

**Recording requested by  
And when recorded mail to:**

City of Alameda  
c/o Housing Authority  
701 Atlantic Avenue  
Alameda, CA 94501  
Attention: Executive Director

Exempt from recording fees pursuant to  
Cal. Gov't Code § 27383

APN: \_\_\_\_\_

**AFFORDABLE HOUSING AGREEMENT**  
(Rental Units Required Pursuant to City Inclusionary Housing Requirements  
Set Forth in Section 30-16 of the City Municipal Code)

This Affordable Housing Agreement (“**Agreement**”) dated \_\_\_\_\_ (“**Effective Date**”), is entered into between the **CITY OF ALAMEDA**, a municipal corporation (“**City**”) and **THE HOUSING AUTHORITY OF THE CITY OF ALAMEDA**, a public body corporate and politic (“**Developer**”).

RECITALS

The following recitals are a substantive part of this Agreement.

A. Developer is the owner of that certain real property located in the City of Alameda, County of Alameda, State of California, more particularly described in Exhibit A attached hereto (“**Property**”).

B. City Municipal Code Section 30-16, added by Ordinance No. 2965-NA adopted on June 15, 2004, sets forth certain inclusionary housing requirements for residential development in the City (“**City Inclusionary Policy**”).

C. The Property is the site of a XX-unit residential development located in the City of Alameda (“**Housing Project**”) that shall be ~~developer~~developed as affordable housing pursuant to the City Inclusionary Policy. The Housing Project shall be developed by Developer in accordance with (a) City Council Ordinance No. \_\_\_\_\_ approving Developer’s Master Plan and Density Bonus Application, allowing for development of \_\_\_\_\_, on file with the Planning and Building Department, as depicted on the approved site plans for the Project attached as Exhibit XX; City Council Ordinance No. \_\_\_\_\_ includes certain conditions of approval, including Condition of Approval No. \_\_\_\_\_, which requires that the Developer reserve XX units in the Project for sale or rental to low- and very low-income households (each

an “Affordable Unit”, and collectively, the “Affordable Units”) in accordance with the City Inclusionary Policy, one (1) of which may be a manager’s unit in accordance herewith.

D. Developer and City desire by the execution of this Agreement to assure the Property meets the requirements of the City Inclusionary Policy, and that the Affordable Units remain affordable for a minimum of fifty-nine (59) years following the date of recordation of this Agreement.

NOW THEREFORE, the parties acknowledge and agree as follows:

## ARTICLE 1. DEFINITIONS

1.01 “Affordable Rent” is the amount of rent considered as “affordable rent” for very low and low income households, adjusted for family size appropriate to the unit, less a utility allowance, pursuant to California Health and Safety Code Section 50053 or any successor statute thereto. If the statute is no longer in effect and no successor statute is enacted, the City shall establish the Affordable Rent for purposes of this Agreement. For purposes of this Section 1.01 “adjusted for family size appropriate to the unit” shall mean a household of two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit. Notwithstanding the foregoing, during the 15 years of the tax credit compliance period under Internal Revenue Code Section 42 applicable to the Housing Project, or such longer term required pursuant to a Regulatory Agreement executed by the California Tax Credit Allocation Committee (“CTCAC”) and recorded against the Housing Project (the “TCAC Regulatory Agreement”), the City hereby permits Developer to use the occupancy standards and rent levels used by CTCAC for purposes of enforcing the TCAC Regulatory Agreement.

1.02 ~~“Eligible Households” shall mean households meeting the income restrictions as set forth in Section 2.01.~~ “Applicable Laws” means all applicable laws, ordinances, statutes, codes, orders, decrees, rules, regulations, official policies, standards and specifications (including any ordinance, resolution, rule, regulation standard, official policy, condition, or other measure) of the United States, the State of California, the County of Alameda, City of Alameda, or any other political subdivision in which the Housing Project is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the Developer or the Housing Project.

1.03 ~~1.03~~—“Area Median Income” shall mean the median income for households in Alameda County, California, as published from time to time by the United States Department of Housing and Urban Development (“HUD”) in a manner consistent with the determination of median gross income under Section 8 of the United States Housing Act of 1937, as amended, and as defined in Title 25, California Code of Regulations, Section 6932. In the event that such income determinations are no longer published by HUD, or are not updated for a period of at least 18 months, the City shall provide the Developer with other income determinations that are reasonably similar with respect to methods of calculation to those previously published by HUD. Notwithstanding the foregoing, during the TCAC Compliance Period, or such longer term

required pursuant to the TCAC Regulatory Agreement, the City hereby permits Developer to use the income levels used by CTCAC for purposes of enforcing the TCAC Regulatory Agreement..

