) in order to reorganize the partnership, prepay the existing debt and use some of the property's equity to renovate the project; and

WHEREAS, in order for the Ocean View Gardens LLC to secure financing, CalHFA requires that the Lease amendment state that all other interests in the property be subordinate to the loan and that the Agency sign the Deed of Trust documents; and

WHEREAS, the Redevelopment Agency has agreed to subordinate the BRA's fee interest in the land to the loan between Ocean View Gardens LLC and the California Housing Finance Agency (CalHFA); and

WHEREAS, the purpose of the CalHFA financing is to provide affordable housing, and the instance of property seizure is remote; and

WHEREAS, AF Evans (managing General Partner of Ocean View Gardens LLC) is a well established housing developer that already owns almost 5,000 housing units and actively manages over 6,000 units of affordable housing, and has successfully built and managed the Ocean View Gardens project for 20 years; and

WHEREAS, the lease amendment also provides the Agency with the provision to cure any monetary or non-monetary default before any possible foreclosure on the property could occur; and

WHEREAS, without this lease amendment, the new project financing will not be approved, and as a result, there will be insufficient funds to update the property and maintain a high quality project for the remainder of the current lease (until 2037); and

WHEREAS, without this lease amendment, after 2012 and under the current provisions of the lease, the Ocean View Gardens Apartments could be converted to 80% AMI, with a remote possibility that the project could convert to market rate rent levels; and

WHEREAS, the requirements of the proposed new financing for the project (Federal tax credits and State bonds) will guarantee another 47 years (from 2012 to 2059) of affordability with 49 of the units at 60% of the average median income (AMI) and 13 units at 50% AMI out of a total of 62 units, regardless of the status of Federal Section 8 monies; and

WHEREAS, these affordability provisions are ensured by the agreements with and monitored by CalHFA, CDLAC and the California Tax Credit Assessment Committee (TCAC), and the Berkeley

Redevelopment Agency or a successor City department will also monitor the project and guarantee that these affordability levels are maintained; and

WHEREAS, the lease amendment will assist in the elimination of blight by guaranteeing the quality, as well as longer affordability of the Ocean View Gardens Apartments through provision of an additional 47 years of affordability, rehabilitation of the project (major maintenance such as kitchen or bath replacements), and actions that take advantage of advances in building systems (e.g., water heaters, windows, energy efficient lighting) that will make the project more efficient and cost effective; and

WHEREAS, the estimated value of the Redevelopment Agency's land interest to be leased, determined at the highest and best uses permitted under the Redevelopment Plan is \$110,000 without improvements (2003 Assessor's Office land value) and over \$1,310,000 with improvements; and

WHEREAS, the Ocean View Gardens' lease amendment and project financing are in accordance and comply with the City's Housing and Redevelopment Plans and policy.

NOW THEREFORE, BE IT RESOLVED that the Redevelopment Agency approves an amendment to a 55 year ground lease between the Redevelopment Agency (BRA) and E&I Development Associates for the Ocean View gardens development at 813 Delaware street which: 1) extends the original lease term by 22 years (from 2037 to 2059); 2) allows assignment of leasehold interest to Ocean View Gardens, Limited Liability Company (LLC); 3) subordinates the fee interest in the land to the loan for approximately \$4.3 million between the new assignee and the California Housing Finance Agency (CALHFA); 4) allows regular and continuing code inspection of all of the units by agency staff; 5) ensures the completion of a tenant survey developed by BRA which solicits input from tenants on management-related issues; and 6) requires that the management company meet with the tenants on a regular and continuing basis to address issues of concern.

The foregoing Resolution was adopted by the Berkeley Redevelopment Agency on January 20, 2004 by the following vote:

Ayes: Agency Members Hawley, Maio, Olds, Shirek, Spring and Wozniak.

Noes: None.

Abstain: Agency Member Worthington.

Absent: Agency Member Breland and Chairperson Bates.

Attest: Sherry M. Kelly  
Sherry M. Kelly, Secretary

Tom Bates  
Tom Bates, Chairperson

CMS#            LFBUP  
RESO#           1211

Agreement between  
**Redevelopment Agency**  
and  
**E&I Development Associates, and**  
**Ocean View Gardens, LLC**  
For: **Extension of 55 year Land Lease**  
Term:        **09/30/1982 – 3/29/2059**

0525



82-149148

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(1-2)

When recorded mail to:  
Roger A. Clay, Jr. Esq.  
GOLDFARB & LIPMAN  
La Salle Building  
491 Ninth Street  
Oakland, CA 94607

RECORDED IN OFFICIAL RECORDS  
OF ALAMEDA COUNTY, CALIF.  
RENE C. DAVIDSON, County Recorder  
FOUNDERS TITLE CO.  
SEP 30 1982  
AM 7,8,9,10,11,12,1,2,3,4,5,6 PM

*2800*

LEASE AND DISPOSITION AGREEMENT

BY AND BETWEEN

THE REDEVELOPMENT AGENCY OF THE CITY OF BERKELEY

and

E & I DEVELOPMENT ASSOCIATES

Regarding

THE WEST BERKELEY REDEVELOPMENT PROJECT

C/

## LEASE AND DISPOSITION AGREEMENT

THIS LEASE AND DISPOSITION AGREEMENT, entered into as of this 30th day of September, 1982 by and between the Redevelopment Agency of the City of Berkeley (Lessor), and E & I Development Associates (Lessee).

