

CITY OF HAYWARD
ECONOMIC DEVELOPMENT LOAN AGREEMENT

by and between

the CITY OF HAYWARD,
a California charter city

“CITY”

and

HAYWARD ECONOMIC DEVELOPMENT CORPORATION,
a California Nonprofit Public Benefit Corporation

“BORROWER”

ECONOMIC DEVELOPMENT LOAN AGREEMENT
(HAYWARD ECONOMIC DEVELOPMENT CORPORATION)

This Economic Development Loan Agreement (the "Agreement") is entered into as of _____, 2024, (the "Effective Date"), by and between the City of Hayward, a California Charter city (the "City"), and HAYWARD ECONOMIC DEVELOPMENT CORPORATION, a California Nonprofit Public Benefit Corporation (the "Borrower"), with reference to the following facts:

- A. In 2005, the Hayward Redevelopment Agency ("RDA") entered into a ground lease with the Cinema Place developer, which expires in 2056, for the Property located at 22631-228522 Foothill Blvd., (APN 428-0066-086 and 428-0066-085), more particularly described in Exhibit A (the "Property"). Subsequently, the RDA entered into a Parking Lot Maintenance Agreement with the Cinema Place developer for Municipal Lot 3. The lease and parking agreements were subsequently transferred to the Hayward Redevelopment Successor Agency ("Successor Agency") and new tenant: 1069 B Street, LLC, which holds a leasehold interest in the Property under the Ground Lease and holds specified rights under the Parking Agreement.
- B. In an effort to further the CITY's economic development goals and activities for the downtown area, the Hayward Economic Development Corporation determined to purchase, from the 1069 B Street, LLC, the rights, duties, and obligations in the Property and entered into negotiations regarding the same ("Transaction").
- C. The City has agreed to provide the Borrower a loan of Eight Million Six Hundred Thousand Dollars (\$8,600,000) from the General Fund to facilitate the transaction and further its goals as outlines above.
- D. This action is exempt from CEQA per State CEQA Guidelines, Not a Project (Public Resources Code§ 21065, State CEQA Guidelines 15378(b)(4))
- E. In consideration of receipt of the loan described in Recital C, Borrower has agreed to observe the terms and conditions of this Loan Agreement.
- F. On January 8, 2024, by Resolution No. 24-01, the City approved the economic development Loan and appropriation of funds.

NOW, THEREFORE, in consideration of the benefits received by the Borrower from the Loan, the Parties agree as follows:

ARTICLE 1. DEFINITIONS AND EXHIBITS

Section 1.1 Definitions

The following capitalized terms have the meanings set forth in this Section 1 wherever used in this Agreement, unless otherwise provided:

- (a) "Agreement" shall mean this Economic Development Loan Agreement.
- (b) "Borrower" shall have the meaning set forth in the first paragraph of this Agreement.
- (c) "City" shall have the meaning set forth in the first paragraph of this Agreement.
- (d) "Deed of Trust" shall mean the deed of trust and security agreement that will encumber the Property to secure repayment of the Loan, in a form to be provided by the City.
- (e) "Default" shall have the meaning set forth in Article 5 below.
- (f) "Loan" shall mean the City loan to the Borrower pursuant to this Agreement in the principal amount of Two Hundred Ninety-Five Thousand Dollars (\$295,000).
- (g) "Loan Documents" shall mean this Agreement, the Note, and the Deed of Trust.
- (h) "Note" shall mean the promissory note that will evidence the Borrower's obligation to repay the Loan, in a form to be provided by the City.
- (i) "Parties" shall mean the City and the Borrower.
- (j) "Property" shall have the meaning set forth in Recital A.
- (k) "Restaurant" shall have the meaning set forth in Recital A.
- (l) "Term" shall mean the term of the Loan and this Agreement, as more particularly described in Section 2.3 below.
- (m) "Transfer" shall have the meaning set forth in Section 3.8 below.

Section 1.2 Exhibits

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

EXHIBIT A: Legal Description of the Property.

ARTICLE 2. LOAN PROVISIONS

Section 2.1 Loan

The City agrees to provide a loan to the Borrower under the terms and conditions of the Loan Documents.

Section 2.2 Amount of Loan and Interest.