~~1.04 “Applicable Laws” means all applicable laws, ordinances, statutes, codes, orders, decrees, rules, regulations, official policies, standards and specifications (including any ordinance, resolution, rule, regulation standard, official policy, condition, or other measure) of the United States, the State of California, the County of Alameda, City of Alameda, or any other political subdivision in which the Housing Project is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the Developer or the Housing Project.~~

1.04 “Eligible Households” shall mean households meeting the income restrictions as set forth in Section 2.01.

## **ARTICLE 2. RENT, INCOME AND OCCUPANCY RESTRICTIONS**

2.01 Rent and Income Restrictions. All of the Affordable Units to be located on the Property shall be rented to very low or low income households whose income does not exceed the limits set forth below:

- (a) Not less than \_\_\_\_\_ (XX) of the Affordable Units constructed on the Property shall be available to Eligible Households whose gross income does not exceed fifty percent (50%) of the Area Median Income at an Affordable Rent.
- (b) Not less than \_\_\_\_\_ (XX) of the Affordable Units constructed on the Property shall be available to Eligible Households whose gross income does not exceed eighty percent (80%) of the Area Median Income at an Affordable Rent.

~~Notwithstanding~~In addition to and notwithstanding the foregoing, Developer ~~may, in its sole reasonable judgment, elect to have a full-time property managers~~shall have an on-site management staff person residing on the Property; ~~in which event one (1) of the Affordable Units may be~~unit designated as a resident manager's unit, and such ~~Affordable Unit~~manager's unit shall not be subject to the above affordability restrictions so long as such ~~Affordable Unit~~unit is occupied by ~~a full-time~~an on-site manager~~management staff person~~ for the Housing Project. If at any time such unit is not occupied by an on-site management staff person, such unit shall be operated as an Affordable Unit and shall be made available to Eligible Households whose gross income does not exceed eighty percent (80%) of the Area Median Income at an Affordable Rent.

~~No~~At the time any lease is executed or renewed, (i) no less than one (1) person per bedroom shall be allowed.~~—No, (ii) no~~ more than two (2) persons shall be permitted to occupy a studio Affordable Unit, ~~(iii) no more than two~~three (23) persons shall be permitted to occupy a one (1) bedroom Affordable Unit, ~~(iv) no more than four~~five (45) persons shall be permitted to occupy a two (2) bedroom Affordable Unit, and ~~(v) no more than six~~seven (67) persons shall be permitted to occupy a three (3) bedroom Affordable Unit. At the request of Developer, City may

make exceptions to the foregoing occupancy standards to the extent such exceptions are ~~required~~permitted by Applicable Laws, and do not increase City's obligations or liabilities under this Agreement, or diminish or impair City's rights and remedies under this Agreement.

Not more than once per year, Developer may adjust rents in occupied Affordable Units to the level allowed for the family size appropriate to the unit. Developer may adjust the rent upon vacancy of an Affordable Unit to the level allowed for the family size appropriate to the unit. City shall annually publish a list of all rent ceilings reflecting the annual adjustments in the income limits for Eligible Households provided by HUD and the State of California Department of Housing and Community Development (“HCD”). Developer must notify each tenant and City in writing of any increase in monthly rent for an Affordable Unit at least thirty (30) days in advance of the effective rent adjustment date. The written notice of rent increase provided to City shall indicate: (1) the rent adjustment for each Affordable Unit; (2) the new rental amount for each Affordable Unit; and (3) the effective date of the adjustment for each Affordable Unit. Failure to provide the notice required shall be considered a ~~default~~failure to perform by Developer under this Agreement; and subject to the terms of Article 11.

