

**GROUND LEASE AGREEMENT
ALAMEDA POINT SITE A BLOCK 8-SENIOR HOUSING**

BY AND BETWEEN

CITY OF ALAMEDA

AND

EDEN HOUSING, INC.

DATED AS OF _____, 2017

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1. DEFINITIONS	2
Section 1.1 Definition.....	3
Section 1.2 Exhibits.....	8
ARTICLE 2. LEASE OF THE LEASED PREMISES	9
Section 2.1 Leased Premises.....	9
Section 2.2 Delivery of Possession and Acceptance.....	9
Section 2.3 Term.....	10
Section 2.4 Use.....	10
Section 2.5 Memorandum of Lease.....	10
Section 2.6 Option to Acquire Leased Premises.....	11
ARTICLE 3. THE IMPROVEMENTS	11
Section 3.1 Construction.....	11
Section 3.2 No Liens.....	12
Section 3.3 Permits, Licenses and Easements.....	13
Section 3.4 Title to Improvements.....	13
Section 3.5 Benefits of Improvements During Term.....	14
Section 3.6 Regulatory Agreements.....	14
Section 3.7 Equal Opportunity.....	14
Section 3.8 Prevailing Wages.....	15
Section 3.9 Payment and Performance Bonds.....	16
Section 3.10 Landlord Review.....	16
Section 3.11 Accessibility Requirements.....	16
Section 3.12 Infrastructure Improvements.....	17
ARTICLE 4. RENTS	18
Section 4.1 Rent.....	18
Section 4.2 Additional Rents.....	18
Section 4.3 Payments.....	19
Section 4.4 Net Lease and Assumption of Risk.....	19
ARTICLE 5. TAXES AND OTHER IMPOSITIONS; UTILITIES	19
Section 5.1 Payment of Impositions.....	19
Section 5.2 Contested Taxes and Other Impositions.....	19
Section 5.3 Failure to Pay Impositions.....	20
Section 5.4 Utilities.....	20

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 6. INSURANCE	20
Section 6.1 Required Insurance Coverage.....	20
Section 6.2 Comprehensive General Liability Insurance.....	20
Section 6.3 Vehicle Liability Insurance.....	21
Section 6.4 Workers' Compensation Insurance.....	21
Section 6.5 Property Insurance.....	21
Section 6.6 Construction Contractor's Insurance.....	21
Section 6.7 Pollution Liability Insurance Policy.....	21
Section 6.8 General Insurance Requirements.....	22
Section 6.9 Additional Requirements.....	22
Section 6.10 Certificates of Insurance.....	23
Section 6.11 Alternative Insurance Compliance.....	23
ARTICLE 7. MAINTENANCE, ALTERATIONS, REPAIRS AND REPLACEMENTS ..	23
Section 7.1 Maintenance of Leased Premises.....	23
Section 7.2 Alterations to Leased Premises.....	24
Section 7.3 Indemnifications.....	24
Section 7.4 Management.....	25
Section 7.5 Delegation of Management Duties.....	25
Section 7.6 Management and Operation of the Residential Units.....	26
Section 7.7 Certain Limitation on Work.....	26
Section 7.8 Alterations Required by Law.....	26
Section 7.9 Landlord Completion of Work.....	26
ARTICLE 8. MORTGAGE LOANS	26
Section 8.1 Loan Obligations.....	26
Section 8.2 Liens and Encumbrances Against Tenant's Interest in the Leasehold Estate.....	26
Section 8.3 Cost of Loans to be Paid by Tenant.....	27
Section 8.4 Proceeds of Loans.....	27
Section 8.5 No Subordination of Fee Interest.....	27
Section 8.6 Notice and Right to Cure Defaults Under Loans.....	27
ARTICLE 9. PERMITTED MORTGAGES AND INVESTOR RIGHTS	27
Section 9.1 Right to Encumber.....	27
Section 9.2 Notice to Mortgagee.....	27
Section 9.3 Right of Mortgagee to Cure.....	28
Section 9.4 Limitation on Liability of Mortgagee.....	29
Section 9.5 Estoppel Certificates.....	29

TABLE OF CONTENTS

	<u>Page</u>
Section 9.6 Registration of Mortgages.....	30
Section 9.7 New Lease.....	30
Section 9.8 Rights of Investor.....	32
ARTICLE 10. REPRESENTATIONS, WARRANTIES AND COVENANTS.....	33
Section 10.1 Representations, Warranties and Covenants of Tenant.	33
Section 10.2 Representations, Warranties and Covenants of Landlord.....	34
Section 10.3 Hazardous Materials.	35
Section 10.4 As-Is Conveyance.	39
ARTICLE 11. EMINENT DOMAIN	40
Section 11.1 Termination of Lease.	40
Section 11.2 Continuation of Lease and Presumption of Restoration.	40
Section 11.3 Temporary Taking.	40
Section 11.4 Award.....	40
Section 11.5 Joinder.....	41
ARTICLE 12. DAMAGE OR DESTRUCTION.....	41
Section 12.1 Damage or Destruction to Leased Premises.	41
Section 12.2 Damage or Destruction near End of Term.....	41
Section 12.3 Distribution of Insurance Proceeds.	41
ARTICLE 13. EVENTS OF DEFAULT.....	42
Section 13.1 Events of Default.	42
Section 13.2 Rights and Remedies.....	43
Section 13.3 Deficiency Judgments.....	44
Section 13.4 Default by Landlord.....	44
Section 13.5 Notices.	45
Section 13.6 Bankruptcy of Landlord.....	45
ARTICLE 14. QUIET ENJOYMENT AND POSSESSION; INSPECTIONS	45
Section 14.1 Quiet Enjoyment.	45
Section 14.2 Landlord's Right of Inspection.	45
ARTICLE 15. VACATION OF LEASED PREMISES.....	45
ARTICLE 16. NON-MERGER.....	46

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 17. ASSIGNMENTS AND TRANSFERS; FORECLOSURE	46
Section 17.1 Consent Required.....	46
Section 17.2 Limitations on Consent Requirement.	46
Section 17.3 Subsequent Assignment.....	47
Section 17.4 Request for Consent.....	47
Section 17.5 Consent of Landlord Not Required.....	47
Section 17.6 Transfer After Foreclosure.....	48
Section 17.7 Grant of Purchase Option.....	48
ARTICLE 18. MISCELLANEOUS PROVISIONS	48
Section 18.1 Entire Agreement: Modifications.	48
Section 18.2 Amendments.	48
Section 18.3 Governing Law.	49
Section 18.4 Binding Effect.....	49
Section 18.5 Severability.....	49
Section 18.6 Further Assurances.....	49
Section 18.7 Captions.	49
Section 18.8 Gender.....	49
Section 18.9 Exhibits.	49
Section 18.10 References.	49
Section 18.11 Rights Cumulative.	50
Section 18.12 Notices.	50
Section 18.13 Counterparts.....	51
Section 18.14 Time of Essence.	51
Section 18.15 Relationship of Parties.	51
Section 18.16 Multiple Leasehold Mortgages.	51
Section 18.17 Conflicts with Mortgage.	51
Section 18.18 Attorneys' Fees.	51
Section 18.19 Non-Liability of Governmental Officials and Employees; Conflicts of Interest.	51
Section 18.20 Consent; Reasonableness.....	52
Section 18.21 Non-Waiver of Governmental Rights.....	52
ARTICLE 19. PARTICULAR COVENANTS.....	52
Section 19.1 Non-Discrimination.....	52

GROUND LEASE AGREEMENT
(Alameda Point, Site A, Block 8-Senior Housing)

THIS GROUND LEASE AGREEMENT (this "**Lease**") is entered into as of _____, 2017 by and between the CITY OF ALAMEDA, a California charter City ("**Landlord**"), and EDEN HOUSING, INC., a California nonprofit public benefit corporation ("**Tenant**").

RECITALS

A. Landlord owns that certain real property situated in Alameda, California, as more particularly described on Exhibit A attached hereto (the "**Leased Premises**"). The Leased Premises are part of the former Naval Air Station Alameda and the Fleet and Industrial Supply Center, Alameda Annex and Facility ("**NAS Alameda**") and were conveyed to Landlord by the United States Department of the Navy (the "**Navy**").

B. The Leased Premises are located in an area of NAS Alameda commonly referred to as Alameda Point.

C. The City adopted a General Plan Amendment for Alameda Point in 2003 in order to implement the community's vision for the reuse of Alameda Point consistent with the goals of the NAS Alameda Community Reuse Plan and other City of Alameda policy documents.

D. In June 2012, the City Council directed City staff to complete the necessary Environmental Impact Report ("**EIR**"), General Plan Amendments, Zoning Ordinance amendments, including the creation of the Alameda Point District (Alameda Municipal Code 30-4.24), and a Master Infrastructure Plan ("**MIP**") (collectively, the "**Planning Documents**") required to implement the Reuse Plan for Alameda Point.

E. On July 15, 2014, the City Council adopted the Town Center Specific Plan ("**Town Center Plan**").

F. On May 11, 2015, the Planning Board approved the Development Plan and on June 16, 2015, the City Council upheld the Planning Board approval of the Development Plan for the Property. The Development Plan was subsequently amended on May 22, 2017 by approval of the Planning Board (as amended, the "**Development Plan**").

G. On or about May 1, 2014, the City issued a request for qualifications seeking a developer to develop Site A of Alameda Point (the "**Property**") consistent with the Planning Documents and the Town Center Plan. The City selected Alameda Point Partners, LLC ("**APP**") as the developer of the Property and on August 6, 2015 entered into a Disposition and Development Agreement ("**DDA**") with APP providing for the development of the Property consistent with the Planning Documents, the Development Plan and the Town Center Plan.

H. The DDA includes the Affordable Housing Implementation Plan that addresses the development of the Affordable Housing Units required to be developed as part of the development of the Property.

I. In accordance with the Affordable Housing Implementation Plan, APP entered into a Partial Assignment and Assumption Agreement with Tenant dated March 7, 2016 ("**Partial Assignment**") whereby APP assigned to Tenant its rights and obligation to develop the Leased Premises with not less than one hundred twenty eight (128) Affordable Housing Units to be available and occupied by Low Income Households and Very Low Income Households. The Partial Assignment assigned to Tenant the right to acquire the Lease Premises in accordance with the terms of the DDA and designated Tenant as Qualified Affordable Housing Developer, as that term is defined in the Affordable Housing Implementation Plan. Tenant is obligated to comply with the Assigned Obligations in the DDA and the Affordable Housing Implementation Plan which are listed on Attachment 1 to the Partial Assignment.

J. Tenant intends to construct a multifamily residential complex on the Leased Premises with approximately sixty (60) Affordable Housing Units including one resident manager unit (the "**Residential Units**") and other ancillary improvements (collectively, the "**Improvements**"). The development of the Residential Units will satisfy in part Tenant's Assigned Obligations pursuant to the Partial Assignment, the requirements of the City's Inclusionary Housing Ordinance for the Project, the obligations under the Renewed Hope Settlement Agreement and the requirements for the Density Bonus waiver that was approved for the Property.

K. Simultaneously with the execution of this Lease, Tenant and Landlord are entering into a lease for the portion of the Affordable Housing Site not covered by this Lease upon which Tenant intends to develop the remaining Affordable Housing Units required to be developed on the Affordable Housing Site pursuant to the Affordable Housing Implementation Plan.

L. Landlord desires to lease the Leased Premises to Tenant for a period of eighty-seven (87) years pursuant to the terms of this Lease and Tenant desires to lease the Lease Premises from Landlord.

M. Capitalized terms that are not otherwise defined herein shall have the meaning set forth in the DDA, including the Affordable Housing Implementation Plan.

NOW, THEREFORE, for and in consideration of the foregoing premises, the covenants, representations, warranties, and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto do hereby agree as follows:

**ARTICLE 1.
DEFINITIONS**

Section 1.1 Definition.

For the purposes of this Lease, the following defined terms shall have the meanings ascribed thereto in this Article 1. Defined terms not otherwise defined herein shall have the definition given in the DDA, including the Affordable Housing Implementation Plan.