Subject to the terms and conditions of this Agreement, the City agrees to make the Loan to the Borrower in the amount of Eight Million Six Hundred Thousand Dollars (\$8,600,000) which shall bear simple interest as provided below and be evidenced by a Promissory Note (the "Note") by Borrower for the benefit of the City dated the same date as this Agreement. The Loan shall accrue simple interest at 5.86 percent on the outstanding principal balance of the Loan for the first five years. Thereafter, no later than November 1 of each year thereafter the interest rate will be adjusted annually and set at a rate that is equal to the yield at market achieved by the City's Managed Portfolio for the quarter ending on June 30 of the previous calendar year, plus 1% and such rate increase will be effective starting January of the following calendar year. Notwithstanding the foregoing, the interest rate shall not exceed 6% and shall not increase at a rate of more than 2% in any given calendar year.

If the City fails to make an adjustment to the interest rate or payment amount as described in this Section, regardless of any notice requirement, Borrower agrees that the City may, upon discovery of such failure, then make the adjustments as if they had been made on time. Borrower further agrees not to hold the City responsible for any damages to Borrower which may result from City's failure to make the adjustment. If applicable, the City may apply any excess monies which I may have paid to partial prepayment of unpaid principal.

In the event of a default under this Agreement, the interest on the unpaid principal balance of the Loan shall begin to accrue as of the date of Borrower default and shall continue to accrue until such time as the Loan is repaid in full 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 2.3 Term.

Unless earlier terminated pursuant to default, the term of this Agreement shall commence on January 31, 2024, and shall expire at such time as the Loan is repaid in full ("Term"). The Loan shall be due 2040 (15) years from the that date.

Section 2.5 Use of Loan Funds.

The Borrower shall use the Loan funds in furtherance of the City's economic development goals, including but not limited to:

- (a) combat community blight and deterioration in the City and contribute to the physical improvement of the City;
- (b) lessening the burdens of government by assisting in providing and expanding economic opportunities in the City;
- (c) encouraging and stimulating economic development within the City;
- (d) promoting social welfare by providing services, educational programs, and economic development opportunities;

(e) implementing and assisting the City redevelopment activities and programs that will eliminate discrimination and prejudice, and combat community deterioration;

(f) expand the opportunities of City residents and groups to own, manage, and operate business enterprises;

(g) assisting City residents and groups to develop entrepreneurial and management skills necessary for the successful operation of business enterprises;

(h) assisting City residents and groups obtain financial support from other sources;

(i) acquiring, providing, developing, leasing, financing, rehabilitating, owning and operating property in support of the City's economic development goals;

(j) acquiring, providing, developing, leasing, financing, rehabilitating, owning and operating decent, safe and sanitary housing affordable to persons and households of low income;

(k) serving, directly or through a wholly owned limited liability company, as a general partner in limited partnerships which will own and operate housing for the benefit of low income persons and households, as described in (j), above;

(l) purchasing, owning, selling, assigning, mortgaging, or leasing any interest in real estate and personal property and constructing, maintaining, and operating improvements thereon necessary or incident to the provision of affordable housing;

(m) providing affordable housing for low-income persons and households where no adequate housing exists for such groups;

(n) borrowing money and issuing evidence of indebtedness in furtherance of any and all of the objects of its business, and to secure the same by mortgage, pledge or other lien on the Corporation's property; and

(o) carrying out such other activities as the board of directors of the Corporation determines will benefit and support the City (collectively, the "Corporate Activities").

Section 2.6 Repayment Schedule.

The Loan shall be repaid as follows:

(a) Repayments of the Loan. No payments shall be due during the first twelve (12) months after the Effective Date of January 31, 2024. Commencing on the thirteenth (14th) month after the Effective Date, Borrower agrees to make monthly payments of the principal plus the then applicable rate of interest.

(b) Payment in Full. All principal and accrued interest on the Loan shall be due in full at the expiration of the Term and in the event of a Default by Borrower which has not

been cured as provided for in this Agreement and for which the City exercises its right to cause the Loan indebtedness to become immediately due and payable.

(c) Prepayment. The Borrower may pay the principal and any interest due on the Loan in advance of the time for payment thereof as provided in this Agreement, without penalty.

Section 2.7 Security.

The Borrower shall secure its obligation to repay the Loan, as evidenced by the Note, by executing the Deed of Trust and recording it as a lien against the Property. The Borrower covenants and agrees not to place any mortgage or deed of trust, including any line of credit, on the Property without obtaining prior written consent of the City.

ARTICLE 3. LOAN REQUIREMENTS

Section 3.1 Applicability.

The conditions set forth in this Article Three shall apply throughout the entire Term and shall bind all successors and assigns of the Borrower to the Agreement.

