

**Recording Requested by and
after Recording Return to:**

**MONTEREY COUNTY
Economic Development Department
1441 Schilling Place – North
Salinas, CA 93901**

Attn: Redevelopment and Housing Division

No fee for recording pursuant to
Government Code Section 27383

AMENDMENT TO CDBG LOAN AND REGULATORY AGREEMENT

**PASEO DE LAS ROSAS APARTMENTS
CASTROVILLE, CA**

**AMENDMENT TO
CDBG LOAN AND REGULATORY AGREEMENT**

THIS AMENDMENT TO CDBG LOAN AND REGULATORY AGREEMENT (the "Amendment"), dated as of the first day of June ___, 2017, is made by and between CASTROVILLE FLC, LP, a California limited partnership, its successors, heirs and assigns (the "Owner") having its place of business at 123 Rico Street, Salinas, CA 93907 and the County of Monterey, a political subdivision of the State of California (the "County").

W I T N E S S E T H:

WHEREAS, the Owner is the owner of certain real property located in the City of Castroville, County of Monterey, State of California further described in this Agreement on which is constructed Paseo de las Rosas Apartments, hereinafter referred to as the "Project";

WHEREAS, the Housing Authority of the County of Monterey (the "Prior Owners") executed that certain Promissory Note (the "CDBG Note"), dated May 23, 2002, in favor of the County, in the original principal amount of Thirty-Five Thousand and No/100ths Dollars(\$35,000.00) (the "CDBG Loan") and repayment of the CDBG Note is secured by a Deed of Trust and Security Agreement (the "**CDBG Deed of Trust**"), dated May 1, 2002, which was executed by the Prior Owner and delivered to First American Title Company, as trustees for the benefit of the County and thereafter recorded on July 3, 2002, in the Official Records of Monterey County, at Instrument No. 2002062501, against the real property as more fully described in Exhibit A , attached hereto and incorporated herein by this reference;

WHEREAS, the Prior Owner and the County also executed that certain CDBG Loan and Regulatory Agreement, dated May 1, 2002 (the "CDBG Loan Agreement"), and recorded it on July 3, 2002, in the Official Records of Monterey County as Instrument No. 2002062500, against the Real Property described in Exhibit A;

WHEREAS, Prior Owner, Owner and County have entered into that certain Assignment, Assumption and Release Agreement where in Owner has agreed to assume all the obligations of the Prior Owner under the County Loan Documents, as described therein, and the County has consented to the assignment by, and release of, the Prior Owner and the assumption by the Owner of said obligations;

WHEREAS, as of the date hereof, the outstanding principal amount of the CDBG Loan is \$10,500; and

WHEREAS, the parties hereto have agreed to modify the terms contained in Sections 1.2, 1.6(a) and (b), 4.3, 4.5, 4.16, 5.1(c) and 6.9 of the CDBG Loan Agreement.

NOW, THEREFORE, for and in consideration of the above premises, the sum of Ten Dollars (\$10.00) in hand paid and other good and valuable consideration, the receipt and sufficiency of which are

hereby acknowledged by each of the parties hereto, the parties, for themselves and for their respective successors and assigns, do hereby agree that the terms of the CDBG Loan Agreement are modified as follows:

1. The foregoing recitals are hereby incorporated by reference as if set forth fully herein. All capitalized terms not defined in this Agreement shall have the same meanings ascribed thereto in the CDBG Loan Agreement.

2. Section 1.2 of the Agreement is amended in its entirety to provide as follows:

Interest. Commencing with the issuance of Certificates of Occupancy or their equivalent, the remaining principal balance of the Note shall bear interest at the rate of three percent (3%) per annum; provided however, in the event of a Default hereunder (as defined in Section 5.1(a) below), interest shall begin to accrue following the Default at the default rate of ten percent (10%), compounded annually.

3. Section 1.6(a) and 1.6(b) of the CDBG Loan Agreement are amended in their entirety to read as follows:

- (a) Term. The Loan and this Agreement (except for the Article Three Requirements as set out in Section 3.1 below) shall have a term which shall be and hereby is extended to July 1, 2072 (the "Term").
- (b) Yearly Payments. Commencing on the first day of July, 2017, the outstanding principal balance and interest if any on the Loan shall be paid in annual payments (Yearly Payments) due and payable on July 1st of each calendar year to Holder in an amount which is no less than 50% of the annual residual receipts ("Annual Residual Receipts Payment") remaining to the account of the Assignee following the payment of amounts owing on any USDA secured debt (and any other senior secured debt) and any and all project operating expenses as determined by the annual audit completed for the Project, as defined in the Assignee's Amended and Restated Limited Partnership Agreement dated as of June __, 2017. Provided further that the Annual Residual Receipts Payment shall be allocated by the County on a pro rata basis between the amounts owing on the Note and that certain Promissory Note (CDBG loan) in the original sum of \$35,000.00 (collectively, the "County Promissory Notes") until all amounts due and owing on both County Promissory Notes are paid in full.

