

ADDENDUM TO DEED OF TRUST

NOTICE: BENEFICIARY UNDERSTANDS THAT THE EXECUTION OF THIS AGREEMENT MAY RESULT IN ITS SECURITY INTEREST BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LATER RECORDED LIEN OF A DEED OF TRUST OF AN INSTITUTIONAL LENDER AS PROVIDED HEREIN.

THIS ADDENDUM TO DEED OF TRUST is made a part of that certain Deed of Trust (the "Deed of Trust") dated as of _____, 200_, executed by EV, LLC, a Washington limited liability company ("Trustor"), in favor of THE CITY OF SAN DIEGO and the SAN DIEGO HOUSING COMMISSION (together, "Beneficiary"). Unless otherwise specified in this Addendum, the capitalized terms herein have the same definitions as the capitalized terms in the Inclusionary Housing In Lieu Fee Agreement (the "In Lieu Agreement") which is secured by the Deed of Trust. The terms of this Addendum shall prevail over any inconsistent terms in the Deed of Trust or the In Lieu Agreement.

1. Subordination to First Trust Deed. Provided that an unrescinded notice of default under the Deed of Trust does not then appear of record, Beneficiary agrees to execute such documents, in a form acceptable to Beneficiary and its legal counsel in their reasonable discretion, as are reasonably required to subordinate the Deed of Trust to the following:

A. Construction Loan. A first deed of trust in favor of an institutional lender (as hereinafter defined) encumbering the Property (and the other real property constituting the "Project," as hereinafter defined) to secure a loan made for the purpose of acquiring the Property and/or constructing the Project, provided that such loan shall be consistent with the following:

1. The amount of the loan shall not exceed 90% of the appraised value of the completed Project as determined by the lender's appraisal.

2. The proceeds of the loan shall be used only for payment of costs of acquiring, developing and constructing the Project and related facilities and to pay reasonable loan fees, points and development fees, and to pay and discharge any prior liens.

3. The interest rate and loan fees for such loan shall be consistent with generally prevailing rates and fees for similar loans being made by similar lenders in the area.

4. Any construction loan shall be for a term of not more than 36 months (including extensions). Such loan shall be payable interest only during such term and there shall be a typical interest reserve account to provide for the payment of

interest (or the borrower shall deposit its own funds for such purpose into an interest reserve account) during the initial term, and the interest reserve shall be fully funded before any extension of the initial term of the loan.

5. The lender shall require that the construction loan proceeds be disbursed through a fund control which shall require the submission of vouchers and receipts for completed work as a condition to disbursement, and Beneficiary shall have access to the records and accounts of such fund control. The lender shall require that the Project be constructed pursuant to a construction contract with a reputable and experienced general contractor, and the parties hereto agree that Trustor may act as the general contractor with respect to the Project, subject to the approval of the construction lender.

6. Before effecting the subordination to a construction loan, Trustor shall submit to Beneficiary for Beneficiary's approval, which shall not be unreasonably withheld, copies of the proposed plans and specifications for the Project, which plans and specifications shall be prepared by an experienced and reputable architect or engineer and shall comply with all applicable laws.

7. Further details of the financing transaction between the lender and Trustor shall be determined by negotiation between Trustor and the lender on the basis of then-prevailing custom and generally accepted financing practices of similar established institutional lenders for similar loans in San Diego County. Trustor shall exercise good faith in such negotiations.

B. Long-Term Loan. A first deed of trust in favor of an institutional lender to secure a long-term loan for the Project, provided that such loan shall be consistent with the following:

1. The amount of the loan shall not exceed 90% of the lender's appraised value of the completed Project.

2. The interest rate and loan fees for such loan shall be consistent with generally prevailing rates and fees for similar loans being made by similar lenders in the area.

3. The loan shall be payable in substantially equal monthly installments based on not less than 20-year amortization and there shall be no "balloon payment" or final due date before the end of the fifth loan year. All interest shall be payable currently and shall not be permitted to accrue.

4. Further details of the financing transaction between the lender and Trustor shall be determined by negotiation between Trustor and the lender on the basis of then prevailing custom and generally accepted financing practices of similar established institutional lenders for similar loans in San Diego County. Trustor shall exercise good faith in such negotiations.

5. Trustor may from time to time refinance the long-term loan subject to the above criteria.

6. Trustor may obtain a long-term loan for the acquisition of the Property consistent with the foregoing criteria before obtaining a construction loan.