- (a) Affordable Housing Implementation Plan. The Affordable Housing Implementation Plan attached to and incorporated into the DDA and attached hereto as Exhibit F.
- (b) Annual Rent: The rent due annually to Landlord from Tenant pursuant to Section 4.1 of this Lease.
- (c) Applicable CC&Rs & Easements: All covenants, conditions, restrictions, and easements that are now or hereafter recorded against the Leased Premises and/or the Project and (i) are identified as exceptions to coverage in the Owner's Title Policy issued to Tenant on the Commencement Date; (ii) are required by the City or one or more other Governmental Authorities in connection with the construction or development of (A) the Project, (B) other land comprising a part of the Property, or (C) infrastructure installed pursuant to the MIP, including without limitation, the requirement to comply with the TDM Plan and any applicable TDM Compliance Strategy; (iii) are contemplated by the DDA, including without limitation, the City Regulatory Agreement, (iv) arise by, through, or under Tenant or Tenant's contractors, agents, or licensees; or (v) are Permitted Exceptions as that term is defined in the DDA.
- (d) Approved Financing: All of the loans and financing approved by Landlord for the development of the Project pursuant to the Affordable Housing Development Financing Plan (as defined in Section 6.1(d) of the Affordable Housing Implementation Plan), approved in accordance with Section 3.4(b) of the Affordable Housing Implementation Plan and Section 3.2 of the DDA.
- (e) Approved Financing Documents: The documents that evidence the Approved Financing.
- (f) Casualty: As defined in Article 12 hereof.
- (g) City: The City of Alameda, California.
- (h) City Regulatory Agreement: The Regulatory Agreement and Declaration of Restrictive Covenants imposing the affordability requirements of the Affordable Housing Implementation Plan on the Leased Premises.
- (i) Closing: The date on which the conditions to conveyance of the Affordable Housing Site set forth in the Affordable Housing Implementation Plan and the DDA are satisfied or waived and a Memorandum of Lease and the Approved Financing Documents, except the

documents pertaining to the Permanent First Mortgage Loan, HCD Loan and AHP Loan, are executed and recorded, as applicable, against the Leased Premises.

(j) Commencement Date: The date of the Closing.

(k) DDA: That certain Disposition and Development Agreement dated August 6, 2015 as amended by that certain First Amendment to Disposition and Development Agreement dated as of February 8, 2017 and effective as of March 9, 2017, as further amended by that certain Second Amendment to Disposition and Development Agreement dated as of August 19, 2017 and clarified by Operating Memoranda dated September 16, 2015, October 26, 2015, March 6, 2017 and October ____, 2017.

(l) EBMUD Infrastructure; New East Bay Municipal Utility District (EBMUD) owned and operated water mains for potable water and fire protection systems serving only the Project, which are compliant with EBMUD specification and consistent with the MIP.

(m) Event of Default: As described in Article 13 hereof.

(n) First Mortgage Loan: The Construction First Mortgage Loan or the Permanent First Mortgage Loan or if both have been paid off and the deed of trust related to such loans have been released, the loan that is next in priority order.

(o) First Mortgagee: The holder of the First Mortgage Loan or "Bank".

(p) Force Majeure Delay. The period of delay caused by any of the following: strikes, lock-outs or other labor disturbances; one or more acts of a public enemy; war; riot; sabotage; blockade; freight embargo; floods; earthquakes; fires; unusually severe weather; quarantine restrictions; lack of transportation; court order; delays resulting from changes in any applicable laws, rules, regulations, ordinances or codes; delays resulting from Hazardous Material Delay, as defined in the DDA; litigation that enjoins construction or other work on the Improvements or any portion thereof, causes a lender to refuse to fund, disburse or accelerate payment on a loan, or prevents or suspends construction work of the Improvements except to the extent caused by the Party claiming an extension and provided further that the Party subject to such litigation is actively mounting a defense to such litigation; inability to secure necessary labor, materials or tools (provided that the Party claiming Force Majeure has taken reasonable action to obtain such materials or substitute materials on a timely basis); a development moratorium, as defined in section 66452.6(f) of the California Government Code; and any other causes beyond the reasonable control and without the fault of the Party claiming an extension of time to perform that prevents the Party claiming an extension of time from performing its obligations under this Agreement.

(q) Governmental Authorities: Any applicable federal, state, or local governmental or quasi-governmental entities, subdivisions, agencies, authorities, or instrumentalities having jurisdiction over the Leased Premises, the Improvements, Landlord, or Tenant.

(r) Hazardous Materials. Any flammable explosives, radioactive materials, hazardous wastes, petroleum and petroleum products and additives thereof, toxic substance or related materials, including without limitation any substances defined as or included within the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” or “toxic substances “under any applicable federal, state or local laws, ordinances or regulations.

(s) HCD: California Department of Housing and Community Development.

(t) HUD: U.S. Department of Housing and Urban Development.

(u) Impositions: All taxes including property taxes, assessments, water and sewer charges, charges for public utilities, excises, levies, license and permit fees and other charges that shall or may be assessed, levied, or imposed during the Term by any Governmental Authorities upon the Leased Premises or any part thereof, including the buildings or improvements now or hereafter located thereon; provided, however, that the term “**Impositions**” shall not include any income tax, capital levy, estate, succession, inheritance, transfer, or similar taxes of Tenant, or any franchise tax imposed upon any owner of the fee of the Leased Premises, or any income, profits, or revenue tax, assessment, or charge imposed upon the rent or other benefit received by Tenant under this Lease by any Governmental Authorities.

(v) Improvements: The approximately sixty(60) Residential Units to be constructed on the Leased Premises, including, without limitation, tenant related space and related ancillary facilities, together with any and all replacements or substitutions therefor or modifications thereto.

(w) Incidental Migration: The non-negligent activation, migration, mobilization, movement, relocation, settlement, stirring, passive migration, passive movement, and/or other incidental transport of Hazardous Materials.

(x) Inclusionary Housing Ordinance: The City of Alameda Ordinance 2926 set forth in Section 30-16 (Inclusionary Housing Requirements for Residential Projects) of Chapter XXX (Development Regulations) of the Municipal Code.

(y) Indemnified Parties: Collectively, the City, its elected and appointed officials, board members, commissions, officers, employees, attorneys, agents, volunteers and their successors and assigns.

(z) Inspection Period: The period beginning on the Effective Date and ending ninety (90) days after the Effective Date.

(aa) Insurance Requirements: The requirements, whether now or hereafter in force, of any insurer or insurance carrier, any board of fire underwriters or any other company, bureau, organization, or entity performing the same or similar functions, applicable to the Leased Premises and/or the Improvements, or any portion thereof, to the extent so applicable.

(bb) Investor: The investor limited partner in any limited partnership formed by Tenant in order to facilitate the use of Tax Credit Funds for the development of the Project.

(cc) Landlord's Estate: Landlord's fee estate in the land constituting the Leased Premises.

(dd) Lease: This ground lease.

(ee) Lease Year: A calendar year.

(ff) Leased Premises: That certain land located in the City, as more particularly described on Exhibit A attached hereto and made a part hereof.

(gg) Legal Requirements: All laws, statutes, codes, ordinances, orders, rules, regulations, and requirements of all Governmental Authorities and the appropriate agencies, officers, departments, boards, and commissions thereof, whether now or hereafter in force, applicable to Landlord, Tenant, the Leased Premises, the Improvements, or any portion thereof, to the extent so applicable.

(hh) Management Agent: The Person designated from time to time as "Management Agent" of all or any portion of the Improvements under any management agreement entered into from time to time with Tenant. Eden Housing Management, Inc. shall serve as the initial Management Agent for the Project.

(ii) Memorandum of Lease: The memorandum of the Lease to be recorded against the Leased Premises in the Official Records in the form attached hereto as Exhibit B.

(jj) Mortgage: Any mortgage, deed of trust, security agreement, or collateral assignment executed in connection with the Approved Financing encumbering Tenant's Estate created hereunder as a leasehold deed of trust lien.

(kk) Mortgagee: The holder, mortgagee, grantee, or secured party under any Mortgage and its successors and assigns.

(ll) Net Condemnation Award: The net amounts owed or paid to the Parties and Mortgagee(s), if any, or to which either of the Parties and Mortgagee(s), if any, may be or become entitled by reason of any Taking or pursuant to any agreement with any condemning authority which has been made in settlement of any proceeding relating to a Taking, less any costs and expenses incurred by the Parties and Mortgagee(s), if any, in collecting such award or payment.

(mm) New Lease: Shall have the meaning given such term in Section 9.7 hereof.

(nn) Official Records: The official land records of Alameda County.

(oo) Partnership Agreement: The Agreement of Limited Partnership of the limited partnership formed by Tenant to develop and own the Project in order to facilitate the use of Tax Credit Funds to finance the Project.

(pp) Party: Landlord or Tenant, as applicable. Landlord and Tenant shall be referred to collectively as the "Parties."

(qq) Person. An individual, partnership, corporation, limited liability company, trust, unincorporated association, or other entity or association.

(rr) Project: The Improvements and Tenant's Estate.

(ss) Property: The property subject to the DDA.

(tt) Regulatory Agreements: Collectively, the Tax Credit Regulatory Agreement, the City Regulatory Agreement and the regulatory agreement(s) executed by Tenant in connection with the Approved Financing, and any other regulatory agreement reasonably determined to be necessary or advisable by Tenant (with the reasonable consent of Landlord) during the Term. To the extent that any regulatory agreement or covenant is extinguished through foreclosure (or otherwise terminated or expired), such regulatory agreement(s) or covenant shall no longer be applicable to this Lease.

(uu) Renewed Hope Settlement Agreement: means that certain Settlement Agreement dated as of March 20, 2001 related to the litigation titled *Renewed Hope Housing Advocates and Arc Ecology v. City of Alameda, et al.*

(vv) Rent: As described in Section 4.2 hereof.

(ww) Residential Units: The sixty(60) multi-family residential units to be developed on the Leased Premises (including the manager's unit).

(xx) Resident(s). Any tenant, sub-tenant, or licensee of Tenant under any Resident Lease(s).

(yy) Resident Lease(s): Any lease or license agreement entered into by Tenant with residents of the Residential Units to be constructed on the Leased Premises.

(zz) Right of First Refusal/Purchase Option: The purchase option and right of first refusal described in the Partnership Agreement and Section 17.7 herein that provides Tenant, or its affiliate with rights of first refusal and purchase option related to the Project.

(aaa) Section 42: Section 42 of the Internal Revenue Code of 1986, as amended.

(bbb) Taking: A taking during the Term hereof of all or any part of the Leased Premises and/or the Improvements, or any interest therein or right accruing thereto, as a result of the exercise of the right of condemnation or eminent domain or a change in grade materially

affecting the Leased Premises or any part thereof. A conveyance in lieu of or in anticipation of the exercise of any such right of condemnation or eminent domain shall be considered a Taking. Any such Taking shall be deemed to have occurred upon the earlier to occur of (a) the date on which the property, right, or interest so taken must be surrendered to the condemning authority, or (b) the date title vested in a condemning authority or other party pursuant to any Taking. If a Mortgage exists, the Mortgagees, to the extent permitted by law, shall be made parties to any Taking or Taking proceeding.

(ccc) Tax Credit Eligible Household: A household that is eligible to rent and occupy a qualified low-income dwelling unit under Section 42 and any Legal Requirements of the State of California or TCAC relating to low-income housing tax credits.

(ddd) Tax Credit Funds: The proceeds from the syndication and sale of federal or state low income housing tax credits established pursuant to Section 42.

(eee) Tax Credit Regulatory Agreement: The agreement with TCAC to be executed by Tenant and properly recorded in the Official Records, setting forth certain terms and conditions under which the Project will be operated.

(fff) Tax Credit Units: All of the Residential Units located on the Leased Premises, other than any unit occupied by a resident manager, which are to be restricted for use during the "compliance period" and any "extended use period" (as such terms are defined in Section 42) solely by Tax Credit Eligible Households.

(ggg) TCAC: California Tax Credit Allocation Committee.

(hhh) Tenant's Estate: Tenant's leasehold interest in the Leased Premises acquired pursuant to this Lease.

(iii) Term: The period of time described in Section 2.3 hereof.

(jjj) Transfer: Any sale, assignment, transfer, conveyance, encumbrance, mortgage, or hypothecation, in any manner or form or any agreement to do any of the foregoing.

Section 1.2 Exhibits. The Exhibits referred to in this Lease and attached hereto are expressly a part of this Lease as if fully set forth herein:

- Exhibit A: Leased Premises
- Exhibit B: Memorandum of Lease
- Exhibit C: Milestone Schedule
- Exhibit D: Intentionally Omitted
- Exhibit E: Right of Entry Agreement

ARTICLE 2.
LEASE OF THE LEASED PREMISES

Section 2.1 Leased Premises. Subject to the terms hereof and in consideration of the covenants of payment and performance stipulated herein, Landlord has leased, demised, and let, and by these presents does hereby lease, demise, and let unto Tenant, and Tenant hereby leases and takes from Landlord, the Leased Premises.