## RECITALS

WHEREAS, the Lessor has been engaged in the planning and development of a housing development for low- and moderate income persons in the West Berkeley Redevelopment Area (The Development);

WHEREAS, the Lessor has selected the Lessee as the developer of the Development;

WHEREAS, the Lessor wishes to lease the land upon which the Development is to be located to the Lessee for a period of fifty-five (55) years, pursuant to the terms of this Lease and Disposition Agreement; and

WHEREAS, pursuant to Section 8 of the United States Housing Act of 1937, as amended ("Section 8"), the Lessee and the California Housing Finance Agency ("CHFA"), have entered into an Agreement to Enter Into a Housing Assistance Payments Contract ("AHAP"); and

WHEREAS, the term of said AHAP provides that when construction of the units in the Development has been completed in accordance with plans and specifications approved by CHFA, and the permanent mortgage loan has been funded by CHFA, that CHFA will enter into a Housing Assistance Payments Contract HAP Contract with the Lessee with respect to such units in the Development, whereby CHFA and HUD will make payments to the lessee on behalf of qualified tenants of the Development; and

WHEREAS, CHFA has provided a commitment for construction and permanent mortgage loans, which shall be made from the proceeds of the sale of CHFA tax-exempt housing revenue notes and/or bonds, to be issued pursuant to the Zenovich-Moscone-Chacon Housing and Home Finance Act, and the rules and regulations issued thereunder; and

WHEREAS, the Parties believe that the terms of this Lease and Agreement are in accord with the public purposes, spirit and provisions of the applicable Federal, State and City of Berkeley laws and requirements under which the Development has been undertaken and is being assisted, including but not limited to the laws, rules and regulations of HUD and CHFA applicable to the

Development; and

WHEREAS, the Parties acknowledge that the terms of this Lease and Agreement are valid, enforceable, and legally binding on all of the Parties hereto, and that they possess the requisite authority to enter into this Lease and Agreement.

NOW, THEREFORE, in consideration of the promise and the respective covenants and agreements hereinafter contained, the Parties hereby agree as follows:

## ARTICLE I

### DEFINITIONS

Section 1.1. Definitions. The following terms shall have the following meanings in this Lease and Agreement:

(a) "AHAP" shall mean the Agreement To Enter Into a Housing Assistance Payment contract, dated September 30, 1982 by and between CHFA and the Lessee, as amended from time to time.

(b) "Authorized Officer(s)" shall mean, in the case of the Lessor, its Executive Officer as designee, and in the case of the lessee, its General Partners.

(c) "CHFA" shall mean the California Housing Finance Agency, a public instrumentality and political subdivision of the State of California, acting through any authorized representative.

(d) "Closing" shall mean the date upon which CHFA accepts the credit instrument evidencing the Construction Loan for the Development.

(e) "Commercial Unit(s)" shall mean the commercial unit(s) within the Development, which unit(s) shall be leased by the Lessee to Commercial Tenant(s), pursuant to the requirements of CHFA and the Lessee.

(f) "Commercial Tenant(s)" shall mean the tenant(s) who will occupy the Commercial Unit(s).

(g) "Construction Loan" shall mean the proceeds of the construction loan to be provided by CHFA, as evidenced by a promissory note and secured by a deed of trust (and any related security agreements or financing statements, including a subordination agreement between CHFA and the lessor, and certain CHFA security agreements required of the lessee) which are to be given by the lessee or the lessor to CHFA at the Closing of the

## Construction Loan.

(h) "Development" shall mean the commercial Units and the Dwelling Units, as well as all landscaping, roads and parking spaces existing thereon, as the same may from time to time exist, to be situated on the Land and designated as CHFA Project No. 81-70-N.

(i) "Dwelling Units" shall mean the units of housing within the Development, and any additions or alterations thereto; such Dwelling Units shall be occupied by the Tenants.

(j) "Excess Earning Distribution" shall mean any distribution of Development Income to the Lessee in excess of ten (10) percent of Lessee's equity in the Development which is allowed to be distributed to the Lessee by CHFA.

(k) "HAP contract" shall mean the Housing Assistance Payments contract to be executed upon completion of the Development, by and between CHFA and the Lessee, with respect to the Dwelling Units, whereby CHFA will undertake to make housing assistance payments available to the Partnership for all 62 Dwelling Units pursuant to Section 8 of the United States Housing Act of 1937, as amended, for a term of 30 years.

(l) "HUD" shall mean the United States Department of Housing and Urban Development, acting through any authorized representative.

(m) "Impositions" shall mean any taxes or assessments, general or specific, and any other governmental charge whatsoever, which if not paid when due would impair the lien of the Construction Loan or Mortgage Loan, the security of the CHFA bonds on encumber title to the Development, and any payment in lieu of taxes, which the lessee has agreed to or is bound to pay with respect to the Development.

(n) "Land" shall mean the two tracts of land upon which the Development is to be located which is being leased to the lessee pursuant to this Lease and Agreement, as is more fully described in the Exhibit C attached hereto and made a part hereof.

(o) "Lease" shall mean this Lease and Agreement, between the lessee and lessor, and shall include any and all amendments thereto hereinafter made.

(p) "Lease Year" shall mean a period of one year commencing on the anniversary of the commencement date of this lease and ending on the day preceding the next succeeding anniversary of such commencement date.

(g) "Lessee" shall mean E & I Development Associates, a limited partnership organized and existing under the laws of California, or its successors and assigns.

(r) "Lessor" shall mean the Redevelopment Agency of the City of Berkeley, California, a public body, corporate and politic, organized and exercising governmental functions and powers and existing under the Community Redevelopment Law of the State of California (Section 33000 et. seq. of the Health and Safety Code.

(s) "Low- and Moderate-income persons" shall mean persons and families whose incomes do not exceed eighty (80) percent of the median income of the San Francisco/Oakland Standard Metropolitan Statistical Area, as adjusted for family size, medical expenses and unusual expenses.

