

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Contra Costa County
Department of Conservation and Development
30 Muir Road
Martinez, CA 94553
Attn: Assistant Deputy Director

No fee document pursuant to
Government Code Section 278393 and 27388.1

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

**FIRST AMENDMENT
OF REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE
COVENANTS
(Giant Road)**

THIS FIRST AMENDMENT OF REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (the "First Amendment") is dated July 25, 2024, and is by and between the County of Contra Costa, a political subdivision of the State of California (the "County"), and Giant Development II, LP, a California limited partnership ("Borrower"), with reference to the following facts:

RECITALS

A. Borrower is acquiring from Giant Development, L.P., a California limited partnership (the "Prior Partnership") that certain real property located at 2832 Giant Road, in the City of San Pablo, County of Contra Costa, State of California, as more particularly described in Exhibit A (the "Property"). The Property is improved with an eighty-six (86) unit affordable housing development, eighty-four (84) of which are for rental to extremely low, very low and low income households, and two (2) manager's units (the "Development"). The Development, as well as all landscaping, roads, and parking spaces on the Property and any additional improvements on the Property, are the "Improvements".

B. The County previously provided the Prior Partnership the following loans: (i) a loan in the amount of One Million Two Hundred Thousand Dollars (\$1,200,000), funded with Six Hundred Thousand Dollars (\$600,000) of HOME Funds and Six Hundred Thousand Dollars (\$600,000) of CDBG Funds, and (ii) a loan in the amount of Five Hundred Thousand Dollars (\$500,000) of HOME Funds, collectively, the "County Original Loans."

C. The County and East Bay Asian Local Development Corporation, a California nonprofit public benefit corporation, entered into that certain Regulatory Agreement and Declaration of Restrictive Covenants dated September 30, 2004, and recorded against the

Property on September 30, 2004 as Instrument No. 2004-376348-00 as assigned to the Prior Partnership pursuant to an Assignment and Assumption Agreement recorded December 22, 2005 as Instrument Number 12005-0490146-000 (the "Regulatory Agreement"), setting forth income, rent, management and other operational requirements of the Development.

D. In support of the rehabilitation of the Improvements, the County has consented to the assignment of the County Original Loans and the Regulatory Agreement to Borrower pursuant to an Assignment, Assumption, and Consent Agreement among the County, the Prior Partnership, and Borrower dated of even date herewith, and has consented to restructure the County Original Loans such that the principal amount is Two Million Five Hundred Twenty Thousand Eight Hundred Forty-Six Dollars (\$2,520,846) which amount represents the original principal amount of the County Original Loans, plus interest accrued on the County Original Loans as of the date of this First Amendment (the "County Loan").

E. Concurrent with the assignment and assumption of the County Original Loans and the Regulatory Agreement, the County and Borrower are entering into the following documents to reflect the County Loan in addition to this First Amendment: (i) First Amendment to First Amended and Restated CDBG/HOME Loan Agreement between the County and Borrower; (ii) Promissory Note executed by Borrower for the benefit of the County in the amount of the County Loan; (iii) Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing among Borrower, as trustor, Old Republic Title Company, as trustee, and the County, as beneficiary, to be recorded against the Property; and (iv) Second Amended and Restated Intercreditor Agreement among the City of San Pablo, Borrower, and the County to be recorded against the Property.

F. As consideration for the County Loan, the County requires the term of the Regulatory Agreement be extended to fifty-five (55) years from the date of this First Amendment.

G. This First Amendment amends the Regulatory Agreement. Defined terms used but not defined in this First Amendment are as defined in the Regulatory Agreement.

The parties therefore agree to amend the Regulatory Agreement as follows:

AGREEMENT

1. Borrower. Section 1.1(f) of the Regulatory Agreement is deleted in its entirety and replaced with the following:

"(f) "Borrower" means Giant Development II, LP, a California limited partnership."

2. County Loan Agreement. Section 1.1(o) of the Regulatory Agreement is deleted in its entirety and replaced with the following:

"(o) "County Loan Agreement" means the First Amended and Restated CDBG/HOME Loan Agreement between Giant Development, L.P., a California limited

partnership and the County dated December 15, 2005, as modified by a First Amendment to First Amended and Restated CDBG/HOME Loan Agreement dated July 25, 2024 and executed by Borrower and the County."

3. County Deed of Trust. Section 1.1(m) of the Regulatory Agreement is deleted in its entirety and replaced with the following:

"(m) "County Deed of Trust " means Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing dated July 25, 2024 among Borrower, as trustor, Old Republic Title Company, as trustee, and the County, as beneficiary, recorded against the Property."

4. County Loan. Section 1.1(n) of the Regulatory Agreement is deleted in its entirety and replaced with the following:

"(p) "County Loan" means the loan to Borrower from the County in the amount of Two Million Five Hundred Twenty Thousand Eight Hundred Forty-Six Dollars (\$2,520,846)."

5. County Note. Section 1.1(p) of the Regulatory Agreement is deleted in its entirety and replaced with the following:

"(p) "County Note" means the promissory note executed by Borrower dated July 25, 2024 in the amount of the County Loan."

