



City of San Leandro

Meeting Date: December 17, 2012

Staff Report

File Number: 12-557

Agenda Section: CONSENT CALENDAR

Agenda Number: 8.C.

TO: City Council

FROM: Chris Zapata
City Manager

BY: Tom Liao
Acting Community Development Director

FINANCE REVIEW: Not Applicable

TITLE: Staff Report for Approving the Transfer of 27751 Leidig Court from Safe Alternatives to Violent Environments (SAVE) to Eden Housing (Eden) by Authorizing the Execution of 1) an Assignment and Assumption Agreement Assigning the City's Community Development Block Grant (CDBG) Financing from SAVE to Eden and 2) a Revocable Grant Agreement Restructuring the City's CDBG Financing into a Revocable and Forgivable Grant

SUMMARY AND RECOMMENDATIONS

Staff recommends the City Council adopt the resolution approving the transfer of 27751 Leidig Court from Safe Alternatives to Violent Environments (SAVE) to Eden Housing (Eden) by authorizing the execution of an Assignment and Assumption Agreement that will assign the City's Community Development Block Grant (CDBG) financing from SAVE to Eden and a Revocable Grant Agreement that will restructure the City's CDBG financing into a revocable grant that will be forgiven by 2021. Eden is not requesting any additional funding from the City.

Since 1988, SAVE has operated 27751 Leidig Court, which is located in Hayward, as its Women In Need Gain Strengths (WINGS) transitional housing facility for domestic violence victims. Due to financial reasons, SAVE has agreed to transfer the facility to nonprofit affordable housing developer Eden Housing who will acquire, rehabilitate, and operate the property as a 16-unit affordable multifamily rental housing complex for very low- and low-income households.

BACKGROUND

In 1988 the City, Alameda County, and the cities of Hayward and Fremont provided SAVE with CDBG loans to assist SAVE in acquiring and rehabilitating the WINGS facility, a 15-unit apartment complex located at 27751 Leidig Court in Hayward. Since acquisition and completion of its rehabilitation, SAVE has operated the property as transitional housing for survivors of domestic violence. SAVE also obtained additional funding from the same

jurisdictions to complete two (2) more separate rehabilitations with the last substantial rehabilitation being completed in mid-2007 with funds provided by the County, the State, and the City of Hayward. The City has invested a total of \$99,394 in CDBG funds from 1988 to 2001 in the WINGS property.

In late 2007, SAVE, for financial reasons, informed the County that it could no longer operate the property as transitional housing for victims of domestic violence and requested approval to list the property for sale. In 2008, the participating local jurisdictions agreed to let SAVE transfer the building to an organization which would operate it as a general affordable housing building rather than restrict it to survivors of domestic violence. For much of 2009, SAVE was responsible for sale/transfer of the property and for providing documentation with regard to equity in WINGS.

In January 2010, the County, on behalf of SAVE, issued a Request for Proposals for the transfer of ownership of WINGS and the assumption of the jurisdictional loans. The participating local jurisdictions and SAVE reviewed proposals and selected nonprofit affordable housing developer Eden Housing to purchase the property from SAVE and operate it as affordable housing. Eden intends to develop this property into 16 units (including a manager's unit) of rental multifamily housing affordable to very low-income households.

On October 11, 2012, SAVE and Eden executed an Agreement for Purchase and Sale and Joint Escrow Instructions pursuant to which Eden will purchase the Leidig Court property from SAVE. Eden will also assume all existing CDBG funding that has been provided to SAVE for the property since 1988.

Analysis

As stipulated in the executed purchase and sale agreement and due to the gap in financing and extent of the significant rehabilitation needed to convert the WINGS property into affordable rental housing, Eden has indicated that it is necessary to obtain additional funding and for all participating jurisdictions to forgive past CDBG loans to facilitate this acquisition and rehabilitation.

Therefore, in order to facilitate the sale of WINGS, the County will provide \$685,000 in Neighborhood Stabilization Program (NSP2) stimulus funds and in Affordable Housing Trust Funds while the City of Hayward will provide an additional \$325,000 in HOME Investment Partnerships Program (HOME) funds. In addition, the City and all the other participating jurisdictions have agreed (subject to City Council approval) on Eden's assumption of SAVE's existing CDBG loans which will be restructured as revocable grants to Eden when Eden assumes ownership of the property. Provided that Eden continually operates the property as an affordable housing property, the revocable grants are proposed to be forgiven twenty (20) years from the dates the financing was first provided to SAVE.

Specifically, the City's \$99,394 CDBG funds are proposed to be forgiven as follows: \$81,894 at closing in December 2012 and \$17,500 on June 30, 2021. The \$81,894 that will be forgiven at the close of escrow consists of the following CDBG loans: \$40,000 in 1988; \$20,000 in 1990; \$7,346 in 1992; and \$9,024 and \$5,524 in 1993. The \$17,500, which the City approved in 2001, will be due to the City and could be recovered through foreclosure against the property should Eden fail to operate the property as affordable housing or otherwise default. Furthermore, the City, together with Hayward and Fremont, will remain as

third party beneficiaries of an Amended and Restated Regulatory Agreement between Alameda County and Eden which will continue to impose affordability restrictions on the property for the next thirty-four (34) years. Also, under this County Amended Regulatory Agreement, the City is entitled to a 4.13% share of the value of the property if Eden fails to perform any obligation under the Regulatory Agreement.

Current Agency Policies

Policies and goals that further affordable housing needs and goals under the 2010-2014 HUD Consolidated Plan:

- Increase the availability of affordable rental housing for extremely low- (30%), very low- (50%), and low-income (80%) households
- Preserve existing affordable rental and ownership housing for households at or below (80%) Area Median Income (AMI)
- Build upon inter-jurisdictional cooperation to achieve housing and homeless needs

Previous Actions

- 9/21/87 By Resolution No. 87-204, Council approved the City joining Hayward, Fremont & Alameda County to support SAVE's development of a transitional housing program
- 3/28/88 By Resolution No. 88-45, Council approved the use of funds for acquisition and mentions letters of commitment for acquisition by Fremont, Hayward & the City
- 10/3/88 By Resolution No. 88-220, Council authorized City Manager to approve annual CDBG Performance Report
- 7/1/90 City signed a Participating Public Jurisdictional (PPJ) Agreement with Fremont and Hayward to provide CDBG construction funds
- 10/5/92 By Resolution No. 92-281, Council approved community improvements' funds for SAVE Housing
- 12/10/92 City recorded a deed of trust dated 9/8/92
- 6/21/93 By Resolution No. 93-121, Council approved a Capital Improvements Agreement between the City and SAVE for rehabilitation of 16 units
- 9/6/94 By Resolution No. 94-174, Council approved PPJ Agreement with Hayward, Fremont and Union City for joint rehabilitation of WINGS
- 7/16/01 By Resolution No. 2001-113, Council approved CDBG Capital Improvements Project Agreement for \$17,500 for facility improvements between the City and SAVE

Applicable General Plan Policies

Policies that further affordable housing needs and goals under the City's Housing Element :

POLICY 58.09: ENDING HOMELESSNESS Develop local strategies with community stakeholders to provide permanent supportive housing for the homeless, people at risk of homelessness, and others with special needs.

Policy 58.11: SERVICE-ENRICHED HOUSING Promote social services and programs in affordable housing projects that assist lower-income households in obtaining the financial resources needed to increase and stabilize their housing choices in the City.

Environmental Review

There is no environmental review that will need to be completed by the City. Alameda County and the City of Hayward are responsible for completing the environmental review procedures pursuant to the National Environmental Policy Act of 1969 (NEPA) for the additional funding they will be providing Eden for the project.

Legal Analysis

The City Attorney approved the Assignment and Assumption Agreement and the Revocable Grant Agreement for execution by the City Manager.

Fiscal Impacts

The City will not provide any new funding to this project. The City will continue to coordinate with the Alameda County and the Cities of Hayward and Fremont for long-term monitoring and regulation of this property.

Budget Authority

Not applicable.

ATTACHMENTS

None.