Section 2.2 Delivery of Possession and Acceptance. On the Commencement Date, if all conditions to the Closing have been satisfied or waived, Landlord will deliver to Tenant exclusive possession and occupancy of the Leased Premises. If the conditions to the Closing have not been satisfied or waived by December 31, 2018, as such date may be extended for Force Majeure Delay or pursuant to the DDA, this Lease will automatically terminate and be of no further force and effect and any rights Tenant may have to the Leased Premises shall terminate. In the event of termination of this Lease as a result of the failure of the conditions to Closing to be satisfied or waived, Tenant shall, at the request of Landlord execute a quitclaim deed or other document necessary to evidence the termination of Tenant's rights to the Leased Premises. Tenant's failure to satisfy the conditions to the Closing shall, subject to the expiration of any applicable notice and cure periods, also be deemed a Developer Event of Default under the DDA with respect to the Assigned Obligations under the Partial Assignment and shall entitle Landlord to any and all rights it may have under the DDA, including termination of the DDA with respect to the Assigned Obligation pursuant to the Partial Assignment, in which event Tenant shall assign the Assigned Obligations to APP. Prior to the Commencement Date, Landlord shall retain possession of the Leased Premises and Tenant shall have no rights to the Leased Premises except as specifically set forth in this Lease and the DDA.

Section 2.3 Inspection Period. Prior to the Commencement Date, during the Inspection Period, Tenant and its employees, contractors, subcontractors, and consultants (collectively, the "**Tenant Parties**") shall be entitled to enter onto the Leased Premises, and to the extent necessary to access the Leased Premises, any adjacent real property, at reasonable times to perform appraisals, inspections and tests, including invasive testing, on the Leased Premises as reasonably necessary to confirm the feasibility of developing the Leased Premises in accordance with this Lease, provided, Tenant has executed a Right of Entry Agreement substantially in the form attached as Exhibit E. After making such tests and inspections, Tenant Parties shall promptly restore the Leased Premises and any adjacent real property to its condition prior to such tests and inspections. Tenant shall defend, indemnify and hold harmless Landlord from all losses, costs, liabilities, claims and expenses (including reasonable attorneys' fees), of any kind or nature whatsoever, incurred, suffered by or claimed against Landlord by reason of any actual damage to the Leased Premises or the adjacent real property or injury to any persons caused by any of Tenant Parties in exercising its rights under this Section. Tenant's obligation to indemnify, defend and hold harmless under this Section 2.3 shall survive the termination of this Lease. To facilitate Tenant's inspection of the Leased Premises, Landlord shall provide Tenant

with any public documents in its possession regarding the Leased Premises, the Backbone Infrastructure and the Deferred Project Infrastructure.

At any time during the Inspection Period Tenant may terminate this Lease by written notice to Landlord if Tenant determines in its sole and absolute discretion that the development of the Leased Premises is not financially feasible, provided, however, Tenant has also terminated the Partial Assignment and assigned to APP the Assigned Obligations. Following such termination, neither party shall have any further rights or obligations hereunder except those obligations which specifically survive termination of this Lease.

Section 2.4 Term. Unless sooner terminated pursuant to the provisions hereof, this Lease shall continue in full force and effect for a term (“**Term**”), commencing on the Commencement Date and expiring on that date that is eighty-seven (87) years thereafter. Landlord shall provide Tenant with a notice of the Commencement Date and the expiration date of this Lease at the Closing which notice shall be incorporated into this Lease.

Section 2.5 Use. Tenant shall, throughout the Term, continuously use the Leased Premises and the Improvements only for the construction, operation, marketing for lease, and leasing of the Residential Units, and such other uses as are reasonably and customarily attendant to such uses, subject to the Applicable CC&Rs and Easements, Regulatory Agreements and this Lease, including but not limited to the restrictions and requirements set forth in Article 3 hereof. Further, Tenant agrees:

- (a) not to use the Leased Premises for any disorderly or unlawful purpose;
- (b) to use commercially reasonable efforts to prevent any action by any Residents from committing or maintaining any nuisance or unlawful conduct on or about the Leased Premises;
- (c) to use commercially reasonable efforts to prevent any action by any Resident that would cause Tenant to violate any of the covenants and conditions of this Lease with respect to the Project;
- (d) upon reasonable prior notice from Landlord, to take reasonable action, if necessary, to abate any action by any Resident that would cause Tenant to violate this Lease; and
- (e) subject to the rights of Residents, to permit Landlord and its agents upon not less than forty-eight (48) hours’ prior written notice to inspect the Leased Premises or any part thereof at any reasonable time during the Term.

Section 2.6 Memorandum of Lease. The Parties shall execute and acknowledge the Memorandum of Lease, in the form attached hereto as Exhibit B, which Tenant shall cause to be immediately recorded in the Official Records at Tenant’s expense.

Section 2.7 Option to Acquire Leased Premises. Landlord hereby grants to Tenant an option to acquire the fee interest in the Leased Premises. Tenant may not exercise this option to purchase unless the following conditions have been met:

- (a) The Closing has occurred;
- (b) The Backbone Infrastructure serving the Leased Premises has been installed and accepted by the City in accordance with the terms of the DDA and any Public Improvement Agreement entered into by and between the City and APP or its assignees and in conformance with the requirements of East Bay Municipal Utilities District;
- (c) No Tenant Event of Default has occurred.

If Tenant elects to exercise this option to acquire the fee interest in the Leased Premises, Tenant shall provide to Landlord a written notice of exercise no later than that date which is six months following the satisfaction of condition (a) above. Landlord shall convey the fee interest in the Leased Premises to Tenant within sixty (60) days of the receipt of the notice of exercise. The consideration for the conveyance of the fee interest in the Leased Premises shall be Tenant's covenant to comply with the Regulatory Agreements plus one dollar (\$1).

Section 2.8 Added Leased Premises. The Leased Premises only include a portion of the Affordable Housing Site and Tenant and Landlord are entering into a separate lease for the remaining portion of the Affordable Housing Site concurrently with this Lease with similar terms and conditions. If Tenant determines to develop the Affordable Housing Site as a single development and Landlord approves the Affordable Housing Development Financing Plan, in accordance with the process described in Section 1.1(d) above, that contemplates the development of the Affordable Housing Site as a single development, Tenant may request that Landlord add the remainder of the Affordable Housing Site to the Leased Premises prior to the Commencement Date in which event, Tenant and Landlord shall consent to an amendment to this Lease to amend the description of the Leased Premises to include the entire Affordable Housing Site.

ARTICLE 3. THE IMPROVEMENTS

Section 3.1 Construction. Tenant shall cause the commencement of construction of the Improvements on or before the date set forth in the Milestone Schedule attached hereto and incorporated herein as Exhibit C. Tenant shall cause the Improvements to be constructed in substantial compliance with the Approved Construction Plans in accordance with Section 5.3 of the DDA. Tenant shall cause the Improvements to be completed by the date set forth in the Milestone Schedule. The construction of the Improvements shall be conducted in a good and worker-like manner, in compliance with all requirements set forth in this Lease, the requirements of the Approved Financing, the requirements of the DDA, all permits and approvals issued for the Project, all construction documents as approved by Landlord pursuant to the DDA, and all

applicable laws, Tenant's obligations set forth in Section 3.7 below, the Development Plan, the Planning Documents, the Town Center Plan, the TDM Plan, the TDM Compliance Strategy, and all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of each permit, license, or other authorization that may be required for all or any applicable portion of such work by any governmental agency having jurisdiction, and Tenant shall be responsible to Landlord for the procurement and maintenance thereof, as may be required of Tenant and all entities engaged in work on the Project. In designing and constructing the Project, Tenant shall comply with accessibility requirements. Tenant shall take no action to effectuate any material amendments, modifications, or alterations to the plans and specifications unless Landlord has approved such, in writing and in advance. Landlord shall not issue Tenant a Certificate of Occupancy of the Improvements until such time as the EBMUD Infrastructure is complete.

Section 3.2 No Liens. Tenant shall not have any right, authority, or power to bind Landlord, Landlord's Estate, or any other interest of Landlord in the Leased Premises, for any claim for labor or material or for any other charge or expense, lien, or security interest incurred in connection with the construction or operation of the Improvements or any change, alteration, or addition thereto. Tenant shall not have any right to encumber Tenant's Estate without the written consent of Landlord, other than for Approved Financing and the Regulatory Agreements, utility easements, and other customary easements or agreements necessary and incidental to the construction and operation of the Improvements, which easements are subject to the approval of Landlord, which shall not be unreasonably withheld. Notwithstanding the foregoing, Landlord agrees to reasonably consider requests from the grantee of any such easement that the easement encumber Landlord's Estate such that any such easement will remain in place following expiration or termination of this Lease.

Tenant shall promptly pay and discharge all claims for work or labor done, supplies furnished, or services rendered at the request of Tenant and shall keep the Leased Premises free and clear of all mechanics' and materialmen's liens in connection therewith. If any claim of lien is filed against the Leased Premises or a stop notice is served on Landlord or other third party in connection with the construction or operation of the Improvements or any change, alteration, or addition thereto, then Tenant shall, within thirty (30) days after such filing of service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to Landlord a surety bond in sufficient form and amount, or provide Landlord with other assurance reasonably satisfactory to Landlord that the claim of lien or stop notice will be paid or discharged, provided that Landlord provides written notice of such claim of lien or stop notice to Tenant promptly upon receipt by Landlord.

If Tenant fails to discharge any lien, encumbrance, charge, or claim in the manner required in this Section, then in addition to any other right or remedy, Landlord may (but shall be under no obligation to) discharge such lien, encumbrance, charge, or claim at Tenant's expense, and Tenant shall pay to Landlord as Additional Rent (as defined in Section 4.2) any such amounts expended by Landlord within thirty (30) days after written notice is received from

Landlord of the amount expended. Alternately, Landlord may require Tenant to immediately deposit with Landlord the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. Landlord may use such deposit to satisfy any claim or lien that is adversely determined against Tenant.

Tenant shall file a valid notice of cessation or notice of completion upon cessation of construction on the Improvements for a continuous period of thirty (30) days or more, except in the event such cessation of construction is caused by adverse weather conditions, and shall take all other reasonable steps to forestall the assertion of claims of lien against the Leased Premises. Landlord shall have the right to post or keep posted on the Leased Premises, or in the immediate vicinity thereof any notices of non-responsibility for any construction, alteration, or repair of the Leased Premises by Tenant. Tenant authorizes Landlord, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that Landlord deems necessary or desirable to protect its interest in the Leased Premises.

Section 3.3 Permits, Licenses and Easements. Tenant shall be responsible for obtaining any and all permits, licenses, easements, and other authorizations required by any Governmental Authority with respect to any construction or other work to be performed on the Leased Premises, including the Additional Approvals – Vertical, as that term is defined in the DDA, and to grant or cause to be granted all permits, licenses, easements, and other governmental authorizations that are necessary or helpful for electric, telephone, gas, cable television, water, sewer, drainage, access (including emergency access), and such other public or private utilities, facilities or other rights as may be reasonably necessary or desirable in connection with the construction or operation of the Improvements. Tenant covenants and agrees to comply with the terms and conditions of all Applicable CC&Rs & Easements; provided, however, that Tenant's obligation to comply such Applicable CC&Rs & Easements shall (i) be limited to the terms and conditions of said Applicable CC&Rs & Easements which apply to the Leased Premises and/or the Project and no other portions of the surrounding Property, and (ii) shall not include any obligation specifically allocated to and undertaken by Landlord pursuant to the terms of a separate agreement between Landlord and Tenant, if any.

Section 3.4 Title to Improvements.

(a) During the Term. Notwithstanding any provision in this Lease to the contrary, the Improvements and all alterations, additions, equipment, and fixtures built, made, or installed by Tenant in, on, under, or to the Leased Premises or the Improvements shall be the sole property of Tenant in fee until the expiration of the Term or other termination of this Lease, subject to the Right of First Refusal/Purchase Option.

(b) After the Term. Upon the expiration of the Term or other termination of this Lease, the Improvements and all alterations, additions, equipment, and fixtures shall be deemed to be and shall automatically become the property of Landlord, without cost or charge to Landlord. Landlord agrees that Tenant, at any time prior to the fifty-seventh (57th) day after the expiration or other termination of this Lease, may remove from the Leased Premises any and all equipment which Tenant has furnished for maintenance purposes or for the use of the

Management Agent, provided that Tenant shall repair any physical damage to the Leased Premises caused by the removal of such equipment and property. Tenant agrees to execute, at the request of Landlord at the end of the Term, a quitclaim deed of the Improvements to Landlord to be recorded at Landlord's option and expense and any other documents that may be reasonably required by Landlord or Landlord's title company to provide Landlord title to the Leased Premises and the Improvements free and clear of all monetary liens and monetary encumbrances not caused or agreed to by Landlord.

Section 3.5 Benefits of Improvements During Term. Landlord acknowledges and agrees that any and all depreciation, amortization, and tax credits for federal or state tax purposes relating to the Improvements located on the Leased Premises and any and all additions thereto, substitutions therefor, fixtures therein, and other property relating thereto shall be deducted or credited exclusively to Tenant as the sole owner of such Improvements during the Term and for the tax years during which the Term begins and ends.

