




SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Economic Development

Prepared by: Danielle O’Leary,
Economic Development Director

City Manager Approval: _____ 

TOPIC: CONTINUING CITY LOANS FROM CENTERTOWN PROJECT AT 855 C STREET

SUBJECT: RESOLUTION AGREEING TO ACCEPT A NEW \$909,876 PROMISSORY NOTE FROM CENTERTOWN II, LP, REPRESENTING THE REMAINING OBLIGATIONS UNDER TWO OUTSTANDING PROMISSORY NOTES FROM CENTERTOWN ASSOCIATES, LTD., AND RELATED MATTERS

RECOMMENDATION:

Adopt the attached resolution for the City: (i) to accept a new \$909,876 promissory note from Centertown II, LP, expected to be the new lessee of the City-owned real property at 855 C Street, San Rafael (**Centertown**), representing the remaining obligations (including accrued interest) under two separate promissory notes from current Centertown lessee Centertown Associates; (ii) with the new note to be secured by a new leasehold deed of trust and accompanied by a new affordable housing regulatory agreement; (iii) to cancel the existing promissory notes and terminate the existing security; and (iv) authorizing the Mayor and/or City Manager to execute all documents reasonably required to carry out the intent and purposes of the foregoing.

BACKGROUND:

On September 13 ([staff report](#)) and September 20, 2021 ([staff report](#)), the City Council adopted Ordinance 2000, Approving and Authorizing the Mayor to Execute a Ground Lease of the Real Property at 855 C Street, San Rafael (Centertown) to Centertown II, LP. The purpose of the Ordinance was to provide BRIDGE/EAH the opportunity to re-syndicate and refinance the Centertown project to provide flood improvements, ADA improvements, and other necessary ongoing maintenance. The Ordinance is expected to become effective on October 20, 2021, and the new Centertown ground lease transaction is scheduled to close on October 22, 2021.

ANALYSIS:

As part of the overall financing for this new Centertown transaction, the remaining amounts due the City under two outstanding promissory notes from current lessee (Centertown Associates, Ltd.)—i) the entire \$631,000 (plus accrued interest) of original principal under an unsecured note to the City dated June 2, 2021; and (ii) the \$219,982 in principal remaining (plus accrued interest) under a secured \$303,000 note originally to the San Rafael Redevelopment Agency dated August 20, 1990—are being combined into a

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

single new \$909,876 Promissory Note from the new Centertown lessee, Centertown II, LP (“**Centertown II**”). This new Note does not represent an advance of new City funds.

The new Promissory Note will bear interest at 1.74% per annum, compounded annually (the current long-term Applicable Federal Rate), and be payable from the City’s prorata percentage of certain “Residual Receipts” from the Centertown project (as defined in the new Note). The new Note term is 57 years. The new Note will be secured by a new Leasehold Deed of Trust, and accompanied by a new affordable housing Regulatory Agreement, both from Centertown II. The new Note, Leasehold Deed of Trust, and Regulatory Agreement will all be substantially similar to the forms attached to this report. As with the prior RDA secured Centertown notes, this new Note will be subordinated to larger loans from the project’s senior lenders. The current \$631,000 and \$303,000 notes will be cancelled, and the current deed of trust securing the \$303,000 note will be released.

This new Note is only a small part of the overall Centertown transaction. The specific transactions described in this report have been negotiated with numerous other parties, and are all closing conditions to the new Centertown transaction.

FISCAL IMPACT:

City Council approval of the matters in this report is the final Council action required for the new Centertown transaction.

There is no fiscal impact in adopting the proposed resolution. The City is entitled to receive \$909,876, plus interest at 1.74% per annum, over a 57-year period.

OPTIONS:

The City Council has the following options to consider on this matter:

1. Adopt the Resolution Agreeing to Accept a New \$909,876 Promissory Note From Centertown II, LP, Representing the Remaining Obligations Under Two Outstanding Promissory Notes From Centertown Associates, Ltd., and Related Matters.
2. Pass the Resolution with modifications.
3. Direct staff to return with more information.
4. Take no action. (Options 2, 3, and 4 will delay and undermine the Centertown financing.

RECOMMENDED ACTION:

Adopt the Resolution Agreeing to Accept a New \$909,876 Promissory Note from Centertown II, LP, Representing the Remaining Obligations Under Two Outstanding Promissory Notes From Centertown Associates, Ltd., and Related Matters.

ATTACHMENTS:

1. Resolution Agreeing to Accept a New \$909,876 Promissory Note From Centertown II, LP, Representing the Remaining Obligations Under Two Outstanding Promissory Notes from Centertown Associates, Ltd., and Related Matters
2. Promissory Note (Centertown) in the principal amount of \$909,876, dated October 22, 2022.
3. Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (Centertown)
4. Affordable Housing Regulatory Agreement

RESOLUTION NO.

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL AGREEING TO ACCEPT A NEW \$909,876 PROMISSORY NOTE FROM CENTERTOWN II, LP, REPRESENTING THE REMAINING OBLIGATIONS UNDER TWO OUTSTANDING PROMISSORY NOTES FROM CENTERTOWN ASSOCIATES, LTD., AND RELATED MATTERS

WHEREAS, the City of San Rafael, as successor housing agency to the former San Rafael Redevelopment Agency (“**SRRA**”), is the fee owner of that certain approximately 0.98-acre lot at 855 C Street in downtown San Rafael (“**Centertown Land**”) on which the Centertown project is located; and

WHEREAS, the City Council has adopted Ordinance 2000, Approving and Authorizing the Mayor to Execute a Ground Lease of the Real Property at 855 C Street, San Rafael (Centertown) to Centertown II, LP (**Centertown II**), in order to provide BRIDGE/EAH the opportunity to re-syndicate and refinance the Centertown project to provide flood improvements, ADA improvements, and other necessary ongoing maintenance; and

WHEREAS, the City currently holds two outstanding promissory notes from current Centertown lessee Centertown Associates, Ltd. (“**Centertown Ltd.**”): a \$631,000 unsecured promissory note, dated June 2, 2021, all of which (together with accrued interest) is outstanding; and a \$303,000 secured promissory note, dated August 20, 1990, of which \$219,982 in principal (plus accrued interest) is outstanding; and

WHEREAS, as part of the new Centertown transaction, it is proposed that the remaining amounts under the two Centertown Ltd. notes be combined into a single new \$909,876 Promissory Note from Centertown II, with the current notes being cancelled and the current deed of trust securing the \$303,000 note being released; and

WHEREAS, the new Promissory Note will: bear interest at 1.74% per annum, be payable from the City’s prorata percentage of certain “Residual Receipts” from the Centertown project (as defined in the new Note), have a term of 57 years, be secured by a new Leasehold Deed of Trust and accompanied by a new affordable housing Regulatory Agreement, and be subordinated to larger loans from the project’s senior lenders; and

WHEREAS, the foregoing matters, are all closing conditions to the new Centertown transaction;

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby approves, and authorizes the Mayor and/or City Manager to take all actions required to accept a new \$909,876 Promissory Note from Centertown II, LP; cause the new Promissory Note to be secured by a new Leasehold Deed of Trust and accompanied by a new affordable housing Regulatory Agreement, all substantially in the form included with the staff report for this Resolution; cancel the two current \$631,000 and \$303,000 notes from Centertown Ltd.; and release the current deed of trust securing the \$303,000 note, all in a form subject to approval by the City Attorney;

AND BE IT FURTHER RESOLVED that the City Council hereby approves, and authorizes the Mayor and/or City Manager to execute, all other documents reasonably required to carry out the intent and purposes of the foregoing, in a form approved by the City Attorney.

