

**COUNTY OF ALAMEDA COUNTYWIDE OVERSIGHT BOARD**

**RESOLUTION NUMBER NO. OB-2020-09**

**A RESOLUTION OF THE COUNTY OF ALAMEDA**

**COUNTYWIDE OVERSIGHT BOARD**

**APPROVING THE AMENDMENT TO THE COMMERCIAL DEVELOPMENT LOAN  
AGREEMENT**

**FOR THE SUCCESSOR AGENCY OF THE CITY OF OAKLAND**

**WHEREAS**, the Redevelopment Dissolution Law (AB 1X 26, enacted June 28, 2011, as amended by AB 1484, enacted June 27, 2012 and SB 107, enacted on September 22, 2015) and Section 34177 of the Health and Safety Code ("HSC") required the successor agencies, among other things, to expeditiously wind down affairs of each former redevelopment agency ("RDA"), while continuing to meet the former RDA's enforceable obligations, and overseeing completion of redevelopment projects and disposing of the assets and properties of the former RDA, all as directed by the successor agencies' oversight boards pursuant to HSC Section 34179(a); and

**WHEREAS**, HSC Section 34179(j) provided for the creation of the County of Alameda Countywide Oversight Board ("Oversight Board") commencing on and after July 1, 2018; and

**WHEREAS**, pursuant to Section 34181(e) of the HSC, the Oversight Board shall direct the Successor Agency of the City of Oakland ("Successor Agency"), to determine whether any contracts, agreements, or other arrangements between the dissolved redevelopment agency and any private parties should be terminated or renegotiated to reduce liabilities and increase net revenues to the taxing entities, and present proposed termination or amendment agreements to the Oversight Board for its approval. The Oversight Board may approve any amendments to or early termination of those agreements if it finds that amendments or early termination would be in the best interests of the taxing entities; and

**WHEREAS**, on July 11, 1997, the former Redevelopment Agency of the City of Oakland (the "Redevelopment Agency") entered into a Disposition and Development Agreement ("DDA") with East Bay Asian Local Development Corporation ("EBALDC"), pursuant to Redevelopment Agency Resolution No. 97-18 C.M.S., with regard to a proposed mixed-use retail, residential, office and community facility in the historic Swans Marketplace ("Swans Project") in the Central District Redevelopment Project Area; and

**WHEREAS**, on June 8, 1998, the Agency, pursuant to Resolution No. 97-19 C.M.S. dated May 20, 1997, executed a \$1,150,00 Commercial Development Loan with EBALDC for the Swans Project ("Loan"); and

**WHEREAS**, the Oakland Redevelopment Successor Agency (ORSA) stepped into the rights and obligations under the DDA and Loan when the Redevelopment Agency dissolved; and

**WHEREAS**, EBALDC has requested that ORSA re-subordinate the Commercial Development Loan to new permanent financing that will replace the loan currently in place before the Commercial Development Loan; and

**WHEREAS**, EBALDC has shown that subordinating the Commercial Development Loan to new financing will aid in avoiding potential default on the Commercial Development Loan by extending the repayment schedule and allow EBALDC to pursue refinancing opportunities in the future, particular in the face of uncertain economic impacts as a result of COVID-19 ; and

**WHEREAS**, EBALDC has requested extending the amortization schedule of the Commercial Development Loan for 22-years with a maturity of the loan to be in the year 2050; and

**WHEREAS**, EBALDC has requested the ability to pursue future refinancing opportunities to better support the operations and management of Swan's Marketplace without returning to the Count of Alameda Countywide Oversight Board; and

**WHEREAS**, the Commercial Development Loan only requires payments when there is available cash flow; and

**WHEREAS**, EBALDC has not been able to make payments to the Agency and/or ORSA from available cash flow; and

**WHEREAS**, EBALDC has agreed to a one-time extension fee to the taxing entities in the amount of \$50,000; and

**WHEREAS**, the Redevelopment Agency authorized the agency administrator to amend Commercial Development Loan documents as required for the project within the general terms of Resolution No. 97-19 C.M.S.; and

**WHEREAS**, the Oversight Board held a public meeting on December 3, 2020, and considered the Amendment to the Commercial Development Loan agreement following the notice required by law.

**WHEREAS**, the Oversight Board finds that the Amendment to the Commercial Development Loan agreement will increase revenues, decrease liabilities and is in the best interest of the taxing entities.