2. Other Terms. The following terms and conditions shall apply to any subordination hereunder:

A. Beneficiary agrees to execute such documentation as may be required by the lender and its title insurer to effectuate the subordination of the Deed of Trust to a new first deed of trust if the terms and conditions of the new loan are consistent with this Addendum, provided such documentation is in a form acceptable to Beneficiary and its legal counsel in their reasonable discretion. Trustor will deliver all documentation with respect to the new loan to Beneficiary in connection with Trustor's request for Beneficiary's subordination, including a copy of all final loan documentation, and Beneficiary shall execute all documents so required by Lender(s) within ten (10) business days after Beneficiary's receipt of a written request therefor by Trustor or the Lender, and of copies of all such final loan documentation.

B. "Institutional lender" shall include only state or federally chartered banks and savings and loan associations and other institutional lenders (such as insurance companies and pension plans) reasonably acceptable to Beneficiary.

C. Beneficiary covenants and agrees to cooperate with Trustor and to execute and/or acknowledge all additional documents, provided such documents are in forms acceptable to Beneficiary and its legal counsel in their reasonable discretion, needed by the lender and a title insurance company (including without limitation the lender's or title company's standard form subordination agreement) in order that the latter may issue the type of title insurance required by the institutional lender in order to make the loan.

D. Concurrent with the recordation of any deed of trust to which the Deed of Trust is subordinated, Trustor shall, at its own expense, obtain and deliver to Beneficiary a title insurance policy (or an endorsement to Beneficiary's existing title insurance policy) insuring that this Deed of Trust will be (after such subordination) a lien on the property hereby encumbered, second and subordinate only to (i) the specific deed of trust to which the Deed of Trust is being subordinated, and to no other "money encumbrances" (i.e., liens or encumbrances securing an obligation to pay money, such as deeds of trust, mortgages, mechanic's liens, and judgment), except non-delinquent taxes and assessments, and to (ii) such other matters as were of record at the time the Deed of Trust was first recorded or which have been approved by Beneficiary.

E. The parties acknowledge that the Deed of Trust secures the performance of certain covenants by Trustor and not payment of a liquidated sum of money. Beneficiary acknowledges that the terms of this Addendum are fair and reasonable to Beneficiary and are adequate to protect Beneficiary's interests.

F. Notwithstanding anything to the contrary contained herein, in the Deed of Trust or in the In Lieu Agreement, the Beneficiary will not agree to subordinate the Deed of Trust which secures this Agreement to any other deed of trust, unless the Beneficiary is entitled to cure any and all defaults, in a manner acceptable to the Beneficiary in its reasonable discretion, of such other deed of trust and to cure any and all defaults under any loan, promissory note or any other agreement or document secured by such other deed of trust.

3. Future Condominium Status. Beneficiary understands that Trustor intends to develop, construct and operate residential units and/or commercial (retail and/or office) space on the Property (the "Project"). In order to facilitate the development, construction and operation of the Project, Beneficiary agrees that Trustor may establish the residential units as one or more condominiums, separate from the commercial space, provided that the residential units shall remain fully subject to the terms of the In Lieu Agreement.

Beneficiary agrees to cooperate with Trustor's development of the Project as provided above by (a) executing such documents (including an amendment to the Deed of Trust) as are reasonably required to subordinate the Deed of Trust to a subdivision or parcel map, condominium plan and declaration of restrictions ("CC&R's"), (b) reconveying the Property encumbered by the Deed of Trust provided that the condominium(s) constituting the residential units (or, at Developer's option, the entire Project, including the residential units) shall be concurrently substituted in place thereof, and (c) signing such consents and approvals as are required to effectuate the condominium status of the residential units and the Project, subject to the following conditions:

1. Beneficiary shall be at no material expense and shall incur no material liability.
2. The residential units shall (by means of the CC&R's, easements or other means reasonably acceptable to Beneficiary) be afforded such rights to ingress and egress, utilities and services as are necessary for their operation as rental units.
3. The terms of the CC&R's (including the assessments which may be levied against the residential units) shall be commercially reasonable and consistent with restrictions for similar projects. The tenants/occupants of the residential units may have common areas and amenities (including parking areas) which are separate from those of the commercial space.
4. All documents are in forms acceptable to Beneficiary and its legal counsel in their reasonable discretion.

Beneficiary also agrees to release from the Deed of Trust (or to subordinate the Deed of Trust to) all utility, access and other easements and licenses, and all governmental exactions, which are required for the development, construction and operation of the Project, provided the same do not materially impair the security of the Deed of Trust or Developer's ability to comply with the In Lieu Agreement.