I, LINDSAY LARA, City Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the City Council held on the 18th day of October, 2021, by the following vote to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk

**PROMISSORY NOTE
(Centertown)**

\$909,876.00

San Rafael, California
October 22, 2021

FOR VALUE RECEIVED, CENTERTOWN II, LP, a California limited partnership (“**Borrower**”), promises to pay to the order of the CITY OF SAN RAFAEL, a municipal corporation (“**Lender**”), the principal sum of Nine Hundred Nine Thousand Eight Hundred Seventy Six and 00/100^{ths} Dollars (\$909,876.00).

1. Borrower’s Obligation. Loan. This promissory note (“**Note**”) evidences Borrower’s obligation to pay the Lender the principal amount of Nine Hundred Nine Thousand Eight Hundred Seventy Six and 00/100^{ths} Dollars \$909,876.00 (the “**Loan**”), representing (i) Borrower’s assumption of \$631,000.00 in principal plus \$12,095.00 accrued interest to date under that certain Promissory Note (Centertown) dated June 2, 2021, originally from Centertown Associates, Ltd. (“**Prior Borrower**”) to Lender and (ii) Borrower’s assumption of \$219,982.00 in remaining principal plus \$46,799.00 in accrued interest to date under that certain Amended and Restated Promissory Note in the original principal amount of \$303,000.00, dated August 20, 1990 and amended May 6, 1991, originally from the Prior Borrower to the former Redevelopment Agency of the City of San Rafael (“**RDA**”). Concurrently herewith, Lender, as lessor (“**Lessor**”), and Borrower, as lessee (“**Lessee**”), are entering into a Ground Lease (Centertown) (as may be further amended from time to time, “**Ground Lease**”) on certain land located at 855 C Street, San Rafael California (“**Land**”), currently improved with approximately sixty (60) units of affordable housing (including one unrestricted manager’s unit) and certain accessory uses (“**Development**”), as to which the Loan relates.

(b) Security. This Note is secured by a Leasehold Deed of Trust with Assignment of Rents and Security Agreement (the “**Leasehold Deed of Trust**”) on the “**Property**” (as defined therein), wherein Borrower is the Trustor and Lender is the Beneficiary.

2. Interest. The outstanding principal balance of this Note will bear interest at a fixed rate of One and Seventy Four Hundredths percent (1.74%) per annum, compounded annually.

3. No Assumption. This Note is not assumable by the successors and assigns of Borrower without the prior written consent of the Lender.

4. Term and Repayment Requirements.

(a) Term. The term of this Note (“**Term**”) commences with the date of this Note and expires on October 22, 2078 (the “**Maturity Date**”).

(b) **Repayment.**

(i) Annual Payments. Commencing June 1, 2024, and on each June 1 of each year thereafter during the Term, Borrower shall make repayments of the outstanding principal and accrued interest on the Loan equal to the City's Prorata Percentage of Lenders' Share of Residual Receipts (each as defined in Section 6) for the previous calendar year. Payments made shall be credited first against accrued interest and then against outstanding principal. Such annual payments shall be accompanied by the Borrower's report of Residual Receipts (including an independent auditor's report regarding the auditor's review of Annual Operating Expenses) (each as defined in Section 6). Borrower shall provide Lender with any documentation reasonably requested by Lender to substantiate Borrower's determination of Residual Receipts; provided, that so long as the County Home Loan is outstanding, Borrower may satisfy its annual reporting obligations under this Subsection 4(b) by providing Lender with whatever documentation is required by the terms of the County HOME Loan Agreement (each as defined in Section 6).

(ii) Additionally, the principal and interest balance of the Loan is due and payable in full upon the earlier to occur of: (i) the date of any Lessee assignment, transfer or sublease of the Land or improvements thereon (each, a "**Transfer**") not authorized by the Lessor or the Ground Lease (and a Transfer that does not require Lender consent under the Ground Lease is deemed authorized), (ii) the date of any Default, or (iii) the Maturity Date.

(c) **Right to Prepay.** Borrower may prepay the Loan at any time without premium or penalty.

5. Payment Terms.

(a) Borrower shall make all payments due under this Note in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

(b) All payments on this Note are to be paid to the Lender at City of San Rafael City Hall, 1400 Fifth Avenue, San Rafael, CA 94901, Attn: Finance Department, or to such other place as the Lender may from time to time designate.

(c) All payments on this Note are without expense to the Lender.

(d) Notwithstanding any other provision of this Note, if, for any reason whatsoever, the payment of any sums by Borrower pursuant to the terms of this Note would result in the payment of interest that exceeds the amount that the Lender may legally charge under the laws of the State of California, then the amount by which payments exceed the lawful interest rate will automatically be deducted from the principal balance owing on this Note, so that in no event is Borrower obligated under the terms of this Note to pay any interest that would exceed the lawful rate.

(e) By execution of this Note Borrower acknowledges and agrees, and by acceptance of this Note Lender acknowledges and agrees, that the determination of "City Prorata Percentage" and "Lenders' Share of Residual Receipts" (including other defined terms required to define those terms) from time to time shall, to the greatest feasible extent, be consistent with the methodology for determining "County Prorata Percentage" and "Lenders' Share of Residual Receipts" (including other defined terms required to define those terms) under the County HOME Loan Agreement, adjusted only to reflect the respective prorata percentages of each of Lender

and the County. The applicable definitions of the County HOME Loan Agreement shall control in the event of conflict with the applicable definitions in this Note.

6. Special Definitions. Subject to 5(e):

(a) **"Annual Operating Expenses"** with respect to a particular calendar year (or if applicable shorter period) shall mean the following costs reasonably and actually incurred for operation and maintenance of the Development, to the extent that they are consistent with an annual independent audit performed by a certified public accountant using generally accepted accounting principles and subject to the limits contained in the Approved Financing Plan: (i) property taxes and assessments imposed on the Development; (ii) debt service and associated fees (including but not limited to the HCD LPR monitoring fee, the City of San Rafael monitoring fee, and the bond monitoring fee) currently due on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Development) on the Approved Financing or as otherwise approved by HCD; (iii) property management fees and reimbursements, not to exceed fees and reimbursements which are standard in the industry, and pursuant to a management contract approved by the County; (iv) premiums for property damage and liability insurance; (v) any annual license or certificate of occupancy fees required for operation of the Development; (vi) annual regulatory compliance monitoring fees; (vii) security services; (viii) advertising and marketing costs; (ix) cash deposited into reserves for capital replacements of the Development in the amount shown in the Approved Financing Plan or such higher amount as to be approved by the County, or as otherwise approved by HCD; (x) cash deposited into an operating reserve in an amount in the amount shown in the Approved Financing Plan or such higher amount as to be approved by the County, as the same may increase during the Term with the approval of the County, and annual operating budgets, but with the operating reserve capped at six (6) months of gross rent from the Development (as such rent may vary from time to time) solely for purposes of determining Annual Operating Expenses; (xi) a partnership management fee and asset management fee in the amount shown in the Approved Financing Plan, or as otherwise approved by HCD, or in such other amount approved by the County; (xii) utility services not paid for directly by tenants, including without limitation, water, sewer, and trash collection; (xiii) maintenance and repair, including but not limited to, pest control, landscaping, grounds maintenance, painting and decorating, cleaning, common systems repair, janitorial supplies and services; (xiv) social services fees and expenses; (xv) annual audit fees, inspection fees, or monitoring fees required in relation to any Approved Financing; (xvi) extraordinary operating costs specifically approved by the County in its reasonable discretion; (xvii) payments of deductibles in connection with casualty insurance claims not normally paid from reserves, the amount of uninsured losses actually replaced, repaired or restored, and not normally paid from reserves, (xviii) reasonable accounting fees and legal fees; (xix) payments of Deferred Developer Fee, if any; and (xxx) other ordinary and reasonable operating expenses approved by the County in its reasonable discretion and not listed above; or if different, as otherwise provided in the County HOME Loan Agreement.