The determination of a status as an Eligible Household shall be made by Developer prior to initial occupancy of the Affordable Unit by such household ~~and; provided that, if Developer fails to perform any term or provision of this Agreement related to the determination of status of an Eligible Household, as reasonably determined by City, then until such failure has been cured and upon written request by City, such determination~~ shall be subject to review and approval by City. The income of all persons residing in the Affordable Unit shall be considered for purposes of calculating the household income. Developer shall not discriminate against prospective tenants with qualified Public Housing Authority Section 8 certificates or vouchers who are otherwise qualified. ~~Developer shall notify City in writing whenever the tenant in an Affordable Unit changes. The notice shall indicate the name and household size of the tenant vacating the Affordable Unit. Once the Affordable Unit is reoccupied, Developer shall notify City in writing of the new tenant's name, household size and income.~~

Immediately prior to the first anniversary date of the occupancy of an Affordable Unit by an Eligible Household, and on each anniversary date thereafter, Developer shall re-certify the income of the occupants of such Affordable Unit by obtaining a completed Tenant Income Certification based upon the current income of each occupant of the Affordable Unit. The Tenant Income Certification shall be in the form attached hereto as Exhibit B or in a form acceptable to the California Tax Credit Allocation Committee.

If an occupant of an Affordable Unit no longer qualifies as an Eligible Household under Section 2.01(a) due to an increase in income but qualifies as an Eligible Household under Section 2.01(b), the occupant may continue to occupy the Affordable Unit and shall be treated as an Eligible Household under Section 2.01(b); provided, however, Developer shall rent the next available comparable unit within the Housing Project (i.e., same number of bedrooms and bathrooms) as an Affordable Unit to an occupant who qualifies as an Eligible Household under Section 2.01(a). If an occupant of an Affordable Unit no longer qualifies as an Eligible Household due to an increase in income ~~above the limitation set forth in paragraph (a) and/or (b), as appropriate, of this Section 2.01,~~ the occupant may continue to occupy the former Affordable Unit; provided, however, Developer may increase the rental rate for such former Affordable Unit

to market rate ~~and Developer shall rent the next available comparable unit within the Housing Project (i.e., same number of bedrooms and bathrooms) as an Affordable Unit.~~ Developer shall send written notice to City with the address and bedroom/bathroom mix of ~~the Affordable Unit designated by Developer as the replacement Affordable Unit~~ any occupant that pays rent greater than the equivalent Affordable Rent for an Eligible Household under Section 2.01(b).

~~In lieu of designating another comparable Housing Project unit as the replacement Affordable Unit to meet the income requirements of paragraph (a) and/or (b), as appropriate, of this Section 2.01, Developer may designate as an Affordable Unit an occupied unit within the Housing Project that is not currently designated as an Affordable Unit if such unit is then occupied by a tenant meeting the income requirements set forth in paragraph (a) and/or (b), as appropriate, of this Section 2.01. In the event Developer makes such a substitution, Developer shall send written notice to the City with the address and bedroom/bathroom mix of the substituted Affordable Unit, along with the name of the occupant and household size and income of the household occupying the unit.~~

~~2.02 Designation of Affordable Units. The initial designation and location of the Affordable Units is set forth in the Site Plan attached hereto as Exhibit C. The appearance, materials, finished quality and amenities of the Affordable Units shall be comparable to the market rate rental units within the Housing Project. Attached hereto as Exhibit D is a list of the materials, amenities and finishes that will be featured in each of the units within the Housing Project, including both the market rate units and the Affordable Units. [Intentionally deleted.]~~

### 2.03 Marketing and Leasing Program.

Developer shall actively market rental of all units within the Housing Project, including the Affordable Units. Prior to lease-up of the Affordable Units, Developer shall provide City with a copy of its marketing program for the Housing Project, which shall include a marketing program for the Affordable Units (“**Affordable Units Marketing Program**”). City shall review the Affordable Units Marketing Program and either approve or request modifications to the Affordable Units Marketing Program within thirty (30) days after receipt. Until all Units have been initially occupied by an Eligible Household in accordance with this Agreement, Developer shall provide monthly updates to the Affordable Units Marketing Program commencing thirty (30) days after the date the Affordable Units Marketing Program is initially approved by City.

Developer is responsible for implementing the Affordable Units Marketing Program actively and in good faith. City may extend the required marketing period in its discretion if Developer delays implementation or otherwise fails to comply with the Affordable Units Marketing Program as approved by City.

## **ARTICLE 3. REPORTING REQUIREMENTS FOR HOUSING PROJECT**

3.01 Reporting Requirements. Developer shall submit an annual report and income certification to the City. The report, at a minimum, shall include:

- (a) The number of persons per Affordable Unit;
- (b) Name of each Affordable Unit Tenant;

- (c) Initial occupancy date;
- (d) Rent paid per month; and
- (e) Gross income per year.