(t) "Mortgage Loan" shall mean the proceeds of the permanent mortgage loan to be provided by CHFA, as evidenced by a promissory note and secured by a deed of trust (and any related security agreements or financing statements, and certain CHFA security agreements required of the lessee), which will be based upon the CHFA final mortgage determination.

(u) "Parties" shall mean the Lessor and the Lessee.

(v) "Partnership Agreement" shall mean the agreement to be executed by the general and limited partners of the Lessee, in which all of the rights and obligations of the partners of the Lessee shall be set forth.

(w) "Regulatory Agreement" shall mean the agreement between CHFA and the Lessee which sets forth certain conditions pursuant to which the Construction Loan and the Mortgage Loan will be made by CHFA to the Lessee, and by which the Development will be operated.

(x) "Redevelopment Plan" shall mean the West Berkeley Urban Renewal Plan in effect on the date of execution of this Lease.

(y) "Tenants" shall mean residents in the Dwelling Units.

(z) "Working Drawings" shall mean drawings and specifications which have been approved for the Development by the Lessor prior to the execution of this Lease.

Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations and corporations.

ARTICLE II

Section 2.1 Incorporated Exhibits. The following documents are incorporated within this Lease by this reference and made a part of this Lease as if they were fully set out within the text.

(a) Redevelopment Plan. The Redevelopment Plan in effect on the date of execution of this Lease is attached as Exhibit A.

(b) Site Map. The Site Map shows the location of the Development Site and identifies Parcel A and Parcel B. It is attached as Exhibit B.

(c) Legal Description of the Development Site. The Legal descriptions of the Development Site is composed of separate descriptions for Parcel A and Parcel B. The descriptions are attached as Exhibit C respectively.

(d) Working Drawings. Prior to the execution of this Agreement, Lessee has submitted and the Lessor has approved working drawings for the construction to be performed under this Lease. The drawings are on file at the office of the Lessor.

ARTICLE IIILEASE OF THE DEVELOPMENT; USE OF DEVELOPMENT

Section 3.1 Lease of the Land. The Lessor, for and in consideration of the rents, covenants and agreements of the Lessee and its successors and assigns, to be paid, kept and performed, leases to the lessee, and in consideration thereof, the lessee does take, hire and lease the Land from the lessor, for and during the Term hereafter set forth. The lessee or its designee shall operate the Development located on the land in accordance with the provisions of this Lease, Federal and State laws, municipal ordinances, the Redevelopment Plan, and, if applicable, any CHFA or HUD documents affecting the Land and the Development.

Section 3.2 Term. The term of this Lease shall be fifty-five (55) years commencing on the date this lease is recorded. This lease shall end at midnight on the last day of the thirty-five year term unless terminated earlier in accordance with the provisions of this lease or the written consent of the parties.

Section 3.3 Rental Provisions. The Lessee hereby agrees to pay the Lessor as rental for the Land: [1] the sum of \$220,000.00 at closing and [2] 50% of all Excess Earning Distribution, if any, for the previous year, distributed on the

annual anniversary of this Lease. Rental payments shall be paid in the manner set forth in Section 10.17.

Section 3.4 Pledge by Lessee of Housing Assistance Payments and Rentals. The Lessee hereby agrees that all payments received from CHFA under the HAP Contract attributable to and on behalf of the Dwelling Units, together with all rentals received from the Tenants and the Commercial Tenant(s), shall be used in accordance with the provisions of the HAP Contract and as determined by CHFA.

Section 3.5 Use of Development and Assurances of Lessee. The Land and the Development are to be used by the Lessee during the entire Term of the Lease solely for the purpose of permitting occupancy of the Dwelling Units by predominantly tenants of low- and moderate-income, and for certain other ancillary purposes including the provisions of Commercial Unit(s) to commercial Tenant(s), provided no provision hereof shall be construed to require the rental of Dwelling Units to low- and moderate-income Tenants at rental rates which will result in operating losses for the Development or no reasonable return (i.e. ten percent of stated equity in the Development as determined by CHFA) to the Lessee for its operation of the Development. Lessee agrees to use its best efforts to secure any governmental housing assistance subsidies which would make economically feasible the rental of the Development to low- and moderate-income persons. The above-stated purposes shall be implemented in conformity with the provisions of the Redevelopment Plan, the HAP Contract, the CHFA approved Management Plan, the Regulatory Agreement and any other CHFA or other documents regulating the Development during the effectiveness of these documents and agreements.

The Lessee agrees:

(a) not to use the Development or the Land or permit the use thereof for any disorderly or unlawful purpose, but only to use the Development in accordance with this Section.

(b) to use reasonable care to prevent any Tenant or commercial Tenant from committing or maintaining any nuisance or unlawful conduct on or about the Development or the Land;

(c) to use its best efforts to prevent any Tenant or Commercial Tenant from violating any of the covenants and conditions of this lease with respect to the Development or the Land;

(d) to take all reasonable action, if necessary, to abate any violation of this Lease by any Tenant or Commercial Tenant upon notice from the lessor or otherwise; and

(e) subject to any applicable laws of the State of California, to permit the Lessor and its agents to inspect the records of the Lessee and the Development and the Land or any part thereof at any time during the Term of this Lease.

(f) to cooperate and coordinate the design, site plan and construction of the Development with adjacent redevelopment projects.

(g) not to modify in any fashion any of the agreements or documents referred to in Section 3.5 above unless such changes are mandated by law or by CHFA or HUD, without obtaining the prior written approval of Lessor. Lessor shall notify Lessee of any objection it has to such modifications within 15 days of receipt of Lessee's written request for such approval.