Section 3.6 Regulatory Agreements. Tenant shall, at all times throughout the Term, comply with all applicable requirements of the Regulatory Agreements as required herein. Tenant will cause all Tax Credit Units to be operated and maintained in accordance with the Tax Credit Regulatory Agreement, and Tenant shall so operate and maintain such Tax Credit Units for the term set forth in the Tax Credit Regulatory Agreement, unless such Tax Credit Regulatory Agreement is released from the Leased Premises pursuant to a foreclosure upon a Mortgage; provided, however, that in no event will any action be taken which violates Section 42(h)(6)(E)(ii) of the U.S. Internal Revenue Code of 1986, as amended, regarding prohibitions against evicting, terminating tenancy, or increasing rent of residential tenants for a period of three (3) years after acquisition of a building by foreclosure or deed-in-lieu of foreclosure

Section 3.7 Equal Opportunity. Tenant, for itself and its successors and assigns, and transferees agrees that in the construction, operation and management of the Project:

(a) Tenant will not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, ancestry, disability, medical condition, age, marital status, gender identity status, sex, sexual orientation, HIV status or Acquired Immune Deficiency Syndrome (AIDS) condition or perceived condition, or retaliation for having filed a discrimination complaint (nondiscrimination factors). Tenant will take affirmative action to ensure that applicants are considered for employment by Tenant without regard to the nondiscrimination factors, and that Tenant's employees are treated without regard to the nondiscrimination factors during employment including, but not limited to, activities of: upgrading, demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Tenant agrees to post in conspicuous places, available to its employees and applicants for employment, the applicable nondiscrimination clause set forth herein;

(b) Tenant will ensure that its solicitations or advertisements for employment are in compliance with the aforementioned nondiscrimination factors;

(c) Tenant will cause the foregoing provisions to be inserted in all contracts for the construction, operation and management of the Project entered into after the date of this Agreement; provided, however, that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw material;

Tenant shall use reasonable efforts to monitor and enforce, or shall cause its general contractor to monitor and enforce, the equal opportunity requirements imposed by this Lease. As requested, Landlord shall provide such technical assistance necessary to implement this Section 3.7.

Section 3.8 Prevailing Wages.

(a) Tenant shall and shall cause its contractors and subcontractors to pay prevailing wages in the construction of the Project as those wages are determined pursuant to Labor Code Sections 1720 et seq. and the implementing regulations of the Department of Industrial Relations (the "DIR"), to employ apprentices as required by Labor Code Sections 1777.5 et seq., and the implementing regulations of the DIR and comply with the other applicable provisions of Labor Code Sections 1720 et seq., 1777.5 et seq., 1810-1815 and implementing regulations of the DIR.

(b) All calls for bids, bidding materials and the Construction Contract documents for the Project must specify that:

(1) No contractor or subcontractor may be listed on a bid proposal nor be awarded a contract for the Project unless registered with the DIR pursuant to Labor Code Section 1725.5.

(2) The Project is subject to compliance monitoring and enforcement by the DIR.

(c) Tenant, as the "awarding body", shall register the Project as required by Labor Code Section 1773.3 as set forth in the DIR's online form PWC-100 within two (2) days after entering into the Construction Contract and provide evidence of such registration to Landlord within two (2) days of such registration and any additional registration reporting to the DIR.

(d) In accordance with Labor Code Sections 1725.5 and 1771.1, Tenant shall require that its contractors and subcontractors be registered with the DIR, and maintain such registration as required by the DIR.

(e) Pursuant to Labor Code Section 1771.4, the Project is subject to compliance monitoring and enforcement by the DIR. Tenant shall and shall require its contractors and subcontractors to submit payroll and other records electronically to the DIR pursuant to Labor Code Sections 1771.4 and 1776 et seq, or in such other format as required by the DIR.

(f) Tenant shall and shall cause its contractors and subcontractors to keep and retain such records as are necessary to determine if prevailing wages have been paid as required

pursuant to Labor Code Sections 1720 et seq., and that apprentices have been employed as required by Labor Code Section 1777.5 et seq., and shall, from time to time upon the request of Landlord provide to Landlord such records and other documentation reasonably requested by Landlord.

(g) Tenant shall and shall cause its respective contractors and subcontractors to comply with all other applicable provisions of Labor Code, including without limitation, Labor Code Sections 1720 et seq., 1725.5, 1771, 1771.1, 1771.4, 1776, 1777.5 et seq., 1810-1815 and implementing regulations of the DIR in connection with construction of the Project or any other work undertaken or in connection with the Leased Premises.

(h) Copies of the currently applicable current per diem prevailing wages are available from the DIR website, www.dir.ca.gov. Tenant shall cause its respective contractors to post the applicable prevailing rates of per diem wages at the Project site and to post job site notices, in compliance with Title 8 California Code of Regulations 16451(d) or as otherwise as required by the DIR.

(i) Tenant shall indemnify, hold harmless and defend (with counsel reasonably selected by the Landlord), to the extent permitted by applicable law, Landlord, its councilmembers, commissioners, officials, employees and agents, against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Tenant, or its contractors or subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., to hire apprentices in accordance with Labor Code Sections 1777.5 et seq., or to comply with the other applicable provisions of Labor Code Sections 1720 et seq., 1725.5, 1771, 1771.1, 1771.4, 1776, 1777.5 et seq., 1810-1815 and the implementing regulations of the DIR in connection with the work performed pursuant to this Agreement. The provisions of this Section shall survive termination of this Agreement.

Section 3.9 Payment and Performance Bonds. In connection with the construction of the Improvements, Tenant shall provide to Landlord Vertical Improvement Completion Assurances in accordance with the DDA.

Section 3.10 Landlord Review. Tenant shall be solely responsible for all aspects of Tenant's conduct in connection with the Improvements, including, but not limited to, the quality and suitability of the specifications, the supervision of construction work, and the qualifications, financial condition, and performance of all engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by Landlord with reference to the Improvements, in accordance with the terms of this Lease, is solely for the purpose of determining whether Tenant is properly discharging its obligations to Landlord, and should not be relied upon by Tenant or by any third parties as a warranty or representation by Landlord as to the quality of the design or performance of the Improvements.

Section 3.11 Accessibility Requirements. The design and the operation of the Project shall meet the program accessibility requirements of Section 504 of the Rehabilitation Act of

1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8 or any applicable successor regulation, the Americans with Disabilities Act, and the Fair Housing Act and their implementing regulations. In addition, Tenant shall ensure that the percentage of accessible dwelling units complies with the requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8, subpart C or any applicable successor regulation.

Section 3.12 Infrastructure Improvements. Tenant acknowledges that the DDA and the Affordable Housing Implementation Plan contemplated that APP would pay the costs of and install certain infrastructure improvements necessary to serve the Project prior to construction of the Project. Due to delays in the development of the Property by APP, Tenant is prepared to pay the costs of and install as part of the construction of the Project such infrastructure as is necessary to connect the Project to existing infrastructure at the Property and to construct the EBMUD Infrastructure. If, prior to the Closing, APP has not either (i) installed infrastructure necessary to serve the Project including the EBMUD Infrastructure or (ii) entered into a Public Improvement Agreement including providing Landlord with the Completion Assurances required by the Public Improvement Agreement related to such infrastructure, Tenant shall provide to Landlord for Landlord's approval a plan for such infrastructure necessary to serve the Project including the EBMUD Infrastructure and approval of such plan by the Landlord shall be a condition of Closing. Landlord's approval of Tenant's plan for installation of the infrastructure shall, solely for purposes of the Closing, constitute satisfaction of the condition for the Completion of the Project Infrastructure set forth in Section 3.1 of the Affordable Housing Implementation Plan. Landlord agrees to grant to Tenant rights of entry to enter onto property adjacent to the Leased Premises as necessary for Tenant to perform activities under this Section 3.12(a) substantially in the form of Exhibit E. Nothing herein shall constitute a release or waiver of APP's obligations under the DDA and the Affordable Housing Implementation Plan to install the Project Infrastructure and the Deferred Project Infrastructure.

In the event that APP defaults under the terms of any Public Improvement Agreement and fails to complete construction of the Project Infrastructure, Landlord shall use commercially reasonable efforts to obtain completion of the Project Infrastructure by seeking to obtain performance pursuant to any Completion Assurances given by APP, provided, however, in no event shall Landlord be obligated to complete the Project Infrastructure. If, after an APP default under the Public Improvement Agreement, Landlord collects funds from any obligor under the Completion Assurances for portions of the Project Infrastructure installed by and paid for by the Tenant, Landlord shall reimburse Tenant for Tenant's costs of installing such infrastructure but only to the extent and in the amount that Landlord receives funds from the obligor and only to the extent that such funds are not necessary to complete other portions of the Project Infrastructure. Nothing herein shall limit Landlord's discretion to settle any claim or dispute with the obligor under the Completion Assurances on any terms deemed acceptable to Landlord.

(b) As the Property adjacent to the Leased Premises is developed it is likely that additional infrastructure improvements consistent with the MIP will be installed and such installation will require access to the Leased Premises and removal and replacement of

infrastructure installed by Tenant to serve the Project. Tenant shall not be responsible for the cost or performance of any such removal or replacement, however, Tenant shall cooperate with Landlord and any developers of the Property adjacent to the Leased Premises with respect to such infrastructure installation, at no cost to Tenant, and shall provide access to the Leased Premises for such installation, provided that Tenant may condition such access on a requirement that such access does not unreasonably interfere with Tenant's construction or operation of the Improvements.

(c) Tenant acknowledges that the infrastructure existing on the Leased Premises and the Property may not be up to current standards for infrastructure improvements and that connecting to such infrastructure may result in increased costs and liability to Tenant. Tenant shall be solely responsible for any such increased costs or liability. Tenant on behalf of itself and anyone claiming by, through or under Tenant (including, without limitation, any successor tenant) hereby waives its right to recover from and fully and irrevocably releases Landlord, its elected and appointed officials, board members, commissioners, officers, employees, attorneys, agents, volunteers and their successors and assigns from any and all actions, causes of action, claims, costs, damages, demands, judgments, liability, losses, orders, requirements, responsibility and expenses of any type or kind that Tenant may have or hereafter acquire against Landlord or any of Landlord Released Parties arising from or related to the infrastructure improvements existing on the Leased Premises or any adjacent real property and any connections made by Tenant to such infrastructure improvements. Tenant hereby indemnifies the Indemnified Parties against any and all liabilities, obligations, damages, penalties, claims, actions, costs, charges, judgment and expenses, including reasonable attorneys' fees, costs and disbursements arising from the existing infrastructure serving the Leased Premises, including any damages to the Project resulting from the existing infrastructure serving the Leased Premises.

ARTICLE 4. **RENTS**

Section 4.1 Rent. Annual Rent For the period commencing upon the Commencement Date and ending on the Expiration Date, for each Lease Year during the Term, Tenant shall pay to Landlord, Annual Rent in an amount equal to One Dollar (\$1.00) per year.

Section 4.2 Additional Rents. In addition to the Rent specified in Section 4.1 hereof, any and all of the payments that Tenant is required to make hereunder to or for the benefit of Landlord shall be deemed to be "**Additional Rents.**" All such Additional Rents shall be payable in accordance with the provisions of this Lease specifying the payment of such Additional Rents, including but not limited to Section 4.3 herein. The Rent specified in Section 4.1 hereof and Additional Rents payable hereunder shall be deemed "**Rents**" reserved by Landlord, and any remedies now or hereafter given to Landlord under the laws of the State of California for collection of the Rents shall exist in favor of Landlord, in addition to any and all other remedies specified in this Lease.

Section 4.3 Payments. All Rents or other sums, if any, due Landlord hereunder shall be paid by Tenant to Landlord at the address of Landlord set forth hereinafter for notices, or to such other person and/or at such other address as Landlord may direct

Section 4.4 Net Lease and Assumption of Risk. This Lease is intended to be, and shall be, construed as an absolute net lease, whereby under all circumstances and conditions (whether now or hereafter existing or within the contemplation of the Parties), the Rents provided for herein shall be absolutely net to Landlord over and above all costs, expenses, and charges of every kind or nature whatsoever related to the Leased Premises, including, without limitation, taxes, utility costs, insurance premiums, operating expenses, costs of repairs, maintenance, restorations, and replacements of the Project, except as may otherwise be expressly set forth herein.

ARTICLE 5. **TAXES AND OTHER IMPOSITIONS; UTILITIES**

Section 5.1 Payment of Impositions. During the Term, prior to delinquency, Tenant will pay all of the Impositions, except that if any Imposition that Tenant is obligated to pay in whole or in part is permitted by law to be paid in installments, Tenant may pay or cause to be paid such Imposition (or its proportionate part thereof) in installments prior to delinquency. Upon the written request of Landlord, Tenant shall exhibit and deliver to Landlord evidence satisfactory to Landlord of payment of all Impositions. During the first and last years of the Term, all Impositions that shall become payable during each calendar, fiscal, tax, or Lease Year, as applicable, shall be ratably adjusted on a per diem basis between Landlord and Tenant in accordance with the respective portions of such calendar, fiscal, tax, assessment, or Lease Year during the Term. If any special assessments are payable in installments, Tenant shall pay only those installments that are due and for which the delinquency date occurs during the Term for periods occurring during the Term. The Parties acknowledge that Tenant intends to apply for a partial exemption for ad valorem taxes under Section 214(g) of the California Revenue and Taxation Code.

