

**RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:**

City of Stockton
425 North El Dorado Street
Stockton, CA 95202
Attn: Economic Development Department

NO FEE DOCUMENT PURSUANT TO GOVERNMENT CODE SECTION 27383

AMENDMENT TO LOAN DOCUMENTS

This AMENDMENT TO LOAN DOCUMENTS (the "Amendment") is made and entered into as of _____, 2015, by and between Diamond Cove Associates, a California Limited Partnership (the "Borrower"), and the City of Stockton, a municipal corporation (the "City").

RECITALS

A. The City and Borrower previously entered into a Loan Agreement dated December 1, 2010 (the "Loan Agreement"), pursuant to which the City provided a loan to Borrower in the amount of \$350,000 (the "Loan") of Community Development Block Grant program funds for rehabilitation costs related to a low income housing project on property located at 5343 and 5358 Carrington Circle, Stockton, California, as more particularly described in **Exhibit A** attached hereto (the "Property").

B. In connection with the Loan Agreement, Borrower executed a Promissory Note dated December 1, 2010 (the "Note"), which was secured by a Deed of Trust with Assignment of Rents and Security Agreement dated December 1, 2010 and recorded on February 14, 2011 against the Property as Document No. 2011-019265 in the Official Records of San Joaquin County (the "Deed of Trust"). The Loan Agreement is further evidenced by a Regulatory Agreement and Declaration of Restrictive Covenants dated December 1, 2010, and recorded in the Official Records of San Joaquin County as Instrument No. 2011-019266 (the "Regulatory Agreement").

C. The Loan Agreement, Note, Deed of Trust, Regulatory Agreement and any other documents evidencing or securing the Loan shall collectively be referred to as "Loan Documents".

D. The parties desire to amend the Loan Documents as described below.

NOW, THEREFORE, the City and the Borrower mutually agree to amend said Loan Documents as follows:

AGREEMENT

1. All references in the Loan Documents to Original City Loan Agreements, Original City Notes, Original City Regulatory Agreements, and Original City Deed of

Trust shall henceforth be deemed to refer to the following documents, respectively, each dated as of even date herewith: the Amended and Restated Loan Agreement, the Amended and Restated Promissory Note, the Amended and Restated Regulatory Agreement recorded concurrently herewith and the Deed of Trust recorded concurrently herewith.

2. Section 1.1(ee) of the Loan Agreement shall be deleted and replaced with the following:

“Term” shall mean the term of the Loan, commencing on the date of this Agreement and continuing until the earlier to occur of (i) fifty five (55) years after the date of issuance of a certificate of occupancy for the Development, and (ii) December 31, 2072.

3. Section 2.6 of the Loan Agreement shall be deleted and replaced with the following:

“Term. The Loan and this Agreement shall have a term that expires on the earlier to occur of (i) fifty five (55) years after the date of issuance of a certificate of occupancy for the Development, and (ii) December 31, 2072.”

4. Section 3.2 of the Loan Agreement is hereby amended by deleting “August 2011” as the date for completing the rehabilitation of the Development and replacing it with “December 2017,” and by deleting “January 2, 2011” as the date for commencing the rehabilitation and replacing it with “January 15, 2016.”

5. Section 2.7 of the Note shall be deleted and replaced with the following:

“Repayment Schedule.

The Loan shall be repaid as follows:

(a) Special Definitions.

(i) Residual Receipts. “Residual Receipts” means, in a particular calendar year, the amount by which Gross Revenue (as defined below) exceeds Annual Operating Expenses (as defined below), but only with respect to Gross Revenue and Annual Operating Expenses accruing from and after the completion of construction of the Development.

(ii) Gross Revenue. “Gross Revenue,” with respect to a particular calendar year, shall mean all revenue, income, receipts, and other consideration actually received from operation and leasing of the Development. “Gross Revenue” shall include, but not be limited to: all

rents, fees and charges paid by tenants, Section 8 payments or other rental subsidy payments received for the dwelling units, deposits forfeited by tenants, all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; proceeds from vending and laundry room machines; the proceeds of business interruption or similar insurance; the proceeds of casualty insurance to the extent not utilized to repair or rebuild the Development (or applied toward the cost of recovering such proceeds); and condemnation awards for a taking of part or all of the Development for a temporary period. "Gross Revenue" shall also include the fair market value of any goods or services provided in consideration for the leasing or other use of any portion of the Development. "Gross Revenue" shall not include tenants' security deposits, loan proceeds, capital contributions or similar advances.