Annual Operating Expenses shall exclude the following: depreciation, amortization, depletion or other non-cash expenses or, any amount expended from a reserve account.

(b) **"Approved Financing Plan"** means the financing plan approved by the County and provided to the Lender as of the date of this Note, attached to this Note as Exhibit A, incorporated herein by this reference, as the same may be amended pursuant to the County HOME Loan Agreement from time to time.

(c) **"City Prorata Percentage"** means the City's prorata percentage of the Lenders' Share of Residual Receipts, resulting from dividing \$850,982.00 (being the portion of

the Loan represented by unpaid principal (rather than interest) of the prior loans included within the Loan) by the amount of the Public Loans.

(d) **“County”** means the County of Marin.

(e) **“County Loans”** means (i) the County CDBG Loan to the Borrower in the amount of \$59,504.00, evidenced by that certain Amended and Restated Promissory Note (Centertown- CDBG Loan) dated on or about the date hereof, (ii) the County HTF Loan to the Borrower in the amount of \$40,000.00, evidenced by that certain Amended and Restated Promissory Note (Centertown- HTF Loan) dated on or about the date hereof, and (iii) the County HOME Loan to the Borrower in the amount of \$950,000.00, evidenced by that certain Promissory Note (Centertown II- HOME Loan) dated on or about the date hereof (**“County HOME Loan”**).

(f) **“County Loan Documents”** means the promissory notes included in the definition of County Loan, together with the HOME Investment Partnerships Act Loan Agreement (Centertown II- HOME Loan) between the County and Borrower dated on or about the date hereof (**“County HOME Loan Agreement”**), the Regulatory Agreement and Declaration of Restrictive Covenants (Centertown II- HOME Loan) between the County and Borrower dated on or about the date hereof, and the Amended and Restated Leasehold Deed of Trust With Assignment of Rents, Security Agreement, and Fixture Filing (Centertown II- CDBG Loan), the Amended and Restated Leasehold Deed of Trust With Assignment of Rents, Security Agreement, and Fixture Filing (Centertown II- HTF Loan), and the Leasehold Deed of Trust With Assignment of Rents and Security Agreement (Centertown II - HOME Loan), all from Borrower as trustor to the County as beneficiary, dated on or about the date hereof, all as amended from time to time.

(g) **“Gross Revenue”** for each particular calendar year (or if applicable shorter period) shall mean all revenue, income, receipts, and other consideration actually received by Borrower from operation and leasing of the Development. Gross Revenue includes, but is not limited to: (i) all rents, fees and charges paid by tenants, payments or other rental subsidy payments received for the dwelling units, deposits forfeited by tenants, all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements resulting in actual income to Borrower; (ii) the proceeds of business interruption or similar insurance; (iii) any payment received in consideration for the leasing or other use of any portion of the Development; (iv) subject to the rights of senior lenders, the proceeds of casualty insurance to the extent not utilized to repair or rebuild the Development (or applied toward the cost of recovering such proceeds); (v) subject to the rights of senior lenders, condemnation awards for a taking of part or all of the Development for a temporary period; or if different, as otherwise provided in the County HOME Loan Agreement.

Gross Revenue shall exclude tenants' security deposits, loan proceeds, capital contributions or other similar advances.

(h) **“HCD”** means the California State Department of Housing and Community Development.

(i) **“Lenders’ Share of Residual Receipts”** means the Lender’s proportionate share of Residual Receipts, which proportionate share shall be determined in accordance with HCD requirements.

(a) **“Public Loans”** means \$850,982.00, plus the amounts of the County Loans and LRB Loan actually disbursed to the Borrower.

(j) **“LRB Loan”** means the Loan Portfolio Restructuring Loan to the Borrower in the amount of \$1,722,662.00.

(k) **“Residual Receipts”** in a particular calendar year (or if applicable shorter period) shall mean the amount by which Gross Revenue exceeds Annual Operating Expenses.

7. Other Covenants.

(a) **Financing Plan.** Borrower shall provide Lender with copies of all updates, revisions and modifications to the Approved Financing Plan from time to time promptly following each applicable update, revision and modification, together with a written explanation thereof and all other information reasonably requested by the County.

8. Default.

(a) Any of the following constitutes an event of default under this Note (each, a **“Default”**):

(i) Any failure to pay, in full, any payment required under this Note, within ten days of written notice that such payment is due; and

(ii) Failure of Borrower to duly perform, comply with, or observe any of the conditions, terms, or covenants of this Note or Deed of Trust, and such failure or breach having continued uncured for 30 days after receipt of written notice thereof from the Lender to Borrower and its limited partner or, if the failure or default cannot be cured within 30 days, Borrower shall not be in default so long as Borrower is diligently undertaking to cure such failure and such cure is commenced within 30 days of such failure.

(b) Upon the occurrence of a Default, the entire unpaid principal balance, together with all interest thereon, and together with all other sums then payable under this Note will at the option of the Lender become immediately due and payable without further demand.

(c) Lender’s failure to exercise the remedy set forth in Subsection 8(b) above or any other remedy provided by law upon the occurrence of one or more of the foregoing events of Default does not constitute a waiver of the right to exercise any remedy at any subsequent time in respect to the same or any other Default. The acceptance by Lender hereof of any payment which is less than the total of all amounts due and payable at the time of such payment does not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or at any subsequent time, or nullify any prior exercise of any such remedy or option, without the express consent of the Lender, except as and to the extent otherwise provided by law.

(d) Borrower’s limited partner may, but shall not be obligated to, cure defaults under this Note in the same manner as Borrower, and such cure shall be accepted or rejected as if tendered by the Borrower.

9. Waivers.

(a) Borrower hereby waives diligence, presentment, protest and demand, and notice of protest, notice of demand, and notice of dishonor of this Note. Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time, and that the Lender may accept further security or release any security for this Note, all without in any way affecting the liability of Borrower.

(b) Any extension of time for payment of this Note or any installment hereof made by agreement by the Lender with any person now or hereafter liable for payment of this Note shall not operate to release, discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part.

(c) The obligations of Borrower under this Note are absolute and Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.

10. Non-Recourse. Payment and performance of the obligations set forth in the Loan Documents shall be non-recourse to Borrower and Borrower's general and limited partners, and Lender's sole recourse with respect to the Loan shall be the right to foreclose under the Deed of Trust and other collateral forming part of the Loan Documents.

11. Miscellaneous Provisions.

(a) All notices to the Lender or Borrower shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the parties as follows:

Lender:

City of San Rafael
1400 Fifth Avenue, Room 202
San Rafael, CA 94901
Attn: Jim Schultz, City Manager
jim.schultz@cityofsanrafael.org

with copy to:

City of San Rafael
1400 Fifth Avenue, Room 202
San Rafael, CA 94901
Attn: Robert Epstein, City Attorney
rob.epstein@cityofsanrafael.org

Borrower:

Centertown II, LP
c/o BRIDGE Housing Corporation
600 California St #900
San Francisco, CA 94108
Attn: General Counsel

and:

Centertown II, LP
EAH Inc.
22 Pelican Way
San Rafael, CA 94901
Attn: Welton Jordan
Chief Real Estate Development Officer

with copy to:

Goldfarb & Lipman LLP
1300 Clay Street, 11th Floor
Oakland, CA 94612
Attention: Erica Williams Orcharton

and

Bocarsly Emden Cowan Esmail & Arndt LLP
633 West Fifth Street, 64th Floor
Los Angeles, CA 90071
Attention: Nicole Deddens

and

NHT Equity, LLC
2245 North Bank Drive, Suite 200
Columbus, OH 43220
Attention: Asset Management

and

Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102
Attention: Jill H. Goldstein, Esq.