4. Dispute Resolution. The provisions of this Addendum have been drafted based upon the parties' expectation, as of the date of this Amendment, as to the development, construction and operation of the Property and the Project. It is recognized that not all details have been addressed and that further matters may arise which are not addressed in this Addendum. The parties agree that they shall each endeavor in good faith to promptly address and resolve such details and other matters. If at any time the parties cannot resolve any matter with respect to subordination of the Deed of Trust or establishing condominiums on the Property, as provided in this Addendum only, either party may, by written notice to the other, which notice shall specify such unresolved matter(s) with reasonable particularity, declare such party's intention to utilize the arbitration procedure addressed below. Following any such notice, the parties shall diligently and in good faith attempt for a period of fifteen (15) days to resolve such matter. If such matter is not resolved within such fifteen (15) day period, either party may elect that such matter be arbitrated, as hereinafter provided.

Any dispute arising out of subordination of the Deed of Trust or establishing condominiums on the Property, as provided in this Addendum only, shall be decided by neutral binding arbitration in accordance with Part 3, Title 9 of the Code of Civil Procedure and, to the extent not inconsistent therewith, the Commercial Arbitration Rules of the American Arbitration Association and not by court action, except as provided by California law for judicial review of arbitration proceedings.

For a period of ten (10) days after notice by either party to the other requesting arbitration, the parties shall attempt to agree upon a mutually acceptable arbitrator, who shall be an active or retired attorney with at least ten (10) years' experience in real property law in Southern California or a retired judge. If the parties fail within such ten (10) days to select the arbitrator, upon the application of either party the arbitrator shall be appointed by the then presiding judge of the Superior Court for San Diego County; the party making such application shall give the other party ten (10) days notice of such application.

The arbitrator shall be instructed to set the matter for hearing within thirty (30) days of the arbitrator's selection (the "Selection Date") and to try all issues of law and fact and to report a statement of decision upon them, if possible, within sixty (60) days of the Selection Date. The arbitrator shall also be instructed to make its ruling consistent with the express requirements of this Addendum and, to the extent not inconsistent therewith, may consider commonly accepted development practices for similar projects in Southern California, such that the Project can proceed on a commercially reasonable basis while adequately protecting Beneficiary's security for the performance of the In Lieu Agreement. The matter shall be tried and judgment shall be entered pursuant to Sections 1280-1294.2 of the Code of Civil Procedure and, to the extent not inconsistent, the Commercial Arbitration Rules of the American Arbitration Association. Considering the parties' need for prompt resolution of the dispute, the arbitrator shall be instructed to grant delays and continuances only in exigent circumstances. All discovery shall be completed no later than ten (10) days before the first hearing date established by the arbitrator, provided that the arbitrator may extend such period in the event of a party's refusal or failure to provide requested discovery for any reason whatsoever, including without limitation legal objections raised to such discovery or unavailability of a witness due to absence

or illness. No party shall be entitled to “priority” in conducting discovery. Depositions of a party or its affiliates may be taken by the other party upon seven (7) days’ written notice, and requests for production or inspection of documents on a party or its affiliates shall be responded to within ten (10) days after service. All disputes relating to discovery which cannot be resolved by the parties shall be submitted to the arbitrator. The decision of the arbitrator with respect to any matter addressed in this Addendum shall be final and binding upon the parties. The arbitrator may award equitable relief as well as money damages.

The dispute resolution provisions contained in this Addendum shall be applicable to any dispute arising out of subordination of the Deed of Trust or establishing condominiums on the Property, as provided in this Addendum only. The dispute resolution procedure contained herein does not apply to, and shall have no force or effect with respect to, any portion of the In Lieu Agreement or the Deed of Trust, except for disputes arising out of subordination of the Deed of Trust or establishing condominiums on the Property only. By agreeing to the dispute resolution procedure contained herein, the parties are not waiving any right to litigate any actions, issues or disputes, including actions for declaratory relief, with respect to the Deed of Trust and the In Lieu Agreement, except for dispute arising out of subordination of the Deed of Trust or establishing condominiums on the Property, as provided in this Addendum only.

5. Successors. The terms of this Addendum shall be binding on the respective successors and assigns of the parties.

“Trustor”

EV, LLC,
a Washington limited liability company

By: _____
Print Name: _____
Officer
Its: _____

By: _____
Print Name: _____
Its: _____

“Beneficiary/Commission”

SAN DIEGO HOUSING COMMISSION,
a public agency

By: _____
Elizabeth C. Morris, Chief Executive

“Beneficiary/City”

THE CITY OF SAN DIEGO,
a California charter city

By: _____
Michael Uberuaga, City Manager