Section 3.2 Compliance with Laws.

The Borrower covenants to operate the Property in compliance with all laws and regulations now or hereafter promulgated.

Section 3.3 Information.

The Borrower shall provide any information reasonably requested by the City in connection with the Property and the Borrower's use of the Loan funds.

Section 3.4 Records.

(a) The Borrower shall maintain complete, accurate, and current records pertaining to the Property for a period of five (5) years after the creation of such records in and shall permit any duly authorized representative of the City to inspect and copy records. Such records shall include all invoices, receipts, and other documents related to expenditures from the Loan funds. Records must be kept accurate and current.

Section 3.5 Fees and Taxes.

The Borrower shall be solely responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property, and shall pay such charges prior to delinquency. However, the Borrower may pay any such charge under protest if the legality thereof is being contested diligently and in good faith and by appropriate proceedings.

Section 3.6 Nondiscrimination.

The Borrower covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age, disability, sex, sexual orientation, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Borrower or any person claiming under or through the Borrower establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property.

Section 3.7 Notice of Litigation.

The Borrower shall promptly notify the City in writing of any litigation affecting the Borrower, Property, or Restaurant and of any claims or disputes that involve a material risk of litigation.

Section 3.8 Transfers.

(a) For purposes of this Agreement, "Transfer" shall mean any change in ownership of Borrower or change in Borrower's principals, and/or any sale, assignment, or transfer, whether voluntary or involuntary, of (i) any rights and/or duties under this Agreement, (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 the Borrower retains title, and/or (iii) any interest in the Restaurant.

(b) No Transfer shall be permitted without the prior written consent of the City, which the City may withhold in its reasonable discretion. Upon any unauthorized Transfer, the City shall have the right to exercise the remedy set out in Article 5 of this Agreement.

Section 3.9 Insurance.

Borrower, at its own cost and expense, shall carry, maintain for the duration of the agreement, and provide proof thereof that is acceptable to the City the insurance specified in subsections (a) through (c) below with insurers and under forms of insurance satisfactory in all respects to the City. Borrower shall not allow any subcontractor to commence work on any subcontract until all insurance required of the Borrower has also been obtained for the subcontractor.

(a) Workers' Compensation. Statutory Workers' Compensation Insurance and Employer's Liability insurance for any and all persons employed directly or indirectly by Borrower shall be provided with limits not less than one million dollars. In the alternative, Borrower may rely on a self-insurance program to meet these requirements so long as the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer, if insurance is provided, or the Borrower, if a program of self-insurance is provided, shall waive all rights of subrogation against the City for loss arising from work performed under this agreement.

(b) Commercial General and Automobile Liability. Borrower shall maintain commercial general and automobile liability insurance for the period covered by this agreement in an amount not less than one million dollars per occurrence, combined single limit coverage for risks associated with the work contemplated by this agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this agreement, including the use of owned and non-owned automobiles. Coverage shall be as broad as Insurance Services Office Commercial Liability occurrence form CG 0001 and Insurance Services Office Automobile Liability form CA 0001 Code 1 (any auto).

Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

(i) City, its officers, employees, agents, and volunteers are to be covered as insureds as respects each of the following: liability arising out of activities performed by or on behalf of Borrower, including the insured's general supervision of Borrower; products and completed operations of Borrower; premises owned, occupied or used by Borrower; or automobiles owned, leased, hired, or borrowed by Borrower. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, agents, or volunteers.

(ii) The insurance shall cover on an occurrence basis, and not on the basis of an accident or claims made.

(iii) The insurance must cover personal injuries as well as bodily injuries. Any exclusion of contractual liability in personal injury provisions of the policy or any endorsement to it must be eliminated.

(iv) The insurance must cover complete contractual liability. This may be provided by amending the definition of "incidental contract" to include any written agreement.

(v) Any explosion, collapse, and underground property damage exclusion must be deleted.

(vi) An endorsement must state that coverage is primary insurance and that no other insurance affected by the City will be called upon to contribute to a loss under the coverage.

(vii) The policy must contain a cross liability or severability of interests clause.

(viii) Any failure of Borrower to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

(ix) Broad form property damage liability must be afforded. A deductible that does not exceed \$25,000 may be provided.

(x) Insurance is to be placed with California- admitted insurers with a Best's rating of no less than B:XI.

(xi) Notice of cancellation or non-renewal must be received by City at least thirty days prior to such change.