Such information shall be reported to the City substantially in the form of the Certification of Continuing Compliance attached hereto as Exhibit EC or in such other format as may be reasonably requested by City.

Annual income recertifications shall also contain those documents used to certify eligibility. City, from time to time during the term of this Agreement, may request additional or different information, if such information is required in order for the City to comply with its reporting requirements, and Developer shall promptly supply such additional or different information in the reports required hereunder. Developer shall maintain all necessary books and records, including property, personal and financial records, in accordance with requirements prescribed by the City with respect to all matters covered by this Agreement. Developer, at such time and in such forms as City may require, shall furnish to City statements, records, reports, data and information pertaining to matters covered by this Agreement. Upon reasonable advance request for examination by City, Developer, at any time during normal business hours, shall make available all of its records with respect to all matters covered by this Agreement. Developer shall permit City to audit, examine and make excerpts or transcripts from these records at City's sole cost.

The first annual report and annual income certification (“**Initial Report**”) shall be submitted to the City within thirty (30) days of the date of the initial rental of all the Affordable Units on the Property. Subsequent annual reports and annual income certifications or recertifications shall be submitted to the City on the anniversary date of submittal of the Initial Report.

3.02 City Approval of Lease Forms. City shall have the right to review and approve Developer’s form of lease for the Affordable Units, including disclosures of the affordability restrictions on the Affordable Units, prior to ~~Owner~~Developer’s use of such form.

~~3.03 — Verification of Citizenship or Qualified Alien Status. Developer shall verify the citizenship or qualified alien status of all adult tenants and all adult applicants for tenancy of the Affordable Units as required under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law No. 104-193, 8 U.S.C. § 1621). Developer may charge a new tenancy applicant (but not an existing tenant) a reasonable eligibility verification fee only if approved in writing by the City. On an annual basis at the time of the annual income recertification, Developer shall verify the citizenship or qualified alien status of all Affordable Unit tenants.~~

~~Developer shall verify the citizenship or qualified alien status by causing the tenant or applicants for tenancy of all Affordable Units to complete and sign under penalty of perjury the HCD Benefit Status Form 1 (2/98) or such other form provided by HCD for this purpose. The signed forms shall be retained by Developer and shall be disclosed to City upon request.~~

~~All eligibility shall be conducted without regard to race, creed, color, gender, religion, age, disability, familial status or national origin of the tenant or applicant for tenancy.~~

#### **ARTICLE 4. PROVISION OF SERVICES AND MAINTENANCE OF PROPERTY**

4.01 Maintenance. During the term of this Agreement, Developer shall maintain, or cause to be maintained, the Property, including all improvements thereon, in a manner consistent with the provisions set forth therefor in the Alameda Municipal Code, and shall keep the entire Property free from any accumulation of debris or waste materials prior to and after construction.

If, at any time, Developer fails to maintain the Property, and has either failed to commence to cure such condition or to diligently prosecute to completion the condition or the condition is not corrected after expiration of sixty (60) days from the date of written notice from the City to the Developer, City may perform the necessary corrective maintenance, and Developer shall pay such costs as are reasonably incurred for such maintenance. The City shall have the right to place a lien on the Property should Developer not reimburse City for such costs within sixty (60) days following City's written demand for reimbursement of such costs. Developer, on behalf of itself, its heirs, successors and assigns, hereby grants to City and its officers, employees and agents, an irrevocable license to enter upon the Property to perform such maintenance during normal business hours after receipt of written notice from City and Developer's failure to cure or remedy such failure within sixty (60) days of such notice. Any such entry shall be made only after reasonable notice to Developer, and City shall indemnify and hold Developer harmless from any claims or liabilities pertaining to any such entry by City. Failure by Developer to maintain the Property in the condition provided in this Article 4 may, in City's reasonable discretion, constitute a default under this Agreement.

## ARTICLE 5. NO TRANSFER

5.01 Prohibition. Except with respect to Permitted Transferees (as defined below), Developer shall not make any total or partial sale, transfer, conveyance, encumbrance to secure financing, assignment or lease of the whole or any part of the Property, the Housing Project or this Agreement without the prior written approval of the City, which approval shall not be unreasonably withheld.