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 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).

(b) Borrower promises to pay all costs and expenses, including reasonable attorney's fees, incurred by the Lender in the enforcement of the provisions of this Note, regardless of whether suit is filed to seek enforcement.

(c) This Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

(d) This Note is governed by and construed in accordance with the laws of the State of California.

(e) The times for the performance of any obligations hereunder are strictly construed, time being of the essence.

(f) This Note contains the entire agreement between the Lender and Borrower as to the Loan. This Note may not be modified except upon the written consent of the Lender and Borrower.

[Signatures on following page]

IN WITNESS WHEREOF, Borrower has caused this Note to be executed and delivered on the date set forth above.

CENTERTOWN II, LP, a California limited partnership

By Centertown II, LLC,
a California limited liability company, its
managing general partner

By: BRIDGE Housing Corporation,
a California nonprofit public benefit
corporation, its managing member

By: _____
Smitha Seshadri,
Executive Vice President

By: EAH Inc.,
a California nonprofit public benefit
corporation, its managing member

By: _____
Welton Jordan,
Assistant Secretary and Chief Real
Estate Development Officer

EXHIBIT A

APPROVED FINANCING PLAN

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

City of San Rafael
City of San Rafael City Hall,
Rm 209
1400 Fifth Avenue, San
Rafael, CA 94901
Attention: City Clerk

EXEMPT FROM RECORDING FEES
PER GOVERNMENT CODE §§6103,
27383

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

APN 011-254-19

**LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING
(CENTERTOWN)**

This LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (“**Deed of Trust**”) is made as of October 22, 2022, by CENTERTOWN II, LP, a California limited partnership, (“**Trustor**”), whose address is c/o BRIDGE Housing Corporation, 600 California St #900, San Francisco, CA 94108, Attn: General Counsel and c/o EAH Inc., 22 Pelican Way, San Rafael, CA 94901, Attn: Welton Jordan Chief Real Estate Development Officer, to Old Title Company (“**Trustee**”), for the benefit of the CITY OF SAN RAFAEL, a municipal corporation, (“**Beneficiary**”), whose address is City of San Rafael City Hall, 1400 Fifth Avenue, San Rafael, CA 94901, Attention City Manager.

Trustor irrevocably grants, conveys, transfers and assigns to Trustee in trust, with power of sale and right of entry and possession, all of Trustor’s right, title and interest now owned or hereafter acquired in and to its leasehold to the real property in Marin County, California, described on Exhibit A attached hereto and incorporated herein by this reference, together with all buildings, structures and improvements now existing or hereafter constructed thereon (the “**Improvements**”) and all other property and interests of any kind or character which may be reasonably necessary or desirable to promote the present and future beneficial use and enjoyment of such real property and improvements (the “**Property**”).

1. Secured Obligations. Trustor makes the grant, conveyance, transfer and assignment herein for the purpose of securing the following obligations (the “**Secured Obligations**”): (i) all obligations of Trustor to Beneficiary under the Promissory Note of even date herewith, in the original principal amount of \$909,876.00, executed by Trustor in favor of Beneficiary or order (the “**Note**”); (ii) all present and future obligations of Trustor to Beneficiary under the Loan Documents (as defined in the Addendum defined below); (iii) all present and future obligations of Trustor to Beneficiary under the Addendum to Deed of Trust in favor of Beneficiary dated of even date attached hereto and incorporated herein by this reference (“**Addendum**”); (iv) all additional present and future obligations of Trustor to Beneficiary under any other agreement or instrument acknowledged by Trustor (whether existing now or in the future) which states that it is or such obligations are, secured by this Deed of Trust; (v) all obligations of Trustor to Beneficiary under all modifications, supplements, amendments, renewals, or extensions of any of the foregoing, whether evidenced by new or additional documents; and (vi) reimbursement of all amounts

advanced by or on behalf of Beneficiary to protect Beneficiary's interests under this Deed of Trust or any other Loan Document as such may be modified, supplemented, amended, renewed or extended.

2. Maintenance and Repair. Trustor shall (i) keep the Property in good condition and repair and not remove or demolish any building; (ii) complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed; (iii) pay when due all claims for labor performed and materials furnished; (iv) comply with all laws affecting the Property or requiring any alterations or improvements to be made; (v) not commit or permit waste; and (vi) cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of the Property may be reasonably necessary.

3. Insurance. Trustor shall maintain hazard insurance against loss by fire, hazards included with the term "extended coverage," and any other hazards for which Beneficiary requires insurance, and liability insurance. The insurance carrier and the insurance policies and amounts of coverage shall be acceptable to Beneficiary, the policies shall name Beneficiary as a loss payee or an additional insured, as applicable, the policies shall include Beneficiary as an additional insured, as applicable, and shall require 30 days' prior notice to Beneficiary before the policy is modified or terminated.

4. Defense of Security. Trustor shall appear in and defend any action or proceeding purporting to affect the security or the rights or powers of Beneficiary or Trustee. Trustor shall pay all costs and expenses, including costs of evidence of title and attorneys' fees, in any such action or proceeding in which Trustee or Beneficiary may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

5. Payment of Taxes and Liens. Trustor shall pay (i) at least ten days before delinquency, all taxes and assessments affecting the Property, including water stock assessments; (ii) when due, all encumbrances, charges and liens, with interest, on the Property, which are or appear to be prior or superior to this Deed of Trust; and (iii) upon demand all costs, fees and expenses of this Deed of Trust. If Trustor fails to make any payment or to do any act provided for in this Deed of Trust, then Beneficiary or Trustee may, without obligation to do so, and with or without notice to or demand upon Trustor, and without releasing Trustor from any obligation under this Deed of Trust: (w) make or do the same in such manner and to such extent as either may deem necessary to protect the security, Beneficiary or Trustee being authorized to enter upon the Property for such purposes; (x) appear in or commence any action or proceeding purporting to affect the security, or the rights or powers of Beneficiary or Trustee; (y) pay, purchase, contest or settle any encumbrance, charge or lien which in the judgment of either appears to be senior to this Deed of Trust; and (z) in exercising any such powers, pay allowable expenses, including attorneys' fees.

6. Reimbursement of Costs. Trustor shall pay upon demand all sums expended by Beneficiary or Trustee provided for in this Deed of Trust or allowed by law, with interest from date of expenditure calculated at the rate of 10% per annum, compounded annually, or the maximum rate allowed by law.

7. No Waiver. By accepting payment of any sum after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums or declare a default for failure to pay.

8. **Reconveyance.** That upon written request of Beneficiary stating that all sums secured hereby have been paid or forgiven, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals of such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as “the person or persons legally entitled thereto.”