6. Intercreditor Agreement. Section 1.1(y) of the Regulatory Agreement is deleted in its entirety and replaced with the following:

"(y) "Intercreditor Agreement" means the Second Amended and Restated Intercreditor Agreement by and among Borrower, the County, and the City of San Pablo dated July 25, 2024."

7. Term. Section 1.1(gg) of the Regulatory Agreement is deleted in its entirety and replaced with the following:

"(gg) "Term" mean the term of this Agreement which commenced on September 30, 2004 and terminates on July 25, 2081."

8. Loss of Subsidy. A new section 2.5 is added to the Regulatory Agreement as follows:

"2.5 Loss of Subsidy.

(a) It is anticipated that certain of the Extremely Low Income Units in the Development (the "Subsidy Units") will receive Project-Based Section 8 or other rental subsidy payments (the "Rental Subsidy") throughout the Term, as reflected in the development budget approved by the County pursuant to the County Loan Agreement (the "Approved Development Budget"). Notwithstanding Section 2.3, if any change in federal law occurs, or any action (or inaction) by Congress or any federal or State

agency occurs, which results in a reduction, termination or nonrenewal of the Rental Subsidy through no fault of the Borrower, such that the Rental Subsidy shown on the Approved Development Budget is no longer available, Borrower may increase the Rent on one or more of the Extremely Low Income Units that overlap with a Subsidy Unit, to a monthly Rent that does not exceed the maximum rent published by HUD for the applicable bedroom size as set forth in 24 C.F.R. 92.252(b) (the "Low HOME Rent") subject to the following requirements:

(1) At the time Borrower requests an increase in the Rent, Borrower shall provide the County with an operating budget for the Development for the County's approval, showing the impact of the loss or reduction of the Rental Subsidy (the "Operating Budget");

(2) The number of Extremely Low Income Units subject to the Rent increase may not be greater than the amount required to ensure that the Development generates sufficient income to cover its operating costs and debt service as shown on the Operating Budget, and as is necessary to maintain the financial stability of the Development;

(3) Borrower shall use good faith efforts to ensure that the Tenants whose Rents are increased to the Low HOME Rent have the highest incomes of the Tenants occupying Extremely Low Income Units; and

(4) Any such Rent increase must be pursuant to a transition plan approved by the County, consistent with remedial measures set forth in California Code of Regulations Title 4, Division 17, Chapter 1, Section 10337(a)(3) or successor regulation applicable to California's Federal and State Low Income Housing Tax Credit Program.

(b) Borrower shall use good faith efforts to obtain alternative sources of rental subsidies and shall provide the County with annual progress reports on efforts to obtain alternative sources of rental subsidies that would allow the rents on the Extremely Low Income Units to be reduced back to the Extremely Low Income Rent. Upon receipt of any alternative rental subsidies, Borrower shall reduce the rents on the Extremely Low Income Units back to the Extremely Low Income Rent, to the extent that the alternative rental subsidies provide sufficient income to cover the operating costs and debt service of the Development as shown on the Operating Budget."

9. Notices. Section 6.15 of the Regulatory Agreement is deleted in its entirety and replaced with the following:

"6.15 Notices.

All notices required or permitted by any provision of this Agreement must be in writing and sent 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:

(1) if intended for the County is to be addressed to:

County of Contra Costa
Department of Conservation and Development
30 Muir Road
Martinez, CA 94553
Attention: Assistant Deputy Director

and (2) if intended for Borrower is to be addressed to:

Giant Development II, LP
c/o East Bay Asian Local Development Corporation
1825 San Pablo Avenue, Suite 200
Oakland, CA 94612
Attention: Chief Executive Officer

With a copy to:

Wincopin Circle LLLP
c/o Enterprise Community Asset Management, Inc.
70 Corporate Center
11000 Broken Land Parkway, Suite 700
Columbia, Maryland 21044
Attn: Asset Management

Such written notices, demands, and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate as provided in this Section. Receipt will be deemed to have occurred on the date marked on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

The County shall provide Wincopin Circle LLLP (the "Limited Partner") a duplicate copy of all notices of default that the County may give to or serve in writing upon Borrower, at the address set forth in this Section, provided, the County shall have no liability to the Limited Partner for its failure to do so. The Limited Partner has the right, but not the obligation, to cure any default of Borrower set forth in such notice, during the applicable cure period described in this Agreement, and the County will accept tender of such cure as if delivered by Borrower."

10. Full Force and Effect. Except as set forth in this First Amendment, the Regulatory Agreement remains unmodified and in full force and effect.

11. Counterparts. This First Amendment may be signed in counterpart and, if signed in counterpart, each counterpart signature is an original signature, and all the counterparts together constitute one and the same agreement.

[signatures on following page]

The parties are signing this First Amendment as of the day and year first above written.