Section 3.6 Rights of Lessee. Except as otherwise provided in this Lease, the Lessee shall have the sole and exclusive right:

(a) to select and terminate the occupancy of a Tenant or commercial Tenant;

(b) to determine the eligibility of a Tenant or commercial Tenant for admission and continued occupancy;

(c) to give notice to a tenant or commercial Tenant to vacate the Development or any part thereof;

(d) to institute and prosecute legal proceedings against a Tenant or commercial Tenant, and levy execution upon any judgment obtained in such proceedings; and

(e) to reinstate a Tenant or commercial Tenant after any action taken, if the circumstances or conditions leading up to such action taken by the Lessee have been corrected and the approval of such reinstatement has been secured from CHFA, if such CHFA approval shall be required.

Section 3.7 Taxes and Assessments.

(a) Payment of Lessee. As a part of the consideration for the execution and delivery of this lease and as additional rent and subject to all the provisions hereof, Lessee covenants and agrees during the entire Term of this Lease, at its own cost and expense, to pay to the public officers charged with the collection thereof, as the same became due and payable and before any fine, penalty, interest, or other charge may be added thereto for the nonpayment thereof, all real estate taxes, licenses and permit fees, charges for public utilities of any kind, and obligations

for any and all other governmental charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever, as well as assessments for sidewalks, streets, sewers, water, or any other public improvements and any other improvements or benefits which shall, during the Term hereof, be made, assessed, levied, or imposed upon or become due and payable in connection with, or a lien upon, the Land, or any part thereof or improvements thereon, or upon this lease. Any such taxes, assessments or charges which are applicable only to a portion of the Term hereof shall be appropriately prorated; provided that, if by law any imposition may at the option of the taxpayer be paid in installments, Lessee may exercise such option, and in such event lessee shall pay all such installments (and interest, if any) becoming due during, or allocable to, the Term of this lease as the same become due and before any additional interest or any penalty, fine or cost may be added subsequent to the expiration of the Term of this Lease, shall not be chargeable to nor payable by the Lessee, it being agreed that such impositions for said partial taxing period shall be pro rated between Lessor and lessee on the basis that the number of days in each such fractional tax year bears to 365.

Upon request therefor by Lessor, Lessee covenants to furnish to Lessor, within thirty (30) days after the date upon which any such tax, assessment, or other charge is payable, official receipts of the proper taxing or other authority, or other proof satisfactory to lessor, evidencing the full payment thereof. In the event of lessee's failure to pay any such tax, assessment, or other charge, lessor shall have the right to pay the same and charge sale amount to Lessee as additional rent. Lessor agrees promptly to send to Lessee (i) copies of any notices for any taxes, assessments or charges, if such notices have been received by lessor, and (ii) evidence of any such payment of taxes, assessments or charges made by the Lessor, which are the responsibility of the lessee, pursuant to the terms of the Lease.

(b) Indemnification of Lessor. Lessee will at all times indemnify and hold harmless Lessor from any and all of the aforesaid taxes, assessments and charges, and from any and all liens and penalties in connection therewith, and also from any and all claims for damages in any way hereinafter chargeable to, or payable for, the Land, or the use and occupancy thereof, during the Term of this Lease.

(c) Limits of Tax Liability. The provisions of this Lease shall not be deemed to require Lessee to pay municipal, county, state or federal income or gross receipts or excess profits taxes assessed against lessor, or municipal, county, state, or federal capital levy, estate, succession, inheritance, gift or transfer taxes of Lessor, or corporation franchise taxes imposed upon any

owner of the fee of the Land. Lessee agrees to promptly send to lessor copies of any and all notices received by it in respect to any taxes or assessments affecting the land which are the responsibility of the Lessor, pursuant to the terms hereof.

(d) Lessee's Right to Contest. Lessee may, if it disputes the amount or validity of any liens, taxes, assessments, charges, penalties or claims, including liens or claims of materialmen, mechanics or laborers, upon the Land and improvements thereon, contest and defend against the same at its cost, and in good faith diligently conduct any necessary proceedings to prevent and avoid the same; provided, however, that such contest shall be prosecuted to a final conclusion as speedily as possible. Any rebate made on account of any taxes or charges paid by Lessee shall belong and be paid by Lessee.

Section 3.8 Assignment of Lessee's Leasehold Interest. The Lessee may assign, pledge, or mortgage its interest in this Lease, only in accordance with CHFA requirements, rules and regulations and after written consent of the Lessor.

#### ARTICLE IV

##### CONSTRUCTION AND MAINTENANCE

Section 4.1 Construction of Improvements. Lessee shall commence construction of the Development as set forth in the Working Drawings within thirty (30) days after the execution of this Lease and shall diligently proceed with construction according to the Lessor approved construction contract until completion.

Section 4.2 Title to Improvements and Liens Thereon. Title to all improvements on the Land, including the buildings situated on the land as of the date hereof, shall be in and remain in Lessee. Upon the expiration of the Term, or upon the sooner termination of the Lease of the Land in accordance herewith, fee simple title to any of the Improvements remaining on the Land shall pass to the Lessor, automatically, without the necessity of any written instrument, unless prior thereto the Lessor shall have removed the Improvements from the Land or sold, assigned, conveyed or otherwise disposed of the Improvements and the same shall have been removed from the Land; and the Lessee shall peacefully and quietly surrender and deliver to the Lessor the Land and the Improvements then remaining, in good order, together with all personal property owned by the Lessee, located in, used in connection with and necessary to the operation of the Development or the Improvements then remaining, and all records, leases and documents necessary to the continued use and operation of the

Development by the Lessor. Any other personal property owned by the Lessee and located on the Land or in the Improvements then remaining upon the termination of the Term shall be deemed abandoned and, if the Lessor shall so elect, shall become the property of the Lessor without any payment or offset therefor.

