

PREDEVELOPMENT LOAN AGREEMENT

Between

CONTRA COSTA COUNTY REDEVELOPMENT AGENCY

and

COMMUNITY HOUSING DEVELOPMENT
CORPORATION OF NORTH RICHMOND

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 DEFINITIONS AND EXHIBITS.....	3
Section 1.1 Definitions.....	3
Section 1.2 Exhibits	6
ARTICLE 2 LOAN PROVISIONS.....	6
Section 2.1 Predevelopment Loan.	6
Section 2.2 Interest.....	6
Section 2.3 Use of Predevelopment Loan Funds.....	6
Section 2.4 Predevelopment Budget; Revisions to Budget.	7
Section 2.5 Security.....	7
Section 2.6 Conditions Precedent to Disbursement of Predevelopment Loan Funds.....	7
Section 2.7 Repayment of the Predevelopment Loan.	8
Section 2.8 Termination of Agreement for Infeasibility.....	8
Section 2.9 Forgiveness of Predevelopment Loan in Certain Circumstances.....	9
Section 2.10 Prepayment of Loan.....	9
ARTICLE 3 PREDEVELOPMENT ACTIVITIES.....	9
Section 3.1 Predevelopment Activities.....	9
Section 3.2 Progress Reports; Community Meetings.	9
Section 3.3 Predevelopment Schedule.....	10
Section 3.4 Conceptual Site Documents.....	10
Section 3.5 Financing Proposal.....	11
Section 3.6 CEQA Environmental Review.....	11
Section 3.7 Design Development Documents.	12
Section 3.8 Land Use Approvals.	13
Section 3.9 Financing Plan.	13
Section 3.10 Construction Plans.	14
Section 3.11 State Prevailing Wages.	14
Section 3.12 Equal Opportunity.....	15
Section 3.13 Borrower Supervision of Predevelopment Activities.	16
Section 3.14 Acquisition of Property; Right of Entry.....	16
ARTICLE 4 LOAN REQUIREMENTS.....	16
Section 4.1 Information.	16
Section 4.2 Records.	16
Section 4.3 Agency Audits.	17
Section 4.4 Notice of Litigation.....	17
Section 4.5 Affordability Restrictions.....	17
Section 4.6 Nondiscrimination.....	18
Section 4.7 Mandatory Language in All Subsequent Deeds, Leases and Contracts.....	18
Section 4.8 Transfer.....	20
Section 4.9 Insurance Requirements.....	20

TABLE OF CONTENTS

(continued)

	<u>Page</u>
ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF BORROWER.....	21
Section 5.1 Representations and Warranties.....	21
ARTICLE 6 DEFAULT AND REMEDIES.....	23
Section 6.1 Events of Default.....	23
Section 6.2 Remedies.....	24
Section 6.3 Right of Contest.....	25
Section 6.4 Remedies Cumulative.....	25
Section 6.5 Remedies by Other Entities/Individuals Pursuant to California Law.....	25
ARTICLE 7 GENERAL PROVISIONS	26
Section 7.1 Relationship of Parties.....	26
Section 7.2 No Claims.....	26
Section 7.3 Amendments.....	26
Section 7.4 Indemnification.....	26
Section 7.5 Non-Liability of Agency Officials, Employees and Agents.....	27
Section 7.6 No Third Party Beneficiaries.....	27
Section 7.7 Future County and Agency Actions. The parties acknowledge and agree that:.....	27
Section 7.8 Conflict of Interest.....	27
Section 7.9 Notices, Demands and Communications.....	28
Section 7.10 Applicable Law.....	28
Section 7.11 Parties Bound.....	29
Section 7.12 Attorneys' Fees.....	29
Section 7.13 Severability.....	29
Section 7.14 Agency Approval.....	29
Section 7.15 Waivers.....	29
Section 7.16 Title of Parts and Sections.....	29
Section 7.17 Entire Understanding of the Parties.....	29
Section 7.18 Multiple Originals; Counterpart.....	30
EXHIBIT A	Legal Description of the Property
EXHIBIT B	Predevelopment Budget
EXHIBIT C	Predevelopment Schedule

PREDEVELOPMENT LOAN AGREEMENT (Heritage Point)

This Predevelopment Loan Agreement (the "Agreement") is dated April 12, 2011 (the "Effective Date"), and is between the Contra Costa County Redevelopment Agency, a public body, corporate and politic (the "Agency"), and Community Housing Development Corporation of North Richmond, a California nonprofit public benefit corporation ("Borrower").