**NOW, THEREFORE, BE IT RESOLVED** that the Oversight Board hereby authorizes and approves the resubordination of the Commercial Development Loan to a refinanced loan, and authorizes a modification to the Commercial Development Loan to (1) increase the maturity date to 2050, (2) revise the definition of surplus cash flow to (A) include debt service on unsecured debt and advances used for operating expenses as an allowable operating expense and (B) add net refinance proceeds as operating revenue, and (3) delete the due on refinance clause;

**PASSED AND ADOPTED** at a regular meeting of the Oversight Board for the Successor Agency of the City of Oakland this 3rd day of December, 2020 by the following vote:

<b>Board Members</b>	<b>Carson</b> County Board of Supervisors	<b>Halliday</b> City Selection Committee	<b>Sethy</b> Ind. Special District Committee	<b>Mack-Rose</b> County Office of Education	<b>Dela Rosa</b> Chancellor of the CA Comm. College	<b>O'Connell</b> County Board of Supervisors (Public)	<b>Katz Mulvey</b> Recognized Employee Organization
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AYES:	✓	✓	✓	✓	✓		
NOES:							
ABSENT:						✓	
ABSTAIN:							✓

RECUSE

DocuSigned by:  
*Barbara Halliday*  
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 Chairperson, Barbara Halliday

ATTEST:



Secretary of the Countywide Oversight Board  
 of the County of Alameda

**SECOND AMENDMENT TO LOAN AGREEMENT AND NOTE**

**SWANS MARKET PROJECT**

**\$1,150,000 COMMERCIAL DEVELOPMENT LOAN**

**THE OAKLAND REDEVELOPMENT SUCCESSOR AGENCY, LENDER**

**AND**

**EAST BAY ASIAN LOCAL DEVELOPMENT CORPORATION, BORROWER**

## SECOND AMENDMENT TO LOAN AGREEMENT AND NOTE

The Loan Agreement originally by and between the Redevelopment Agency of the City of Oakland (“Redevelopment Agency”), a community redevelopment agency organized and existing under Community Redevelopment Law, and Swans Marketplace Partnership, L.P., (the “Partnership”), dated June 18, 1998 (the “Loan Agreement”), and the Promissory Note Secured by Deed of Trust executed by Partnership in connection with this loan (the “Note”), as amended by that First Amendment to Promissory Note of Swans Marketplace Partnership, L.P. dated August 18, 2005 (the “First Amendment”), is hereby amended by this Second Amendment to Loan Agreement and Note (“Second Amendment”) dated for reference as of \_\_\_\_\_, 2020 (“Effective Date”), by and between the Oakland Redevelopment Successor Agency (“ORSA”), successor agency to the Redevelopment Agency pursuant to California Health and Safety Code Section 34173, and East Bay Asian Local Development Corporation (“Borrower”), a California nonprofit public benefit corporation. (ORSA and Borrower are collectively referred to as the “Parties”).

### RECITALS

A. On June 18, 1998, the Redevelopment Agency and the Partnership entered into the Loan Agreement and Note for a loan in the amount of \$1,150,000 (the “Loan”) for the development of Swans Market (the “Project”) at 521 10<sup>th</sup> Street and 901 Washington Street, Oakland (the “Properties”).

B. On December 23, 2009, the Redevelopment Agency, the Partnership, and Borrower entered into an Assignment and Assumption Agreement assigning the Partnership’s rights, title, interest and obligations under the Loan to Borrower.

C. Pursuant to California law, the Redevelopment Agency was dissolved on February 1, 2012. On July 17, 2012, the City of Oakland established ORSA, which acquired the rights, duties and obligations of the Redevelopment Agency, including the Redevelopment Agency’s interest in the Loan.

D. On October 31, 2013, ORSA subordinated the deed of trust securing the Loan to new New Markets Tax Credit financing for the Project as authorized by Oakland Oversight Board Resolution No. 2013-7 approved on March 18, 2013.

E. Borrower has requested that ORSA amend the Loan Agreement and Note to extend the term of the Loan by 22 years, from 2028 to 2050, and subordinate the Loan to new financing that is required to unwind the New Market Tax Credit financing.

F. ORSA is requiring Borrower to pay a \$50,000 extension fee in connection with this Second Amendment.

G. All capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Loan Agreement and Note.

H. This Second Amendment shall not take effect unless and until it has been approved by the Alameda Countywide Oversight Board and the California Department of Finance, pursuant to Health and Safety Code Section 34179.