Lessee agrees that any improvements on the Land and any maintenance and repair work, alterations, replacement and additions in connection therewith shall be of good quality, and approved by CHFA, should such approval of CHFA be required. Except as provided herein with respect to the provisions by CHFA of the Construction Loan and Mortgage Loan for the Development, (or for any refinancing in connection therewith), or for any other purpose permitted by applicable CHFA rules and regulations, Lessee shall have no authority, express or implied, to create or place any lien or encumbrance of any kind or nature whatsoever upon, or in any manner to bind the interest of Lessor in the Land or to assign the rentals payable under this lease for any claim in favor of any person dealing with lessee. Lessee covenants and agrees promptly to pay all sums legally due and payable by Lessee on account of any labor performed or materials supplied against lessee's leasehold interest in the Land or the improvements thereon. In the event any mechanics or materialmen's lien is filed against the Land, lessee at its expense shall promptly cause such lien to be removed by bonding or otherwise and Lessee will indemnify and hold lessor harmless from any and all such asserted claims or liens.

Section 4.3 Use of Premises. The Lessee shall at all times during the Term of this Lease actively and continuously use or cause the Development to be improved and to be used for such purposes, consistent with all applicable zoning and environmental laws, with all applicable rules and regulations of CHFA, if applicable, and the Lease and the Redevelopment Plan. Lessee agrees reasonably, promptly and effectively to comply with all applicable and lawful statutes, rules, order, ordinances, requirements and regulations of the State of California, the Federal Government, and of any other governmental authority having jurisdiction over the Development. Lessee may, if in good faith and on reasonable grounds, dispute the validity of any charge, complaint or action taken pursuant to or under color of any charge, complaint, order, ordinance, requirement or regulation, defend against the same, and in good faith diligently conduct any necessary proceedings to prevent and avoid any adverse consequence of the same. Lessee agrees that any such contest shall be prosecuted to a final conclusion as speedily as possible.

Section 4.4 Maintenance of the Development and the Land. During the Term of this Lease, the Lessee or its designee shall perform, or cause to be performed, all maintenance and repair

necessary to maintain the Development and Land in good repair and tenantable conditions.

Lessee covenants and agrees that it shall maintain or cause to be maintained the Development and Land including improvements, landscaping, and any other appurtenances that may from time to time be placed thereon, regardless of style, description, or classification, in a manner that is in keeping with the Redevelopment Plan and shall not cause or suffer to be caused, any condition within its control to be unhealthy, unsafe or an aesthetic or visual detriment.

In the event that there arises a condition in violation of the above-stated maintenance standard, then upon thirty (30) days written notice by the Lessor to Lessee to cure the violation, the Lessor has the right to perform all acts necessary to cure such condition, or to take any other recourse at law or equity that the Lessor may have and to collect the cost of the Lessor's action from Lessee. The Parties hereto further mutually understand and agree that such rights of the Lessor specifically include the right to establish or enforce a lien or other encumbrance against the property. The foregoing provisions shall be a covenant running with the land, enforceable by the Lessor.

Section 4.5 Utilities. The Lessee shall be responsible for the cost of all utilities, including water, heat, gas, electricity, waste removal or other utilities or services supplied to the Development and the Lessee will pay or cause same to be paid, currently and as due.

Section 4.6 As-Built Drawings. Within sixty (60) days after receipt of a certificate of occupancy, Lessee shall provide the Lessor with a complete set of "as built" plans and specifications of the Development.

## ARTICLE V

### CHFA LOANS

Section 5.1 CHFA Rights. To secure the payment of the funds to be provided by CHFA for the construction and development of the Development, the Lessee and CHFA will enter into a Construction Loan and thereafter into a Mortgage Loan. Nothing contained herein shall relieve the Lessee of its obligations and responsibilities under said Construction Loan or Mortgage Loan to the extent specified therein or under the Regulatory Agreement between the Lessee and CHFA.

Section 5.2 Costs of CHFA loans to be Paid by Lessee. The Lessee affirms that it shall bear all of the costs and expenses in

connection with (1) the preparation and securing of the Construction Loan and Mortgage Loan, (ii) the delivery of any instruments and documents and their filing and recording, if required, and (iii) all taxes and charges payable in connection with the Construction Loan and Mortgage Loan.

Section 5.3 CHFA Loans Superior to Lease. The Lessor acknowledges and covenants that the Construction Loan and the Mortgage Loan shall be superior to any rights which the Lessor shall acquire under this Lease, and this Lease shall be subordinate to the Construction Loan and Mortgage Loan.

Section 5.4 Application of Rentals by Lessee. It is expressly understood and agreed that the Lessor shall have no right or claim to, or interest in, any payments under the HAP Contract or from Tenants received by the Lessee except for any payments to be made pursuant to Section 3.3 above.

Section 5.5 Proceeds of Mortgage. It is expressly understood and agreed that all Construction Loan and Mortgage Loan proceeds shall be paid to and become the property of Lessee, and that the Lessor shall have no right to receive any such Construction Loan or Mortgage Loan proceeds, except as set forth in the CHFA documents applicable to the Development.

Section 5.6 Subordination by Lessor. At such time or times as Lessee places, extends, renews, refinances and/or replaces any loan with CHFA or any other lender, and so long as such refinancing, extension, renewal or replacement does not terminate or adversely affect the fee simple interest of the Lessor in the Land or violate the terms of this Lease, Lessor agrees to promptly join in (and execute, acknowledge and deliver), in the manner required, such Construction Loan or Mortgage Loan (and/or all related agreements, instruments and documents, exclusive of notes, bonds or other undertakings imposing any financial liability on Lessor) solely for the purpose of mortgaging the leasehold in the Land and subjecting the right, title and interest of Lessor therein to the lien or the continuation or replacement of the lien of such construction loan or mortgage loan but without imposing any personal liability on the partners of the Lessee or the Lessor, all subject to approval by CHFA, if required, or any subsequent lender, provided such subordination shall be in conformity with the provisions of this Lease.