PREPARED BY: Steve Hernandez, Housing Specialist I, Community Development Department



City of San Leandro

Meeting Date: December 17, 2012

Resolution - Council

File Number: 12-578 **Agenda Section:** CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: Tom Liao
Acting Community Development Director

FINANCE REVIEW: Not Applicable

TITLE: ADOPT: Resolution Approving and Authorizing the City Manager to Execute an Assignment and Assumption Agreement that Approves the Assignment of the City's Community Development Block Grant (CDBG) Financing to Safe Alternatives to Violent Environments (SAVE) from SAVE to Eden Housing (Eden) and a Revocable Grant Agreement Restructuring the City's CDBG Financing into a Revocable and Forgivable Grant Related to the Transfer by SAVE to Eden of the Property Located at 27751 Leidig Court, Hayward (approves assignment and restructuring of existing CDBG funding in the amount of \$99,394 as revocable and forgivable grants)

WHEREAS, in 1988 the City, Alameda County, and the cities of Hayward and Fremont provided SAVE with CDBG loans and grants to assist SAVE in acquiring and rehabilitating the WINGS facility, a 15-unit apartment complex located 27751 Leidig Court in Hayward. Since the acquisition and rehabilitation of the WINGS facility, SAVE has operated the property as transitional housing for survivors of domestic violence, some of whom were residents of the City; and

WHEREAS, between 1988 and 2001, the City loaned and/or granted \$99,394.00 in CDBG funds for this project to SAVE; and

WHEREAS, in 2007, SAVE informed the County that it could no longer operate the property as transitional housing for victims of domestic violence, and requested approval to sell the property. In 2008, the City as well as the other participating local jurisdictions agreed to let SAVE transfer the building to an organization that would operate the property as affordable housing, which would be in compliance with the use of the CDBG funds already loaned or granted to SAVE for this property; and

WHEREAS, in January 2010, the County, on behalf of SAVE, issued a Request for Proposals for the transfer of ownership of the property and the assumption of the participating jurisdiction's loans and grants. The City, with the participating local jurisdictions and SAVE, reviewed the proposals and selected the non-profit affordable housing developer, Eden

Housing, to purchase the property from SAVE and operate it as an affordable housing project;
and

WHEREAS, Eden proposes to develop the property into 16 units of rental multifamily housing affordable to very low-income households; and

WHEREAS, on October 11, 2012 SAVE and Eden executed an Agreement for the Purchase and Sale of the property, where Eden would also assume all of the funding obligations, including the loans and grants from the local participating jurisdictions, provided to SAVE for the property since 1988.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of San Leandro that it approves of the assignment and assumption of the CDBG funds provided to SAVE by the City in the amount of \$99,934.00 for the property located 27751 Leidig Court, Hayward, California, from SAVE to Eden Housing and the revocable grant agreement restructuring the City CDBG financing into a revocable and forgivable grant; and

BE IT FURTHER RESOLVED, that the City Council authorizes the City Manager to execute all documents to effect such approvals, subject to the approval as to form of such documents by the City Attorney.

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of San Leandro
Community Development Dept.
Housing Services Division
835 E. 14th Street
San Leandro, CA 94577
Attn: Housing/Planning Mgr.

No fee for recording pursuant to
Government Code Section 27383

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

**ASSIGNMENT AND ASSUMPTION AGREEMENT
(CDBG Funds)**

(27751 Leidig Court, Hayward)

This Assignment and Assumption Agreement (this "Agreement") is entered into as of _____, 2012 by and among the City of San Leandro, a municipal corporation (the "City"), Safe Alternatives to Violent Environments, Inc., a California nonprofit public benefit corporation, which was formerly known as "Shelter Against Violent Environments, Inc." (the "Assignor"), and Leidig Court LLC, a California limited liability company (the "Assignee"). The City, the Assignor and the Assignee shall each be referred to as a "Party", and shall collectively be referred to as the "Parties."

RECITALS

A. The Assignor owns certain real property located in the City of Hayward, California, commonly known as 27751 Leidig Court, as more particularly described in the attached Exhibit A and has operated the Property under the terms of that certain Regulatory Agreement between the County of Alameda and the Assignor dated May 19, 1988 and recorded in the official records of the County (the "Official Records") as document number 88-156303 on June 30, 1988 (the "SAVE-County Regulatory Agreement"). As defined by the SAVE-County Regulatory Agreement, the Participating Public Jurisdictions are the County of Alameda, the City of Fremont, the City of Hayward and the City of San Leandro (the "PPJs"). The Assignor desires to sell the Assignor's fee interest in the Property to the Assignee pursuant to the terms and conditions of a purchase and sale agreement between the Assignor and the Assignee. The Parties intend for this Agreement to be recorded in the Official Records concurrently with the recordation in the Official Records of the grant deed conveying the fee interest in the Property from the Assignor to the Assignee.

B. During the Assignor's ownership of the Property, the City represents that it provided certain loans and other financial assistance to the Assignor for the acquisition and

rehabilitation of the Property, consisting of Community Development Block Grant ("CDBG") funds (the "CDBG Funds"). The CDBG Funds are evidenced by certain agreements between the City and the Assignor as more particularly set forth below (collectively, the "Funding Documents").

C. The Assignor desires to assign to the Assignee all of the Assignor's rights, title and interest in and to, if any, and obligations and liabilities, if any, regarding the CDBG Funds, as set forth below and evidenced by the Funding Documents. The Assignee has agreed, subject to the terms and conditions of this Agreement, to assume such obligations and liabilities regarding the CDBG Funds as evidenced by the Funding Documents. The City desires to acknowledge and consent to the foregoing assignment and assumption and to release Assignor from its obligations and liabilities regarding the CDBG Funds.

D. Nothing in this Agreement is intended to be construed as an admission nor does it in fact constitute an admission or otherwise bind SAVE as the Assignor that it has now or at any time in the past incurred or otherwise assumed liability, indebtedness or any other monetary or non-monetary obligation for any of the Assumed Obligations (as defined below) or arising under any of the Funding Documents.

NOW THEREFORE, in consideration of the foregoing, and in consideration of the mutual promises of the Parties hereto and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

Section 1. Assignment by the Assignor. As of the Effective Date, the Assignor hereby assigns to the Assignee all of the Assignor's rights, title and interest in and to, if any, and obligations and liabilities, if any, described below as represented by the City to exist under the Funding Documents (collectively, the "Assumed Obligations").

Section 2. Acceptance of Assignment and Assumption of the Assumed Obligations by the Assignee. As of the Effective Date, the Assignee hereby accepts the above assignment of the Assumed Obligations and hereby assumes all of the Assumed Obligations. The Assignee hereby agrees to perform all of the terms, covenants, obligations and conditions imposed upon Assignor under the Funding Documents as if the Assignee were the original signatory thereto. All references in the Funding Documents to the Assignor shall hereafter be deemed to be references to the Assignee. Notwithstanding the preceding, Assignee is not, and this Agreement is not intended to make Assignee, liable for, and will not be declared in breach or default for, any of Assignor's actions, inactions, uses of CDBG Funds, compliance or noncompliance, if any, or any default, if any, by Assignor arising and/or committed prior to and existing as of the Effective Date.

Section 3. City Representation and Acknowledgement Regarding the CDBG Funds The City hereby represents to the Assignor and the Assignee that the outstanding balance as of the Effective Date of the CDBG Funds is Ninety-Nine Thousand, Three Hundred Ninety-Four Dollars (\$99,394.00), which amount includes without limitation, all principal, interest, and the following, if any, actual or alleged default interest, late fees, penalties, attorneys' fees, expenses, costs advanced, prorata sharing of sales proceeds, taxes, impositions and deposits of any kinds, and any other kind or nature of monetary obligation whether or not liquidated and reduced to a

specified dollar amount and whether or not specifically referenced in the documents listed in Section 4.

Section 4. City Representations and Acknowledgements Regarding Funding Documents and Assumed Obligations. The City represents to the Assignee that the "Funding Documents" consist of the following documents and agreements:

(a) The following document executed by the Assignor in connection with funding in the amount of Forty Thousand Dollars (\$40,000.00) in CDBG Funds provided by the City to Assignor in connection with the Property: that certain Regulatory Agreement between the County of Alameda and the Assignor dated May 19, 1988 and recorded in the official Records as document number 88-156303 on June 30, 1988 which include certain benefits and obligations specified therein in favor of the City. The \$40,000 amount of the City's funding is evidenced by that certain Agreement dated as of June 21, 1988 among the City, the County of Alameda, the City of Hayward, the City of Fremont and the City of Union City, and was increased by the following amounts: \$20,000 as evidenced by that certain Agreement dated as of July 1, 1990 among the City, the City of Hayward, and the City of Fremont; and \$9,024 as evidenced by that certain Agreement dated as of July 1, 1993 among the City, the City of Hayward, the City of Fremont and the City of Union City;

(b) The SAVE-County Regulatory Agreement;

(c) The following documents executed by the Assignor in favor of the City in connection with CDBG Funds in the amount of Seven Thousand Three Hundred Forty-Six Dollars (\$7,346.00) loaned to Assignor: that certain deed of trust executed by the Assignor in favor of the City dated as of September 8, 1992, and recorded in the Official Records as document number 92402694 on December 10, 1992, and that certain promissory note from Assignor to City referenced in said deed of trust;

(d) The following documents executed by the Assignor in favor of the City in connection with CDBG Funds in the amount of Five Thousand Five Hundred Twenty-Four Dollars (\$5,524.00) loaned to Assignor: that certain deed of trust executed by the Assignor in favor of the City dated as of June 21, 1993, and recorded in the Official Records as document number 93232975 on June 29, 1993; that certain promissory note from Assignor to City referenced in said deed of trust; and that certain Capital Improvements Agreement dated as of June 21, 1993 between the City and the Assignor; and

(e) The following document executed by the Assignor in favor of the City in connection with Seventeen Thousand Five Hundred Dollars (\$17,500.00) of CDBG Funds provided by the City to the Assignor: that certain Capital Improvements Agreement dated as of July 16, 2001 between the City and the Assignor.

Section 5. City Consent and Release. The City hereby consents to the assignment to, and assumption of, the Assumed Obligations by the Assignee. The City, for itself and on behalf of its respective successors and assigns hereby releases and forever discharges the Assignor and its respective officers, directors, employees, attorneys, and predecessors (each a "Released Party", and, collectively, the "Released Parties") from the Assumed Obligations and the Funding

Documents (including but not limited to the SAVE-County Regulatory Agreement) whether or not specifically referenced in the documents listed in Section 4.