(c) Professional Liability. Borrower, at Borrower's own cost and expense, shall maintain for the period covered by this agreement professional liability insurance for licensed professionals performing work pursuant to this agreement in an amount not less than one million dollars covering the licensed professionals' errors and omissions, as follows:

(i) Any deductible shall not exceed \$100,000 per claim.

(ii) Notice of cancellation or non-renewal must be received by the City at least thirty (30) days prior to such change.

(iii) If the professional liability coverages are written on an occurrence form, the policy must contain a cross liability or severability of interest clause.

(iv) The following provisions shall apply if the professional liability coverages are written on a claims made form:

1. The retroactive date of the policy must be shown and must be provided for at least five years after completion of the agreement or the work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the agreement or the work.
3. If coverage is canceled or not renewed and it is not replaced with another claims made policy form with a retroactive date that precedes the date of this agreement, Borrower must provide extended reporting coverage for a minimum of five years after completion of the agreement or the work.
4. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this agreement.

(d) Deductibles and Self-Insured Retentions. During the period covered by this agreement, upon express written authorization of City's City Attorney, Borrower may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels upon a requirement that Borrower procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

(e) Notice of Reduction in Coverage. In the event that any coverage required under this section is reduced, limited, or materially affected in any other manner, Borrower shall provide written notice to City at Borrower's earliest possible opportunity and in no case later than five days after Borrower is notified of the change in coverage.

(f) In addition to any other remedies City may have if Borrower fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option:

- (i) Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement;
- (ii) Order Borrower to stop work under this agreement, or withhold any payment which becomes due to Borrower hereunder, or both stop work and withhold any payment, until Borrower demonstrates compliance with the requirements hereof;
- (iii) Terminate the agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies City may have and is not the exclusive remedy for Borrower's failure to maintain insurance or secure appropriate endorsements.

ARTICLE 4. REPRESENTATIONS AND WARRANTIES OF BORROWER

Section 4.1 Representation and Warranties.

Borrower hereby represents and warrants to the City as follows:

(a) Organization. Borrower is duly organized, 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 Borrower. Borrower has full power and authority to execute and deliver this Agreement pursuant to Borrower's Articles of Incorporation and Bylaws, and to make and accept the borrowings contemplated hereunder, to execute and deliver the Loan Documents 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. The Loan Documents and 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 Borrower, and all actions required under Borrower's organizational documents and applicable governing law for the authorization, execution, delivery and performance of the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken (to the extent such actions are required as of the date of execution and delivery of the above-named documents).

(d) Valid Binding Agreements. The Loan Documents 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 Borrower enforceable against it in accordance with their respective terms, subject to the laws affecting creditors rights and principles of equity.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of the Loan Documents 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 Borrower, or any provision of the organizational documents of Borrower, or will conflict with or constitute a breach of or a default under any agreement to which Borrower is a party, or will result in the creation or imposition of any lien upon any assets or property of Borrower, other than liens established pursuant hereto.

(f) Compliance With Laws; Consents and Approvals. The use of the Property 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. Borrower 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 Borrower, threatened against or affecting Borrower or the Property, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Borrower, materially affect Borrower's ability to repay the Loan or impair the security to be given to the City pursuant hereto.

ARTICLE 5. DEFAULT

Section 5.1 Events of Default.

“Default” shall consist of any breach by the Borrower of any covenant, agreement, provision or warranty contained in this Agreement, the Note, the Deed of Trust, which breach is not cured within the applicable cure period, including but not limited to:

(a) The Borrower fails to pay any interest, principal, or other sums due under this Agreement, the Note, or any extensions or renewals thereof, including but not limited to the amount due under this Loan Agreement, within ten (10) days from the date the payment is due;

(b) The Borrower fails to comply with or fully and timely perform any of the Borrower's obligations under this Agreement or any other Loan Documents, following thirty (30) days written notice from the City to Borrower;

(c) Borrower refinances the Loan without City's written consent or without having complied with the requirements of this Agreement.

(d) The Borrower's insolvency, failure in business, commission of an act of bankruptcy, general assignment for the benefit of creditors, filing of any petition in bankruptcy or for relief under the provision of the Bankruptcy Act or any act for the relief of debtors,

appointment of a receiver, trustee or liquidator for the Home, admission in writing of an inability to pay debts as they mature, adjudication as bankrupt or insolvent, dissolution or liquidation under any law or statute.