## ARTICLE VI

### INSURANCE

Section 6.1 Required Insurance coverage.

(a) Fire and Extended Coverage Endorsement. The Lessee shall during the Term keep the Dwelling Units and the Commercial Unit(s) in the Development insured against loss or damage by fire and all other risks as may be included in the standard form of extended coverage endorsement available at all time in amount such that the proceeds of such insurance shall not be less than the replacement value of the Development or any other higher amount required by CHFA. The amount of such insurance shall be adjusted by reappraisal of the Development by the insurer or its designee at least once every three (3) years during the Term of this Lease.

(b) Liability and Property Damage Insurance. During the Term of the lease, the Lessee shall keep in full force and effect a policy or policies of public liability and property damage insurance against liability for bodily injury to or death on or about the Development. The limits of such insurance shall be not less than the amounts required by CHFA, if applicable, or by the terms of the Partnership Agreement, whichever is greater.

(c) Workers' Compensation Insurance. The Lessee shall carry workers' compensation insurance covering all persons employed in connection with the Development and with respect to whom death, bodily injury, sickness insurance claims could be asserted against the Lessor or the lessee.

(d) Title Insurance. The Lessee shall obtain a Mortgagee's title insurance policy in such form and amount as shall be required by CHFA; on behalf of the Lessor, the Lessee shall obtain an owner's title insurance policy, insuring a leasehold interest in the Land and a fee simple title to the Improvements on the Land, in such form and amount as shall be required by Lessor.

#### Section 6.2 Insurance Policies and Premiums.

(a) All policies shall name the Lessor, the Lessee, and CHFA as insureds as their respective interests may appear; provided, however, that CHFA, for so long as the Construction Loan or Mortgage Loan is outstanding, shall be named as mortgagee under the terms of a standard mortgagee clause, and all insurance proceeds shall be payable to CHFA. Duplicate copies of such policies or certificates of such insurance shall be promptly furnished to CHFA and the Lessor.

(b) Any policy of insurance shall provide that any change or cancellation of said policy must be in writing to CHFA, Lessee and the Lessor at their respective principal offices at least thirty (30) days before the effective date of said change or cancellation.

Section 6.3 Proceeds of Insurance.

(a) For so long as the Construction Loan or Mortgage Loan on the Development is outstanding:

(i) All fire and extended coverage (casualty) insurance proceeds shall be applied by CHFA, if it is the mortgagee, as provided in the Construction Loan and Mortgage Loan or if CHFA is not the mortgagee, by whatever entity is the mortgagee, as provided in the Lease, to the payment of the costs of repairing or rebuilding that part of the Development damaged or destroyed if [A] the Lessee agrees in writing within ninety (90) days after payment of the proceeds of insurance that such repair or rebuilding is economically feasible, and [B] CHFA, if applicable, determines that such repair or rebuilding will not adversely affect the payment of principal or interest on the Construction Loan or Mortgage Loan. If the property is not repaired or replaced, all such proceeds shall be applied in a manner consistent with the terms of the Construction Loan or Mortgage Loan, if applicable, or to the Lease; and

*OK Lessee* (ii) Any proceeds of any mortgagee's title insurance shall be paid to CHFA, if it is the mortgagee, provided that, if so requested by the Lessee or the Lessor, such proceeds shall be applied to remedy the defect in title, if any.

(b) In the event that CHFA is no longer providing the Construction Loan or the Mortgage Loan, all insurance proceeds received under the policies set forth in this Article V shall be paid to, and applied by, (i) the Lessee, or (ii) any subsequent mortgagee (should the terms of any loan agreement entered into by the Lessee with such mortgagee stipulate as such), in a manner consistent with the provisions of Section 6.2 herein.

ARTICLE VII

Section 7.1 Non-discriminatory Clause; Affirmative Action.

(a) The Lessee shall not, in the selection or approval of Tenants or provisions of service or in any other manner, discriminate against any person on the grounds of race, color, religion, creed, marital status, sex, sexual orientation, national origin, ancestry, or any other arbitrary factor.

(b) The Lessee will comply with all requirements of Title VI of the Civil Rights Act, and all applicable rules and regulations issued thereunder and all other such federal, state, and municipal laws.

(c) The obligations of the Lessee to comply with subsections

(a) and (b) above inures to the benefit of the lessor and to CHFA and then shall be entitled to invoke any remedies available by law to redress any breach of these subsections or to compel compliance therewith by the Lessee.

Section 7.2 Nondiscrimination and Nonsegregation Covenants. All deeds, leases and contracts relating to the Development Land shall contain and be subject to the following nondiscrimination and nonsegregation clauses:

1. In deeds: "The grantee herein covenants by and for itself, its 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 race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, development, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee itself or any person claiming under or through it, establish or permit an any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."
2. In leases: "The Lessee herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the leasing, subleasing, transferring use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the land herein leased."
3. In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in

the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land."

Section 7.3 Compliance by Lessee with Governmental Regulations. In carrying out all construction-related work on the Development, Lessee shall comply with the Lessor-approved affirmative action Plan and all applicable municipal resolutions on affirmative action.

## ARTICLE VIII

### ASSURANCES OF LESSOR

#### Section 8.1 Lessor to Give Peaceful Possession.

The Lessor covenants that it is seized in fee simple of, and has good and marketable title to, the Land and that the same is free of all easements, covenants, conditions and restrictions except as shall be set forth in the owner's title insurance policy to be acquired for the Lessor by the Lessee. The lessor has the full right and authority to make this Lease. The lessor covenants and warrants that the lessee and its Tenants shall have, hold and enjoy, during the Lease Term, peaceful, quiet and undisputed possession of the Land herein leased without hindrance or molestation so long as the Lessee is not in default hereunder; the Lessor shall not, from and after the date of this Lease, mortgage, encumber or otherwise impair the state of title to the Land. The Lessor hereby affirms that the Lessee will be the owner in fee simple of all improvements to be constructed on the Land.

