

LOAN AGREEMENT
(Glen Berry Apartments)

This Agreement is entered into and made effective as of the 1st day of December, 1992, by and between the City of Hayward, California, a municipal corporation ("the City") and Eden Housing, Inc., a California nonprofit public benefit corporation ("the Borrower").

This Agreement is entered into on the basis of the following facts, intentions and understanding of the parties:

A. The Borrower is organized for the purpose of providing low and moderate income housing units.

B. The Borrower has acquired or will acquire all that real property located at 625-661 Berry Avenue in Hayward, Alameda County, California (the "Property"), more particularly described in Exhibit "A" attached hereto and incorporated herein.

C. The Borrower intends to construct and operate on the Property 50 rental housing units, a community center, underground parking facilities and related improvements and amenities (the "Project").

D. To provide additional financing for the development of the Project which will benefit low and lower income residents of the City of Hayward, the Borrower has applied for, and the City has approved, the loans described herein. The funds loaned to the Borrower are from the City's allocation of Community Development Block Grant funds, and from the City of Hayward Redevelopment Agency's Low and Moderate Income Housing Fund.

E. The purpose of this Loan Agreement is to set forth the terms and conditions upon which the City will make the loans to the Borrower in order for the Borrower to develop the Project.

In consideration of their mutual undertakings, the parties agree as follows:

SECTION ONE: THE LOANS, LOAN DOCUMENTS AND LOAN PROCEEDS

1.1 The Loans. Subject to the terms and conditions of this Agreement, the City agrees to make the following loans to the Borrower:

a. A "bridge" loan (the "Bridge Loan") in the amount of Two Hundred Thirty Thousand and No/100th Dollars (\$230,000.00) which shall be evidenced by a Promissory Note substantially in the form attached hereto as Exhibit "B"; and

b. A predevelopment loan (the "Predevelopment Loan") in the amount of Two Hundred Eighteen Thousand Nine Hundred Forty-seven and No/100th Dollars (\$218,947.00) which shall be evidenced by a Promissory Note substantially in the form attached hereto as Exhibit "C".

The above loans shall be repaid in the following order: First, the \$230,000.00 Bridge Loan; and second, the \$218,000.00 Predevelopment Loan. The Deeds of Trust in favor of the City securing the Loans shall have the same order of priority.

1.2 Security for the Loans. Each Loan shall be secured by a Deed of Trust (the "Deeds of Trust") on the Property. The City hereby agrees to subordinate its Deeds of Trust securing each Loan to any and all deeds of trust and regulatory agreements securing any construction loans for the Project, including, without limitation Bank of America State Bank's construction loan, the Department of Housing and Community Development's construction and permanent loan, and the seller's carry-back financing, and SAMCO's permanent loan. The City shall execute and record, at Borrower's expense, subordination agreements in order to implement the provisions of this Section.

1.3 Closing Documents. Borrower shall execute and deliver to the City the following items in a form satisfactory to the City:

- a. This Loan Agreement;
- b. The \$230,000.00 Promissory Note for the Bridge Loan;
- c. The Deed of Trust securing the \$230,000.00 Bridge Loan Promissory Note, duly recorded in the Official Records of Alameda County;
- d. The \$218,947.00 Promissory Note for the Predevelopment Loan;
- e. The Deed of Trust securing the \$218,947.00 Predevelopment Loan Promissory Note, duly recorded in the Official Records of Alameda County;
- f. If requested by the City, an ALTA Lender's policy of title insurance in the form approved by the City;
- g. An opinion letter from the Borrower's attorney; and
- h. Such other documents as may be required by this Agreement or as the City may otherwise require prior to closing. (All of the above documents in this Section 1.3 are herein sometimes referred to collectively as the "Loan Documents").

1.4 Use of Loan Proceeds. All proceeds of the Loans shall be used solely and exclusively for predevelopment, acquisition and/or construction costs relating to the Project.

1.5 Disbursement of Loan Proceeds. Upon the recording of each Deed of Trust, the full amount of the Loan secured thereby shall be disbursed to Borrower.

SECTION TWO: ADDITIONAL COVENANTS, REPRESENTATIONS AND WARRANTIES OF BORROWER

The Borrower covenants, represents and warrants to the City as follows:

2.1 Organization of the Borrower. The Borrower is a duly organized corporation, validly existing and in good standing under the laws of the State of California. The Borrower has all requisite power and authority in the State

of California to own and operate the Property, to carry on its business as now conducted, and to execute, deliver and perform its obligations under this Agreement, the Notes, Deeds of Trust and other Loan Documents.

2.2 Authorization of Loans. The execution, delivery and performance of this Agreement, the Notes, Deeds of Trust and other Loan Documents have been duly authorized by the Borrower; this Agreement, the Notes, Deeds of Trust and other Loan Documents have been duly executed and delivered and constitute the valid and binding obligations of the Borrower enforceable in accordance with their respective terms.