In the event of a breach, the City shall provide Borrower written notice of the breach and the Borrower shall have thirty (30) days to cure the breach or, if such breach cannot be reasonably cured within thirty (30) days, the Borrower shall commence to cure within thirty (30) days and thereafter shall diligently complete such cure within one hundred and eighty (180) days.

Section 5.2 Remedies

The occurrence of any Default hereunder following the expiration of all applicable notice and cure periods shall give the City the right to proceed with any and all remedies set forth in this Agreement and the Loan Documents, subject to the rights of senior lenders, including but not limited to the following:

(a) Acceleration of Note. The City shall have the right to cause all indebtedness of the Borrower to the City under this Agreement and the Note, together with any accrued interest thereon, to become immediately due and payable. The Borrower waives all right to presentment, demand, protest or notice of protest or dishonor. The City may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the City as a creditor and secured party under the law including the Uniform Commercial Code, including foreclosure under the City Deed of Trust. The Borrower shall be liable to pay the City on demand all reasonable expenses, costs and fees (including, without limitation, reasonable attorney's fees and expenses) paid or incurred by the City in connection with the collection of the Loan and the preservation, maintenance, protection, sale, or other disposition of the security given for the Loan.

(b) Specific Performance. The City shall have the right to mandamus or other suit, action or proceeding at law or in equity to require Borrower to perform its obligations and covenants under the Loan Documents or to enjoin acts on things which may be unlawful or in violation of the provisions of the Loan Documents.

(c) Right to Cure at Borrower's Expense. The City shall have the right (but not the obligation) to cure any monetary default by Borrower under a loan other than the Loan. The Borrower agrees to reimburse the City for any funds advanced by the City to cure a monetary default by Borrower upon demand therefor, together with interest thereon at the lesser of the maximum rate permitted by law or ten percent (10%) per annum from the date of expenditure until the date of reimbursement.

Section 5.3 Right of Contest.

Borrower shall have the right to contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute a Default hereunder. Any such contest shall be prosecuted diligently and in a manner unprejudicial to the City or the rights of the City hereunder.

Section 5.4 Remedies Cumulative.

No right, power, or remedy given to the City by the terms of this Agreement or the Loan Documents 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 Borrower 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 shall 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 shall 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 the Borrower or its agents, employees or contractors, and the Borrower shall 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. The Borrower 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 the Agreement. In regards to the Property, the Borrower shall be 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 shall be solely responsible for similar matters relating to their employees. The Borrower shall be solely responsible for its own acts and those of its agents and employees.

Section 6.2 No Claims.

Nothing contained in this Agreement shall create or justify any claim against the City by any person that the Borrower may have employed or with whom the Borrower may have contracted relative to the Property.

Section 6.3 Amendments.

No alteration or variation of the terms of this Agreement shall be valid unless made in writing by the Parties.

Section 6.4 Indemnification.

The Borrower shall indemnify, defend and hold the City and its council members, directors, officers, employees, agents, successors and assigns ("Indemnitees") 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) which arise out of or in connection with this Agreement. This indemnity obligation shall not extend to any claim arising solely from

the grossly negligent or willful misconduct of the Indemnitees. The provisions of this Section shall survive the expiration of the Term and the reconveyance of the Deed of Trust.

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

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

Section 6.6 No Third Party Beneficiaries.

There shall be no third party beneficiaries to this Agreement.

Section 6.7 Conflict of Interest.

(a) No person described in Section 6.7(b) below who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this contract or who is in a position to participate in a decision-making process or 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 contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during, or for one year after, such person's tenure. The Borrower shall exercise due diligence to ensure that the prohibition in this Section 6.7(a) is followed.

(b) The conflict of interest provisions of Section 6.7(a) above apply to any person who is an employee, agent, consultant, officer, or any elected or appointed official of the City or the Borrower.

Section 6.8 Notices, Demands and Communications.

Formal notices, demands, and communications between the Parties shall be sufficiently given if and shall not be deemed given unless dispatched by certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally with a delivery receipt, to the principal office of the Parties as follows:

City:

City of Hayward
777 B Street
Hayward, CA 94541
Attention: City Manager

Borrower:

Hayward Economic Development Corporation
777 B Street
Hayward, CA 94541
Attention: Chief Executive Officer

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 shall 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 6.9 Applicable Law.

This Agreement shall be governed by California law.

Section 6.10 Parties Bound.

Except as otherwise limited herein, the provisions of this Agreement shall be 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 the Borrower and its successors and assigns in the Property for the entire Term, and the benefit hereof shall inure to the benefit of the City and its successors and assigns.