(iii) Annual Operating Expenses. "Annual Operating Expenses" with respect to a particular calendar year shall mean the following costs reasonably and actually incurred for operation and maintenance of the Development to the extent that they are consistent with an annual independent audit performed by a certified public accountant using generally accepted accounting principles:

- a) Property taxes and assessments imposed on the Development;
- b) Property management fees and reimbursements, including on-site manager expenses pursuant to a management contract approved by the City. The initial management fee shall not exceed Sixty-five Dollars (\$65) per month per Unit with a maximum three percent (3%) increase per year.
- c) Premiums for property damage and liability insurance;
- d) Utility services not paid for directly by Tenants, including water, sewer, and trash collection;
- e) Maintenance and repair, including but not limited to pest control, landscaping and grounds maintenance, painting and decorating, cleaning, common systems repairs, general repairs, and janitorial supplies;
- f) General administrative expenses including but not limited to advertising and marketing, security services and systems, professional fees for legal, audit, accounting and tax returns;
- g) Any annual license or certificate of occupancy fees required for operation of the Development;
- h) Cash deposited into reserves for capital replacements of the Development. Deposits into the capital replacement account shall be required on an annual basis and shall be in an amount required by the senior lender and investor limited partner, unless otherwise preapproved by City in writing;
- i) Cash deposited into an operating reserve in an amount required by the senior lender and investor limited partner unless otherwise preapproved by City in writing;
- j) Extraordinary operating costs specifically approved by the City;

- k) Payments of deductibles in connection with casualty insurance claims not normally paid from reserves, the amount of uninsured losses actually replaced, repaired or restored, and not normally paid from reserves;
- l) Deferred developer fee;
- m) Operating loans repayments and other amounts payable to the Borrower's limited partner pursuant to the Partnership Agreement;
- n) An asset management fee payable to the investor limited partner of Borrower in amount not to exceed \$3,500 per year increasing annually by 3%.
- o) Asset management fees payable to Developer's general partners, in an amount not to exceed \$20,000 per year, increasing by 3% per annum, which fees shall accrue if not paid in a given year; and
- p) Other ordinary and reasonable operating expenses approved by the City and not listed above.

Annual Operating Expenses shall not include the following: depreciation, amortization, depletion or other non-cash expenses or any amount expended from a reserve account.

(iv) Annual Payments. Commencing on the first May 1 following completion of the rehabilitation of the Development, and on May 1 of each year thereafter for the Term of the Loan, Borrower shall make repayments of the outstanding principal and accrued interest on the Loan equal to 9.98% of the Residual Receipts from the preceding calendar year. Such annual payments shall be accompanied by the Borrower's report of Residual Receipts (including an independent auditor's report regarding the auditor's review of Annual Operating Expenses). The Borrower shall provide the City with any documentation reasonably requested by the City to substantiate the Borrower's determination of Residual Receipts.

(v) Payment in Full. All principal and accrued interest on the Loan shall be due in full on the earlier to occur of (i) the date of any Transfer not authorized by the City, (ii) the date of any Default (subject to applicable notice and cure rights), and (iii) the expiration of the Term.

(b) Prepayment. The Borrower shall have the right to prepay the loan at any time. However, the Regulatory Agreement shall remain in effect for the entire Term, regardless of any prepayment."

6. The following new Section 3.9(c) shall be added to the Loan Agreement:

Notwithstanding the foregoing, the following Transfers shall be permitted without the consent of the City: (i) a transfer to a limited partnership, the general partner of which is a limited liability company whose sole member is Visionary Home Builders of California, Inc., (ii) transfers of

limited partner interests in Borrower to an investor limited partner and subsequent transfers of limited partner interests for the purpose of syndicating low income housing tax credits, (iii) the removal of the general partner of Borrower by the limited partner in accordance with the terms of Borrower's limited partnership agreement and replacement of such general partner with an affiliate of the limited partner or with another entity reasonably approved by the City; and (iv) the grant and exercise of an option or right of first refusal to acquire the Property or the limited partner interests of Borrower by the general partner or an affiliate thereof in accordance with Borrower's partnership documents.

7. The following new Section 5.2(e) is added to the Loan Agreement:

“(d) Limited Partner Notice and Cure Rights. The City shall send a copy of any notice of Default to Borrower's limited partner, at the address set forth in Section 6.11. The limited partner shall have the same right as Borrower to cure or remedy any Default hereunder within the cure period provided to Borrower; provided however, if the Default is of such nature that the limited partner reasonably determines that it is necessary to replace the general partner of Borrower in order to cure such Default, then the cure period shall be extended by an additional sixty (60) days after the removal and replacement of such general partner, provided that the limited partners have promptly commenced and diligently proceeded with all requisite actions to effect such removal and replacement. Any cure tendered by the limited partner shall be accepted or rejected on the same basis as if such cure had been tendered by Borrower.”

8. Section 6.5 of the Loan Agreement is hereby amended by adding the phrase “or willful misconduct” at the end of the first clause in that Section.