9. **Assignment of Rents.** Trustor hereby absolutely and unconditionally assigns to Beneficiary all of the rents, issues, profits, royalties, revenues, income and other benefits (collectively, the “**Rents**”) derived from the Property, whether now due, past due or to become due, and hereby gives to and confers upon Beneficiary, either directly or through a receiver, the right, power and authority, but not the obligation, to collect the Rents, and to sue, either in the name of Trustor or Beneficiary, for all such Rents and to apply the same to the indebtedness secured hereby in such order as Beneficiary may determine in its sole discretion. This assignment of Rents is intended to create and shall be construed to create an absolute assignment to Beneficiary of all of Trustor’s right, title and interest in the Rents. The foregoing notwithstanding, so long as no event of default exists by Trustor in the payment of any indebtedness secured hereby, or in any other covenant contained herein, or in said Note or in any other document evidencing or securing such indebtedness, Trustor shall have the right to collect all Rents from the Property and to retain, use and enjoy the same. Upon the occurrence of such a default, and after prior written notice by Beneficiary to Trustor, Trustor shall have no interest whatsoever in the Rents that are received by Trustor after a default, and all such Rents shall be received and held by Trustor in constructive trust for Beneficiary and delivered promptly to Beneficiary, or to a court-appointed receiver for the Property, without the necessity for further notice to, or demand upon, Trustor. Upon the occurrence of such a default and at any time thereafter during the continuance thereof, Beneficiary may, at its option, send any tenant of the Property a notice to the effect that: (i) a default has occurred; (ii) Beneficiary has elected to exercise its rights under this assignment; and (iii) such tenant is thereby directed to thereafter make all payments of Rents to or for the benefit of Beneficiary or as Beneficiary shall direct. Any such tenant shall be entitled to rely upon any notice from Beneficiary and shall be protected with respect to any payment of Rents made pursuant to such notice, irrespective of whether a dispute exists between Trustor and Beneficiary with respect to the existence of a default or the rights of Beneficiary hereunder. Any such tenant shall not be required to investigate or determine the validity or accuracy of such notice or the validity or enforceability of this assignment. Trustor hereby agrees to indemnify, defend and hold any such tenant harmless from and against any and all losses, claims, damages or liabilities arising from or related to any payment of Rents by such tenant made in reliance on and pursuant to such notice. Trustor’s obligations and Beneficiary’s rights under this Section are subject to the requirements of holders of senior liens (if any) permitted by the Loan Documents or the Ground Lease (as defined in the Addendum).

10. **Default and Foreclosure.** Upon default by Trustor in payment or performance of any Secured Obligation, Beneficiary may declare all sums secured immediately due and payable by delivery to Trustee of a declaration of default and demand for sale and of a notice of default and of a notice of sale, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, the Note and all documents evidencing expenditures secured by this Deed of Trust. Upon default of any obligation secured by this Deed of Trust and acceleration of all sums due, Beneficiary may instruct Trustee to proceed with a sale of the Property under the power of sale granted in this Deed of Trust, noticed and held in accordance with California Civil Code Sections 2924, et seq., as such statutes may be amended from time to time. Trustor waives all rights it may have to require marshaling of assets or to require sales of

assets in any particular order, including any rights under California Civil Code Sections 2899 and 3433. The Trustor's limited partner may, but shall not be obligated to, cure defaults hereunder in the same manner as Borrower.

11. Substitution of Trustee. Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where the Property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed of Trust is recorded and the name and address of the new Trustee.

12. Successors and Assigns. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term "**Beneficiary**" shall mean the owner and holder, including pledgees, of the Note whether or not named as Beneficiary herein.

13. Trustee Acceptance. Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

14. Further Assurances. Trustor shall, at its own cost and expense, do, execute, acknowledge, and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers, and assurances as Trustee or Beneficiary shall from time to time require, for better assuring, conveying, assigning, transferring, and confirming unto Trustee the Property and rights hereby conveyed or assigned or intended now or hereafter so to be, or which Trustor may be or may hereafter become bound to convey or assign to Trustee, or for carrying out the intention or facilitating the performance of the terms of this Deed of Trust, or for filing, registering, or recording this Deed of Trust. Trustor shall, on demand, execute and deliver, and hereby authorizes Trustee and Beneficiary, or either of them, to execute in the name of Trustor, to the extent it may lawfully do so, one or more financing statements, chattel mortgages, or comparable security instruments, to evidence more effectively the lien hereof. Immediately upon the execution and delivery of this Deed of Trust, and thereafter from time to time, Trustor shall cause this Deed of Trust, and any security instruments creating a lien or evidencing the lien hereof upon any personal property and each instrument of further assurance, to be filed, registered, or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the title of Trustee to, the Property encumbered hereby.

15. Condemnation and Insurance Proceeds. Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation or other taking of all or any portion of the Property, or knowledge of any casualty damage to the Property, or damage in any other manner, Trustor shall immediately notify Beneficiary thereof. Trustor hereby authorizes and empowers Beneficiary as attorney-in-fact for Trustor to make proof of loss, to adjust and compromise any claim under the insurance policies covering the Property, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Beneficiary's expenses incurred in the collection of such proceeds; provided, however, that nothing contained in this Section shall require Beneficiary to

incur any expense or take any action hereunder. Trustor hereby authorizes and empowers Beneficiary, at Beneficiary's option, as attorney-in-fact for Trustor, to commence, appear in and prosecute, in Beneficiary's or Trustor's name, any action or proceeding relating to any condemnation or other taking of all or any part of the Property, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Property, or any part thereof, or for conveyances in lieu of the Property, or any part thereof, shall be paid to Beneficiary. The foregoing powers of attorney are coupled with an interest and are irrevocable. Trustor hereby authorizes Beneficiary to apply such awards, payments, proceeds or damages relating to condemnation of the Property and insurance covering the Property, after the deduction of Beneficiary's expenses incurred in the collection of such amounts, at Beneficiary's option, subject to the requirements of applicable law and the provisions hereof, to restoration or repair of the Property or to payment of the sums secured by this Deed of Trust. Beneficiary shall be under no obligation to question the amount of any compensation, awards, proceeds, damages, claims, rights of action, and payments relating to condemnation or other taking of the Property or insured casualty affecting the Property, and may accept the same in the amount in which the same shall be paid. Trustor shall execute such further evidence of assignment of any awards, proceeds damages or claims arising in connection with such condemnation or taking or such insurance as Beneficiary may require. Trustor's obligations and Beneficiary's rights under this Section are subject to the requirements of holders of senior liens (if any) permitted by the Loan Documents or the Ground Lease.

16. Severability. If any one or more of the provisions contained in this Deed of Trust shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Deed of Trust, but this Deed of Trust shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein or therein, but only to the extent of such invalidity.

17. Estoppel Certificate. Trustor shall, within ten days of a written request from Beneficiary, furnish Beneficiary with a written statement, duly acknowledged, setting forth the sums secured by this Deed of Trust and any right of set-off, counterclaim or other defense which exists against such sums and the obligations of this Deed of Trust.

18. California Uniform Commercial Code Security Agreement; Fixture Filing. Trustor hereby grants Beneficiary a security interest in all personal property of Trustor located on the Property and wherever located and used in any way in connection with or in any way relating to the Property, and whether now owned or hereafter in existence, acquired or created (including equipment, inventory, goods, documents, instruments, general intangibles, chattel paper, accounts and deposit accounts), and all fixtures of Trustor now owned or hereafter in existence, acquired or created on, of or relating to the Property, and all substitutions, replacements, additions, accessions and proceeds (including insurance proceeds) of all of the foregoing (collectively, the "**Personal Property**"). Beneficiary may file this Deed of Trust, or a reproduction hereof, in the real estate records or other appropriate index, as a financing statement for the Personal Property. Any reproduction of this Deed of Trust or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Trustor shall execute and deliver to Beneficiary, upon Beneficiary's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Deed of Trust in such form as Beneficiary may require to perfect a security interest with respect to the Personal Property. Trustor shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of

any record searches for financing statements Beneficiary may reasonably require. Without the prior written consent of Beneficiary, Trustor shall not create or suffer to be created pursuant to the California Uniform Commercial Code any other security interest in the Personal Property. Upon Trustor's breach of any covenant or agreement of Trustor contained in this Deed of Trust, including the covenants to pay when due all sums secured by this Deed of Trust, Beneficiary shall have the remedies of a secured party under the California Uniform Commercial Code and, at Beneficiary's option, may also invoke any remedies provided in this Deed of Trust as to the Personal Property. In exercising any of such remedies, Beneficiary may proceed against the Property and any of the Personal Property separately or together and in any order whatsoever, without in any way affecting the availability of Beneficiary's remedies under the California Uniform Commercial Code or the remedies provided in the Deed of Trust. This Deed of Trust also covers goods which are or which are to become fixtures on the Property and constitutes and is filed as a fixture filing under the California Uniform Commercial Code.