Section 6. Effective Date. This Agreement and the assignment, assumption and release described in this Agreement shall be effective as of the date this Agreement is recorded in the Official Records which shall be recorded concurrently with the grant deed transferring Assignor's fee title in and to the Property to Assignee (the "Effective Date").

Section 7. Exhibits. The exhibit attached to this Agreement is hereby incorporated into this Agreement by this reference.

Section 8. California Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California.

Section 9. Invalidity. Any provision of this Agreement which is determined by a court to be invalid or unenforceable shall be deemed severed herefrom, and the remaining provisions shall remain in full force and effect as if the invalid or unenforceable provision had not been a part hereof.

Section 10. Headings; Interpretations. The headings used in this Agreement are for convenience only and shall be disregarded in interpreting the substantive provisions of this Agreement. The Parties agree that this Agreement has been prepared by all of the Parties and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement (including, but not limited to, California Civil Code Section 1654, as may be amended from time to time).

Section 11. Successors and Assigns. This Agreement shall apply to and bind the successors and assigns of the Parties hereto.

Section 12. Amendments. No provision of this Agreement may be amended, changed or waived except by a written instrument signed by all of the Parties (or, in the case of a waiver, by the Party against whom enforcement of the waiver is sought).

Section 13. Further Acts. Each of the Parties, upon the request of any other, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.

Section 14. Attorneys' Fees. If any attorney is engaged by any party hereto and an action is filed to enforce or defend any provision of this Agreement, the prevailing Party shall be entitled to costs and reasonable attorneys' fees.

Section 15. Counterparts; Multiple Originals. This Agreement may be signed in counterparts, and in multiple originals each of which shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

ASSIGNOR:

SAFE ALTERNATIVES TO VIOLENT ENVIRONMENTS, INC., a California nonprofit public benefit corporation

By: _____

Name: _____

Its: _____

ASSIGNEE:

LEIDIG COURT LLC, a California limited liability company

By: Eden Investments, Inc., a California nonprofit public benefit corporation, its sole member

By: _____

Name: _____

Its: _____

CITY:

CITY OF SAN LEANDRO, a municipal corporation

By: _____

Name: Chris Zapata

Its: City Manager

STATE OF CALIFORNIA)
)
COUNTY OF ALAMEDA)

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.

Notary Public

STATE OF CALIFORNIA)
)
COUNTY OF ALAMEDA)

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.

Notary Public

STATE OF CALIFORNIA)

COUNTY OF ALAMEDA)

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.

Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

PORTION OF BLOCK "S" AS SAID BLOCK IS SHOWN ON THE "MAP OF ANNEX TO MEEK ORCHARD TRACT," FILED MARCH 11, 1918, IN MAP BOOK 16, PAGE 59, ALAMEDA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHEASTERN BOUNDARY LINE OF SAID TRACT, DISTANT THEREON, SOUTH 42° 01' EAST, 525 FEET FROM THE INTERSECTION THEREOF, WITH THE CENTER LINE OF HARRIS ROAD, AS SAID ROAD IS SHOWN ON SAID MAP; RUNNING THENCE SOUTH 47° 59' WEST, 240 FEET; THENCE SOUTH 42° 01' EAST 100 FEET; THENCE NORTH 47° 59' EAST, 240 FEET TO THE NORTHERN BOUNDARY LINE OF SAID TRACT; THENCE ALONG SAID LAST NAMED LINE NORTH 42° 01' WEST, 100 FEET TO THE POINT OF BEGINNING.

CDBG REVOCABLE GRANT AGREEMENT
(LEIDIG COURT)

This CDBG Revocable Grant Agreement (the "Agreement") is dated December __, 2012, and entered into by and between the City of San Leandro, a California charter city (the "City") and Leidig Court LLC, a California limited liability company (the "Leidig"), with reference to the following facts, purposes and intentions.

RECITALS

A. These Recitals refer to and utilize certain capitalized terms which are defined in Article 1 of this Agreement. The Parties intend to refer to those definitions in connection with the use of capitalized terms in these Recitals.

B. The City has received funds from HUD pursuant to Title I of the Housing and Community Development Act of 1974, as amended ("CDBG Funds"). CDBG Funds must be used in accordance with the CDBG Regulations.

C. The City represents that it provided certain loans and other financial assistance to SAVE for the acquisition and rehabilitation of the Property, consisting of Community Development Block Grant ("CDBG") funds (the "CDBG Funds").

D. Leidig has proposed to acquire the Property from SAVE and to redevelop the Property. The Property is improved with a fifteen (15) unit housing project with a community room, which Leidig intends to develop into sixteen (16) units (including the manager's unit) of rental multifamily housing affordable of which fifteen (15) units shall be for very low income households (the "Development").

E. Leidig's purchase of the Property follows the Request for Proposals for the Transfer of Ownership of WINGS Affordable Housing Development ("RFP") issued by Alameda County Housing and Community Development and the cities of Hayward, Fremont and San Leandro (collectively, the "Participating Public Jurisdictions" or "PPJs") issued in January 2010 for the acquisition, rehabilitation and operation of the Property, which has been vacant and uninhabitable since 2008. Leidig, through its sponsor Eden Housing, Inc., responded to the RFP and was selected by the PPJs to work with the PPJs toward Leidig's purchase of the Property from Safe Alternatives to Violent Environments, Inc., a California nonprofit public benefit corporation, formerly known as "Shelter Against Violent Environments, Inc." ("SAVE"), and Leidig's rehabilitation and operation of the Property for use as affordable housing for very low and lower income households.

F. As a condition of the City's approval of the sale of the Property, Leidig has agreed to assume the Assigned CDBG Financing pursuant to the terms of the CDBG Assignment Agreement. The City and Leidig desire that the Assigned CDBG Financing be a revocable grant pursuant to the terms and conditions of this Agreement (the "CDBG Revocable Grant").

G. In addition to the CDGB Revocable Grant, the acquisition and rehabilitation of the Development will be financed by grants and loans as more particularly described in the Approved Financing;

H. CEQA imposes no conditions on the City's consideration and approval of this Agreement, because the project undertaken pursuant to this Agreement is the rehabilitation of existing improvements, and such projects are exempt from CEQA requirements under class 2 categorical exemption.

I. The City has completed and approved all applicable NEPA environmental review for the activities proposed to be undertaken under this Agreement, and has deemed the project to be categorically excluded according to 24 Code of Federal Regulations Section 58.35(a)(3).

NOW, THEREFORE, the Parties agree as follows:

ARTICLE 1.
DEFINITIONS AND EXHIBITS

Section 1.1 Definitions.

(a) "Agreement" means this CDBG Revocable Grant Agreement.

(b) "Approved Financing" means all of the following funds acquired by Leidig and approved by City for the purpose of financing the Development, in addition to the Grant and the other revocable CDBG Grants listed in (iv) below, which, like the Grant were funded entirely to SAVE and not to Leidig:

(i) a loan from Citibank in the approximate amount of One Million Sixty-Three Thousand Eight Hundred Seventy Nine Dollars (\$1,063,879), which shall be set by Citibank prior to closing;

(ii) a loan from the County of up to Six Hundred Eighty-Five Thousand Dollars (\$685,000), consisting of Four Hundred Eighty-Five Thousand Dollars (\$485,000) of Neighborhood Stabilization Program 2 funds and Two Hundred Thousand Dollars (\$200,000) of Affordable Housing Trust Fund funds (the "County Loan");

(iii) a loan from the City of Hayward of Home Investment Partnership Program ("HOME") funds in the approximate amount of Three Hundred Twenty-Five Thousand Dollars (\$325,000) (the "HOME Loan");

(iv) the following CDBG financing funded to SAVE but assumed by Leidig:

(1) a revocable grant of CDBG and SAFEH funds from the County of Alameda in the amount of Seven Hundred Forty-One Thousand Nine Hundred Ninety-Seven Dollars (\$741,997) (the "County Grant");

(2) a revocable grant of CDBG funds from the City of Fremont in the amount of Three Hundred Ten Thousand Two Hundred Fifty Dollars (\$310,250) (the "Fremont Grant");

(3) a revocable grant of CDBG funds from the City of Hayward in the amount of Three Hundred Twenty-Five Thousand Dollars (\$325,000) (the "Hayward Grant");

(c) "Assigned CDBG Financing" means Ninety-Nine Thousand Three Hundred Ninety-Four Dollars (\$99,394), which amount includes without limitation, all principal, interest, and the following, if any, actual or alleged default interest, late fees, penalties, attorneys' fees, expenses, costs advanced, prorata sharing of sales proceeds, taxes, impositions and deposits of any kinds, and any other kind or nature of monetary obligation whether or not liquidated and reduced to a specified dollar amount and whether or not specifically referenced in the Financing Documents.

(d) "CDBG" means the Community Development Block Grant program under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et. seq.), as amended.

(e) "CDBG Assignment Agreement" means that certain Assignment and Assumption Agreement by and between the City, SAVE (as the Assignor) and Leidig (as the Assignee), evidencing the assignment of the CDBG Funding Documents.