9. Exhibit B, Approved Development Budget, is hereby deleted and replaced with Exhibit B attached hereto.

10. Section 6.11 of the Loan Agreement is hereby amended by adding the following notice addresses:

“With a copy of notices of default to:

Raymond James Housing Opportunities Fund 41 L.L.C.
c/o Raymond James Tax Credit Funds, Inc.
880 Carillon Parkway
St. Petersburg, Florida 33716
Facsimile No.: 727-567-8455
Attention: Steven J. Kropf, President

With copies to:

Kyle Arndt, Esq.
Bocarsly Emden Cowan Esmail & Arndt LLP
633 W. 5th Street, 64th Floor
Los Angeles, California 90071
Facsimile No.: 213-239-0410

11. Exhibit B of the Loan Agreement, Approved Development Budget, is hereby deleted.

12. Section 2 of the Note is hereby amended by deleting “December 13, 2029” and replacing it with “the earlier of the date which is 55 years from receipt of a certificate of occupancy for the Development and December 31, 2072”.

13. The following new Section 8(d) is hereby added to the Note:

“(d) The limited partner of Borrower shall have the notice and cure rights set forth in the Loan Agreement.”

14. All references in the Deed of Trust to the number of Units at the Development shall henceforth be deemed to refer to 60 units, including one manager’s unit.

15. The following paragraph is hereby added at the end of Section 7.3 of the Deed of Trust:

“Notwithstanding the foregoing, prior to Beneficiary exercising any remedies hereunder or under any of the Loan Documents, the limited partner of Trustor shall have the notice and cure rights set forth in the Loan Agreement.”

16. The following new Section 8.13 is hereby added to the Deed of Trust:

“Partial Subordination to Extended Use Agreement. Trustor and the California Tax Credit Allocation Committee may enter into a Regulatory Agreement (the “**TCAC Regulatory Agreement**”), which constitutes the extended low-income housing commitment described in Section 42(h)(6)(B) of the Internal Revenue Code of 1986, as amended (the “**Code**”). In the event of a foreclosure of Beneficiary’s interest under this Deed of Trust or delivery by the Trustor of a deed in lieu thereof (collectively, a “**Foreclosure**”), the following rule shall apply pursuant to Section 42(h)(6)(E)(ii) of the Code:

With respect to dwelling units that had been regulated by the TCAC Regulatory Agreement, for a period of three (3) years following a Foreclosure: none of the tenants occupying such units at the time of the Foreclosure may be evicted or have their tenancy terminated other than for

good cause, nor may any rent be increased except as otherwise permitted under Section 42 of the Code.”

17. Regulatory Agreement is hereby amended to clarify that 13 Units shall be rented to Low Income Households and 46 Units shall be rented to Very Low Income Households.

18. Section 1.1(u) of the Regulatory Agreement is hereby deleted and replaced with the following:

“‘Term’ shall mean the period of time beginning on the date a certificate of occupancy is issued for the rehabilitation of the Development and ending on the earlier of the date which is 55 years later and December 31, 2072.”

19. The following is hereby added to the end of Section 2.3 of the Regulatory Agreement:

“Notwithstanding the foregoing, the treatment of over-income tenants shall comply with Section 42 of the Internal Revenue Code of 1986, as amended, while such section is applicable to the Project.”

Section 5.6 of the Regulatory Agreement is hereby amended to add the phrase, “Subject to the rights of senior lenders,” at the beginning of the last sentence of that Section.

20. In the event of a conflict between this Amendment and the Loan Documents, the terms and provisions of this Amendment shall control.

21. In all other respects, the Loan Documents shall remain unchanged and shall remain in full force and effect.

[Signatures on following page.]

IN WITNESS WHEREOF, the City and Borrower have executed this Amendment as of the date written on the first paragraph of this Amendment.

BORROWER:

Diamond Cove Associates,
a California Limited Partnership

By: Diamond Cove Housing Corporation,
a California nonprofit corporation

By: _____
Carol J. Ornelas
Chief Executive Officer

CITY:

City of Stockton,
a municipal corporation

By: _____
Its: _____

APPROVED AS TO FORM:

John M. Luebberke,
City Attorney

By: _____

ATTEST:

By: _____
Bonnie Paige,
City Clerk

**EXHIBIT A
LEGAL DESCRIPTION**

The land referred to is situated in the County of San Joaquin, City of Stockton, State of California, and is described as follows:

PARCEL NO. 1: Lot 13A, as shown upon map entitled Tract No. 1553, Hillsboro Estates East, Unit No. 2, filed for record June 29, 1979 In Book 24 Of Maps and Plats, at Page 81, San Joaquin County Records.

PARCEL NO. 2: Lots 12 And 12A, as shown upon map entitled Tract 1553, Hillsboro Estates East, Unit No. 2, filed for record June 29, 1979 In Book 24 Of Maps and Plats, at Page 81, San Joaquin County Records.

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, a Notary Public in and for said State, personally appeared,

_____, proved to me 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 _____

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, a Notary Public in and for said State, personally appeared,

_____, proved to me 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 _____