Section 5.2 Contested Taxes and Other Impositions. Tenant, at its sole cost and expense, in its own name or in the name of Landlord, may contest the validity or amount of any Imposition relating to all or any portion of the Leased Premises, in which event the payment thereof may be deferred during the pendency of such contest, if diligently prosecuted.

(a) As may be necessary or desirable, Landlord or Tenant, as applicable, upon the request of the other Party, shall use its best reasonable efforts to assist in any such proceeding to contest the validity or amount of any Imposition.

(b) Nothing contained in this Section 5.2, however, shall be construed to allow any such contested Imposition to remain unpaid for a length of time which shall permit the Leased Premises, or any part thereof, to be sold by any Governmental Authorities for the nonpayment of such Imposition. Tenant shall promptly furnish Landlord copies of all notices, appeals, pleadings, motions, and orders in any proceedings commenced with respect to such contested

Imposition. During such contest, Tenant shall (by the payment of such disputed taxes, assessments, or charges, if necessary) prevent any advertisement of tax sale, any foreclosure of, or any divesting thereby of Landlord's title, reversion, or other interest in or to the Leased Premises and the Improvements.

Section 5.3 Failure to Pay Impositions. If during the Term, Tenant shall fail to pay any Impositions before the same become delinquent, or as otherwise required pursuant to Section 5.1 hereof, Landlord, at its election, may pay such Impositions (but shall not be obligated to pay same), together with any interest and penalties due thereon, and the amount so paid by Landlord shall be repayable to Landlord by Tenant within forty-five (45) days after Landlord's demand therefor.

Section 5.4 Utilities. During the Term, Tenant shall pay all utilities used, rendered, or supplied upon or in connection with the Improvements and the construction thereof including, but not limited to, all charges for gas, electricity, light, heat, or power, all telephone and other communications services, all water rents and sewer service charges, and all sanitation fees or charges levied or charged against the Leased Premises during the Term; provided, however, that Tenant shall have no responsibility hereunder for the payment of utilities supplied by the respective providers directly to residential tenants for such residential tenants' use in connection with the occupancy of their respective Residential Units. Landlord shall have no responsibility for the payment of utility costs.

ARTICLE 6. **INSURANCE**

Section 6.1 Required Insurance Coverage. Except as otherwise provided in Section 6.11, during the Term Tenant shall maintain or cause to be maintained and kept in force, at the sole cost and expense of Tenant or its Contractors the insurance applicable to the Project and required under this Article 6.

Section 6.2 Comprehensive General Liability Insurance. During the Term Tenant shall maintain or cause to be maintained and kept in force, comprehensive general liability insurance in an amount not less than Two Million Dollars (\$2,000,000) with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including premises operations, underground and collapse, completed operations, contractual liability, independent contractor's liability, broad form property damage and personal injury, and Five Million Dollars (\$5,000,000) general aggregate limit, which minimum amounts shall be increased by the CPI Increase every five (5) years on the anniversary of the Commencement Date and covering, without limitation, all liability to third parties arising out of or related to Tenant's performance of its obligations under this Agreement or other activities of Tenant at or about the Leased Premises and the Project, including, without limitation, Tenant's indemnification obligations under this Agreement or the DDA. Such insurance in excess of One Million Dollars (\$1,000,000) may be covered by a so-called "umbrella" or "excess coverage" policy.

Section 6.3 Vehicle Liability Insurance. During the Term Tenant shall maintain or cause to be maintained and kept in force, vehicle liability insurance in an amount not less than One Million Dollars (\$1,000,000) (combined single limit) including any automobile or vehicle whether hired or owned by Tenant.

Section 6.4 Workers' Compensation Insurance. During the Term Tenant shall maintain or cause to be maintained and kept in force, workers' compensation insurance in an amount not less than the statutory limits in accordance with Article I of Chapter 4 of Part I of Division 4 of the California Labor Code.

Section 6.5 Property Insurance. During the Term, Tenant shall maintain or cause to be maintained and kept in force, property insurance covering the Leased Premises, the Improvements, and all personal (non-expendable) property (except for personal property otherwise typically covered by insurance maintained by tenants) located on the Leased Premises, in form appropriate for the nature of such property, covering all risks of loss, including earthquake (only if required by Tenant's lender and to the extent available at commercially reasonable cost), for 100% of the replacement value, with deductible, if any, reasonably acceptable to the City Risk Manager.

Section 6.6 Construction Contractor's Insurance. Tenant shall cause any Contractor performing work on the Leased Premises or Improvements to maintain insurance of the types and in at least the minimum amounts described in Sections 6.2, 6.3, and 6.4, and shall require that such insurance shall meet all of the general requirements of Sections 6.8 and 6.9. Except with respect to construction of tenant improvements, Tenant shall also cause its Contractor to obtain and maintain Contractor's Pollution Liability Insurance covering the Contractor and all subcontractors in an amount of not less than Five Million Dollars (\$5,000,000) with a maximum deductible of One Hundred Thousand Dollars (\$100,000) with coverage continuing for ten years after completion of construction.

Section 6.7 Pollution Liability Insurance Policy.

No later than the Commencement Date, Tenant shall procure to the reasonable satisfaction of Tenant and Landlord, at its cost, a real estate environmental liability insurance policy (a "Pollution Liability Insurance Policy") covering pre-existing conditions with a ten (10) year term that names Tenant as the named insured with the right to control the policy, and Landlord as an additional insured. The Pollution Liability Insurance Policy shall meet the requirements of Section 6.9(e), shall include a Ten Million (\$10,000,000) policy per claim and in the aggregate coverage limit and a maximum deductible of One Hundred Thousand Dollars (\$100,000) or other amount reasonably agreed by Landlord, and shall provide the following types of coverage:

- (1) Pollution Legal Liability;
- (2) On-Site and Off-Site Clean-Up Costs;
- (3) Non-Owned Disposal Site;
- (4) In-Bound and Out-Bound Contingent Transportation

- (5) Legal Defense Expense
- (6) Business Interruption for Tenant, including to the extent reasonably available, soft-costs and construction delays.

(b) Tenant shall confer with and consider in good faith the input of Landlord in connection with procurement of a Pollution Liability Insurance Policy. Tenant shall pay the premiums and any other costs of procuring the Pollution Liability Insurance Policy, and any required deductible amount to activate the insurance in the event of a claim.

(c) Nothing in this Agreement shall preclude or prevent Tenant from seeking and applying proceeds from claims made under the Pollution Liability Insurance Policy toward costs of remediation of Hazardous Materials provided, however, that Tenant shall be solely responsible for the payment of any deductible and other costs in connection with procuring such proceeds.

(d) Tenant shall use commercially reasonable efforts to renew the Pollution Liability Insurance Policy for one additional ten (10) year term prior to expiration of the Pollution Liability Insurance Policy.

(e) Tenant shall be deemed to have satisfied the provisions of this Section 6.7 if Tenant is named as an additional insured under a Pollution Liability Insurance Policy procured by APP that complies with the requirements of Section 16.7 of the DDA.

Section 6.8 General Insurance Requirements. With the exceptions of the Pollution Liability Insurance Policy, the insurance required by this Article 6 shall be provided under an occurrence form, and Tenant shall maintain (or cause to be maintained) such coverage continuously throughout the Term of this Agreement (except for the Contractor's insurance requirement set forth in Section 6.6, which shall be maintained until Tenant is entitled to issuance of an Estoppel Certificate of Completion for the construction of the Improvements as set forth in the DDA and the Pollution Liability Insurance Policy, which shall be maintained as specified in Section 6.7). Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be two and one-half (2.5) the occurrence limits specified above.

Section 6.9 Additional Requirements. The insurance policies required pursuant to this Article 6 (other than Workers' Compensation insurance) shall be endorsed to name as additional insureds Landlord and its elected and appointed officials, board members, commissions, officers, employees, attorneys, agents, volunteers (the "Additional Insureds"). All insurance policies shall contain:

(a) an agreement by the insurer to give Landlord at least thirty (30) days' notice (ten (10) days' notice for non-payment of premium) prior to cancellation or any material change in said policies;

(b) except with respect to the Pollution Liability Insurance Policy, an agreement by the insurer that such policies are primary and non-contributing with any insurance that may be carried by Landlord. For the Pollution Liability Insurance Policy, the policy shall contain an agreement by the insurer that the Pollution Liability Insurance Policy is primary and non-contributing with any insurance that may be carried by the City for environmental conditions at, on or under acquired Property;

(c) a provision that no act or omission of Tenant shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained by the Additional Insureds up to applicable policy limits; and

(d) a waiver by the insurer of all rights of subrogation against the Additional Insureds in connection with any claim, loss or damage thereby insured against.

(e) all insurance companies providing coverage pursuant to this Article 6, shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California, and shall have an A. M. Best's rating of not less than "A:VII".

Section 6.10 Certificates of Insurance. Upon Landlord's Risk Manager's request at any time during the Term of this Agreement, Tenant shall provide certificates of insurance, in form and with insurers reasonably acceptable to Landlord's Risk Manager, and/or insurance policies including all endorsements, evidencing compliance with the requirements of this section, and shall provide complete copies of such insurance policies, including a separate endorsement naming the Additional Insureds as additional insureds.

Section 6.11 Alternative Insurance Compliance. During such time that a Mortgagee imposes insurance requirements that are inconsistent with the requirements set forth in Article 6, Tenant may satisfy the insurance requirements of this Article 6, other than the Pollution Liability Insurance Policy by meeting the requirements of such Mortgagee; provided that Tenant shall provide at least five (5) Business Days prior written notice to Landlord specifying: (x) the nature of the inconsistency; (y) a statement that there is no commercially reasonable way for Tenant to comply with both Landlord's and Mortgagee's insurance requirement; and (z) the alternative insurance requirement Tenant intends to comply with.

ARTICLE 7.

MAINTENANCE, ALTERATIONS, REPAIRS AND REPLACEMENTS

Section 7.1 Maintenance of Leased Premises. During the Term at Tenant's sole cost and expense, Tenant shall keep and maintain the Leased Premises, all Improvements, and all appurtenances thereunto belonging, in good and safe order, condition, and repair. In addition, all maintenance and repair of the Residential Units shall conform and comply with the Legal Requirements affecting the Leased Premises.

Section 7.2 Alterations to Leased Premises. Following construction of the Improvements, Tenant may make any additions, alterations, or changes (sometimes collectively referred to herein as “**Alterations**”) in or to the Improvements subject, however, to the following conditions:

(a) No Alterations shall be made that are likely to materially impair the structural soundness of the Improvements;

(b) No Alterations of the Leased Premises shall be undertaken which have a cost greater than Two Hundred Fifty Thousand Dollars (\$250,000.00) that would materially affect the design of the Improvements, or demolition of any portion thereof, without first presenting to Landlord complete plans and specifications therefor and obtaining Landlord’s written consent thereto (which consent shall be given so long as, in Landlord’s judgment, such Alterations will not violate the Legal Requirements, this Lease, the Regulatory Agreements, or impair the value of the Improvements);

(c) No Alterations shall be undertaken until Tenant shall have procured, to the extent the same may be required from time to time, all permits and authorizations of all applicable Governmental Authorities, all required consents of Mortgagee, and the consent of Landlord if required pursuant to subsection (b), above, if applicable. Landlord shall join in the application for such permits or authorizations whenever such action is necessary or helpful and is requested by Tenant, and shall use Landlord’s reasonable best efforts to obtain such permits or authorizations; and

(d) Any Alterations shall be performed in good and worker-like manner and in compliance with the Legal Requirements, Regulatory Agreements, and all applicable Insurance Requirements.

Section 7.3 Indemnifications. Notwithstanding any other provision of this Lease to the contrary, Tenant shall defend, indemnify and hold harmless Landlord and its commissioners, its officer(s), employee(s), agent(s), contractor(s), and director(s) (including directors or employees of any Landlord instrumentalities or affiliates) from all claims, actions, demands, costs, expenses and attorneys’ fees arising out of, attributable to or otherwise occasioned, in whole or in part, by an act or omission of Tenant, its agent(s), contractor(s), servant(s), or employee(s) which constitutes a breach of Tenant’s obligations under this Lease. If any third-party performing work for Tenant on the Project shall assert any claim against Landlord on account of any damage alleged to have been caused by reason of the negligent acts or intentional misconduct of Tenant, its agent(s), servant(s), employee(s) or contractor(s) (including, without limitation, its general contractor), Tenant shall defend at its own expense any suit based upon such claim; and if any judgment or claim against Landlord shall be allowed, Tenant shall pay or satisfy such judgment or claim and pay all reasonable costs and expenses in connection therewith including attorneys’ fees.