(f) "CDBG Funding Documents" consist of the following:

(i) The following document executed by the Assignor in connection with funding in the amount of Forty Thousand Dollars (\$40,000.00) in CDBG Funds provided by the City to Assignor in connection with the Property: that certain Regulatory Agreement between the County of Alameda and the Assignor dated May 19, 1988 and recorded in the official Records as document number 88-156303 on June 30, 1988 which include certain benefits and obligations specified therein in favor of the City. The \$40,000 amount of the City's funding is evidenced by that certain Agreement dated as of June 21, 1988 among the City, the County of Alameda, the City of Hayward, the City of Fremont and the City of Union City, and was increased by the following amounts: \$20,000 as evidenced by that certain Agreement dated as of July 1, 1990 among the City, the City of Hayward, and the City of Fremont; and \$9,024 as evidenced by that certain Agreement dated as of July 1, 1993 among the City, the City of Hayward, the City of Fremont and the City of Union City;

(ii) The SAVE-County Regulatory Agreement between the County of Alameda and the SAVE dated May 19, 1988 and recorded in the official records of the County (the "Official Records") as document number 88-156303 on June 30, 1988;

(iii) The following documents executed by the Assignor in favor of the City in connection with CDBG Funds in the amount of Seven Thousand Three Hundred Forty-Six Dollars (\$7,346.00) loaned to Assignor: that certain deed of trust executed by the Assignor in favor of the City dated as of September 8, 1992, and recorded in the Official Records as

document number 92402694 on December 10, 1992, and that certain promissory note from Assignor to City referenced in said deed of trust;

(iv) The following documents executed by the Assignor in favor of the City in connection with CDBG Funds in the amount of Five Thousand Five Hundred Twenty-Four Dollars (\$5,524.00) loaned to Assignor: that certain deed of trust executed by the Assignor in favor of the City dated as of June 21, 1993, and recorded in the Official Records as document number 93232975 on June 29, 1993; that certain promissory note from Assignor to City referenced in said deed of trust; and that certain Capital Improvements Agreement dated as of June 21, 1993 between the City and the Assignor; and

(v) The following document executed by the Assignor in favor of the City in connection with Seventeen Thousand Five Hundred Dollars (\$17,500.00) of CDBG Funds provided by the City to the Assignor: that certain Capital Improvements Agreement dated as of July 16, 2001 between the City and the Assignor.

(g) "CDBG Regulations" means the statutory and regulatory provisions that govern the CDBG program under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et. seq.*), as amended including 24 C.F.R. Part 570 *et seq.*

(h) "CDBG Revocable Grant Documents" means this Agreement, the County-Leidig Regulatory Agreement, the Revocable Grant Deed of Trust, and any other document or agreement evidencing the CDBG Revocable Grant.

(i) "CEQA" means the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*).

(j) "City" means the City of San Leandro, a California charter city.

(k) "County" means the County of Alameda, a political subdivision of the State of California.

(l) "County-Leidig Regulatory Agreement" means that certain Regulatory Agreement and Declaration of Restrictive Covenants dated December __, 2012 between County and Leidig, to be recorded against the Property, naming the City as a third party beneficiary.

(m) "Effective Date" means the date all of the following are recorded in Alameda County: the grant deed conveying title to the Property to Leidig; the CDBG Assignment Agreement; the County-Leidig Regulatory Agreement; and the Revocable Grant Deed of Trust..

(n) "HUD" means the United States Department of Housing and Urban Development.

(o) "Leidig" means Leidig LLC, a California limited liability company.

(p) "NEPA" means the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321-4347).

(q) "Parties" mean Leidig and the City.

(r) "Property" means that certain real property located in the City of Hayward, California, commonly known as 27751 Leidig Court (Assessor's Parcel No. 453-0095-010) in the County of Alameda, State of California. A legal description of the Property is attached as Exhibit A.

(s) "Revocable Grant Deed of Trust" means that certain Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing of even date herewith among Leidig, as Trustor, North American Title Insurance Company, as trustee, and the City, as beneficiary, that will encumber the Property to secure performance of the covenants of the CDBG Revocable Grant Documents. The form of the Deed of Trust will be provided by City.

(t) "SAVE" means Safe Alternatives to Violent Environments, Inc., a California nonprofit public benefit corporation, which was formerly known as "Shelter Against Violent Environments, Inc."

(u) "Term" means the term of this Agreement and the CDBG Revocable Grant which commences as of the date of this Agreement and ends June 30, 2047.

Section 1.2 Exhibits.

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

Exhibit A: Legal Description
Exhibit C: Financing Proposal
Exhibit D: NEPA Mitigation Measures

ARTICLE 2. GRANT PROVISIONS

Section 2.1 Grant.

(a) In connection with the acquisition of the Property by the Leidig from SAVE, SAVE assigned, and the Leidig assumed, the Assigned Financing pursuant to the CDBG Assignment Agreement. As of the Effective Date, the outstanding balance of the Assigned Financing is Ninety-Nine Thousand Three Hundred Ninety-Four Dollars (\$99,394). Leidig assumed the Assigned CDBG Financing in order to assist the City in fulfilling the original intention of the City's provision of the CDBG Funds, which was to provide affordable low income housing. The Parties acknowledge that none of the Assigned CDBG Financing is or was disbursed to Leidig, and that all disbursements were made to SAVE prior to Leidig's acquisition of the Property. Leidig shall not be responsible for the repayment of any of the Assigned CDBG Financing to the City, except as provided in this Agreement. Notwithstanding Leidig's assumption of the Assigned Financing, Leidig is not, and this Agreement is not intended to make Leidig, liable for, and Leidig will not be declared in breach or default for, any of SAVE's actions,

inactions, uses of CDBG Funds, compliance or noncompliance, if any, or any default, if any, by SAVE arising and/or committed prior to and existing as of the Effective Date.

(b) Leidig and the City desire that the Assigned Financing be a revocable grant from the City to Leidig as set forth in this Section. Except as set forth in Section 2.4, Leidig has no obligation to repay the CDBG Revocable Grant.

(c) This Agreement and the CDBG Assignment Agreement become effective upon the Effective Date. Leidig assumed the Assigned CDBG Financing based on understanding with the City that the terms and conditions of the CDBG Funding Documents that would be amended, replaced and or superseded as set forth herein. Therefore, notwithstanding any provision in any documents executed by SAVE or otherwise evidencing the Assigned CDBG Financing, as of the Effective Date, this Section, together with the County-Leidig Regulatory Agreement and the Revocable Grant Deed of Trust, hereby replace any and all other documents evidencing the Assigned CDBG Financing, which are hereby terminated as of the Effective Date. The Parties acknowledge the portions of the Assigned Financing may be evidenced only by resolutions or CDBG Reports, and although such documents are not assigned or assumed and cannot be terminated, the intent of this subsection is to make the Grant subject only to the CDBG Revocable Grant Documents. Leidig and the City agree that the Assigned CDBG Financing shall be a grant from the City to Leidig as set forth in this Section. As of the Effective Date, Leidig and the City hereby agree and acknowledge that the CDBG Revocable Grant is Ninety-Nine Thousand Three Hundred Ninety-Four Dollars (\$99,394). The CDBG Revocable Grant is evidenced by this Agreement, the County-Leidig Regulatory Agreement and is secured by the Revocable Grant Deed of Trust, and all prior documents relating to the Assigned CDBG Financing are hereby terminated by this Section, and shall have no further force or effect as to the Property or to Leidig as of the Effective Date.

(d) The City's sole recourse shall be the remedies set forth in Section 5.2 below; provided, however, in no event shall any remedy include any demand by the City, or other action of the City, for the repayment of any portion of the CDBG Revocable Grant forgiven in accordance with Section 2.3 of this Agreement.

Section 2.2 Security.

(a) Leidig shall secure its obligation to repay the CDBG Revocable Grant in the event of Default by executing the Deed of Trust, and recording it as a lien against the Property

(b) In conjunction with the recordation of the CDBG Revocable Grant Deed of Trust, the City shall: (i) take such actions necessary to cause the reconveyance of the existing deeds of trust, if any, which were previously recorded against the Property and which were assigned to the Leidig pursuant to the CDBG Assignment Agreement, and (ii) mark as "cancelled" the existing promissory notes, if any, executed by SAVE to evidence the Assigned CDBG Financing and which were assigned to Leidig pursuant to the CDBG Assignment Agreement, and return such cancelled promissory notes to Leidig (the "Cancelled Promissory Notes"). Upon the delivery of the Cancelled Promissory Notes to Leidig, such notes shall be terminated, and shall be of no further force or effect.

(c) In addition, to the extent the Assigned CDBG Financing is evidenced by any other documents or agreements which were assigned to Leidig pursuant to the CDBG Assignment Agreement, such documents and agreements shall terminate as of the date of Leidig's acquisition of the Property and such documents or agreements shall be of no further force or effect, and the only documents evidencing and securing the Assigned CDBG Financing shall be this agreement, the County-Leidig Regulatory Agreement and the CDBG Revocable Grant Deed of Trust.

Section 2.3 Forgiveness of CDBG Revocable Grant.

(i) Provided that no Default exists, without further action of the parties, the CDBG Revocable Grant shall be forgiven in the following amount on the following dates (each of which, except for the amounts forgiven on the Effective Date, is approximately twenty (20) years after the year the portion of the Assumed CDBG Financing was originally made, approved, or disbursed by the City to Save): Upon transfer of title to the Property to Borrower, \$137,250 is automatically forgiven (the transfer date being more than 20 years from the 1987/88, 1994 and 1998 fundings by the City to SAVE);

(ii) On June 30, 2021, \$50,000 is automatically forgiven (original funding to SAVE in 2001); and

(iii) On June 30, 2026, \$75,000 is automatically forgiven (original funding to SAVE in 2006).