5.02 Permitted Transfers. Notwithstanding any other provision of this Agreement to the contrary, City approval of an assignment or transfer of this Agreement or conveyance of the Property or Housing Project, or any part thereof, shall not be required in connection with any of the following (the “**Permitted Transfers**”):

- (a) The lease of Affordable Units to Eligible Households.
- (b) Assignments for financing purposes, and any subsequent transfer to the lender providing such financing by foreclosure or deed in lieu of foreclosure thereunder, subject to such financing being considered and approved by the City.
- (c) Transfer of the Property and Housing Project to an affiliate entity which controls, is controlled by or under common control with Developer.
- (d) In the event of an assignment by Developer pursuant to subparagraph (c) not requiring the City’s prior approval, Developer nevertheless agrees that at least thirty (30) days prior to such assignment or transfer it shall give written notice to the City of such assignment or transfer and that such transferee shall be required to assume Developer’s obligations under this Agreement pursuant to a written assignment and assumption agreement in a form reasonably acceptable to the City Attorney.

(e) Pursuant to the Ground Lease (as defined in Article 9).

5.03 City Consideration of Requested Transfer. The City agrees that it will not unreasonably withhold approval of a request made pursuant to this Article 5 provided (a) the Developer delivers written notice to the City requesting such approval, and (b) the proposed assignee or transferee possesses comparable operational experience and capability, and comparable net worth and resources, as Developer, and (c) the assignee or transferee assumes the obligations of the Developer under this Agreement pursuant to a written assignment and assumption agreement in a form reasonably acceptable to the City Attorney. Such notice shall be accompanied by evidence regarding the proposed assignee’s or purchaser’s qualifications and experience and its financial commitments and resources sufficient to enable the City to evaluate the proposed assignee or purchaser pursuant to the criteria set forth herein and other criteria as reasonably determined by the City. The City shall approve or disapprove the request within forty-five (45) days of its receipt of the Developer’s notice and all information and materials required herein.



## **ARTICLE 6. NO DISCRIMINATION**

Developer covenants, by and for itself and any successors in interest, that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Developer, itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, subleases or vendees in the Property.

## **ARTICLE 7. NO IMPAIRMENT OF LIEN**

No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Agreement shall defeat or render invalid or in any way impair the lien or charge of any [ground lease or memorandum thereof](#), mortgage, deed of trust or other financing or security instrument; provided, however, that any successor of Developer to the Property and Housing Project shall be bound by such covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

## **ARTICLE 8. DURATION**

The covenants contained in Articles 2, 3, 4 and 5 of this Agreement shall be deemed to run with the Property and Housing Project until the date which is fifty-nine (59) years following the Effective Date. The covenants against discrimination contained in Article 6 of this Agreement shall run with the land in perpetuity.

## **ARTICLE 9. SUCCESSORS AND ASSIGNS**

The covenants contained in the Agreement shall be binding upon Developer and its heirs, successors and assigns, and such covenants shall run in favor of the City and its successors and assigns for the entire period during which such covenants shall be in force and effect, without regard as to whether the City is or remains an owner of any land or interest therein to which such covenants relate. In the event of any breach of any such covenants, or breach of any of Developer's obligations under this Agreement, City and its successors and assigns shall have the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach. The covenants contained in the Agreement, without regard to technical classification and designation, shall be for the benefit of and shall be enforceable only by the City, and its successors and assigns.

City acknowledges ~~and consents to that~~ Developer is entering into a ground lease (with a term of up to 99 years) and a memorandum thereof on, about or after the date hereof (collectively, the "Ground Lease") with respect to the Property with a tax credit limited

partnership (the “Partnership”) as tenant, which ~~tax credit limited partnership shall~~Ground Lease is a Permitted Transfer hereunder. The Partnership shall own the Housing Project and will assume the obligations of Developer hereunder. City agrees that upon execution of the Ground Lease, (a) the Partnership and any of its partner(s) may cure any default hereunder upon the same terms and conditions as Developer, and (b) the Partnership and its limited partner(s) shall be provided copies of all notices to Developer hereunder upon written notice ~~from Developer~~ to City of the addresses of the Partnership and limited partner(s). City acknowledges ~~that this Agreement (including, without limitation, Article 5) shall not prevent any change in the partners or equity holders of~~and agrees that a transfer of partnership interests in the Partnership is a Permitted Transfer.