In addition, if any contractor or subcontractor which performed preconstruction work or any construction work for Tenant or Tenant’s affiliates on the Improvements shall assert any

claim against Landlord on account of any damage alleged to have been caused by reason of acts of negligence of Tenant or Tenant's affiliates, their members, partners, officers, directors, affiliates, agents, or employees, or their construction contractors, Tenant shall defend at its own expense any suit based upon such claim; and if any judgment or claim against Landlord shall be allowed, Tenant shall pay or cause to be paid or satisfied such judgment or claim and pay all costs and expenses in connection therewith.

The obligations, indemnities, and liabilities of Tenant under this Section 7.3 shall not extend to any liability caused by the negligence or misconduct of Landlord, or its employee(s), contractor(s), or agent(s). Tenant's liability shall not be limited by any provisions or limits of insurance set forth in this Lease. This indemnity shall survive the termination of this Lease. The provisions of this Section 7.3 shall not apply to matters arising out of or related to Hazardous Materials which are addressed in Section 10.3 below.

Section 7.4 Management. During the Term, Tenant shall, at all times, use its best efforts to keep the Leased Premises fully leased and in good condition and repair. During the Term, Tenant shall: (a) carefully and efficiently operate, lease, and manage the Leased Premises; (b) maintain separate books and records for the Leased Premises; (c) timely collect all rents, and pay and discharge all costs, expenses, liabilities, and obligations of or relating to the Leased Premises; (d) maintain such reserves as may be required by the Mortgagee; and (e) timely furnish Landlord with accounting documents and other information regarding the Project and the operation thereof as may be reasonably required by Landlord.

Section 7.5 Delegation of Management Duties. Upon completion of the Improvements, the Leased Premises shall be managed by the Management Agent approved by Landlord. Each management contract relating to the Leased Premises shall (a) be subject to Landlord's approval, (b) provide that it may be terminated by Landlord at any time after the termination of this Lease upon thirty (30) days' notice to the Management Agent and (c) allow Tenant to terminate the management contract following Management Agent's failure to materially comply with the management, leasing, and occupancy requirements of Sections 7.4, 7.5 and 7.6 of this Lease. If Landlord determines that the Management Agent has failed to materially comply with the management, leasing, and occupancy requirements of Sections 7.4, 7.5 and 7.6 of this Lease, Landlord shall notify Tenant. Tenant shall then have sixty (60) days beyond the cure periods in the management contract to cause the Management Agent to correct the non-compliance. If, following such sixty (60) day period, Management Agent has not corrected the non-compliance and Tenant has not terminated the management contract then, Landlord shall have the right, subject to any applicable Lender or Investor approvals, to remove Management Agent. All service and supply contracts shall also by their terms be terminable by Landlord at any time after the termination of this Lease upon thirty (30) days' notice. Tenant shall not enter into any commercially unreasonable contract for services or supplies. Landlord's approval of any Management Agent shall not be construed as a representation, endorsement, or warranty by Landlord as to the reputation, ability, or qualifications of the same. In addition, Landlord expressly reserves the right to approve the fees and/or compensation of the

Management Agent. As of the date hereof, Landlord has approved the initial Management Agent, the initial Management Agreement, and initial management fee.

Section 7.6 Management and Operation of the Residential Units. Tenant shall be responsible, at its sole cost and expense, for the repair and maintenance of the Residential Units in full compliance with this Lease and all Legal Requirements, and for paying all costs relating to such Residential Units (including, without limitation, taxes, insurance, and any homeowner's association fees or special assessments).

Section 7.7 Certain Limitation on Work. Tenant shall not do or knowingly permit any work which would adversely and materially affect the value, rentability, or rental value of the Leased Premises, and Tenant shall not, without the prior written consent of Landlord, demolish or remove, or cause, knowingly suffer, or knowingly permit the demolition or removal of, the Project other than such demolition and/or removal as may be permitted following any event described in Articles 11 and 12 hereof.

Section 7.8 Alterations Required by Law. Without limitation on the other provisions of this Lease, if any work shall be required with respect to the Leased Premises or any part thereof by any present or future laws, ordinances, or regulations, the same shall be done by and the cost thereof borne by Tenant.

Section 7.9 Landlord Completion of Work. To the extent Tenant is required to complete work pursuant to any Legal Requirement and fails to do so, upon the expiration of sixty (60) days written notice from Landlord to Tenant, or such longer period as is reasonably necessary to complete such work given the circumstances, Landlord shall have the right to complete such work and Tenant shall reimburse Landlord for all reasonable expenses incurred in connection therewith.

ARTICLE 8. **MORTGAGE LOANS**

Section 8.1 Loan Obligations. Nothing contained in this Lease shall relieve Tenant of its obligations and responsibilities under any Approved Financing or Approved Financing Documents to operate the Project as set forth therein.

Section 8.2 Liens and Encumbrances Against Tenant's Interest in the Leasehold Estate. During the Term, Tenant shall have the right to encumber the leasehold estate created by this Lease and the Improvements with the Regulatory Agreements and all other liens and restrictive covenants related to the Approved Financing. Except as otherwise provided in this Lease, Tenant shall not engage in any financing or any other transaction creating any security interest or other encumbrance or lien upon the Property other than a lien for current taxes, whether by express agreement or operation of law, or allow any encumbrance or lien to be made on or attached to the Property or the Improvements, except with the prior written consent of Landlord, which approval shall not be unreasonably withheld, delayed or conditioned, and as otherwise permitted under this Lease. Tenant shall notify Landlord in writing in advance of any

financing secured by any deed of trust, mortgage, or other similar lien instrument that it proposes to enter into with respect to the Improvements, and of any encumbrance or lien that has been created on or attached to the Property whether by voluntary act of Tenant or otherwise.

Section 8.3 Cost of Loans to be Paid by Tenant. Tenant affirms that it shall bear all of the costs and expenses in connection with (i) the preparation and securing of the Approved Financing, (ii) the delivery of any instruments and documents and their filing and recording, if required, and (iii) all taxes and charges payable in connection with the Approved Financing.

Section 8.4 Proceeds of Loans. It is expressly understood and agreed that all Approved Financing proceeds shall be paid to and become the property of Tenant, and that Landlord shall have no right to receive any such Approved Financing proceeds.

Section 8.5 No Subordination of Fee Interest. Landlord will not approve any subordination of its fee interest in any portion of the Property to the interests of any lender or other entity providing financing for the Project.

Section 8.6 Notice and Right to Cure Defaults Under Loans. Landlord may record in the Official Records a request for notice of any default under the Approved Financing Documents or other financing secured by the Project. In the event of default by Tenant under the Approved Financing Documents or other financing secured by the Project, Landlord shall have the right, but not the obligation, to cure the default within the cure periods available to Tenant and its partners. Any payments made by Landlord to cure a default shall be treated as Additional Rent due from Tenant and shall be paid to Landlord within thirty (30) days following the date on which the payment was made by Landlord.

ARTICLE 9.

PERMITTED MORTGAGES AND INVESTOR RIGHTS

Section 9.1 Right to Encumber. Tenant shall have the right during the Term to encumber, through one or more Mortgages, Regulatory Agreements, or declaration of covenants, all of Tenant's right, title, and interest in the Leased Premises, subject to the provisions of this Lease and with prior written Landlord approval. Except as expressly set forth in this Lease, Landlord shall not encumber its fee interest in the Leased Premises.

Section 9.2 Notice to Mortgagee. During any period in which a Mortgage is in place, Landlord shall give any such Mortgagee of which Landlord has received notice from Tenant a duplicate copy of all notices of default or other notices that Landlord may give to or serve in writing upon Tenant pursuant to the terms of this Lease and all such duplicate copies of notices of default and other notices shall be distributed simultaneously to both Tenant and Mortgagee. No notice by Landlord to Tenant under this Lease shall be effective unless and until a copy of such notice has been delivered to each Mortgagee of which Landlord has received notice from Tenant. Additionally, Landlord shall give Mortgagee written notice of any rejection of this Lease in bankruptcy proceedings. Landlord shall not serve a notice of cancellation or termination upon Tenant unless a copy of any prior notice of default shall have been given to Mortgagee and the

time for curing such default pursuant to Section 9.3 below shall have expired without the same having been cured, and no such notice of default shall be effective as to such Mortgagee not receiving actual notice thereof. Landlord further agrees that it shall notify Mortgagee in writing of the failure of Tenant to cure a default within any applicable grace period under this Lease and of the curing of any default by Tenant under this Lease, and Mortgagee shall have the additional cure periods pursuant to Section 9.3 below. The performance by Mortgagee of any condition or agreement on part of Tenant to be performed hereunder will be deemed to have been performed with the same force and effect as though performed by Tenant. The address of Mortgagee originally designated in a Mortgage may be changed upon written notice delivered to Landlord in the manner specified in Section 18.12 herein. Landlord's failure to give any such notice to any such Mortgagee shall not constitute a default under Section 13.4.

Section 9.3 Right of Mortgagee to Cure. Notwithstanding any default by Tenant under this Lease, Landlord shall have no right to terminate or cancel this Lease unless Landlord shall have given each Mortgagee written notice of such default pursuant to Section 9.2 of this Lease and such Mortgagees shall have failed to remedy such default or acquire Tenant's leasehold estate created by this Lease or commence foreclosure or other appropriate proceedings as set forth in, and within the time specified by, this Section.

Any Mortgagee which has an outstanding Mortgage shall have the right, but not the obligation, at any time to pay any or all of the rent due pursuant to the terms of this Lease, and do any other act or thing required of Tenant by the terms of this Lease, to prevent termination of this Lease. After receipt of notice from Landlord that Tenant has failed to cure such default within the period specified in this Lease, Mortgagee shall have ninety (90) days from the receipt of such notice to cure such default. All payments so made and all things so done shall be as effective to prevent a termination of this Lease as the same would have been if made and performed by Tenant instead of by Mortgagee.

Prior to the expiration of the cure rights of Mortgagees, Landlord shall not effect or cause any purported termination of this Lease nor take any action to deny Tenant possession, occupancy, or quiet enjoyment of the Leased Premises or any part thereof.

Without limiting the rights of Mortgagees as stated above, and whether or not there shall be any notice of default hereunder, each Mortgagee shall have the right, but not the obligation, at any time prior to termination of this Lease to pay all of the rent due hereunder, with all due interest and late charges, to procure any insurance, to pay any taxes or assessments, to make any repairs or improvements, to do any other act or thing required of Tenant hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants, and conditions hereof to prevent termination of this Lease. Any Mortgagee and its agents and contractors shall have full access to the Leased Premises for purposes of accomplishing any of the foregoing. Any of the foregoing done by any Mortgagee shall be as effective to prevent a termination of this Lease as the same would have been if done by Tenant.

In addition to the cure period provided in this Section 9.3, if the default is such that possession of the Leased Premises may be reasonably necessary to remedy the default, any Mortgagee shall have a reasonable time after the expiration of such ninety (90)-day period within which to remedy such default, provided that (i) such Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant under this Lease within such ninety (90)-day period and shall continue to pay currently any monetary obligations when the same are due and (ii) such Mortgagee shall have acquired Tenant's leasehold estate hereunder or commenced foreclosure or other appropriate proceedings prior to or within such period, and shall be diligently prosecuting the same and such foreclosure is completed with a maximum of eighteen (18) months following the commencement of such proceedings.

Any default under this Lease which by its nature cannot be remedied by any Mortgagee shall be deemed to be remedied if (i) within ninety (90) days after receiving written notice from Landlord that Tenant has failed to cure such default within the period specified in this Lease, or prior thereto, any Mortgagee shall have acquired Tenant's leasehold estate or commenced foreclosure or other appropriate proceedings or other remedies available to such Mortgagee under the applicable Mortgage, (ii) Mortgagee shall diligently prosecute any such proceedings or remedies referenced in subsection (i) above to completion, and (iii) Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant hereunder which does not require possession of the Leased Premises.

If any Mortgagee is prohibited, stayed, or enjoined by any bankruptcy, insolvency, or other judicial proceedings involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings, the times specified for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided that any Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant under this Lease and shall continue to pay currently such monetary obligations when the same fall due; provided, further, that such Mortgagee shall not interfere with Landlord's efforts to seek compliance by Tenant with any non-monetary obligation under this Lease.

Section 9.4 Limitation on Liability of Mortgagee. No Mortgagee shall be or become liable to Landlord as an assignee of this Lease or otherwise unless it expressly assumes by written instrument executed by Landlord and Mortgagee such liability (in which event the Mortgagee's liability shall be limited to the period of time during which it is the owner of the leasehold estate created hereby) and no assumption shall be inferred from or result from foreclosure or other appropriate proceedings in the nature thereof or as the result of any other action or remedy provided for by such Mortgage or other instrument or from a conveyance from Tenant pursuant to which the purchaser at foreclosure or grantee shall acquire the rights and interest of Tenant under the terms of this Lease.