(b) Upon the written request of Leidig, in connection with the partial forgiveness of the CDBG Revocable Grant set forth above, or at such other times as may be requested by Leidig, the City shall deliver a written notice to Leidig evidencing the outstanding balance of the CDBG Revocable Grant, and amounts previously forgiven by the City. Prior to the forgiveness of the entire CDBG Revocable Grant, the City shall reasonably consider a request by the Leidig to accelerate the schedule for the forgiveness of the CDBG Revocable Grant, as may be necessary to obtain financing necessary for the Property to be maintained in accordance with the CDBG Revocable Grant Documents, or (ii) maintain the financial feasibility of the Project, subject to the requirements of the County-Leidig Regulatory Agreement. Notwithstanding anything to the contrary, the forgiveness of the CDBG Revocable Grant pursuant to the terms of this Section shall have no effect on the County-Leidig Regulatory Agreement which shall remain in full force and effect for the term specified therein. The forgiveness provisions of this Section 2.3 are to be liberally construed due to the circumstances involving the prior owner, the condition of the Property and the Leidig's agreement to assume the CDBG Assigned Financing. Incorporated herein by this reference the RFP and County of Alameda staff memorandum titled SAVE WINGS property status dated May 15, 2012, incorporated by this reference herein.

Section 2.4 Revocation of Grant Upon Default.

Notwithstanding any provision herein to the contrary, and in addition to any other rights and remedies available to the City set forth in Article 5, upon a Default by Leidig, the City may revoke the outstanding balance of the CDBG Revocable Grant, and declare the outstanding balance of the CDBG Revocable Grant (other than any portion of the CDBG Revocable Grant that has been previously forgiven by the City as set forth in Section 2.3 above) plus interest

thereon to be immediately due and payable, subject to the non-recourse provisions set forth in Section 2.6.

Section 2.5 Interest on Default. In the event of a Default, interest on the CDBG Revocable Grant shall begin to accrue, as of the date of Default and continuing until such time as the outstanding balance of the CDBG Revocable Grant funds are repaid in full (other than any portion of the CDBG Revocable Grant that has been previously forgiven by the City as set forth in Section 2.3 above) or the Default is cured, at the default rate of the lesser of ten percent (10%), compounded annually, or the highest rate permitted by law.

Section 2.6 Non-Recourse. Neither Leidig, nor any member of Leidig, shall have any direct or indirect personal liability for payment of the principal of, and interest on, CDBG Revocable Grant or the performance of the covenants of Leidig under the CDBG Revocable Grant Deed of Trust. The sole recourse of City with respect to the principal of, and default interest, if any, on, the outstanding balance of the CDBG Revocable Grant, and defaults by Leidig in the performance of its covenants under the Deed of Trust, shall be to the Security described in the CDBG Revocable Grant Deed of Trust.

ARTICLE 3. GRANT REQUIREMENTS.

Section 3.1 Compliance with County-Leidig Regulatory Agreement.

Leidig shall comply with the terms of all conditions set forth in the County-Leidig Regulatory Agreement, and any breach thereunder, subject to any applicable notice and cure periods, is a default under this Agreement. The County-Leidig Regulatory Agreement is hereby incorporated into this Agreement by this reference. Notwithstanding anything to the contrary, the forgiveness of the CDBG Revocable Grant pursuant to Section 2.3 above, shall have no effect on the County-Leidig Regulatory Agreement which shall remain in full force and effect for the term specified therein.

Section 3.2 Information.

Leidig shall provide any information reasonably requested by the City in connection with the Development, including (but not limited to) any information required by HUD in connection with Leidig's operation of the Development.

Section 3.3 Records.

(a) Leidig shall keep and maintain at Leidig's principal office, or elsewhere, full, complete and appropriate books, records and accounts relating to the Development, including all such books, records and accounts necessary or prudent to evidence and substantiate in full detail Leidig's compliance with the terms and provisions of this Agreement. Books, records and accounts relating to Leidig's compliance with the terms, provisions, covenants and conditions of this Agreement must be kept and maintained in accordance with generally accepted

accounting principles consistently applied, and be consistent with requirements of this Agreement. All such books, records, and accounts must be open to and available for inspection and copying by HUD, the City, its auditors or other authorized representatives at reasonable intervals during normal business hours. Copies of all tax returns and other reports that Leidig may be required to furnish any government agency must at all reasonable times be available for inspection by the City at the place that the books, records and accounts of Leidig are kept. Leidig shall preserve such records for a period of not less than five (5) years after the creation of such records in compliance with all HUD records and accounting requirements including but not limited to those set forth in 24 C.F.R. 570.506 and 570.502(b). If any litigation, claim, negotiation, audit exception, monitoring, inspection or other action relating to the use of the Grant is pending at the end of the record retention period stated herein, then Leidig shall retain such records until such action and all related issues are resolved. Such records include all invoices, receipts, and other documents related to expenditures from the Grant funds. Records must be accurate and current. Such records include but are not limited to:

- (i) Records providing a full description of the activities undertaken with the use of the CDBG Revocable Grant;
- (ii) Records demonstrating that each activity undertaken meets one of the national objectives of the CDBG program set forth in 24 C.F.R. 570.208;
- (iii) Records required to determine the eligibility under the CDBG program of the activities undertaken;
- (iv) Records documenting compliance with the fair housing and equal opportunity requirements, as applicable;
- (v) Financial records as required by 24 C.F.R. 570.502 and OMB Circular A-110; and
- (vi) Other records necessary to document compliance with Subpart K of 24 C.F.R. 570 and 24 C.F.R. 92.508.

(b) The City shall notify Leidig of any records it deems insufficient. Leidig has fifteen (15) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the City in such notice, or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then Leidig shall begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

Section 3.4 Audits.

Each year while this Agreement is in effect, Leidig shall provide the City with a copy of Leidig's annual audit, which must include information on all of Leidig's activities and not just those pertaining to the Development. In addition, the City or any designated agent or employee of the City at any time is entitled to audit all of Leidig's books, records, and accounts pertaining thereto. Such audit shall be conducted during normal business hours at the principal place of

business of Leidig and other places where records are kept. Immediately after the completion of an audit, the City shall deliver a copy of the results of such audit to Leidig.

Section 3.5 CDBG Requirements.

(a) Leidig shall comply with all applicable laws and regulations governing the use of the CDBG Funds as set forth in 24 C.F.R. 570 et seq. In the event of any conflict between this Agreement and applicable laws and regulations governing the use of the CDBG Revocable Grant funds, the applicable laws and regulations govern.

(b) The laws and regulations governing the use of the CDBG Revocable Grant include (but are not limited to) the following:

(i) Environmental and Historic Preservation. 24 C.F.R. Part 58, which prescribe procedures for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4361), and the additional laws and authorities listed at 24 C.F.R. 58.5.

(ii) Applicability of OMB Circulars. The applicable policies, guidelines, and requirements of OMB Circulars Nos. A-87, A-102, Revised, A-110, A-122, and A-133.

(iii) Debarred, Suspended or Ineligible Contractors. The use of debarred, suspended, or ineligible contractors set forth in 24 C.F.R. Part 24.

(iv) Civil Rights, Housing and Community Development, and Age Discrimination Acts. The Fair Housing Act (42 U.S.C. 3601 et seq.) and implementing regulations at 24 C.F.R. 100 et seq.; Title VI of the Civil Rights Act of 1964 as amended; Title VIII of the Civil Rights Act of 1968 as amended; Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Executive Order 11063 as amended by Executive Order 12259 and implementing regulations at 24 C.F.R. 107; Executive Order 11246 as amended by Executive Orders 11375, 12086, 11478, 12107; Executive Order 11625 as amended by Executive Order 12007; Executive Order 12432; Executive Order 12138 as amended by executive Order 12608.

(v) Lead-Based Paint. The requirement of the Lead-Based Paint Poisoning Prevention Act, as amended (42 U.S.C. 4821 et seq.), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. 4851 et seq.), and implementing regulations at 24 C.F.R. Part 35.

(vi) Relocation. The requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and state relocation laws. If and to the extent that rehabilitation of the Development results in the permanent or temporary displacement of residential tenants, homeowners, or businesses, then Leidig shall comply with all applicable local, state, and federal statutes and regulations with respect to relocation planning, advisory assistance, and payment of monetary benefits. Leidig shall prepare and submit a relocation plan to the City for approval. Leidig is solely responsible for payment of any

relocation benefits to any displaced persons and any other obligations associated with complying with such relocation laws. Leidig shall indemnify, defend (with counsel reasonably chosen by the City), and hold harmless the City against all claims that arise out of relocation law obligations to residential tenants, homeowners, or businesses permanently or temporarily displaced by the Development.

(vii) Discrimination against the Disabled. The requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and federal regulations issued pursuant thereto, which prohibit discrimination against the disabled in any federally assisted program, the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and the applicable requirements of Title II and/or Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 et seq.), and federal regulations issued pursuant thereto.

(viii) Clean Air and Water Acts. The Clean Air Act, as amended, 42 U.S.C. 7401 et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 C.F.R. Part 1500, as amended from time to time.