RECITALS

A. Defined terms used but not defined in these recitals are as defined in Article 1 of this Agreement.

B. On March 31, 2009, the Agency Board considered and adopted Resolution No. 2009/115, authorizing the development of a unified development area for six properties fronting the east side of Third Street between Grove Street and Chesley Avenue (the "Heritage Point Unified Development Area" formerly referred to as "Grove Point Unified Development Area"). The Heritage Point Unified Development Area is located within the North Richmond Redevelopment Project Area (the "Project Area").

C. The Agency subsequently issued a Request for Qualifications and a Request for Proposal for the Grove Point (Heritage Point): Mixed Use Retail/Residential Development, soliciting a master developer for the site and giving property owners, developers and community organizations the opportunity to submit redevelopment proposals for the Heritage Point Unified Development Area.

D. The Agency received and reviewed several proposals and selected Borrower as the "Master Developer" for the Heritage Point Unified Development Area based on Borrower's initial redevelopment project concept set forth in its Response to Request For Proposal dated August 26, 2009 (the "Response to RFP") and the qualifications and experience of Borrower's development team.

E. The Agency owns or is in the process of acquiring the six (6) parcels that together comprise the Heritage Point Unified Development Area, more particularly described in the attached Exhibit A incorporated herein by this reference, collectively referred to as the "Property":

1. Certain real property identified as APN 409-080-001, currently owned by the Agency and more commonly referred to as 304 Grove Street;
2. Certain real property identified as APN 409-080-015, not currently owned by the Agency, and more commonly referred to as 1538-1540 Third Street;
3. Certain real property identified as APN 409-080-014, currently owned by the Agency, and more commonly referred to as 1534 Third Street;

4. Certain real property identified as APN 409-080-013, currently owned by the Agency, and more commonly referred to as 305 Chesley Avenue;
5. Certain real property identified as APN 409-080-016, not currently owned by the Agency, and more commonly referred to as 1542 Third Street; and
6. Certain real property identified as APN 409-080-020, currently owned by the Agency, and more commonly referred to as 1546 Third Street.

F. Pursuant to this Agreement the Agency proposes to loan to Borrower and Borrower proposes to borrow from the Agency, up to One Hundred Thirty One Thousand Seven Hundred Dollars (\$131,700) in low and moderate income housing Funds (the "Predevelopment Loan") to finance certain Predevelopment Activities associated with Borrower's proposed development of the Property.

G. Subject to satisfactory completion of certain feasibility analyses, site investigations, and other activities, Borrower desires to enter into a disposition and development agreement with the Agency for the acquisition of the Property, and construction of the Development. As more fully set forth in Section 7.7, however, this Agreement does not authorize or guarantee the execution of any disposition and development agreement, the granting of the Land Use Approvals, the sale of the Property, or the construction of the Development. Such actions may be authorized and will become possible only upon subsequent discretionary action of the County and the Agency, as applicable.

H. Until completion of certain feasibility studies for the Development, it is not possible to provide meaningful information for environmental assessment of the Development in accordance with the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000 *et seq.*) ("CEQA"). The Parties intend to use the feasibility studies funded through the Predevelopment Loan to prepare the necessary environmental assessment under CEQA prior to approval of future discretionary actions of the County and the Agency that would authorize and enable construction of the Development. CEQA imposes no conditions on the Agency's consideration and approval of this Agreement, because the project undertaken pursuant to this Agreement is the funding of feasibility or planning studies, and such projects are exempt from CEQA requirements under the class 2 categorical exemption, as further set forth in 14 California Code of Regulations Section 15262.

I. Pursuant to the terms of the California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*; the "Redevelopment Law"), if the Borrower proceeds to acquire the Property, the Borrower and the Agency shall record a Regulatory Agreement as specified in this Agreement on the portion of the Property within the Development to be developed for housing, ensuring that Homes on such Property are sold at affordable prices to Eligible Purchasers, and/or Apartments are rented at affordable rents to Eligible Tenants.

The Parties therefore agree as follows:

ARTICLE 1
DEFINITIONS AND EXHIBITS

Section 1.1 Definitions

The following capitalized terms have the meanings set forth in this Section 1.1 wherever used in this Agreement, unless otherwise provided:

- (a) "Agency" has the meaning set forth in the first paragraph of this Agreement.
- (b) "Agreement" means this Predevelopment Loan Agreement.
- (c) "Apartments" means the rental/mutual housing units which are proposed to be constructed by the Borrower on the Property and rented to Eligible Tenants pursuant to the Regulatory Agreement.
- (d) "Architect" means Kodama Diseno Architects, or a successor Architect approved by the Agency.
- (e) "Assignment of Documents" means that certain Assignment of Collateral Documents executed by Borrower of even date herewith, pursuant to which Borrower assigns to the Agency Borrower's rights and obligations with respect to the Collateral Documents as security for the performance of Borrower's obligations under the Predevelopment Loan Documents.
- (f) "Borrower" has the meaning set forth in the first paragraph of this Agreement.
- (g) "CEQA" has the meaning set forth in Recital H.
- (h) "County" means the County of Contra Costa, a political subdivision of the State of California.
- (i) "Collateral" means and includes all right, title, interest, claims and demands of Borrower in and to all of the following: all right, title, interest, claims and demands of Borrower in and to the Collateral Documents, including contract rights and general intangibles, now existing or hereafter arising; and all amendments, substitutions for, and proceeds thereof, including, without limitation, insurance and similar payments.
- (j) "Collateral Documents" has the meaning set forth in the Assignment of Documents.
- (k) "Conceptual Site Documents" has the meaning set forth in Section 3.4 below.
- (l) "Construction Plans" has the meaning set forth in Section 3.10 below.

(m) "Disposition and Development Agreement" means the disposition and development agreement by and between the Agency and Borrower (or Borrower's successors or assigns as approved by the Agency) to fund the Subsequent Loan and set forth development standards, which may be approved or denied in the Agency's sole discretion.

(n) "Deed of Trust" means that certain Deed of Trust, in favor of the Agency securing Borrower's obligations hereunder and under the Predevelopment Note, or if a Subsequent Loan is approved, the Subsequent Loan Documents, to be recorded against the Property if and when it has been acquired by Borrower as set forth in Section 2.7(b). The form of the Deed of Trust will be provided by the Agency.

(o) "Default Rate" has the meaning set forth in Section 6.2(d).

(p) "Design Development Documents" has the meaning set forth in Section 3.7 below.

(q) "Development" means the Property and the Improvements.

(r) "Effective Date" has the meaning set forth in first paragraph of this Agreement.

(s) "Eligible Purchaser" means a household that meets the income requirements set forth in the Regulatory Agreement, to whom the Borrower shall sell a Home in the Development.

(t) "Eligible Tenant" means a household that meets the income requirements set forth in the Regulatory Agreement, to whom the Borrower shall rent an Apartment in the Development.

(u) "Event of Default" has the meaning set forth in Section 6.1 below.

(v) "Financing Plan" has the meaning set forth in Section 3.9 below.

(w) "Financing Proposal" has the meaning set forth in Section 3.5 below.

(x) "Home(s)" means the homes which are proposed to be constructed by Borrower on the Property to be sold to Eligible Purchasers pursuant to the Regulatory Agreement.

(y) "Improvements" means the Homes and/or Apartments, and related neighborhood serving commercial space and on-site improvements proposed to be constructed by Borrower on the Property.

(z) "Infeasibility Condition" has the meaning set forth in Section 2.8 below.

(aa) "Land Use Approvals" means the permits and approvals necessary for the development of the Improvements on the Property, including, but not limited to, general plan amendment, preliminary development plan, subdivision, final development plan, and overall

design and architectural review and approval by the County and any other applicable government entity.

(bb) "Parties" means the Agency and Borrower.

(cc) "Predevelopment Activities" means the activities to be performed by Borrower during the Term, to be partially financed by the Predevelopment Loan, including but not limited to preparation of Conceptual Site Documents, Design Development Documents, Construction Plans, Predevelopment Schedule, Financing Proposal, Financing Plan, and obtaining Land Use Approvals, as further described in Article 3 below.

(dd) "Predevelopment Budget" means the proforma predevelopment budget, including sources and uses of funds, attached hereto and incorporated herein as Exhibit B, which may be amended with the approval of the Agency as set forth in this Agreement.

(ee) "Predevelopment Costs" means costs and fees associated with the Predevelopment Activities and related activities, including but not limited to financial and legal services, and preparation of funding applications, as shown in the Predevelopment Budget.

(ff) "Predevelopment Note" means the Promissory Note of even date herewith, executed by Borrower, that evidence's Borrower's obligation to repay the Predevelopment Loan.

(gg) "Predevelopment Loan" has the meaning set forth in Recital F.

(hh) "Predevelopment Loan Documents" means this Agreement, the Predevelopment Note, and the Assignment of Documents.

(ii) "Predevelopment Schedule" means the schedule of performance for the Predevelopment Activities, attached hereto and incorporated herein as Exhibit C, which may be amended with the approval of the Agency as set forth in this Agreement.

(jj) "Property" has the meaning set forth in Recital E.

(kk) "Redevelopment Law" has the meaning set forth in Recital I.

(ll) "Response to RFP" has the meaning set forth in Recital D.

(mm) "Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants between the Agency and Borrower that: (i) will require the Borrower to sell the Homes in the Development to Eligible Purchasers and/or rent the Apartments to Eligible Tenants; and (ii) be recorded against the Property if and when it has been acquired by Borrower, in accordance with Section 2.7(b) below. The form of the Regulatory Agreement will be provided by the Agency.