Section 9.5 Estoppel Certificates. Landlord and Tenant agree that at any time and from time to time upon not less than twenty (20) days' prior written notice by the other Party, or upon request from any Mortgagee or Investor or a permitted assignee or other interested party, Landlord or Tenant will execute, acknowledge, and deliver to the other Party or to such

Mortgagee or Investor a statement in writing certifying: (a) that this Lease is unmodified and in full force and effect; (b) the date through which the Rents have been paid; and (c) that, to the knowledge of the certifier (if such be the case), there is no default (or any conditions existing which, but for the passage of time or the giving of notice, would constitute a default), set-off, defense, or other claim against Landlord or Tenant, as applicable, other than those, if any, so specified under the provisions of this Lease. In addition to clauses (a) through (c) above, if a Mortgagee requires such a statement in writing from Landlord, Landlord, in its statement, shall (x) confirm that Landlord consents to the Mortgage in question; (y) identify all of the relevant documents that evidence this Lease; and (z) provide any other statements or provisions reasonably requested by Mortgagee. It is intended that any such statement may be relied upon by any persons proposing to acquire the interest of Landlord, Tenant, or any Mortgagee or Investor, as the case may be, in this Lease or by any prospective Mortgagee or Investor or permitted assignee of any Mortgagee or Investor.

Section 9.6 Registration of Mortgages. Tenant shall, and from time to time upon written request by Landlord, provide written notice to Landlord of the name and address of each Mortgagee under this Lease. All references to a Mortgage shall include any mortgages, deeds of trust, security agreements, or collateral assignments permitted by Landlord hereunder encumbering Tenant's leasehold interest in the Leased Premises. Any Mortgagee or designee thereof that acquires title to the leasehold estate or any part thereof, any person that acquires title to the leasehold estate through any judicial or non-judicial foreclosure sale, deed, or assignment in lieu thereof, or any sale or transfer made under any order of any court to satisfy wholly or in part obligations secured by any Mortgage, and the successors and assigns of any such Mortgagee, is referred to as a "**Transferee.**" Each Mortgagee and Transferee is an intended beneficiary of the terms of this Lease.

Section 9.7 New Lease. Notwithstanding the provisions of Sections 10 and 11 hereof, in the event of the termination or cancellation of this Lease prior to the natural expiration of the Term of this Lease due to a default of Tenant or operation of law or otherwise (including, without limitation, the bankruptcy filing of Tenant or the commencement of an insolvency proceeding or similar proceeding, an act of condemnation or eminent domain against a portion of the Leased Premises by a government agency or body, the destruction or damage of the Leased Premises, or a change in the control or management of Tenant), Landlord shall also be obligated to give notice to Mortgagee simultaneously with such notice given to Tenant. No such notice to Tenant shall be effective with respect to termination or cancellation of this Lease unless Mortgagee shall also have been so notified. Landlord, upon written request from any Mortgagee within sixty (60) days of receiving such notice of termination or cancellation, shall enter into a new lease with the Mortgagee having a lien with the most senior priority or its designee in accordance with and upon the same terms and conditions as set forth herein and with the same relative priority in time and in right as this Lease (to the extent possible) and having the benefit of and vesting in Mortgagee, or its designee, of all the rights, title, interest, powers, and privileges of Tenant hereunder (the "**New Lease**"). In this regard, in the event of the filing of a petition in bankruptcy by Tenant, and Tenant rejects this Lease under the then applicable provisions of the United States Bankruptcy Code, U.S.C. Title 11, (the "**Bankruptcy Code**"),

Landlord shall, upon the request of a Mortgagee within the time period specified above, affirm this Lease, and Landlord will enter into a New Lease immediately upon Tenant's rejection of this Lease. In the event of the filing of a petition in bankruptcy by Landlord, and Landlord rejects this Lease and Tenant does not affirm it, a Mortgagee will have, within a reasonable amount of time, the authority to affirm this Lease on behalf of Tenant and to keep this Lease in full force and effect. Nothing in this Section or this Lease shall be construed to imply that this Lease may be terminated by reason of rejection in any bankruptcy proceeding of Tenant. The Parties intend, for the protection of Mortgagees, that any such rejection shall not cause a termination of this Lease. Notwithstanding anything to the contrary contained herein, no termination of this Lease shall become effective until, and the lien of each Leasehold Mortgage on the Leased Premises shall remain effective until, either a New Lease has been made pursuant to this Section 9.7 of this Lease or no Mortgagee has timely accepted (or caused to be accepted) a New Lease, upon the expiration of the 30-day period as set forth above. Upon entering into a New Lease, such Mortgagee or its affiliated designee shall cure any monetary default by Tenant hereunder.

After cancellation and termination of this Lease and upon compliance with the provisions of this Section 9.7 by Mortgagee, or its designee, within such time, Landlord shall thereupon execute and deliver such New Lease to such Mortgagee or its designee, having the same relative priority in time and right as this Lease (to the extent possible) and having the benefit of all the right, title, interest, powers, and privileges of Tenant hereunder in and to the Leased Premises and Landlord and the new Tenant shall execute and deliver any deed or other instrument and take such other action as may be reasonably necessary to confirm or assure such right, title, interest, or obligations.

Upon the execution and delivery of the New Lease, title to all Improvements on the Leased Premises shall automatically vest in the Mortgagee or the designee until the expiration or earlier termination of the term of the New Lease.

If Landlord shall, without termination of the Lease, evict Tenant, or if Tenant shall abandon the Leased Premises, then any reletting thereof shall be subject to the liens and rights of Mortgagees, and in any event Landlord shall not relet the Leased Premises or any part thereof, other than renewal of occupancies of residential tenants and leases or other occupancy agreements with new residential tenants consistent with any covenants of record for low-income housing, without sixty (60) days' advance written notice to all Mortgagees of the intended reletting and the terms thereof, and if any Mortgagee shall, within thirty (30) days of receipt of such notice, give notice to Landlord of such Mortgagee's intent to pursue proceedings to foreclose on the Leased Premises or otherwise cause the transfer thereof, then so long as the Mortgagee shall diligently pursue such proceedings Landlord shall not proceed with such reletting without the written consent of such Mortgagee.

If a Mortgagee shall elect to demand a New Lease under this Section and only in the event that such Mortgagee is not recognized as a proper plaintiff, Landlord agrees, at the request of, on behalf of, and at the expense of the Mortgagee, to institute and pursue diligently to conclusion any appropriate legal remedy or remedies to oust or remove the original Tenant from the Leased Premises, and those sub-tenants actually occupying the Leased Premises, or any part

thereof, as designated by the Mortgagee, subject to the rights of non-defaulting residential tenants in occupancy of apartment units at the Leased Premises. Mortgagees shall cooperate with Landlord in connection with any such actions.

Nothing herein contained shall require any Mortgagee to accept a New Lease.

No Mortgagee shall be liable to Landlord unless it expressly assumes such liability in writing. In the event any Mortgagee or other transferee becomes the "Tenant" under this Lease or under any New Lease obtained pursuant to this Article, Mortgagee or other transferee shall not be liable for the obligations of Tenant under this Lease that do not accrue during the period of time that the Mortgagee or such other transferee, as the case may be, remains the actual Tenant under this Lease or the New Lease, holding record title to the leasehold interest thereunder, other than the requirement that the Mortgagee cure any monetary defaults by Tenant upon entering into a New Lease. Any liability of any Mortgagee or other transferee shall be limited to its interests in the leasehold and the Leased Premises, and shall be enforceable solely against those interests.

Section 9.8 Rights of Investor. Investor shall have the same notice and cure rights as any Mortgagee, which rights shall run concurrently with those of any Mortgagee for so long as Investor is a limited partner of Tenant or Tenant's assignee, provided, however, that Investor shall be deemed to have met any condition relating to the commencement or continuation of a foreclosure proceeding if it is attempting with diligence and in good faith to remove the general partner of Tenant. The address for any notices to same, as of the date hereof, is provided in Section 18.12 hereof. Notwithstanding any other provisions herein:

(a) if a monetary event of default occurs under the terms of this Lease, prior to exercising any remedies hereunder, Landlord shall provide written notice of such default to Investor and Investor shall have a period of sixty (60) days after such notice is given within which to cure the default prior to exercise of remedies by Landlord; or

(b) if a nonmonetary event of default occurs under the terms of this Lease, prior to exercising any remedies hereunder, Landlord shall provide written notice of such default to Investor and Investor shall have a period of ninety (90) days after such notice is given within which to cure the default prior to exercise of remedies by Landlord, unless such cure cannot reasonably be accomplished within such ninety (90) day period, in which event Investor shall have such time as is reasonably required to cure such default so long as Investor continues in good faith to diligently pursue the cure.

(c) The following provisions are for the benefit of HCD in connection with the HCD Loan and will only be effective if Tenant obtains financing from HCD for the Project, however, Landlord agrees to execute a rider to this Lease in a form consistent with HCD's standard lease rider form as a condition to Tenant's receipt of financing from HCD, subject to Landlord's reasonable approval:

(1) Landlord shall not place any mortgage on its fee interest without the prior written consent of HCD.

(2) Landlord hereby consents to any assignment of the Lease by Tenant to HCD, and following such assignment HCD may further assign or transfer the Lease to a third party without the consent of Landlord.

(3) Landlord may not terminate the lease or accelerate the Rent upon a default by Tenant without first providing HCD with the notice and cure period set forth in 9.3 above.

(4) Landlord may not terminate this lease without the prior written consent of HCD and any attempt to take such action without the consent of HCD will be void.

(5) In the event of Casualty, the Lease may not be terminated so long as Tenant or HCD pursues reconstruction of the Improvements with reasonable diligence.

(6) HCD shall not have any liability for the performance of any of the obligations of Tenant under the Lease until HCD has acquired the leasehold interest, and then only in accordance with the terms of the Lease and only with respect to obligations that accrue during the HCD's ownership of the leasehold interest.

(7) Neither Landlord nor Tenant, in the event of bankruptcy by either, will take the benefit of any provisions in the United States Bankruptcy Code that would cause the termination of the Lease or otherwise render it unenforceable in accordance with its terms.

(8) The leasehold interest under this Lease will not merge into the fee interest in the Property in the event that Tenant acquires the reversionary interest in the Project.

(9) The acquisition of the Leased Premises by HCD will not result in a termination of the Lease; and upon such event, Landlord shall enter into a new lease having a term at least as long as the term remaining on the Lease prior to acquisition by the HCD and on substantially the same terms and conditions as this Lease.

ARTICLE 10.
REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 10.1 Representations, Warranties and Covenants of Tenant. As an inducement to Landlord to enter into and to proceed under this Lease, Tenant warrants and represents to Landlord as follows, which warranties, representations, and covenants are true and correct as of the date of this Lease and shall be true and correct as of the Commencement Date: Tenant has the right, power, and authority to enter into this Lease and the right, power, and authority to comply with the terms, obligations, provisions, and conditions contained in this Lease;

(a) The entry by Tenant into this Lease and the performance of all of the terms, provisions, and conditions contained herein will not, or with the giving of notice or the passage

of time, or both, would not, violate or cause a breach or default under any other agreements to which Tenant is a party or by which it is bound;

(b) Tenant (i) shall not cause or permit any Hazardous Materials to be placed, held, located, or released or disposed of on, under, or at the Leased Premises or any part thereof, except in commercially reasonable amounts used in the construction and operation of the Improvements and in accordance with Legal Requirements, and (ii) shall not cause or permit any Hazardous Materials which are not Existing Environmental Conditions (as defined below) to contaminate the Leased Premises or any part thereof; and

(c) At all times during the Term, Tenant or its authorized representative shall use, maintain and operate the Leased Premises and the Improvements thereon in accordance with all Legal Requirements and Regulatory Agreements. Tenant acknowledges that prior to the date hereof, the City certified the EIR and its related Mitigation and Monitoring Program attached as Exhibit D to the DDA (as amended consistent with applicable law from time to time, the "**Mitigation Measures**"). Tenant will comply with the terms of the EIR, the Mitigation Measures and related conditions of approval in the Planning Documents, the Town Center Plan and the Development Plan to the extent applicable to the Leased Premises and Improvements.

Section 10.2 Representations, Warranties and Covenants of Landlord. As an inducement to Tenant to enter into and to proceed under this Lease, Landlord warrants and represents to Tenant as follows, which warranties, representations, and covenants are true and correct as of the date of this Lease and as of the Commencement Date:

(a) Authority. Landlord has all requisite right, power and authority to enter into this Agreement and the documents and transactions contemplated herein and to carry out the obligations of this Agreement and the documents and transactions contemplated herein. Landlord has taken all necessary or appropriate actions, steps and company and other proceedings to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of this Agreement. This Agreement is a legal, valid and binding obligation of Landlord, enforceable against it in accordance with its terms. The representations and warranties of Landlord in the preceding sentence of this Section 10.2 are subject to and qualified by the effect of: (a) bankruptcy, insolvency, moratorium, reorganization and other laws relating to or affecting the enforcement of creditors' rights generally; and (b) the fact that equitable remedies, including rights of specific performance and injunction, may only be granted in the discretion of a court.