(ix) CDBG Uniform Administrative Requirements. The requirements of 24 C.F.R. 92.505 regarding cost and auditing requirements.

(x) Training Opportunities. The requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701(u) ("Section 3"), requiring that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and agreements for work in connection with the project be awarded to business concerns that are located in, or owned in substantial part by persons residing in, the areas of the project. Leidig agrees to include the following language in all subcontracts executed under this Agreement:

(1) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low-income persons, particularly persons who are recipients of HUD assistance for housing.

(2) The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

(3) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause; and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference;

shall set forth minimum number and job titles subject to hire; availability of apprenticeship and training positions; the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(4) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 135.

(5) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 C.F.R. Part 135.

(6) Noncompliance with HUD's regulations in 24 C.F.R. Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

(7) With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

(xi) Drug Free Workplace. The requirements of the Drug Free Workplace Act of 1988 (P.L. 100-690) and implementing regulations at 24 C.F.R. Part 24.

(xii) Anti-Lobbying; Disclosure Requirements. The disclosure requirements and prohibitions of 31 U.S.C. 1352 and implementing regulations at 24 C.F.R. Part 87.

(xiii) Historic Preservation. The historic preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. Section 470) and the procedures set forth in 36 C.F.R. Part 800.

(xiv) Flood Disaster Protection. The Flood Disaster Protection Act of 1973 (P.L. 93-234). No portion of the assistance provided under this Agreement is approved for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the national flood insurance program

pursuant to Section 201(d) of said Act. The use of any assistance provided under this Agreement for such acquisition or construction in such identified areas in communities then participating in the national flood insurance program is subject to the mandatory purchase of flood insurance requirements of Section 102(a) of said Act. Any contract or Agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement is to contain certain provisions. These provisions will apply if such land is located in an area identified by HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq. These provisions obligate the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(s) of the Flood Disaster Protection Act of 1973. Such provisions are required notwithstanding the fact that the construction on such land is not itself funded with assistance provided under this Agreement

(xv) Religious Organizations. If Leidig is a religious organization, as defined by the CDBG program, all conditions prescribed by HUD for the use of CDBG funds by religious organizations, including the First Amendment of the United States Constitution regarding church/state principles and the applicable constitutional prohibitions set forth in 24 C.F.R. Section 570.200(j).

(xvi) National Objectives. Leidig certifies, and agrees to maintain documentation that demonstrates, that from the time the Property is acquired by Leidig, the activities carried out under this Agreement meet one or more of the CDBG Program's national objectives – (1) benefit low/moderate income persons; (2) aid in the prevention or elimination of slums or blight; or (3) meet community development needs having a particular urgency as defined in 24 CFR Part 570.208.

(xvii) HUD Regulations. Any other HUD regulations present or as may be amended, added, or waived in the future pertaining to the Grant funds, including but not limited to HUD regulations as may be promulgated regarding subrecipients.

Section 3.6 Hazardous Materials.

(a) Leidig shall keep and maintain the Site in compliance with, and may not cause or permit the Site to be in violation of any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under or about the Site including, but not limited to, soil and ground water conditions. Leidig may not use, generate, manufacture, store or dispose of on, under, or about the Site or transport to or from the Site any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials") except such of the foregoing as may be customarily used in rehabilitation of projects like the Improvements.

(b) Leidig shall immediately advise the City in writing if at any time it receives written notice of (i) any and all enforcement, cleanup, removal or other government or regulatory actions instituted, completed or threatened against Leidig or the Site pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, ("Hazardous Materials Law"); (ii) all claims made or threatened by any third party against Leidig or the Site relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to as "Hazardous Materials Claims"); and (iii) Leidig's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Site that could cause the Site or any part thereof to be classified as "border-zone property" under the provision of California Health and Safety Code, Sections 25220 et seq., or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Site under any Hazardous Materials Law.

(c) The City has the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Leidig. Leidig shall indemnify and hold harmless the City and its board members, supervisors, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under, or about the Site including without limitation: (i) all foreseeable consequential damages; (ii) the costs of any required or necessary repair, cleanup or detoxification of the Site and the preparation and implementation of any closure, remedial or other required plans; and (iii) all reasonable costs and expenses incurred by the City in connection with clauses (i) and (ii), including but not limited to reasonable attorneys' fees and consultant's fees. This indemnification applies whether or not any government agency has issued a cleanup order. Losses, claims, costs, suits, liability, and expenses covered by this indemnification provision include, but are not limited to: (1) losses attributable to diminution in the value of the Site; (2) loss or restriction of use of rentable space on the Site; (3) adverse effect on the marketing of any rental space on the Site; and (4) penalties and fines levied by, and remedial or enforcement actions of any kind issued by any regulatory agency (including but not limited to the costs of any required testing, remediation, repair, removal, cleanup or detoxification of the Site and surrounding properties). This obligation to indemnify will survive termination of this Agreement.

(d) Without the City's prior written consent, which shall not be unreasonably withheld, Leidig may not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Site, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in the City's reasonable judgment, impair the value of the City's security hereunder; provided, however, that the City's prior consent is not necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain the City's consent before taking such action, provided that in such event Leidig shall notify the City as soon as practicable of any action so taken. The City agrees not to withhold its consent, where such consent is required hereunder, if either (i) a particular remedial action is

ordered by a court of competent jurisdiction, (ii) Leidig will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Leidig establishes to the reasonable satisfaction of the City that there is no reasonable alternative to such remedial action that would result in less impairment of the City's security hereunder; or (iv) the action has been agreed to by the City.

(e) Leidig hereby acknowledges and agrees that (i) this Section is intended as the City's written request for information (and Leidig's response) concerning the environmental condition of the Site as required by California Code of Civil Procedure Section 726.5, and (ii) each representation and warranty in this Agreement (together with any indemnity obligation applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Site is intended by the Parties to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

(f) In the event that any portion of the Site is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1) and Leidig is in default of its obligations to the City, then, without otherwise limiting or in any way affecting the City's or the trustee's rights and remedies, the City may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Site and (2) exercise (a) the rights and remedies of an unsecured creditor, including reduction of its claim against Leidig to judgment, and (b) any other rights and remedies permitted by law. For purposes of determining the City's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), Leidig will be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Site and Leidig knew or should have known of the activity by such lessee, occupant, or user that caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) attorneys' fees and other professional service fees and costs, incurred by the City in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Site is environmentally impaired, plus interest thereon at the lesser of ten percent (10%) or the maximum rate permitted by law, until paid, will be payable to the City upon its demand made at any time following the conclusion of such action.

Section 3.7 Maintenance and Damage.

During the course of rehabilitation, Leidig shall maintain the Development in good repair and in a neat, clean and orderly condition. If there arises a condition in contravention of this requirement, and if Leidig has not cured such condition within thirty (30) days after receiving a City notice of such a condition, then in addition to any other rights available to the City, the City has the right to perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Property.

Section 3.8 Fees and Taxes.

Leidig is solely responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Site, and shall pay such charges prior to delinquency. However, Leidig is not required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by the City, Leidig deposits with the City any funds or other forms of assurance that the City in good faith from time to time determines appropriate to protect the City from the consequences of the contest being unsuccessful. The Parties acknowledge that Leidig intends to file for welfare exemption under Section 214 of the Tax and Revenue Code.

Section 3.9 Notice of Litigation.

Leidig shall promptly notify the City in writing of any uninsured litigation materially affecting Leidig or the Site and of any claims or disputes evidenced in writing that involve a material risk of such litigation.

Section 3.10 Transfer.

(a) For purposes of this Agreement, "Transfer" means any sale, assignment, or transfer, whether voluntary or involuntary, of (i) any rights and/or duties under this Agreement, and/or (ii) any interest in the Property, including (but not limited to) a fee simple interest, a joint tenancy interest, a life estate, a partnership interest, a leasehold interest, a security interest, or an interest evidenced by a land contract by which possession of the Property is transferred and Leidig retains title.

(b) No Transfer is permitted without the prior written consent of the City, which the City may withhold in its sole discretion. The City hereby approves a transfer to an affiliate of Eden Housing, Inc. or a limited partnership whose managing general partner is an affiliate of Eden Housing, Inc.

Section 3.11 Insurance Requirements.

Leidig shall maintain the following insurance coverage throughout the Term of the Grant:

(a) Workers' Compensation insurance to the extent required by law, including Employer's Liability coverage, with limits not less than One Million Dollars (\$1,000,000) each accident.

(b) Commercial General Liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations.

(c) Comprehensive Automobile Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for Bodily Injury and

Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable; provided, however, that if Leidig does not own or lease vehicles for purposes of this Agreement, then no automobile insurance shall be required.

(d) Builders' risk insurance during the course of the rehabilitation, and, upon completion of rehabilitation and until the Improvements are accepted by the City, property insurance covering the Improvements, in form appropriate for the nature of such property, covering all risks of loss, excluding earthquake, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the City, naming the City as a Loss Payee, as its interests may appear. Flood insurance must be obtained if required by applicable federal regulations.

(e) Blanket Fidelity Bond covering all officers and employees, for loss of Grant proceeds caused by dishonesty or similar cause, in an amount not less than \$250,000 naming the City as the Loss Payee, or similar coverage in the same amount, as approved by the City.