(nn) "Subsequent Loan" means a subsequent loan from the Agency to Borrower for the development of the Improvements on the Property, which loan may be approved or denied in the Agency's sole discretion.

(oo) "Subsequent Agency Documents" means the Disposition and Development Agreement, promissory note, deed of trust, Regulatory Agreement, and any other document evidencing, or entered into by and between the Agency and Borrower (or Borrower's successors or assigns as approved by the Agency) regarding the Subsequent Loan.

(pp) "TCAC" means the California Tax Credit Allocation Committee.

(qq) "Term" means the term of this Agreement, which commences on the Effective Date and terminates on December 31, 2012, unless sooner terminated pursuant to the terms of this Agreement.

(rr) "Transfer" has the meaning set forth in Section 4.8 below.

Section 1.2 Exhibits

The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

- EXHIBIT A: Legal Description of the Property
- EXHIBIT B: Predevelopment Budget
- EXHIBIT C: Predevelopment Schedule

ARTICLE 2 LOAN PROVISIONS

Section 2.1 Predevelopment Loan.

On and subject to the terms and conditions of this Agreement, the Agency agrees to make and Borrower agrees to accept the Predevelopment Loan for the purposes set forth in Section 2.3 of this Agreement. The obligation to repay the Predevelopment Loan is evidenced by the Predevelopment Note.

Section 2.2 Interest.

Interest will accrue on the outstanding principal balance of the Predevelopment Loan at a per annum rate of interest equal to three percent (3%) commencing on the date of disbursement; provided, however, upon the occurrence of an Event of Default, interest on the outstanding principal balance of the Predevelopment Loan will begin to accrue at the Default Rate, and will continue at the Default Rate until such time as the Predevelopment Loan is repaid in full or the Event of Default is cured.

Section 2.3 Use of Predevelopment Loan Funds.

Borrower shall use the Predevelopment Loan to fund the Predevelopment Costs as set forth in the Predevelopment Budget. Borrower shall not use the Predevelopment Loan for any other purposes without the prior written consent of the Agency.

Section 2.4 Predevelopment Budget; Revisions to Budget.

The current approved Predevelopment Budget is attached to this Agreement as Exhibit B. Borrower shall submit any revisions to the Predevelopment Budget to the Agency for approval within five (5) days of the date Borrower receives information indicating that actual Predevelopment Costs vary or will vary from the costs shown on the Predevelopment Budget. Written consent of the Agency is required to amend the Predevelopment Budget.

Section 2.5 Security.

Pursuant to the Assignment of Documents executed by Borrower concurrently herewith, Borrower grants to the Agency a valid, first priority, continuing security interest in all presently existing and hereafter acquired or arising Collateral in order to secure prompt, full and complete payment of any and all obligations to the Agency under this Agreement and in order to secure prompt, full and complete performance by Borrower of each of its covenants and duties under each of the Predevelopment Loan Documents.

Section 2.6 Conditions Precedent to Disbursement of Predevelopment Loan Funds.

The maximum amount of funds to be disbursed pursuant to this Section 2.6 will not exceed the amount of the Predevelopment Loan. The Agency shall not be obligated to make any disbursements of Predevelopment Loan funds for Predevelopment Costs or take any other action under the Predevelopment Loan Documents unless the following conditions precedent are satisfied prior to each such disbursement of Predevelopment Loan funds:

- (a) There exists no Event of Default nor any act, failure, omission or condition that would constitute an Event of Default under this Agreement;
- (b) Borrower has delivered to the Agency all Borrower's organizational documents and a copy of a corporate resolution authorizing Borrower's execution of the Predevelopment Loan Documents;
- (c) Borrower has furnished the Agency with evidence of the insurance coverage meeting the requirements of Section 4.9 below;
- (d) Borrower has caused to be executed and delivered to the Agency all Predevelopment Loan Documents and any other instruments, and policies required under the Predevelopment Loan Documents;
- (e) The Agency has determined that the undisbursed proceeds of the Predevelopment Loan, together with other funds or firm commitments for funds that Borrower has obtained in connection with the Improvements, are not less than the amount that is necessary

WHEREAS, this Agreement has been entered into by the undersigned as of the date first above written.

AGENCY:

CONTRA COSTA COUNTY REDEVELOPMENT
AGENCY, a public body, corporate and politic

By: 

James Kennedy
Redevelopment Director

BORROWER:

COMMUNITY HOUSING DEVELOPMENT
CORPORATION OF NORTH RICHMOND, a
California nonprofit public benefit corporation

By: 

Name: Donald Gilmore

Its: Executive Director