SECTION THREE: DEFAULT AND REMEDIES

3.1 Events of Default. The occurrence of any of the following events shall with sixty (60) days' prior written notice, at the option of the City, constitute an event of default by the Borrower under the terms of this Agreement, the Notes, Deeds of Trust and any other Loan Documents:

a. The Borrower fails to pay any principal and interest payment, or other sums due under this Agreement, the Notes or any extensions or renewals thereof;

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;

c. Unless agreed to in writing by the City and subject to Section 4.1, the Borrower voluntarily or involuntarily sells, transfers, disposes of or further encumbers all, or any portion, or any interest in the Property or improvements thereon;

d. Material injury or destruction of the Property or improvements thereon, by fire, other casualty or otherwise, which shall not have been repaired to the condition prior to such damage or destruction;

e. 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 Property, admission in writing of an inability to pay debts as they mature, adjudicated as bankrupt or insolvent, dissolution or liquidation under any law or statute, by or against the Borrower; or

f. Default under any loan secured by a deed of trust on the Property senior to the City's Deeds of Trust securing the Loans or a breach or default under any document relating to a loan secured by a senior deed of trust, after the expiration of any applicable cure period.

3.2 Remedies of the City upon Default. Upon the occurrence of an event of default by the Borrower in the performance of this Agreement or any of the Loan Documents, the City shall have the following rights, in addition to the the City's other rights and remedies provided by law, subject to subparagraph d of this Section 3.2:

a. If the City so elects, the City may declare the entire principal amount of the Loans to become immediately due and payable, and upon doing so, the City shall have full power to exercise any and all rights and powers

granted to the City in the Notes, Deeds of Trust and other Loan Documents in the event of default.

b. The City may, at its option, take possession of the Property securing the Loans, together with all materials, equipment and improvements thereon, pursuant to the rights given to the City under the Deeds of Trust.

c. The City may terminate this Agreement.

d. Notwithstanding anything to the contrary in the Notes, Deeds of Trust or any other instrument evidencing or securing the obligations of the Borrower under the Notes, the City expressly agrees that there shall be no personal liability of the Borrower, or its partners if Borrower is a partnership, under the Notes, Deeds of Trust and under any other instrument given to evidence or secure the obligations of the Borrower, or its partners if Borrower is a partnership, under the Note. The liability of the Borrower, and its partners if Borrower is a partnership, shall be strictly and absolutely limited to the property conveyed by the Deeds of Trust and the rents, profits, issues, products and proceeds thereof. In the event a default occurs under the Notes or with respect to the indebtedness evidenced by the Notes, the City shall not seek any judgment for a deficiency against the Borrower, or the partners if Borrower is a partnership, legal representatives, successors or assigns of the Borrower.

3.3 Nonwaiver by the City. No waiver by the City of any breach of a covenant, warranty or other event of default shall constitute a waiver of the right of the City to assert any future remedies provided for in this Agreement or any other Loan Document on the basis of the same or a similar breach of a covenant or warranty or other event of default.

SECTION FOUR: GENERAL PROVISIONS

4.1 Assignment, Transfer and Encumbrances. The Loans shall not be assigned and the Property shall not be transferred by the Borrower without the prior written consent of the City. The City hereby approves an assignment of the Loans and transfer of the Property to Berry Avenue Associates, a California Limited Partnership, the general partner of which is Eden Housing, Inc. or an affiliate of Eden Housing, Inc. named Glen Berry, Inc. The City also approves the transfer of the limited partner's interest in Berry Avenue Associates, a California Limited Partnership, to Mission Housing Investments and/or to an affiliate of Mission Housing Investments.

The City hereby approves the following loans, which shall encumber the Property: A construction loan from Bank of America State Bank in an amount not to exceed \$4,300,000.00; a construction/permanent loan from the Department of Housing and Community Development in an amount not to exceed \$2,600,000.00; the seller's carry-back financing in an amount not to exceed \$460,000.00; and a permanent loan from SAMCO in an amount not to exceed \$1,300,000.00.

4.2 Governing Law. This Agreement and all other Loan Documents shall be construed according to the laws of the State of California. This Agreement is made for the sole protection and benefit of the Borrower and the City, and no other person shall be deemed to have a right of action of any kind hereunder or any claim to the Loan proceeds.

4.3 Notice. Any notice required by or given pursuant to this Agreement shall be made in writing and shall be served personally or sent by certified mail, return receipt requested:

If to the City, addressed to:

City of Hayward
25151 Clawiter Road
Hayward, California 94545-2731
Attention: Director of the Department of
Community and Economic Development

If to the Borrower, addressed to:

Eden Housing, Inc.
22941 Atherton Street, Suite D
Hayward, California 94541
Attention: Executive Director

Any notice given in accordance with the provisions of this Section shall be deemed to be effective, if delivered, on the date of such delivery or, if mailed, three (3) days after the date of postmark. Each party may give notice to the other party of a change of its address for the purpose of giving notice under this Section.