19. Due-On-Sale or Encumbrance. If all or any part of the Property, or any interest therein, or any beneficial interest in the general partner of Trustor (if Trustor is not a natural person or persons but is a corporation, partnership, trust, limited liability company or other legal entity), is sold, transferred, mortgaged, assigned, pledged, or further encumbered, whether directly or indirectly, whether voluntarily or involuntarily or by operational law, except as otherwise permitted by the Loan Documents or Ground Lease, Beneficiary may, at Beneficiary's option, declare all of the sums secured by this Deed of Trust to be immediately due and payable, and Beneficiary may invoke any remedies permitted by this Deed of Trust.

20. Non-Recourse. Payment and performance of the obligations set forth in the Loan Documents shall be non-recourse to Borrower and Borrower's general and limited partners, and the Lender's sole recourse with respect to the Loan shall be the right to foreclose under the Deed of Trust and other collateral forming part of the Loan Documents.

21. Partial Subordination to Section 42 Extended Use Commitment. Notwithstanding anything herein to the contrary, if the Lender takes title to the Property through foreclosure or deed of lieu of foreclosure, the Property shall remain subject to the provisions of Section 42(h)(6)(E)(ii) of the Internal Revenue Code or any similar successor provision of the Code. This section shall apply notwithstanding the order of recording of any of the Loan Documents and the TCAC Extended Use Commitment, executed in connection with the allocation of federal low income housing tax credits to the Trustor for the Property pursuant to Section 42 of such Code.

22. Permitted Transfers. The Lender consents to those purchase options and rights of first refusal in favor of the general partner of Trustor or its designee which are set forth in Trustor's partnership agreement, as well as (provided that Lender receives at least 30-days prior written notice thereof) transfers of any of Trustor's limited partner interests to affiliates of the Trustor's limited partner in which the limited partner serves as general partner, managing member or directly or indirectly controls the general partner or managing member, and agrees that transfer of title to the Property in accordance therewith shall not constitute a default under the Loan Documents, provided that Trustor gives Lender at least 30 days prior written notice of such transfer, accompanied by documentation reasonably requested by Lender and contact information for such transferee, and provided that the transferee agrees to assume the duties and obligations of the Trustor respecting the Loan on the same terms as those imposed on the Trustor.

The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to Trustor at Trustor's address hereinbefore set forth.

October 22, 2021

TRUSTOR:

CENTERTOWN II, LP,
a California limited partnership

By Centertown II, LLC,
a California limited liability company, its
managing general partner

By: BRIDGE Housing Corporation,
a California nonprofit public benefit
corporation, its managing member

By: _____
Smitha Seshadri,
Executive Vice President

By: EAH Inc.,
a California nonprofit public benefit
corporation, its managing member

By: _____
Welton Jordan,
Assistant Secretary and Chief
Real Estate Development Officer

EXHIBIT A

LEASEHOLD LEGAL DESCRIPTION

All that real property situated in the City of San Rafael, County of Marin, State of California, described as follows:

[TO BE INSERTED]

A.P.N. 011-254-19

**ADDENDUM TO DEED OF TRUST,
ASSIGNMENT OF RENTS, SECURITY
AGREEMENT AND FIXTURE FILING**

This ADDENDUM TO DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING is made a part of that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the “**Deed of Trust**”) dated as of October 22, 2021, executed by CENTERTOWN II, LP, a California limited partnership, as Trustor, in favor of CITY OF SAN RAFAEL, a municipal corporation, as Beneficiary.

1. **Loan Documents.** The “**Loan Documents**” are the following, as modified from time to time:

- (a) Note
- (b) Deed of Trust

2. **Ground Lease.** The Ground Lease is that certain Ground Lease (Centertown) between Trustor, as lessee and Beneficiary, as lessor, dated October 22, 2021, on the land to which the Property relates, as it may be amended from time to time.

3. **Hazardous Materials.**

(a) **Special Representations and Warranties.** Without in any way limiting the other representations and warranties set forth in the Deed of Trust, and after reasonable investigation and inquiry, Trustor hereby specially represents and warrants to Trustor’s knowledge as of the date of this Deed of Trust as follows:

(i) Except as described in the Ground Lease or previously disclosed to Beneficiary, the Property is not and has not been a site for the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of any Hazardous Materials. “**Hazardous Materials**” means any substance, material or waste which is or becomes regulated by any federal, state or local governmental authority, and includes without limitation (i) petroleum or oil or gas or any direct or indirect product or by-product thereof; (ii) asbestos and any material containing asbestos; (iii) any substance, material or waste regulated by or listed (directly or by reference) as a “hazardous substance”, “hazardous material”, “hazardous waste”, “toxic waste”, “toxic pollutant”, “toxic substance”, “solid waste” or “pollutant or contaminant” in or pursuant to, or similarly identified as hazardous to human health or the environment in or pursuant to, the Toxic Substances Control Act [15 U.S.C. Section 2601, *et seq.*]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, *et seq.*], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, *et seq.*], the Resource Conservation and Recovery Act [42 U.S.C. Section 6901, *et seq.*], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, *et seq.*], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, *et seq.*], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, *et seq.*], the California Hazardous Waste Act [California Health and Safety Code Section 25100, *et seq.*], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, *et seq.*], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, *et seq.*], as they now

exist or are hereafter amended, together with any regulations promulgated thereunder; (iv) any substance, material or waste which is defined as such or regulated by any "Superfund" or "Superlien" law, or any Environmental Law; or (v) any other substance, material, chemical, waste or pollutant identified as hazardous or toxic and regulated under any other federal, state or local environmental law, including without limitation, asbestos, polychlorinated biphenyls, petroleum, natural gas and synthetic fuel products and by-products.

(ii) The Property is in compliance with all laws, ordinances and regulations relating to Hazardous Materials ("**Hazardous Materials Laws**"), including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq.; the Comprehensive Environment Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, "CERCLA"), 42 U.S.C. Section 9601 et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651, the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 et seq.; the Safe Drinking Water Act, as amended, 42 U.S.C. Section 300f et seq.; and all comparable state and local laws, laws of other jurisdictions or orders and regulations.

(iii) There are no claims or actions ("**Hazardous Materials Claims**") pending or threatened against Trustor or the Property by any governmental entity or agency or by any other person or entity relating to Hazardous Materials or pursuant to the Hazardous Materials Laws.

(b) Hazardous Materials Covenants. Trustor agrees as follows:

(i) Trustor shall not cause or permit the Property to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any Hazardous Materials.

(ii) Trustor shall comply and cause the Property to comply with all Hazardous Materials Laws.