BORROWER:

GIANT DEVELOPMENT II, LP,
a California limited partnership

By: Giant Development II, LLC,
a California limited liability company,
its general partner

By: East Bay Asian Local Development
Corporation,
a California nonprofit public benefit
corporation,
its manager

By: _____
Capri Roth, EVP of Real Estate
Development

APPROVED AS TO FORM:

Thomas L. Geiger
County Counsel

By: _____
Kathleen Andrus
Deputy County Counsel

COUNTY:

COUNTY OF CONTRA COSTA, a political
subdivision of the State of California

By: _____
John Kopchik
Director, Department of Conservation and
Development

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

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

WITNESS my hand and official seal.

Name: _____
Notary Public

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

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

WITNESS my hand and official seal.

Name: _____
Notary Public

EXHIBIT A

Legal Description of the Property

Real Property situated in the County of Contra Costa, City of San Pablo, State of California, and described as follows:

PARCEL ONE:

All that real property being a portion of Parcel A as shown on the Parcel Map M.S. No. 777-86, filed April 7, 1986 in Book 122 of Parcel Maps at Page 7, located in the City of San Pablo, County of Contra Costa, State of California, more particularly described as follows:

Beginning at the Northwest corner of said Parcel A, said point being on the Easterly boundary of the road right of way known as Giant Road (County Road No. 21); thence along said Easterly boundary of Giant Road, South 12° 25' 00" West a distance of 363.51 feet;

Thence South 77° 35' 00" East a distance of 314.00 feet;

Thence North 12° 25' 00" East a distance of 273.74 feet;

Thence South 77° 35' 00" East a distance of 26.00 feet;

Thence North 12° 25' 00" East a distance of 89.77 feet;

Thence North 77° 35' 00" West a distance of 340.00 feet; to the point of beginning.

Also being Lot 1, as shown on the Lot Line Adjustment Plat attached to that certain "Certificate of Compliance for Lot Line Adjustment LLA 04-35" recorded August 5, 2004 as instrument No. 2004-302583 of Official Records which was corrected in the Correction Deed recorded September 14, 2004 as Instrument No. 2004- 353917 of Official Records.

PARCEL TWO:

Non-exclusive easements for access, drainage and utilities, created as an appurtenance to Parcel One above in the "Easement and Maintenance Agreement" executed by and between Pulte Home Corporation, a Michigan Corporation and Giant Development L.P., a California limited partnership recorded April 14, 2006 as Instrument No. 2006-116461, Official Records, over, under and upon the following described land:

Being a portion of Lot "J" as said Lot is shown on that certain Map entitled "Subdivision No. 8921, for Condominium purposes, Devon Square in the City of San Pablo", filed February 1, 2006 in Book 487 of Maps at Pages 7 to 10, inclusive, of Official Records of Contra Costa County, more particularly described as follows:

Beginning at a point on the mostly Westerly line of said Subdivision No. 8921, being the Southerly terminus of the line shown as "North 12° 25' 00" East, 273.74" on the last said Map;

Thence from said point of beginning, along the last said mostly Westerly line, North 12° 25' 00" East, 273.74 feet to a point on the Northerly line of the last said Subdivision;

Thence along the last said Northerly line, South 77° 35' 00" East, 24.00 feet;

Thence leaving the last said Northerly line, along the mostly Easterly line of said Lot J and its Northerly production, South 12° 25' 00" West, 127.75 feet to a tangent curve, concave to the Northeast, having a radius of 10.00 feet and a central angle of 90° 00' 00";

Thence Southerly, Southeasterly and Easterly along the arc of said curve 15.71 feet;

Thence, South 12° 25' 00" West, 0.50 feet;

Thence leaving the last said mostly Easterly line of said Lot J, South 12° 25' 00" West, 23.00 feet to a point on the last said mostly Easterly line of said Lot J;

Thence along the mostly Easterly line of said Lot J;

Thence along the mostly Easterly line of said Lot J, South 12° 25' 00" West, 0.50 feet to a point on a nontangent curve concave to the Southeast having a radial which bears North 12° 25' 00" East, a radius of 10.00 feet and a central angle of 90° 00' 00";

Thence Westerly, Southwesterly and Southerly along the arc of said curve 15.71 feet;

Thence, South 12° 25' 00" West, 88.98 feet to a tangent curve, concave to the Northeast, having a radius of 10.00 feet and a central angle of 90° 00' 00";

Thence Southerly, Southeasterly and Easterly along the arc of said curve 15.71 feet;

Thence, South 12° 25' 00" West, 0.50 feet;

Thence leaving the last said mostly Easterly line of said Lot J, South 12° 25' 00" West, 2.85 feet to a point on the mostly Northerly line of the right of way of Lake Street as said street is shown on the last said Subdivision No. 8921 and being also a non-tangent curve, concave to the South, having a radial which bears North 21° 45' 12" East, a radius of 25.25 feet and a central angle of 9° 29' 12";

Thence Westerly along the arc of said curve, 4.28 feet;

Thence continuing along the last said right of way of Lake Street, North 77° 35' 00" West, 29.74 feet to the point of beginning.

APN: 412-060-005-3