Section 8.3 Lessor to Lease Development with Marketable Title. Lessor covenants and warrants that there are no outstanding liens and encumbrances that will interfere with the Lessee's possession of the Land except:

1. Those covenants, conditions and restrictions specified in the Redevelopment Plan attached as Exhibit A;
2. Any provisions of this Agreement;
3. Any lien, not delinquent, for real property taxes;
4. All easements of record appearing on that certain

Preliminary Report, dated 8-23-82, prepared by the Founders Title Insurance Company.

Section 8.4 Lessor to Obtain Necessary Governmental Approvals. The Lessor covenants that all necessary approvals from any and all governmental agencies in compliance with all federal, state, and local laws, ordinances, and regulations requisite to leasing of the Land have been obtained.

## ARTICLE XI

### DEFAULTS AND REMEDIES

Section 9.1 Events of Default. Failure or delay by any Party to perform any term or provision of this Lease in a timely manner constitutes an event of default under this Lease. The Party who so fails or delays must within thirty (30) days commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with reasonable diligence.

The nondefaulting Party should give written notice of default to the Party in default, specifying the alleged default. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

Except as otherwise expressly provided in this Agreement, any failure or delay by any Party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by any Party of one or more such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other Party.

Section 9.2 Bankruptcy. In the event of bankruptcy on the part of Lessee or in the case of any receiver being appointed to take charge of the premises, or any portion of the premises, due to lessee's inability to meet its obligations, Lessor may, at its option, declare this lease terminated and forfeited by Lessee and Lessor shall be entitled in such event to immediate possession of the premises, and no receiver or trustee in bankruptcy shall acquire in any such case any of the rights of Lessee hereunder.

Section 9.3 Plans and Data. In the event Lessee defaults and does not proceed with the construction of the Development, it

shall deliver to the Lessor all plans and data concerning the Development and the Lessor or any other person or entity designated by the Lessor is free to use such plans and data for any reason whatsoever without cost or liability therefor to Lessee.

Section 9.4 Institution of Legal Actions. Any Party may institute legal action to interpret or enforce the terms of this Lease, to cure, correct or remedy any default, or recover damages for any default, or to obtain any other remedy available at law or in equity. Such legal actions must only be instituted in the Superior Court of the County of Alameda, State of California, in the Berkeley-Albany Municipal Court in Alameda County or in the Federal District Court for the Northern District of California. The Parties may agree to have any dispute heard by an arbitrator under mutually agreed upon rules and procedures.

Section 9.5 Attorney's Fees and Costs. The Party prevailing in any legal action shall be entitled to recover against the Party not prevailing all reasonable attorney's fees and costs incurred in such action. As used herein, "legal action" includes arbitration proceedings.

Section 9.6 Further Default. The abandonment of the Development by the Lessee or the removal of the Development by the Lessee from the Land shall constitute an event of default by the Lessee under this Lease.

#### ARTICLE X

#### MISCELLANEOUS

Section 10.1 Benefit of and Enforcement by CHFA. Notwithstanding anything contained in this Lease to the contrary, in the event that any provisions of this Lease in any way contradicts, modifies or in any way changes (i) the terms of the Regulatory Agreement, or the Construction Loan or the Mortgage Loan, or (ii) the terms of any other documents executed, or to be executed, by the Lessee with CHFA relating to the Development, the terms of such Regulatory Agreement or such documents referred to in (i) and (ii) above shall prevail and govern.

Section 10.2 Instrument is Entire Agreement. This Lease and attached Exhibits, subject to the terms of the HAP Contract, the Partnership Agreement and the CHFA documents applicable to the Development, constitute the entire agreement between the Parties. This Lease, subject to the terms of such aforementioned agreements, shall completely and fully supersede all other prior agreements, both written and oral, between the Lessor and the Lessee relating to the lease of the Land by the Lessor to the Lessee.

JP

Section 10.3 Notices. All notices hereunder shall be in writing signed by an Authorized Officer(s) and shall be sufficient if sent by United States first class, registered or certified mail, postage prepaid, addressed, [1] if to the Lessor, to the Redevelopment Agency, c/o Executive Officer, 2180 Milvia Street, Berkeley, California 94704, and [2] if to the lessee, to Oceanview Gardens, Berkeley., California 94702, and to CRICO Limited Partnership of Berekley, c/o C.R.I., Inc., One Central Plaza, 11300 Rockville Pike, Rockville, Maryland 20852, and [3] if to CHFA, to the California Housing Finance Agency, 301 Capitol Mall, Sacramento, California 95814. The Lessor, CHFA and the Lessee may, by like notice, designate any further or different addresses to which subsequent notices shall be sent.

Section 10.4 Recording. This Lease shall be recorded in the office of the Alameda County Court Clerk, Oakland, California, or in such other office as may at the time be provided by law as the proper place for the recordation thereof.

Section 10.5 Non-Waiver of Breach. Neither the failure of the lessor or the Lessee to insist upon strict performance of any of the covenants and agreements of this lease nor the failure by the lessor or lessee to exercise any rights or remedies upon default while the Lessor or Lessee is in default hereunder shall be deemed a waiver or relinquishment (1) of any covenant herein contained or of any of the rights or remedies of the lessor or lessee hereunder, (2) of the right in the future of the lessor or the lessee to insist upon and to enforce by mandamus or other appropriate legal remedy a strict compliance with all of the covenants and conditions hereof, or (3) the right of the lessor to recover possession of the Land.