(iii) Trustor shall immediately notify Beneficiary in writing of: (i) the discovery of any Hazardous Materials on, under or about the Property; (ii) any knowledge by Trustor that the Property does not comply with any Hazardous Materials Laws; (iii) any Hazardous Materials Claims; and (iv) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be designated as Border Zone Property.

(iv) In response to the presence of any Hazardous Materials on, under or about the Property, Trustor shall immediately take, at Trustor's sole expense, all remedial action required by any Hazardous Materials Laws or any judgment, consent decree, settlement or compromise in respect to any Hazardous Materials Claims.

(c) Inspection By Beneficiary. Upon reasonable prior notice to Trustor, Beneficiary, its employees and agents, may from time to time (whether before or after the commencement of

a nonjudicial or judicial foreclosure proceeding) enter and inspect the Property for the purpose of determining the existence, location, nature and magnitude of any past or present release or threatened release of any Hazardous Material into, onto, beneath or from the Property.

(d) Hazardous Materials Indemnity. Trustor hereby agrees to defend, indemnify and hold harmless Beneficiary, its employees, agents, successors and assigns from and against any and all losses, damages, liabilities, claims, actions, judgments, court costs and legal or other expenses (including, without limitation, attorneys' fees and expenses) which Beneficiary may incur as a direct or indirect consequence of the use, generation, manufacture, storage, disposal, threatened disposal, transportation or presence of Hazardous Materials in, on, under or about the Property. Trustor shall immediately pay to Beneficiary upon demand any amounts owing under this indemnity, together with interest at the rate of 10% per annum. Trustor's duty and obligations to defend, indemnify and hold harmless Beneficiary shall survive the release, reconveyance or partial reconveyance of this Deed of Trust.

(e) Legal Effect of Section. Without limiting any of the remedies provided in this Deed of Trust, Trustor acknowledges and agrees that each of the provisions in this Section 3 is an environmental provision (as defined in Section 736(f)(2) of the California Code of Civil Procedure) made by Trustor relating to real property security (the "**Environmental Provisions**"), and that Trustor's failure to comply with any of the Environmental Provisions will be a breach of contract that will entitle Beneficiary to pursue the remedies provided by Section 736 of the California Code of Civil Procedure ("**Section 736**") for the recovery of damages and for the enforcement of the Environmental Provisions. Pursuant to Section 736, Beneficiary's action for recovery of damages or enforcement of the Environmental Provisions shall not constitute an action within the meaning of Section 726(a) of the California Code of Civil Procedure or constitute a money judgment for a deficiency or a deficiency judgment within the meaning of Sections 580a, 580b, 580d, or 726(b) of the California Code of Civil Procedure. Notwithstanding any contrary provision contained herein, the obligations of Trustor under this Section shall survive any foreclosure proceeding, any foreclosure sale, any delivery of a deed in lieu of foreclosure, and any release or reconveyance of this Deed of Trust.

Trustor's Initials

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

City of San Rafael
1400 Fifth Avenue, Room 209
San Rafael, California 94901
Attn: City Clerk

APN: 011-254-19

(Space above for Recorder's use only)

AFFORDABLE HOUSING REGULATORY AGREEMENT

This Affordable Housing Regulatory Agreement (the "**Agreement**") is made this 22nd day of October, 2021 by and between the **City of the City of San Rafael**, a municipal corporation ("**City**"), and **Centertown II, LP**, a California limited partnership ("**Owner**").

RECITALS

A. City is the owner of certain land ("**Land**") in the City. Owner is the owner of certain improvements on the Land ("**Improvements**") and pursuant to the Ground Lease (as defined below), has acquired a leasehold interest in the Land. Owner's leasehold in the Land, together with the Improvements, is more particularly described in Exhibit A, is the "**Development**."

B. Owner intends to operate the Development as an affordable housing project (the "**Project**") comprised of a 60 unit (including one manager's unit) housing project (the "**Improvements**"), located on the Development in the City of San Rafael.

C. As further consideration for City's agreement to lease the Land to Owner, and to further the interests of City, Owner has agreed to enter into and record this Agreement. The purpose of this Agreement is to regulate and restrict the occupancy, rents, operation, ownership, and management of the Development and the Project for affordable housing and related uses. The covenants in this Agreement are intended to run with the land and be binding on Owner and its successors and assigns in the Development.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and City hereby agree as follow:

A. Definitions.

The following terms have the meanings and content set forth in this section wherever used in this Agreement or attached exhibits.

"**Affordable Rent**" means the total charges for rent and utilities to each Qualifying Household as allowed based on household size, income level and unit size pursuant to Fair Market Rents and Income Limits published annually by HUD.

"**City**" is the City of San Rafael.

"**Development**" is defined in Recital A.

"**Ground Lease**" means that certain Ground Lease (Centertown Project) between the

City (as Landlord) and Owner (as Lessee), dated October 22, 2021 as memorialized by a Memorandum of Ground Lease of the Development dated October 22, 2021, and recorded in the Official Records of Marin County, California substantially concurrently herewith, as amended from time to time.

“**HUD**” means the Federal Department of Housing and Urban Development, or successor.

“**Lower Income Household**” means a household whose annual income does not exceed eighty percent (80%) of the Area Median Income as determined for the San Francisco, California HUD Metro FMR Area annually by HUD and adjusted for household size.

In the event that such income determinations are no longer published by HUD, “Median Income” shall mean the median gross yearly income for households in Marin County, as published periodically by the California Department of Housing and Community Development (“**HCD**”). In the event that such income determinations are no longer published by HCD, or are not updated for a period of at least eighteen months, Lessor shall provide Lessee with other income determinations which are reasonably similar with respect to method of calculation to these previously published by HCD or HUD.

“**Owner**” means Centertown II, LP, a California limited partnership, and its officers, officials, directors, employees, agents and authorized representatives.

“**Project**” means the Units on the Development and any supportive services and programs provided to tenants of the Development.

“**Qualifying Household**” means a household that qualifies as a Lower Income Household.

“**Restricted Units**” is defined in C.1, below.

“**TCAC**” means the California Tax Credit Allocation Committee.

“**Term**” means the term of this Agreement described herein.

“**Unit**” means any one of the units in the Project.

B. OWNER'S OBLIGATIONS

1. **Compliance With Ground Lease.** Owner's actions with respect to the Development shall at all times be in full conformity with all of the requirements of the Ground Lease, including but not limited to the insurance requirements contained therein.

2. **Use For Affordable Housing.** Owner agrees that, at all times during the Term of this Agreement, a minimum of 28 Units in the Project will be used as affordable housing for Lower Income Households.

3. **Term of Agreement.** This Agreement shall commence upon completion of the rehabilitation of the Project and shall remain in full force and effect for the entire term of the Ground Lease, including that of any “New Lease” as defined therein.

C. OCCUPANCY AND RENTS

1. **Occupancy Of Units.** During the term of this Agreement, 28 Units in the Project will be used as affordable housing for Lower Income Households (“**Restricted Units**”).

2. Tenant Selection. Owner shall adopt written tenant selection policies for the 28 Restricted Units that: (i) are reasonably related to program eligibility and the applicant's ability to perform the obligations of the lease; (ii) are consistent with the purpose of providing housing for Qualifying Households; and (iii) give prompt written notification to any rejected applicant of the grounds for rejection.

3. Nondiscrimination. Owner shall not discriminate or segregate in the use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any units in the Project on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. Owner shall include a statement in all advertisements, notices and signs for the availability of Units for rent to the effect that Owner is an Equal Housing Opportunity Provider.