Leidig shall cause any general contractor or agent working on the Improvements under direct contract with Leidig, and any subcontractors to such general contractors or agents, to maintain insurance of the types and in at least the minimum amounts described in subsections (a), (b), and (c) above, except that the limit of liability for commercial general liability insurance for subcontractors shall be One Million Dollars (\$1,000,000), and shall require that such insurance meet all of the general requirements of subsections (f), (g), and (h) below, including, without limitation, the requirement of subsection (g). Liability and Comprehensive Automobile Liability insurance to be maintained by such contractors and agents pursuant to this subsection must name as additional insureds the City, its officers, agents, employees and members of the City Board of Supervisors.

(f) The required insurance must be provided under an occurrence form, and Leidig shall maintain the coverage described in subsections (a) through (d) continuously until the Improvements are accepted by the City. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be three times the occurrence limits specified above.

(g) Commercial General Liability, Comprehensive Automobile Liability and Property insurance policies must be endorsed to name as an additional insured the City and its officers, agents, employees and members of the City Board of Supervisors.

(h) All policies and bonds must contain (a) the agreement of the insurer to give the City at least thirty (30) days' notice prior to cancellation (including, without limitation, for non-payment of premium) or any material change in said policies; (b) an agreement that such policies are primary and non-contributing with any insurance that may be carried by the City; (c) a provision that no act or omission of Leidig will affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; and (d) a waiver by the insurer of all rights of subrogation against the City and its authorized parties in connection with any loss or damage thereby insured against.

Section 3.12 Anti-Lobbying Certification.

Leidig certifies, to the best of Leidig's knowledge or belief, that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

(c) This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification will be subject to a civil penalty of not less than Ten Thousand Dollars (\$10,000) and no more than One Hundred Thousand Dollars (\$100,000) for such failure.

ARTICLE 4.
REPRESENTATIONS AND WARRANTIES OF LEIDIG

Section 4.1 Representations and Warranties.

Leidig hereby represents and warrants to the City as follows:

(a) Organization. Leidig is a duly organized California limited liability company, validly existing and in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted.

(b) Authority of Leidig. Leidig has full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver this Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Authority of Persons Executing Documents. This Agreement all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Leidig, and all actions required under Leidig's

organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

(d) Valid Binding Agreements. This Agreement and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of Leidig, enforceable against it in accordance with their respective terms.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on Leidig, or any provision of the organizational documents of Leidig, or will conflict with or constitute a breach of or a default under any agreement to which Leidig is a party, or will result in the creation or imposition of any lien upon any assets or property of Leidig.

(f) Compliance with Laws; Consents and Approvals. The rehabilitation of the Development will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency.

(g) Pending Proceedings. Leidig is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Leidig, threatened against or affecting Leidig or the Property, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Leidig, materially affect Leidig's ability to comply with the terms of this Agreement.

(h) Financial Statements. The financial statements of Leidig and other financial data and information furnished by Leidig to the City fairly present the information contained therein. As of the date of this Agreement, there has not been any adverse, material change in the financial condition of Leidig from that shown by such financial statements and other data and information.

(i) Sufficient Funds. Leidig holds sufficient funds and/or binding commitments for sufficient funds to complete the rehabilitation of the Development.

ARTICLE 5. DEFAULT AND REMEDIES

Section 5.1 Events of Default.

Each of the following constitutes a "Default" by Leidig under this Agreement:

- (a) Failure to Comply with County-Leidig Regulatory Agreement. Failure of Leidig to comply with the County-Leidig Regulatory Agreement, subject to all applicable notice and cure rights provided therein.
- (b) Breach of Covenants. Failure by Leidig to duly perform, comply with, or observe any of the conditions, terms, or covenants of this Agreement, and such failure continues uncured for thirty (30) days after receipt of written notice thereof from the City to Leidig or, if the breach cannot be cured within thirty (30) days, Leidig shall not be in breach so long as Leidig is diligently undertaking to cure such breach and such breach is cured within ninety (90) days or such longer period as may be expressly approved by the City in writing; provided, however, that if a different period or notice requirement is specified under any other section of this Article 5, the specific provisions shall control.
- (c) Insolvency. A court having jurisdiction has made or entered any decree or order (i) adjudging Leidig, or its sole member, to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of Leidig, or its sole member, or seeking any arrangement for Leidig, or its sole member, under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of Leidig, or its sole member, in bankruptcy or insolvency or for any of their properties, (iv) directing the winding up or liquidation of Leidig, or its sole member, if any such decree or order described in clauses (i) to (iv), inclusive, has continued unstayed or undischarged for a period of ninety (90) days; or (v) Leidig, or its sole member, has admitted in writing its inability to pay its debts as they fall due or has voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive.
- (d) Assignment; Attachment. Leidig, or its sole member, has assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon has been returned or released within ninety (90) days after such event or, if sooner, prior to sale pursuant to such sequestration, attachment, or execution.
- (e) Suspension; Termination. Leidig, or Leidig's sole member shall have voluntarily suspended its business or has been dissolved or terminated.
- (f) Liens on Property. There shall be filed any claim of lien (other than liens approved in writing by City) against the Development, the Property, or any part thereof, or any interest or right made appurtenant thereto and the continued maintenance of said claim of lien or notice to withhold for a period of sixty (60) days, without discharge or satisfaction thereof or provision therefor (including, without limitation, the posting of bonds) satisfactory to City.
- (g) Condemnation. The condemnation, seizure, or appropriation of all or the substantial part of the Property or the Development, by an entity other than the City or County.

(h) Unauthorized Transfer. Any Transfer not previously approved by the City pursuant to Section 3.10.

(i) Representation or Warranty Incorrect. Any Leidig representation or warranty contained in this Agreement, or in any application, financial statement, certificate, or report submitted to the City in connection with this Agreement, proves to have been incorrect in any material respect when made. After issuance of the certificates of occupancy for the Property, Default may be declared under this subsection only if the failure of representation or warranty also has a material adverse effect on the operation of the Property.

Section 5.2 Remedies.

The occurrence of any Default hereunder following the expiration of all applicable notice and cure periods will, either at the option of the City or automatically where so specified, gives the City the right to proceed with any and all remedies set forth in this Agreement, including but not limited to the following:

(a) Repayment of Grant. The City may demand Leidig repay the City any portion of the CDBG Revocable Grant not forgiven pursuant to Section 2.3 above, together with any accrued interest thereon, to become immediately due and payable. City may proceed to enforce payment of the indebtedness only by nonjudicial foreclosure under the Deed of Trust. Leidig waives all right to presentment, demand, protest or notice of protest or dishonor. Leidig is liable to pay the City on demand all reasonable expenses, costs and fees (including, without limitation, reasonable attorney's fees) paid or incurred by the City in connection with the repayment of the CDBG Revocable Grant which shall be a part of the Secured Obligation enforced only by nonjudicial foreclosure under the Deed of Trust.

(b) Specific Performance. The City has the right to mandamus or other suit, action or proceeding at law or in equity to require Leidig to perform its obligations and covenants under this Agreement and the County-Leidig Regulatory Agreement or to enjoin acts on things that may be unlawful or in violation of the provisions of this Agreement.

Section 5.3 Right of Contest.

Leidig shall have the right to contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute a Default hereunder.

Section 5.4 Remedies Cumulative.

No right, power, or remedy given to the City by the terms of this Agreement or the Revocable Grant Deed of Trust is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the City by the terms of any such instrument, or by any statute or otherwise against Leidig and any other person. Neither the failure nor any delay on the part of the City to exercise any such rights and remedies shall operate as a waiver thereof, nor does any single or partial exercise by the City of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

ARTICLE 6.
GENERAL PROVISIONS

Section 6.1 Relationship of Parties.

Nothing contained in this Agreement is to be interpreted or understood by any of the parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the City and Leidig or its agents, employees or contractors, and Leidig will at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement. Leidig has and retains the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the performance of services under this Agreement. In regards to the rehabilitation of the Development, Leidig is solely responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding, and all other laws and regulations governing such matters, and shall include requirements in each contract that contractors are solely responsible for similar matters relating to their employees. Leidig is solely responsible for its own acts and those of its agents and employees.

Section 6.2 No Claims.

Nothing contained in this Agreement creates or justifies any claim against the City by any person that Leidig may have employed or with whom Leidig may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the rehabilitation of the Development, and Leidig shall include similar requirements in any contracts entered into for the rehabilitation or the operation of the Development.

Section 6.3 Amendments.

No alteration or variation of the terms of this Agreement is valid unless made in writing by the Parties. The City Manager is authorized to execute on behalf of the City amendments to the CDBG Revocable Grant Documents or amended and restated CDBG Revocable Grant Documents as long as any material change in the amount or terms of this Agreement is approved by City Council, or in the event the amounts or terms of financing provided by other parties for the Property is revised, requiring conforming amendments to the CDBG Revocable Grant Documents.

Section 6.4 Indemnification.

Leidig shall indemnify, defend (with counsel reasonably selected by the City) and hold the City harmless against any and all claims, suits, actions, losses and liability of every kind, nature and description made against it and expenses (including reasonable attorneys' fees or other professional service fees or costs) that arise out of or in connection with this Agreement,

including but not limited to the rehabilitation of the Development, except to the extent such claim arises from the grossly negligent or willful misconduct of the City, its agents, and its employees and/or claims arising out of or in connection, directly or indirectly, with events prior to the Effective Date. The provisions of this Section will survive the term of this Agreement.