Section 10.6 Effective Date; Counterparts. This Lease shall become effective upon the commencement of the Term set forth herein. This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 10.7 Lease Binding on Successors. This Lease and all its provisions and attached Exhibits shall inure to the benefit of, and shall be binding upon, the Lessor, the Lessee and their respective successors and assigns.

Section 10.8 Relationship of Parties. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of association or of buyer and seller whatsoever between Lessor and Lessee, it being expressly understood and agreed that neither the computation of any payments and other charges hereunder nor any other provisions

contained in this Lease, nor any act or acts of the parties hereto, shall be deemed to create any relationship between Lessor and lessee other than the relationship of landlord and tenant.

Section 10.9 Warranty Against Payment of Consideration for Agreement. Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this lease, other than normal costs of conducting business and costs of professional services such as architects, engineers and attorneys.

Section 10.10 Computation of Time In computing any period of time prescribed or allowed under this Lease, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last calendar day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. As used herein, "legal holiday" means a legal holiday recognized by the City of Berkeley and which the offices of the City are closed for public business.

Section 10.11 No Third Party Beneficiary. The provisions of this Lease are for the exclusive benefit of the Lessor and Lessee, and their successors and assigns, and not for the benefit of any third person, nor shall this Lease be deemed to have conferred any rights, express or implied, upon any third person.

Section 10.12 Gender and Number. Words of any gender used in this Lease shall be held to include any other gender, and words in the singular number shall be held to include the plural (and vice-versa), when the sense requires.

Section 10.13 Titles. The titles and article or paragraph headings are inserted only for convenience, and are in no way to be construed as a part of this Lease or as a limitation on the scope of the particular provisions to which they refer.

Section 10.14 Invalidity of Particular Provisions.

(a) If any provision of this Lease or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provisions of this Lease shall be valid and be enforced to the fullest extent permitted by law.

(b) If the terms of the HAP Contract or Regulatory Agreement shall be modified in such a manner as to create certain

inconsistencies with the provisions of this Lease, the Lessor and Lessee agree to promptly take all actions necessary to amend those sections affected by the occurrence of any of the events set forth above so as to ensure that all of the provisions of this Lease are fully accurate, valid and enforceable.

Section 10.15 Effect of Approval by CHFA. The approval of this Lease by CHFA has signified that the undertaking of the Lessee, and the performance of its obligations, under this Lease is consistent with, and shall not in any way impair, the rights of the Lessee to receive (a) housing assistance payments under the AHAP and the HAP Contract, and (b) proceeds under the Construction Loan and the Mortgage Loan; and that CHFA has approved the terms of this Lease, including the Term hereof.

Section 10.16 Applicable Law. This Lease shall be governed by and construed in accordance with the laws of the State of California.

Section 10.17 Rental Payments. All rental payments to be paid by the Lessee to the Lessor pursuant to Section 3.3 above shall be paid by the Lessee to the Lessor in trust. The Lessor shall hold the Rental Payments in trust and shall only release the funds from trust upon the City's or Lessor's use and expenditure of the Rental Payments for the redevelopment of the Delaware Street Historical District in the West Berkeley Development. If the Rental Payments have not been expended pursuant to this Section by January 1, 1985, the Lessor shall deposit the Rental Payments with the Lessee for use by the Lessee, with CHFA approval, to make capital improvements to the Development and to pay operating costs of the Development which are eligible activities under the Community Development Block Grant Program and the Lessee shall thereafter not be liable to the Lessor for said Rental Payments.

Section 10.18 Reasonable Approvals. Wherever the Lease requires Lessor or Lessee approval of any document or other matter, such approval shall not be unreasonably withheld.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands this the day and year first above written.

82-149148

LESSOR

WITNESS:

THE REDEVELOPMENT AGENCY OF  
THE CITY OF BERKELEY

\_\_\_\_\_

By: *Forrest Craven*  
Executive Officer, Forrest Craven

LESSEE:

ATTEST:

E AND I DEVELOPMENT ASSOCIATES,

\_\_\_\_\_

By: *Arthur Evans*  
*Arthur* Evans,  
General Partner

By: CRICO LIMITED PARTNERSHIP OF  
BERKELEY, a General Partner

ATTEST:

By: C.R.H.W., INC.,  
Its General Partner

\_\_\_\_\_

By: *Richard L. Kadish*  
Richard L. Kadish  
Senior Vice President

APPROVED BY:

WITNESS:

CALIFORNIA HOUSING FINANCE  
AGENCY

\_\_\_\_\_

By: *R.P. Phinney*  
Authorized Officer, R.P. Phinney

WBLA/RC/9/30

STATE OF CALIFORNIA )  
 )  
COUNTY OF San Francisco ) ss.

On September 30, 1982, before me, the undersigned, a Notary Public in and for the State aforesaid, personally appeared Arthur F. Evans, known to me to be one of the partners of the partnership that executed the within instrument and acknowledged to me that such partnership executed the same.

WITNESS my hand and official seal.

Rita Kehrig  
Notary Public



STATE OF CALIFORNIA )  
 )  
COUNTY OF SAN FRANCISCO ) ss.

On this 30 day of September, 1982, before the undersigned, a Notary Public duly commissioned and sworn, personally appeared R. P. Phinney known to me to be the Development Officer of the California Housing Finance Agency, a public instrumentality of the State of California, and known to me to be the person who executed the within instrument on behalf of said Agency, and acknowledged to me that such Agency executed the same.

IN WITNESS WHEREOF, I have hereto set my hand and affixed my official seal in said County of San Francisco, State of California, the day and year in this certificate first above written.

Rita Kehrig