Section 6.11 Attorneys' Fees.

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

Section 6.12 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 shall 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 6.13 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 the Borrower or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to the Borrower to perform any obligation under this Agreement shall 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 the Borrower shall not 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 6.14 Title of Parts and Sections.

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

Section 6.15 Entire Understanding of the Parties.

This Agreement constitutes the entire understanding and agreement of the Parties with respect to the Loan.

Section 6.16 Multiple Originals; Counterpart.

Multiple Originals; Counterpart. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by telecopier, facsimile machine, portable document format (“PDF”), Electronic Signature, or other electronic means shall be as effective as delivery of a manually executed counterpart of this Agreement. The effectiveness of any such documents and signatures shall, subject to applicable laws, have the same force and effect as manually signed originals and shall be binding on the parties. No party may raise the use of a telecopier, facsimile machine, PDF, or other electronic means, or the fact that any signature was transmitted through the use of a telecopier, facsimile machine, PDF or other electronic means, as a defense to the enforcement of this Agreement. “Electronic Signature” means any symbol or process attached to a document or instrument and executed or adopted by a person with the intent to sign the document or instrument, including, without limitation, any digital representation of a party’s signature created by scanning such party’s signature or by any electronic signature service such as DocuSign.

[Signature Pages Follow]

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

CITY:

CITY OF HAYWARD, a California charter City

By: _____
Dustin Claussen
Interim City Manager

APPROVED AS TO FORM:

Michael S. Lawson, City Attorney

By: _____
Vadim Sidelnikov, Deputy City Attorney

ATTEST: _____
Miriam Lens, City Clerk

BORROWER:

Hayward Economic Development Corporation, , a
California Nonprofit Corporation

By: _____
Dustin Claussen

Its: Chief Executive Officer

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Real property in the City of Hayward, County of Alameda, State of California, described as follows:

PARCEL ONE:

PARCEL 1, AS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP 9095", FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF ALAMEDA COUNTY, STATE OF CALIFORNIA ON MAY 4, 2007 IN BOOK 298 OF PARCEL MAPS, PAGE 26, OFFICIAL RECORDS.

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT AND RIGHT OF WAY, 5 FEET IN WIDTH, EXTENDING FROM "B" STREET SOUTHEASTERLY FOR PEDESTRIAN AND VEHICULAR TRAVEL, BUT NOT FOR PARKING, OVER, ALONG AND ACROSS A STRIP OF LAND DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE SOUTHEASTERN LINE OF "B" STREET, DISTANT THEREON NORTHEASTERLY 200 FEET FROM THE POINT OF INTERSECTION THEREOF WITH THE NORTHEASTERN LINE OF MAIN STREET; THENCE RUNNING SOUTHEASTERLY PARALLEL WITH SAID LINE OF MAIN STREET 200 FEET; THENCE NORTH 47° 55' EAST, PARALLEL WITH SAID LINE OF "B" STREET, 57.04 FEET TO THE ACTUAL POINT OF COMMENCEMENT; RUNNING THENCE PARALLEL WITH SAID LINE OF "B" STREET, NORTH 47° 55' EAST 5.02 FEET; THENCE PARALLEL WITH SAID LINE OF MAIN STREET, NORTH 36° 24' WEST 200 FEET TO SAID LINE OF "B" STREET; THENCE ALONG THE LAST NAMED LINE SOUTH 47° 55' WEST 5.02 FEET; THENCE SOUTH 36° 24' EAST 200 FEET TO THE ACTUAL POINT OF COMMENCEMENT; SAID EASEMENT IS APPURTENANT TO AND FOR THE BENEFIT OF PARCEL 1 OF ABOVE DESCRIBED PARCEL MAP.

PARCEL THREE:

A NON-EXCLUSIVE EASEMENT APPURTENANT TO PARCEL ONE ABOVE FOR PEDESTRIAN, VEHICULAR ACCESS, STORM DRAIN, DRAINAGE, UTILITIES AND INCIDENTAL PURPOSES, MORE PARTICULARLY DESCRIBED IN THAT CERTAIN "CINEMA PLACE PARKING MAINTENANCE AND EASEMENT AGREEMENT" RECORDED JULY 19, 2007 AS SERIES NO. 2007265131 OF OFFICIAL RECORDS.

APN: 428-0066-034-08 (a portion)

From Order Number: NCS-221144-CC
First American Title Insurance Company