NOW, THEREFORE, the Loan Agreement and Note are amended as follows:

1. Section 2.3 of the Loan Agreement, TERM OF LOAN, is amended to read as follows:

TERM OF LOAN. Payments of principal and interest shall be made as required by the Note. Unless due sooner under the Note, the Loan principal balance and all accrued interest shall be due and payable on the earlier of (a) thirty (30) years from the date of the Second Amendment to Loan Agreement and Note, or (b) an Event of Default by Borrower which has not been cured as provided for in this Agreement.

2. Section 2 of the Note, as previously amended by the First Amendment, is hereby amended to read as follows:

**2. AMOUNT AND TIME OF PAYMENT.** Beginning in the calendar year in which the Project first obtains a certificate of occupancy, and continuing annually thereafter, Borrower shall make payments of principal and interest equal to the Available Cash Flow, as defined below, from the Property. Payment for each calendar year shall be made no later than 90 calendar days following the end of each calendar year. Borrower shall provide Lender, within 60 calendar days of the end of each calendar year, with an accounting, prepared by an independent auditor, of the Operating Revenues and Operating Expenses>Returns, as defined below, for the previous calendar year.

“Available Cash Flow” means the excess of annual Operating Revenues over annual Operating Expenses>Returns for the Property. “Operating Revenues” shall mean all income derived from the Property, and shall include, without limitations: (1) rents and lease payments (including rent on commercial or common space within the Property); (2) interest on contingency reserves or other reserves not designated as a sinking fund; (3) proceeds from debt refinancings greater than the amount of original debt principal (net of refinancing fees); and (4) receipts from services other than parking which is a fee charged. “Operating Expenses>Returns” shall mean, without limitations: (1) all direct costs and expenses necessary to operate the Property as approved by the Lender; (2) debt service on any loans and operating advances, provided that such loans or advances have been used to acquire the Property, develop the Project, or operate the Property, and have been approved by Lender; (3) debt service on the unsecured loan by the Heron Foundation, which will be fully repaid in March of 2008; (4) payments of operating reserves not to exceed two percent (2%) of gross rental revenue per year to achieve a maximum operating reserve equal the six (6) months operating costs, including debt service; (5) replacement reserves for capital items not to exceed six tenths of a percent (0.6%) of the replacement cost of the commercial and garage components of the Project; (6) ground lease payments, provided that the amount paid in any year may not exceed the permitted Return on

Investment, defined as an amount equal to 10 percent of the aggregate cash or property (valued at its fair market value at the time of acquisition) contributed or paid to Borrower by its partners; and (7) reasonable partnership management expenses up to \$15,000 per year. For operating advances, Borrower must report to Lender on a quarterly basis any amounts advanced (including cumulative advances) and the uses of funds advanced. As of the date of this Amendment, Borrower has made, and Lender hereby approves, operating advances totaling Six Hundred Fifty Thousand Dollars (\$650,000). For any operating advances made after the date of this Amendment, Borrower shall report to Lender on a quarterly basis any amounts advanced (including cumulative advances) and the uses of funds advanced.

Notwithstanding the preceding provision, Borrower shall pay to the order of Lender the full amount of the outstanding principal advanced under this Note and the Loan Agreement, together with all accrued but unpaid interest thereon (provided that unpaid interest shall be payable only to the extent of available proceeds) on the earliest of: (a) thirty (30) years from the date of the 2<sup>nd</sup> Amendment of this Note; (b) the date the Project is sold; or (c) an Event of Default by Borrower as defined in the Loan Agreement which has not been cured in the manner and time provided in the Loan Agreement. Notwithstanding the above, payments shall also be due from syndication proceeds, leveraged funds, and other funds received by Borrower or an affiliate as required by Lender under the syndication provision of the Loan Agreement.

3. A \$50,000 extension fee shall be paid by Borrower to ORSA upon execution of this Second Amendment.

[Signatures on following page]

**IN WITNESS WHEREOF**, the undersigned Parties have executed this Second Amendment, as of the Effective Date.

**BORROWER:**

**East Bay Asian Local Development Corporation,**  
a California nonprofit public benefit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**ORSA:**

**Oakland Redevelopment Successor Agency,**  
successor agency to the Redevelopment Agency of the  
City of Oakland under Health and Safety Code Section  
34173

By: \_\_\_\_\_

Name: \_\_\_\_\_

ORSA Administrator

Approved as to form and legality:

\_\_\_\_\_

ORSA Counsel