Section 6.5 Non-Liability of Officials, Employees and Agents.

No member, official, employee or agent of the City will be personally liable to Leidig in the event of any default or breach by the City or for any amount that may become due to Leidig under the terms of this Agreement. No member, officer, director, employee or agent of Leidig shall be personally liable to the City in the event of any default or breach by Leidig or for any amount which may become due to the City or its successor or on any obligation under the terms of this Agreement.

Section 6.6 No Third Party Beneficiaries.

There are no third party beneficiaries to this Agreement.

Section 6.7 Discretion Retained By City.

The City's execution of this Agreement in no way limits the discretion of the City in the permit and approval process in connection with rehabilitation of the Development.

Section 6.8 Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no person described in Section 6.8(b) below may, during or after their tenure, obtain a personal or financial interest or benefit from the activities funded pursuant to this Agreement, or have any interest in any contract, subcontract or agreement with respect to such activities, or the proceeds under the contract, either for themselves or those with whom they have family or business ties. Leidig shall exercise due diligence to ensure that the prohibition in this Section 6.8(a) is followed.

(b) The conflict of interest provision of Section 6.8(a) above applies to (i) any person who is an employee, agent, consultant, or officer of the City who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this Grant or who is in a position to participate in a decision-making process or to gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any , (ii) any immediate family member of such person, (iii) any elected or appointed official of the City, and (iv) any person related within the third (3rd) degree of such person.

(c) In accordance with Government Code Section 1090 and the Political Reform Act, Government Code section 87100 et seq., no person who is a director, officer, partner, trustee or employee or consultant of Leidig, or immediate family member of any of the preceding, may make or participate in a decision, made by the City or a City board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Leidig. Interpretation

of this section shall be governed by the definitions and provisions used in the Political Reform Act, Government Code section 87100 et seq., its implementing regulations manual and codes, and Government Code section 1090.

(d) Leidig shall comply with the conflict of interest provisions set forth in 24 C.F.R. Section 570.611.

Section 6.9 Notices, Demands and Communications.

Formal notices, demands, and communications between the parties will be sufficiently given if and will not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service (e.g., Fed-Ex, UPS), return receipt requested, or delivered personally, to the principal office of the Parties as follows:

City:

City of San Leandro
Community Development Dept.
Housing Services Division
835 E. 14th Street
San Leandro, CA 94577
Attn: Housing/Planning Mgr.

Leidig:

Leidig LLC
c/o Eden Investments, Inc.
22645 Grand Street
Hayward, CA 94544
Attention: President
Fax: 510-582-6523

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 by mail as provided in this Section. Receipt will be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

Section 6.10 Applicable Law.

The laws of the State of California govern all matters arising out of this Agreement.

Section 6.11 Parties Bound.

Except as otherwise limited herein, the provisions of this Agreement are binding upon and inure to the benefit of the parties and their heirs, executors, administrators, legal representatives, successors, and assigns. This Agreement is intended to run with the land and

shall bind Leidig and its successors and assigns in the Property and the Development for the entire Term, and the benefit hereof shall inure to the benefit of City and its successors and assigns.

Section 6.12 Attorneys' Fees.

If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing party has the right to recover its reasonable attorneys' fees and costs of suit from the other party.

Section 6.13 Severability.

If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions will continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 6.14 Force Majeure.

In addition to specific provisions of this Agreement, performance by either Party shall not be deemed to be in Default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, quarantine restrictions, freight embargoes, lack of transportation, or court order. An extension of time for any cause will be deemed granted if notice by the Party claiming such extension is sent to the other within ten (10) days from the commencement of the cause and such extension of time is not rejected in writing by the other Party within ten (10) days of receipt of the notice. In no event shall the City be required to agree to cumulative delays in excess of one hundred eighty (180) days.

Section 6.15 City Approval.

The City has authorized the City Manager to execute the CDBG Revocable Grant Documents and deliver such approvals or consents as are required by this Agreement, and to execute estoppel certificates concerning the status of the CDBG Revocable Grant and the existence of Leidig defaults under the CDBG Revocable Grant Documents. Any consents or approvals required under this Agreement shall not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies. The City shall not unreasonably delay in reviewing and approving or disapproving any proposal by Leidig made in connection with this Agreement.

Section 6.16 Waivers.

Any waiver by the City of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the City to take action on any breach or default of Leidig or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Leidig to perform any obligation under this Agreement does not operate as a waiver or release from any of its obligations under this Agreement. Consent by the City to any act or omission by Leidig is not to be construed to be a consent to any

other or subsequent act or omission or to waive the requirement for the City's written consent to future waivers.

Section 6.17 Title of Parts and Sections.

Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and are to be disregarded in interpreting any part of this Agreement's provisions.

Section 6.18 Entire Understanding of the Parties.

This Agreement, together with the CDBG Revocable Grant Documents, the CDBG Assignment Agreement and the other documents specifically identified herein constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof.

Section 6.19 Multiple Originals; Counterpart.

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Remainder of Page Intentionally Left Blank

WHEREAS, this Agreement has been entered into by the undersigned as of the Effective Date.

LEIDIG:

LEIDIG COURT LLC, a California limited liability company

By: Eden Investments, Inc., a California nonprofit public benefit corporation, its sole member

By: _____

Name: _____Linda Mandolini_____

Its: _____President_____

CITY:

CITY OF SAN LEANDRO, a municipal corporation

By: _____
Chris Zapata, City Manager

EXHIBIT A

LEGAL DESCRIPTION

PORTION OF BLOCK "S" AS SAID BLOCK IS SHOWN ON THE "MAP OF ANNEX TO MEEK ORCHARD TRACT," FILED MARCH 11, 1918, IN MAP BOOK 16, PAGE 59, ALAMEDA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHEASTERN BOUNDARY LINE OF SAID TRACT, DISTANT THEREON, SOUTH 42° 01' EAST, 525 FEET FROM THE INTERSECTION THEREOF, WITH THE CENTER LINE OF HARRIS ROAD, AS SAID ROAD IS SHOWN ON SAID MAP; RUNNING THENCE SOUTH 47° 59' WEST, 240 FEET; THENCE SOUTH 42° 01' EAST 100 FEET; THENCE NORTH 47° 59' EAST, 240 FEET TO THE NORTHERN BOUNDARY LINE OF SAID TRACT; THENCE ALONG SAID LAST NAMED LINE NORTH 42° 01' WEST, 100 FEET TO THE POINT OF BEGINNING.

EXHIBIT B

APPROVED BUDGET

EXHIBIT C

CEQA MITIGATION MEASURES

Impact (I-1): The project proposes to introduce additional exterior lighting to the area, which includes residential uses.

Mitigation Measure (I-1): 30 days prior to the issuance of a building permit, the applicant shall submit for review and approval of the Zoning Administrator a Lighting Plan. Light standards shall be low-lying and exterior lights on the building shall be deflected so that lights shine onto applicant's property and not toward adjacent properties; all subject to review and approval by the Zoning Administrator prior to issuance of a building permit. Implementation of this mitigation measure will reduce this impact to less than significant.

Potentially Significant Environmental Effect (VI-1): Strong to violent earthquake ground shaking on active fault zones in the region could cause significant damage to improvements, and in extreme cases, loss of life.

Mitigation-Measures (VI-1): Require geotechnical investigations to mitigate effects of engineered fills, settlement and liquefaction.

1. Engineered fills in the planning area shall be properly designed and adequately compacted to significantly reduce both seismically induced and natural fill settlement.

2. All roads, structural foundations and underground utilities shall be designed to accommodate estimated settlement without failure.

3. Final design of improvements shall be made in conjunction with a design level geotechnical investigation submitted to the City for review. The investigation shall include deep borings and evaluation of liquefaction potential and the report shall estimate the magnitude of differential settlement. If a high liquefaction potential exists, the report shall include measures to control drainage, including measures aimed at controlling damage to buildings, buried pipelines and surface parking.

Potentially Significant Environmental Effect (XI-1): Short-term noise level increases at sensitive locations in and surrounding the area would be expected during periods of heavy construction. Temporary increases in ambient noise levels in the project vicinity are to be expected during the construction phase of the project.

Mitigation Measures (XI-1): Contractor and/or developer shall comply with the following construction, noise, dust and litter control requirements.

1. The project sponsor shall require their contractor and subcontractors to fit all internal combustion engines with mufflers which are in good condition.

2. A dust and litter control program shall be submitted for the review and approval of the Zoning Administrator. Any violation of the approved program or applicable ordinances shall require an immediate work stoppage. Construction work shall not be allowed to resume until, if necessary, an appropriate construction bond has been posted.

3. The applicant shall make a good-faith effort to avoid interference with existing neighborhood traffic flows. Prior to issuance of building permits, the proposed roads serving this development shall be constructed to provide access to each lot. This shall include provision for an on-site area in which to park earth moving equipment.

4. Transporting of heavy equipment and trucks shall be limited to weekdays between the hours of 9:00 A.M. and 4:00 P.M. and prohibited on Federal and State holidays.

5. The site shall be maintained in an orderly fashion. Following the cessation of construction activity, all construction debris shall be removed from the site.