4. Income Certification and Increases In Tenant Income. Owner shall certify the incomes of all prospective tenants in the Restricted Units prior to their initial occupancy of a Unit and shall recertify their incomes annually. If upon recertification, a tenant's income exceeds the maximum designated for a Lower Income Household, Owner may increase the rent for such tenants to no more than 30% of the tenant's income and the tenant may be permitted to continue to occupy a Unit in the Project. Owner shall provide City an annual report on the income recertification evidencing that Project occupants meet the requirements of qualified households.

5. Rental Charges. Total charges for rent, utilities and related services for each Unit in the Project shall not exceed the Affordable Rent for that Unit. If upon recertification, a tenant's income exceeds the Qualifying Household limit for the applicable Unit type, Owner may increase the rent for such tenants to no more than 30% of the Tenant's monthly income less utility and other mandatory charges.

6. Conflicts With Other Regulatory Requirements. If any other regulatory agreement executed by Owner enforces the requirements of any loan program or low income housing tax credits as a means of providing financing or equity for the Development or Project are more restrictive than the rent and income restrictions contained in this Agreement, compliance with the rent and income restrictions of any such regulatory agreements shall be deemed compliance with this Agreement.

D. PROPERTY MANAGEMENT.

1. Management Responsibilities. Owner is responsible for all management functions with respect to the Project, including without limitation the selection of tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. City shall have no responsibility over management of the Development or the Project.

2. Review of Management Policies. Owner shall submit its written management policies with respect to the Project and Program to City for its review, and shall amend such policies in any way necessary to insure that such policies comply with the provisions of this Agreement and the requirements of all parties providing financing for the Development and/or the Project.

3. Inspection and Records. Owner shall maintain records that clearly document Owner's performance of its obligations to operate the Development under the terms of this Agreement. Owner shall submit any records to City within ten business days of City's request. Owner shall permit City to enter and inspect the Project for compliance with obligations under this Agreement upon 72 hours advance notice of such visit by City to Owner or Owner's management agent and to tenants of any Units.

4. **Annual Report.** Owner shall submit to City each year, on or prior to the date such report is required to be submitted to TCAC, a report for the preceding calendar year showing the necessary information to allow City to determine Owner's compliance with this Agreement, and within 30 days after receipt of a written request, any other information or completed forms requested by City in order to comply with City reporting requirements.

E. GENERAL PROVISIONS

1. **Default and Remedies.** In the event of any Owner breach of any agreement or obligation under this Agreement, City shall provide written notice to Owner and Owner's limited partner] of such breach. Owner shall have an opportunity to cure the breach within 30 days from Owner's receipt of such written notice or such longer period of time as City determines is necessary to cure the breach if Owner diligently undertakes to cure. If Owner fails to perform a timely cure, City may proceed with any remedy allowed by law to enforce the terms and conditions of this Agreement. A cure by Owner's limited partner shall be accepted or rejected on the same basis as if made or tendered by Owner.

2. **Binding Upon Successors.** All provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferee, and assigns of Owner and City, and shall run with the land for the full term of this Agreement.

3. **Non-Liability of Officials, Employees and Agents.** No officers, directors, employees and agents of City shall be personally liable to Owner for any obligation created under the terms of this Agreement.

4. **Indemnity.** Owner shall indemnify and hold City free and harmless against any losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including reasonable attorneys' fees) which City may incur as a direct or indirect consequence of Owner's failure to perform any obligations as and when required by this Agreement. This indemnity obligation shall not extend to any claim arising solely from the gross negligence or willful acts of City, its agents, and its employees. Owner's duty to indemnify City shall survive the term of this Agreement. Notwithstanding the foregoing or anything else to the contrary contained herein, no foreclosing lender or its successors and/or assigns shall be responsible or liable for any indemnity obligations that accrue hereunder prior to the completion of foreclosure (or acceptance of a deed in lieu thereof).

5. **Governing Law.** This Agreement shall be interpreted under and be governed by the laws of the State of California, including its statutes of limitation, except for those provisions relating to choice of law and those provisions preempted by federal law.

6. **Agreement Controls.** Notwithstanding any provisions of the Ground Lease, in the event that any provisions of this Agreement and Ground Lease conflict, the terms of this Agreement shall control.

7. **Consents and Approvals.** Any consent or approval of City required under this Agreement shall not be unreasonably withheld. Any approval must be in writing and executed by an authorized representative of City.

8. **Notices, Demands and Communication.** Formal notices, demands and communications between Owner and City shall be sufficiently given and shall not be deemed given unless dispatched by (i) delivered personally or by courier, (ii) sent by overnight express delivery, or (iii) mailed by registered or certified mail (return receipt requested), postage prepaid, to the principal offices of Owner and City as follows:

City:
City of San Rafael
1400 Fifth Avenue, Room 202
San Rafael, California 94901
Attention: City Manager

Owner:
Centertown II, LP
c/o BRIDGE Housing Corporation
600 California St #900
San Francisco, CA 94108
Attn: General Counsel

With a copy to:

City of San Rafael
1400 Fifth Avenue, Room 202
San Rafael, CA 94901
Attn: City Attorney

and

Centertown II, LP
EAH Inc.
22 Pelican Way
San Rafael, CA 94901
Attn: Welton Jordan
Chief Real Estate Development Officer

With a copy to

Goldfarb & Lipman LLP
1300 Clay Street, 11th Floor
Oakland, CA 94612
Attention: Erica Williams Orcharton

and

Bocarsly Emden Cowan Esmail & Arndt LLP
633 West Fifth Street, 64th Floor
Los Angeles, CA 90071
Attention: Nicole Deddens

With a copy to
NHT Equity, LLC
2245 North Bank Drive, Suite 200
Columbus, OH 43220
Attention: Asset Management

and

Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102
Attention: Jill H. Goldstein, Esq.

9. Relationship of Parties. The relationship of Owner and City during the term of this Agreement is solely that of City and owner shall not be construed as a joint venture, equity venture, or partnership.

10. Waiver. Any waiver by City of any obligation in this Agreement must be in writing. No waiver will be implied from any delay or failure by City to take action on any breach or default of Owner or to pursue any remedy allowed under this Agreement, the Ground Lease or applicable law. Any extension of time granted to Owner 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 City to any act or omission by Owner shall not be construed to be consent to any other or subsequent act or omission or to waive the requirement for City's written consent to future

waivers.

11. Amendments and Modifications. Any amendments or modifications to this Agreement must be in writing, and shall be made only if executed by both Owner and City.

12. Severability. Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

[Remainder of Page left Intentionally Blank]

IN WITNESS WHEREOF, City and Owner have caused this Regulatory Agreement to be executed by their duly authorized representatives.

City

CITY OF SAN RAFAEL,
a municipal corporation

By: _____
Jim Schultz, City Manager

Owner:

CENTERTOWN II, LP,
a California Limited Partnership

By: Centertown II, LLC,
a California limited liability company, its managing general partner

By: BRIDGE Housing Corporation,
a California nonprofit public benefit corporation, its managing member

By: _____
Smitha Seshadri, Executive Vice President

By: EAH Inc.,
a California nonprofit public benefit corporation, its managing member

By: _____
Welton Jordan, Assistant Secretary and
Chief Real Estate Development Officer

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of _____)

On _____ before me, _____, Notary Public, personally appeared, _____, who proved to me the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her their authorized capacity(ies), and that by his/her/their signature (s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of _____)

On _____ before me, _____, Notary Public, personally appeared, _____, who proved to me the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her their authorized capacity(ies), and that by his/her/their signature (s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

EXHIBIT A

LEASEHOLD LEGAL DESCRIPTION

All that real property situated in the City of San Rafael, County of Marin, State of California, and described as follows:

[TO BE INSERTED]

A.P.N. 011-254-19