

SECOND AMENDMENT TO LOAN AGREEMENT AND NOTE

SWANS MARKET PROJECT

\$1,150,000 COMMERCIAL DEVELOPMENT LOAN

THE OAKLAND REDEVELOPMENT SUCCESSOR AGENCY, LENDER

AND

EAST BAY ASIAN LOCAL DEVELOPMENT CORPORATION, BORROWER

SECOND AMENDMENT TO LOAN AGREEMENT AND NOTE

The Loan Agreement originally by and between the Redevelopment Agency of the City of Oakland (“Redevelopment Agency”), a community redevelopment agency organized and existing under Community Redevelopment Law, and Swans Marketplace Partnership, L.P., (the “Partnership”), dated June 18, 1998 (the “Loan Agreement”), and the Promissory Note Secured by Deed of Trust executed by Partnership in connection with this loan (the “Note”), as amended by that First Amendment to Promissory Note of Swans Marketplace Partnership, L.P. dated August 18, 2005 (the “First Amendment”), is hereby amended by this Second Amendment to Loan Agreement and Note (“Second Amendment”) dated for reference as of _____, 2020 (“Effective Date”), by and between the Oakland Redevelopment Successor Agency (“ORSA”), successor agency to the Redevelopment Agency pursuant to California Health and Safety Code Section 34173, and East Bay Asian Local Development Corporation (“Borrower”), a California nonprofit public benefit corporation. (ORSA and Borrower are collectively referred to as the “Parties”).

RECITALS

A. On June 18, 1998, the Redevelopment Agency and the Partnership entered into the Loan Agreement and Note for a loan in the amount of \$1,150,000 (the “Loan”) for the development of Swans Market (the “Project”) at 521 10th Street and 901 Washington Street, Oakland (the “Properties”).

B. On December 23, 2009, the Redevelopment Agency, the Partnership, and Borrower entered into an Assignment and Assumption Agreement assigning the Partnership’s rights, title, interest and obligations under the Loan to Borrower.

C. Pursuant to California law, the Redevelopment Agency was dissolved on February 1, 2012. On July 17, 2012, the City of Oakland established ORSA, which acquired the rights, duties and obligations of the Redevelopment Agency, including the Redevelopment Agency’s interest in the Loan.

D. On October 31, 2013, ORSA subordinated the deed of trust securing the Loan to new New Markets Tax Credit financing for the Project as authorized by Oakland Oversight Board Resolution No. 2013-7 approved on March 18, 2013.

E. Borrower has requested that ORSA amend the Loan Agreement and Note to extend the term of the Loan by 22 years, from 2028 to 2050, and subordinate the Loan to new financing that is required to unwind the New Market Tax Credit financing.

F. ORSA is requiring Borrower to pay a \$50,000 extension fee in connection with this Second Amendment.

G. All capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Loan Agreement and Note.

H. This Second Amendment shall not take effect unless and until it has been approved by the Alameda Countywide Oversight Board and the California Department of Finance, pursuant to Health and Safety Code Section 34179.

NOW, THEREFORE, the Loan Agreement and Note are amended as follows:

1. Section 2.3 of the Loan Agreement, TERM OF LOAN, is amended to read as follows:

TERM OF LOAN. Payments of principal and interest shall be made as required by the Note. Unless due sooner under the Note, the Loan principal balance and all accrued interest shall be due and payable on the earlier of (a) thirty (30) years from the date of the Second Amendment to Loan Agreement and Note, or (b) an Event of Default by Borrower which has not been cured as provided for in this Agreement.

2. Section 2 of the Note, as previously amended by the First Amendment, is hereby amended to read as follows:

2. AMOUNT AND TIME OF PAYMENT. Beginning in the calendar year in which the Project first obtains a certificate of occupancy, and continuing annually thereafter, Borrower shall make payments of principal and interest equal to the Available Cash Flow, as defined below, from the Property. Payment for each calendar year shall be made no later than 90 calendar days following the end of each calendar year. Borrower shall provide Lender, within 60 calendar days of the end of each calendar year, with an accounting, prepared by an independent auditor, of the Operating Revenues and Operating Expenses>Returns, as defined below, for the previous calendar year.

“Available Cash Flow” means the excess of annual Operating Revenues over annual Operating Expenses>Returns for the Property. “Operating Revenues” shall mean all income derived from the Property, and shall include, without limitations: (1) rents and lease payments (including rent on commercial or common space within the Property); (2) interest on contingency reserves or other reserves not designated as a sinking fund; (3) proceeds from debt refinancings greater than the amount of original debt principal (net of refinancing fees); and (4) receipts from services other than parking which is a fee charged. “Operating Expenses>Returns” shall mean, without limitations: (1) all direct costs and expenses necessary to operate the Property as approved by the Lender; (2) debt service on any loans and operating advances, provided that such loans or advances have been used to acquire the Property, develop the Project, or operate the Property, and have been approved by Lender; (3) debt service on the unsecured loan by the Heron Foundation, which will be fully repaid in March of 2008; (4) payments of operating reserves not to exceed two percent (2%) of gross rental revenue per year to achieve a maximum operating reserve equal the six (6) months operating costs, including debt service; (5) replacement reserves for capital items not to exceed six tenths of a percent (0.6%) of the replacement cost of the commercial and garage components of the Project; (6) ground lease payments, provided that the amount paid in any year may not exceed the permitted Return on

Investment, defined as an amount equal to 10 percent of the aggregate cash or property (valued at its fair market value at the time of acquisition) contributed or paid to Borrower by its partners; and (7) reasonable partnership management expenses up to \$15,000 per year. For operating advances, Borrower must report to Lender on a quarterly basis any amounts advanced (including cumulative advances) and the uses of funds advanced.

Notwithstanding the preceding provision, Borrower shall pay to the order of Lender the full amount of the outstanding principal advanced under this Note and the Loan Agreement, together with all accrued but unpaid interest thereon (provided that unpaid interest shall be payable only to the extent of available proceeds) on the earliest of: (a) thirty (30) years from the date of the 2nd Amendment of this Note; (b) the date the Project is sold; or (c) an Event of Default by Borrower as defined in the Loan Agreement which has not been cured in the manner and time provided in the Loan Agreement. Notwithstanding the above, payments shall also be due from syndication proceeds, leveraged funds, and other funds received by Borrower or an affiliate as required by Lender under the syndication provision of the Loan Agreement.

3. A \$50,000 extension fee shall be paid by Borrower to ORSA upon execution of this Second Amendment.

[Signatures on following page]

IN WITNESS WHEREOF, the undersigned Parties have executed this Second Amendment, as of the Effective Date.

BORROWER:

East Bay Asian Local Development Corporation,
a California nonprofit public benefit corporation

By: _____

Name: _____

Its: _____

ORSA:

Oakland Redevelopment Successor Agency,
successor agency to the Redevelopment Agency of the
City of Oakland under Health and Safety Code Section
34173

By: _____

Name: _____

ORSA Administrator

Approved as to form and legality:

ORSA Counsel