## **ARTICLE 10. SUBORDINATION AGREEMENT**

Except as otherwise expressly provided below, this Agreement shall have priority over the liens of all mortgages, deeds of trust and other liens (other than the lien for current, unpaid property taxes) and Developer shall cause all such mortgagees, deed of trust beneficiaries and other lien holders to execute and deliver to City for recordation in the Official Records of Alameda County, a subordination agreement, in a form reasonably acceptable to City, subordinating such mortgages, deeds of trust and other liens to this Agreement thereby ensuring the priority of this Agreement over all such mortgages, deeds of trust and other liens. Notwithstanding the subordination provisions set forth herein, the City may, in its sole discretion, subordinate this Agreement.

## **ARTICLE 11. DEFAULT**

Any failure by Developer to perform any term or provision of this Agreement shall constitute a “Default” (1) if Developer does not cure such failure within thirty (30) days following written notice of default from City, or (2) if such failure is not of a nature which can be cured within such thirty (30) day period, Developer does not commence substantial efforts to cure the failure within thirty (30) days and thereafter prosecute to completion with diligence and continuity the curing of such failure. Any notice of default given under this Agreement shall identify the nature of the failure in performance which City claims constitutes the Default and the manner in which such Default may be satisfactorily cured. Any failure or delay by City in asserting any of its rights or remedies, including specific performance, as to any Default shall not operate as a waiver of any Default or of any such rights or remedies or deprive City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

## **ARTICLE 12. NOTICES, DEMANDS AND COMMUNICATIONS**

Any approval, disapproval, demand, document or other notice to be provided under this Agreement shall be given in writing and shall be sent: (a) for personal delivery by a delivery service that provides a record of the date of delivery, the individual to whom delivery was made, and the address where delivery was made; (b) by first-class certified United States mail, postage prepaid, return receipt requested; or (c) by a nationally recognized overnight courier service and marked for next day business delivery. All notices shall be addressed to the party to whom such

notice is to be given at the property address stated herein or to such other address as a party may designate by written notice to the other. Any written notice, demand or communication shall be deemed received: (a) immediately if delivered by personal delivery as provided hereinabove; (b) on the third (3<sup>rd</sup>) day from the date it is postmarked if delivered by first-class mail, postage prepaid, return receipt requested; and (c) on the next business day if sent via nationally recognized overnight courier and marked for next day business delivery. Notices sent by a party's attorney on behalf of such party shall be deemed delivered by such party.

To City: City of Alameda  
2263 Santa Clara Avenue  
Alameda, CA 94501  
Attention: City Attorney

[With a copy to:](#)

Housing Authority of the City of Alameda  
701 Atlantic Avenue  
Alameda, CA 94501  
Attention: Executive Director

To Developer \_\_\_\_\_  
Attention: \_\_\_\_\_

[With a copy to:](#)

~~With a copy to:~~ Developer Counsel  
Attention: \_\_\_\_\_

[With a copy to:](#)

Lender  
[With a copy to:](#)

[\[investor\]](#)

[With a copy to:](#)

[\[investor's counsel\]](#)

**ARTICLE 13. ATTORNEYS' FEES**

In any action or proceeding which either party brings against the other to enforce its rights hereunder, the unsuccessful party shall pay all costs incurred by the prevailing party, including reasonable attorneys' fees, which amounts shall be a part of the judgment in any action or proceeding.

**ARTICLE 14. RECORDATION OF AGREEMENT**

Immediately following the Effective Date, this Agreement and the Notice of Affordability Restrictions on Transfer of Property in the form attached hereto as Exhibit FD, shall be recorded against the Property in the Official Records of Alameda County.

**ARTICLE 15. COMPLIANCE MONITORING FEE**

Developer acknowledges and agrees that the City is obligated to monitor compliance with this Agreement on an annual basis and, therefore, agrees to pay City for a portion of its administrative costs for such monitoring by paying to City an annual monitoring fee in the amount of Twenty-~~five~~Five Dollars (\$25.00) per unit per year, payable on the initial date of occupancy and each year on the anniversary date of the initial date of occupancy.

**ARTICLE 16. MISCELLANEOUS**

Each party agrees to cooperate with the other in the implementation and administration of this Agreement and, in that regard, shall execute any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. The words “include” and “including” shall be construed as if followed by the words “without limitation.” All exhibits and attachments hereto are incorporated by reference as though fully restated herein. This Agreement shall be interpreted as though prepared jointly by both parties, and shall be construed in accordance with and be governed by the laws of the State of California. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby. A waiver by either party of a breach of any of the covenants, conditions or agreements hereunder to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions hereof. No waiver by City of any of the conditions hereof shall be effective unless in writing expressly identifying the scope of the waiver and signed on behalf of an authorized official of City. Any alteration, change or modification of or to the Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party hereto.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the City and Developer have caused this Agreement to be executed on their behalf by their respective officers thereunto duly authorized, on the Effective Date first above written.