4. Section 4.3 of the Agreement is amended to approve the Housing Authority of the County of Monterey as the Management Agent for the Project.

5. Section 4.5 of the Agreement is amended to require the prior written approval of the Owner's limited partner(s) prior to the replacement of the Management Agent by the County under Section 4.5.

6. Section 4.16(b) is amended to provide the following:

Notwithstanding the foregoing, the Owner's limited partner is authorized at any time without the prior approval of the County to transfer its interests in the Owner to a related entity.

7. Section 5.1(c) is amended to provide that in the event of a breach of covenants as specified under this subsection, the Owner's limited partner(s) shall have thirty (30) additional days to cure a breach beyond the cure periods for the Owner as described therein.

8. Section 6.9 of the Agreement is amended in its entirety to provide as follows:

Notices, Demands and Communications. Formal notices, demands and communications between the parties shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the parties, as follows:

County:

County of Monterey
Redevelopment and Housing Division

Owner:

Castroville FLC, LP
134 E. Rossi Street
Salinas, CA 93901
Attn: Starla Warren

USDA:

United States Department of Agriculture
Rural Development
Salinas Field Office
744-A LaGuardia St.
Salinas, CA 93905

Such written notices, demands and communications may be seen to such other addresses as the affected Party may from time to time designate by mail as provided in this Section 6.8. Receipt shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery.

9. The Owner acknowledges and affirms to the County that, as of the effective date hereof, there are no defenses, set-offs or counter-claims, whether legal or equitable, to Owner's obligations hereunder or under the CDBG Loan Agreement which might have existed prior to the effective date hereof. Nothing herein contained herein shall in any way impair the rights and remedies available to the County under the CDBG Loan Agreement, or its security interest in the Property or alter, waive, annul, vary or affect any provision, covenant or condition of the CDBG Loan Agreement, except as specifically modified and amended herein.

10. The County acknowledges and agrees for the reliance of the Owner, that concurrently with the recording of this Amendment, County has consented to and caused to be recorded that certain Subordination Agreement (County) which subordinates the lien of the CDBG Deed of Trust and the CDBG Loan Agreement to the security interests and real property liens of the First Lien Deed of Trust, which is recorded concurrently herewith; and the Second Lien Deed of Trust executed by Owner, delivered to the Trustee for the benefit of the United States Department of Agriculture Rural Administration ("USDA"), as beneficiary, and recorded concurrently herewith, and that certain Third and Fourth Lien Deed of Trust dated September 6, 1972, and recorded in the Official Records at Book 795, Page 982; and the Fifth Lien Deed of Trust dated December 30, 1993, which was recorded in the Official records on February 17, 1993, at Book 2908, Page 445, delivered to Trustee and held by USDA as the beneficiary. All USDA loan documents recorded against the Project are senior liens to the County Loan Documents regardless of when such document or documents were recorded against the Project.

11. By the terms and their execution of the Assignment, Assumption and Release Agreement dated June ___, 2017, which is recorded concurrently herewith, the Authority has assigned, Owner has assumed, and the County has approved the Owner's assumption of the CDBG Loans.

12. Notwithstanding anything herein contained, if any one or more of the provisions of this Amendment shall for any reason whatsoever be held to be illegal, invalid, or unenforceable in any respect, such illegality, invalidity, or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such illegal, invalid, or unenforceable provision had never been contained herein.

13. This Amendment shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.

14. This Amendment may be executed in any number of counterparts and all counterparts shall be construed together and shall constitute but one Amendment.

IN WITNESS WHEREOF, Owner and County have caused this Amendment to be executed and made effective as of the day and year first above written.

OWNER:

CASTROVILLE FLC, LP,
a California limited partnership

By: Housing Authority Limited Liability Company,
a California limited liability company
Its: General Partner

By: Monterey County Housing Authority Development Corporation,
a California nonprofit public benefit corporation,
Its: Manager

By: _____
Starla Warren, President/CEO

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) §
County of _____)

On _____, 2017, before me, _____ a Notary Public, personally appeared Starla Warren who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary Public
Print Name: _____

(Affix Seal Above)

COUNTY:

COUNTY OF MONTEREY,
a political subdivision of the State of California

By: _____
Name: David L. Spaur
Its: Economic Development Director

APPROVED AS TO FORM:

By: _____
Name: Brian Briggs
Its: Deputy County Counsel

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) §
County of _____)

On _____, 2017, before me, _____ a Notary Public, personally appeared David L. Spaur who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary

(Affix seal above)

EXHIBIT A

REAL PROPERTY DESCRIPTION