4.4 Amendments. This Agreement may be changed only by an agreement in writing and signed by both parties.

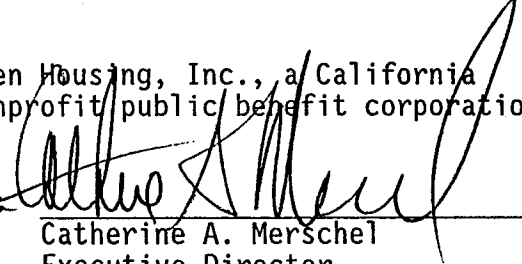
4.5 Further Assurances. The parties agree, from time to time and as may be reasonably required by either party hereto, to execute and deliver such further documents and do all things which may be necessary to carry out the intent of this Agreement more effectively and completely.

4.6 Headings. The headings to the various sections and paragraphs of this Agreement have been inserted for convenient reference only and shall not be used to construe this Agreement.

4.7 City Not a Joint Venturer. Notwithstanding anything to the contrary herein contained, the City, by entering into this Agreement or by any action taken pursuant hereto, will not be deemed a partner or joint venturer with the Borrower.

In witness whereof the parties have executed this Agreement as of the date first written above.

Eden Housing, Inc., a California nonprofit public benefit corporation

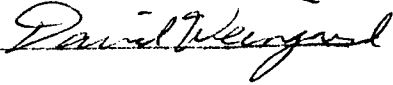
By: 
Catherine A. Merschel
Executive Director

City of Hayward, California, a municipal corporation

By: 

Interim City Manager
(Title)

FORM APPROVED
CITY ATTORNEY

by 

LEGAL DESCRIPTION

REAL PROPERTY in the City of Hayward, County of Alameda, State of California, as described in the Certificate of Merger recorded May 6, 1988, Series No. 88-107691, Alameda County Records, more particularly described as follows:

That certain parcel of land described in the deed to Thomas K. Chen and Carla Chen, and Kuang-Shuing Chao from James T. Hagerty and Coletta E. Hagerty recorded September 8, 1977, Reel 5039, Image 594, Series Number 77-179603 of Official Records, and that certain parcel of land described in the Affidavit-Death of Joint Tenant recorded May 22, 1953 in Book 7036 at Page 196 of Official Records and again in October 1, 1985 in the office of the County Recorder.

Beginning at the intersection of the northeastern line of the parcel of land described in the deed to San Francisco Bay Area Rapid Transit District, filed October 10, 1967, on Reel 2059, at Image 260, Official Records of Alameda County, with the centerline of Berry Avenue, 50 feet in width; thence along said centerline north $58^{\circ} 59' 46''$ east, 101.51 feet; thence leaving said centerline of Berry Avenue, along the easterly line of said parcel described in the Affidavit-Death of Joint Tenant (7036 OR 196), south $31^{\circ} 00' 28''$ west, 413.21 feet to the southeast corner of said parcel (7036 OR 196), same point also lying on the northerly line of the parcel of land described in the Deed to J.G. Realty Co. from Multiple Properties, Inc, recorded December 8, 1967 in Book 2089 at Page 853 of Official Records; thence along said northerly line south $58^{\circ} 59' 32''$ west, 165.25 feet to the southwest corner of the said parcel of land described in the Deed to Thomas K. Chen and Carla Chen, and Kuang-Shuing Chao from James T. Hagerty and Coletta E. Hagerty (Reel 5039, Image 594); thence along the westerly line of said parcel (Reel 5039, Image 594) north $31^{\circ} 36' 28''$ west, 388-24 feet to a point on the southeastern line of Berry Avenue (Reel 2660, Image 734); thence along said southeastern line north $58^{\circ} 59' 32''$ east, 16.32 feet, to a point of curvature; thence along a non-tangent curve concave southerly with a radius of 31.00 feet, the center of which bears north $21^{\circ} 11' 56''$ east through a central angle of $90^{\circ} 55' 20''$, an arc length of 49.19 feet, to a point of reverse curvature; thence along a tangent curve to the right, with a radius of 60.00 feet, through a central angle of $8^{\circ} 47' 35''$, an arc length of 9.21 feet, to said northeasterly line of said S.F.B.A.R.T.D. Parcel (2059 O.R. 260); thence along last said northeasterly line north $31^{\circ} 00' 14''$ west, 25.00 feet to the point of beginning of this description.

Excepting therefrom that portion thereof conveyed to the City of Hayward by Deed recorded April 25, 1989, Series No. 89-112177.

A.P. Nos. 444-60-27-5 & 444-60-3-2