**CITY:**

RECOMMENDED FOR APPROVAL:

CITY OF ALAMEDA, a municipal corporation

\_\_\_\_\_  
Vanessa Cooper, Executive Director,  
Housing Authority of the City of Alameda

\_\_\_\_\_  
Jill Keimach  
City Manager  
*[Signature must be notarized]*

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

- and -

**DEVELOPER::**

\_\_\_\_\_

By: \_\_\_\_\_  
*[Signature must be notarized]*

**NOTARY ACKNOWLEDGMENTS**

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 )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

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

I certify under PENALTY OF PERJURY under the laws of the State of California that  
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

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    )  
  ) ss:  
COUNTY OF \_\_\_\_\_ )

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

I certify under PENALTY OF PERJURY under the laws of the State of California that  
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

**EXHIBIT A**

**Description of Property**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF ALAMEDA, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

[TO BE COMPLETED]



**EXHIBIT B**

**Tenant Income Certification**

Project Name and Address: \_\_\_\_\_

Date: \_\_\_\_\_

- Affordable Units:  50% of Median Income  
 80% of Median Income  
 120% of Median Income

Address/Unit Number: \_\_\_\_\_

Rent: \_\_\_\_\_

Tenant/Household Name: \_\_\_\_\_

Date of Lease: \_\_\_\_\_

Size of Household: \_\_\_\_\_

Expiration: \_\_\_\_\_

Total Household Income: \_\_\_\_\_ per year

The following list includes each member of the household and their income. Attached are federal or state income tax returns for the most recent tax year, current stubs from paychecks or other evidence of the income of each income-producing member of the household.

Name of Household Member	Relationship	Age	Social Security Number	Annual Income	Source of Income/ Name of Employer
--------------------------	--------------	-----	------------------------	---------------	---------------------------------------

I/We the undersigned have read and answered fully, frankly and personally each of the above questions under penalty of perjury and do hereby swear they are true.

\_\_\_\_\_  
Head of Household                      Date

\_\_\_\_\_  
Developer/ Agent                      Date

**EXHIBIT C**

**Site Plan**

~~{To be inserted}~~

**EXHIBIT D**

**~~Materials, Amenities and Finishes~~**

~~{To be inserted}~~

**EXHIBIT E**

**CERTIFICATION OF CONTINUING COMPLIANCE**

Project Name and Address: \_\_\_\_\_

Date: \_\_\_\_\_

Total Affordable Housing Units in Project:

Very Low Income Units (not to exceed 50% of Median Income): \_\_\_\_\_

Low Income Units (not to exceed 80% of Median Income): \_\_\_\_\_

Moderate Income Units (not to exceed 120% of Median Income): \_\_\_\_\_

The Developer, in accordance with the Affordable Housing Agreement dated \_\_\_\_\_, does hereby certify to the City of Alameda that during the preceding year, the units identified on the following pages were occupied in accordance with the Affordable Housing Agreement and does hereby further certify that the representations set forth herein are true and correct to the best of the undersigned's knowledge.

Signed: \_\_\_\_\_  
Developer/ Agent

Date: \_\_\_\_\_

[See Attached]

**ANNUAL COMPLIANCE REPORT**

Project Name and Address: \_\_\_\_\_

Date: \_\_\_\_\_

**Very Low Income Units (Not to Exceed 50% of Median Income)**

Unit No./Address	Type	Tenant Name	Annual Household Income	Number in Household	Monthly Rent
------------------	------	-------------	-------------------------	---------------------	--------------

(Attach additional sheets as required.)

Signed: \_\_\_\_\_  
Developer / Agent

Date: \_\_\_\_\_

**ANNUAL COMPLIANCE REPORT**

Project Name and Address: \_\_\_\_\_

Date: \_\_\_\_\_

**Low Income Units (Not to Exceed 80% of Median Income)**

Unit No./Address	Type	Tenant Name	Annual Household Income	Number in Household	Monthly Rent
------------------	------	-------------	-------------------------	---------------------	--------------

(Attach additional sheets as required.)

Signed: \_\_\_\_\_  
Developer / Agent

Date: \_\_\_\_\_

**ANNUAL COMPLIANCE REPORT**

Project Name and Address: \_\_\_\_\_

Date: \_\_\_\_\_

**Moderate Income Units (Not to Exceed 120% of Median Income)**

Unit No./Address	Type	Tenant Name	Annual Household Income	Number in Household	Monthly Rent
------------------	------	-------------	-------------------------	---------------------	--------------

(Attach additional sheets as required.)

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Developer / Agent

**EXHIBIT FD**

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Alameda  
c/o Housing Authority of the  
City of Alameda  
701 Atlantic Avenue  
Alameda, CA 94501  
Attention: Executive Director

*Exempt from recording fees pursuant to  
Cal.Gov't Code Section 27383*

*Space Above This Line For Recorder's Use Only*

**NOTICE OF AFFORDABILITY RESTRICTIONS  
ON TRANSFER OF PROPERTY**

***(Note: Above Title and text below must remain in 14-point type or larger)***

***Important notice to owners, purchasers, tenants, lenders, brokers, escrow and title companies, and other persons, regarding affordable housing restrictions on the real property described in this Notice:*** Restrictions have been recorded with respect to the property described below (referred to in this Notice as the “Property”) which restrict the price and terms at which the Property may be sold or rented. These restrictions may limit the sales price or rents of the Property to an amount which is less than the fair market value of the Property. These restrictions also limit the income of persons and households who are permitted to purchase and rent the Property.

**Title of Document Containing Affordable Housing Restrictions:**

Affordable Housing Agreement (referred to in this Notice as the “Affordable Housing Restrictions”).

**Parties to Affordable Housing Restrictions:**

Exhibit F

1

City of Alameda ("City") and  
the Housing Authority of the City of Alameda ("Owner").

**The Affordable Housing Restrictions are recorded:** *(check one)*

as Document No. \_\_\_\_\_, official records of  
\_\_\_\_\_ Alameda County, on  
\_\_\_\_\_, 2016; or

concurrently with this Notice, official records of  
\_\_\_\_\_ Alameda County.

**Legal Description of Property:**

See Exhibit A (Attached hereto)

**Street Address of Property:** \_\_\_\_\_, **Unit**

**No.** \_\_\_\_\_,

\_\_\_\_\_, California.

**Assessor's Parcel Number of Property:** \_\_\_\_\_

**Summary of Affordable Housing Restrictions** *(check as applicable):*

The Affordable Housing Restrictions restrict the amount of rent which  
may be charged for the rental housing unit or units on the Property, as  
follows:

\_\_\_\_\_  
30% of maximum annual income for households whose gross income  
does not exceed the applicable income level.

The Affordable Housing Restrictions restrict the sales price which  
may be charged for the sale of the ownership housing unit or units on  
the Property, as follows:

\_\_\_\_\_.

The Affordable Housing Restrictions restrict the income level of the  
tenant or buyer of the Property, as follows:

\_\_\_\_\_.

Term of Restrictions: ~~\_\_\_\_\_~~ 59 years, commencing on \_\_\_\_\_, 2016 and terminating on \_\_\_\_\_, 2075.

This Notice does not contain a full description of the details of all of the terms and conditions of the Affordable Housing Restrictions. You will need to obtain and read the Affordable Housing Restrictions to fully understand the restrictions and requirements which apply to the Property. In the event of any conflict between the terms of this Notice and the terms of the Affordable Housing Restrictions, the terms of the Affordable Housing Restrictions shall control.

This Notice is being recorded and shall be indexed against the City and the current Owner of the Property.

**CITY OF ALAMEDA:**

Dated: \_\_\_\_\_,  
~~20~~ 2016

By: \_\_\_\_\_  
City Manager

**OWNER:**

Dated: \_\_\_\_\_,  
~~20~~ 2016

\_\_\_\_\_

By: \_\_\_\_\_  
*[Signature must be notarized]*



ACKNOWLEDGMENTS

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 )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

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

I certify under PENALTY OF PERJURY under the laws of the State of California that  
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

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 )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

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

I certify under PENALTY OF PERJURY under the laws of the State of California that  
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF ALAMEDA, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

[TO BE COMPLETED]

Exhibit A of  
Exhibit F