(b) No Actions. As of the Effective Date only, there is no pending or threatened suit, action, arbitration, or other legal, administrative, or governmental proceeding or investigation that affects the Leased Premises, or that adversely affects Landlord's ability to perform its obligations under this Agreement.

(c) Commitments to Third Parties. Except as (i) disclosed in the Preliminary Title Report and (ii) set forth in Applicable CC&Rs and Easements, EDC Agreement, the LIFOC, Exchange Agreement, Renewed Settlement Hope Settlement Agreement, the DDA and the

Development Agreement Landlord has not made any commitment, agreement or representation to any Government Authority, or any adjoining or surrounding property owner or any other third party, that would in any way be binding on Tenant or would interfere with Tenant's ability to develop and improve the Leased Premises into the Project.

(d) **Hazardous Materials.** To the best of Landlord's knowledge and except as disclosed herein, Landlord has received no written notice from any government authority regarding any, and, to the best of Landlord's knowledge, there are no, violations with respect to any law, statute, ordinance, rule, regulation, or administrative or judicial order or holding (each, a "Law"), whether or not appearing in any public records, with respect to the Leased Premises, which violations remain uncured as of the date hereof or on the Commencement Date, or releases of Hazardous Materials that have occurred during Landlord's possession of the Property, excluding Incidental Migration. Landlord has not assumed by contract or law any liability, including any obligation for corrective action or to conduct remedial actions, of any other Person relating to Hazardous Materials. Landlord has provided Tenant with notice that the Department of Toxic Substances has recorded Covenant to Restrict Use of Property ("**CRUP**") affecting the Leased Premises and Tenant will be required to comply with the CRUP.

(e) **Condition of the Leased Premises.** The condition of the Leased Premises, including but not limited to the physical condition and the condition of title, will be substantially similar to that existing as of the expiration of the Inspection Period, except to the extent that any changes to the Property are the result of Tenant's activities under this Lease.

Section 10.3 Hazardous Materials.

(a) **Existing Property Environmental Conditions.** Effective as of the Commencement Date with respect to Hazardous and Materials that existed on the Leased Premises prior to the Commencement Date ("Existing Environmental Conditions") affecting the Leased Premises: as between Tenant and Landlord, Tenant shall comply with any recorded covenants related to the Existing Environmental Conditions, comply with the Site Management Plan and, as between Landlord and Tenant, Tenant shall be responsible for addressing any additional remediation required at a formerly closed site by any regulatory agency (other than the City) due to reevaluation in accordance with applicable law by any regulatory agency (other than the City) of the applied remediation strategy or any change in law or regulation related to the remediation standards, including any change in remediation standards or risk screening levels.

(b) **New Releases.** Effective as of the Commencement Date with respect to releases of Hazardous Material at the Leased Premises caused by Tenant, which releases first occur after the Commencement Date, excluding Incidental Migration of Hazardous Materials that existed as of the Commencement Date ("New Releases"): as between Tenant and Landlord, Tenant shall keep and maintain the Leased Premises in compliance with, and shall not cause or permit the Leased Premises to be in violation of, any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions in, on, under or emanating from the Leased Premises including, but not limited to, soil and ground water conditions. Tenant shall not use, generate, manufacture, store or dispose of in, on, or under any portion of the Leased

Premises, or transport to or from such Leased Premises or the Project any Hazardous Materials, except such of the foregoing as may be customarily kept and used in and about the construction and operation of multi-family residential development or in accordance with law or this Agreement. Tenant shall be responsible for complying with the requirements of the Site Management Plan(s) related to the Leased Premises after the Commencement Date.

(c) Notification To Landlord; Landlord Participation. Tenant shall promptly notify and advise the City Attorney in writing if at any time it receives written notice of: (1) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Tenant, the Leased Premises, or the Project pursuant to any Hazardous Materials Law; (2) all claims made or threatened by any third party against Tenant, the Leased Premises, or the Project relating to damage, injunctive relief, declaratory relief, violations, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (1) and (2) above are referred to as "Hazardous Materials Claims"); and (3) Tenant's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Leased Premises or the Project that could cause part or all of the Leased Premises or the Project to be subject to any restrictions on the ownership, occupancy, transferability or use of the Leased Premises or the Project under any Hazardous Materials Law. At its sole costs and expense, Landlord shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims.

(d) Indemnity. Without limiting the generally or obligations of the indemnification set forth in Section 7.3, Tenant shall indemnify, defend (with counsel chosen by Landlord and reasonably acceptable to Tenant), and hold harmless the Indemnified Parties from and against all third party suits, actions, claims, causes of action, costs, demands, judgments, liens damage, cost, expense or liability the Indemnified Parties may incur directly or indirectly arising out of or attributable to any New Release, including without limitation: (1) the costs of any required or necessary repair, cleanup or detoxification of the Leased Premises or the Project, and the preparation and implementation of any closure, remedial or other required plans and (2) all reasonable costs and expenses incurred by the Indemnified Parties in connection with clauses (1), including but not limited to reasonable attorneys' fees. The defense, hold harmless and indemnity obligations contained in this Section 10.3(d) shall not extend to any claim arising solely from Landlord's gross negligence or willful misconduct. Tenant's obligation to indemnify, defend and hold harmless under this Section 10.3(d) shall survive termination of this Agreement, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action.

(e) Tenant's Release of Landlord. Effective as of the Commencement Date, Tenant, on behalf of itself and anyone claiming by, through or under Tenant (including, without limitation, any successor tenant) hereby waives its right to recover from and fully and irrevocably releases Landlord, its elected and appointed officials, board members, commissioners, officers, employees, attorneys, agents, volunteers and their successors and assigns (the "Landlord Released Parties") from any and all actions, causes of action, claims,

costs, damages, demands, judgments, liability, losses, orders, requirements, responsibility and expenses of any type or kind (collectively "Claims") that Tenant may have or hereafter acquire against any of Landlord Released Parties arising from or related to:

(1) Claims Related to the Leased Premises; (A) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Leased Premises, or its suitability for any purpose whatsoever; (B) any presence of Hazardous Materials that were existing at, on, or under the Leased Premises as of the Commencement Date and; and (C) any information furnished by Landlord Released Parties related to the Leased Premises or the Property in connection with this Agreement.

(2) Claims for Incidental Migration: the Incidental Migration of Hazardous Materials that existed as of the Commencement Date from any portion of the NAS Alameda property acquired by Landlord to the Leased Premises, whether such Incidental Migration occurs prior to or after the applicable Commencement Date.

Notwithstanding the foregoing provisions of this Section or anything to the contrary herein, nothing herein shall negate, limit, release, or discharge Landlord Released Parties in any way from, or be deemed a waiver of any Claims by Tenant (or anyone claiming by, through or under Tenant, including, without limitation, any successor tenant or owner of the Leased Premises or the Project) with respect to (i) any fraud or intentional concealment or willful misconduct committed by any of Landlord Released Parties, (ii) any premises liability or bodily injury claims accruing prior to the Commencement Date to the extent such claims are not based on the acts of Tenant, its partners or any of their respective agents, employees, contractors, consultants, officers, directors, affiliates, members, shareholders, partners or other representatives (iii) any violation of law by any of Landlord Released Parties prior to the Commencement Date; (iv) any breach by Landlord of any of Landlord's representations, warranties or covenants expressly set forth in this Agreement; or (v) the release (including negligent exacerbation but excluding Incidental Migration) of Hazardous Materials by Landlord Released Parties at, on, under or otherwise affecting the Leased Premises, which release first occurs after the Commencement Date, or (vi) any claim that is actually accepted as an insured claim under any pollution legal liability policy maintained by Landlord (collectively, the "Excluded Tenant Claims").

(f) Scope of Release. The release set forth in subsection 10.3(e) includes Claims of which Tenant is presently unaware or which Tenant does not presently suspect to exist which, if known by Tenant, would materially affect Tenant's release of Landlord Released Parties. Tenant specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, Tenant agrees, represents and warrants that Tenant realizes and acknowledges that factual matters now unknown to Tenant may have given or may hereafter give rise to Claims which are presently unknown, unanticipated and unsuspected, and Tenant further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Tenant nevertheless hereby intends to release, discharge and acquit Landlord Released Parties from any such unknown Claims. Accordingly, Tenant, on behalf of itself and anyone claiming by, through or under Tenant, hereby assumes the above-mentioned risks and hereby expressly waives any

right Tenant and anyone claiming by, through or under Tenant, may have under Section 1542 of the California Civil Code, which reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

Tenant's Initials: _____

(g) Landlord's Release of Tenant. Effective as of the Commencement Date, Landlord, on behalf of itself and anyone claiming by, through or under Landlord (including, without limitation, any successor owner of any portion of NAS Alameda Property acquired by Landlord, whether prior to or after the Commencement Date), hereby waives its right to recover from and fully and irrevocably releases Tenant, its partners and their respective partners, members, shareholders, managers, directors, officers, employees, attorneys, agents, and successors and assigns (the "Tenant Released Parties") from any and all Claims that Landlord may have or hereafter acquire against any of Tenant Released Parties arising from or related to the Incidental Migration of Hazardous Materials that existed as of the Commencement Date from the Leased Premises to any portion of the NAS Alameda Property acquired by Landlord, whether such Incidental Migration occurs prior to or after the Commencement Date.

Notwithstanding the foregoing provisions of this Section or anything to the contrary herein, nothing herein shall negate, limit, release, or discharge Tenant Released Parties in any way from, or be deemed a waiver of any Claims by Landlord (or anyone claiming by through or under Landlord, including, but not limited to, any successor owner of any portion of NAS Alameda) with respect to: (i) any fraud or intentional concealment or willful misconduct committed by any of Tenant Released Parties, (ii) any premises liability or bodily injury claims accruing after the commencement Date to the extent such claims are not based on the acts of Landlord, its elected and appointed officials, board members, commissioners, officers, employees, attorneys, agents, volunteers and their successors and assigns; (iii) any violation of law by any of Tenant Released Parties; (iv) a breach of Tenant's obligations under this Agreement or any other agreement between Landlord and Tenant; (v) the release (including negligent exacerbation but excluding Incidental Migration) of Hazardous Materials by any of Tenant Released Parties at, on, under or otherwise affecting the Leased Premises or any other portion of the NAS Alameda Property acquired by Landlord, which release first occurs after the commencement Date; or (vi) any claim that is actually accepted as an insured claim under the Pollution Liability Insurance Policy maintained by Tenant.

(h) Scope of Release. The release set forth in subsection 10.3(g) includes claims of which Landlord is presently unaware or which Landlord does not presently suspect to exist which, if known by Landlord, would materially affect Landlord's release of Tenant Released Parties. Landlord specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, Landlord agrees,

represents and warrants that Landlord realizes and acknowledges that factual matters now unknown to Landlord may have given or may hereafter give rise to Claims which are presently unknown, unanticipated and unsuspected, and Landlord further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Landlord nevertheless hereby intends to release, discharge and acquit Tenant Released Parties from any such unknown Claims. Accordingly, Landlord, on behalf of itself and anyone claiming by, through or under Landlord, hereby assumes the above-mentioned risks and hereby expressly waives any right Landlord and anyone claiming by, through or under Landlord, may have under Section 1542 of the California Civil Code, which reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

Landlord's Initials: _____

(i) Effective as of the commencement Date, Landlord specifically acknowledges and agrees that, as between Tenant and Landlord, in the event of any Incidental Migration of Hazardous Materials that existed as of the Commencement Date from the Leased Premises to any portion of the NAS Alameda Property acquired by Landlord, whether such Incidental Migration occurs prior to or after the Commencement Date, Tenant shall not be responsible for any required remediation of any such Hazardous Materials.

(j) Effective as of the Commencement Date, Tenant specifically acknowledges and agrees, that as between Tenant and Landlord, in the event of any Incidental Migration of Hazardous Materials that existed as of the Commencement Date from property owned by Landlord to the Leased Premises, which such Incidental Migration occurs prior to or after the Commencement Date, Landlord shall not be responsible for any required remediation of any such Hazardous Materials at the Leased Premises.

(k) No Limitation. Tenant hereby acknowledges and agrees that Tenant's duties, obligations, and liabilities under this Lease, including, without limitation, under subsection (b) above, are in no way limited or otherwise affected by any information Landlord may have concerning the Leased Premises and/or the presence on the Leased Premises of any Hazardous Materials, whether Landlord obtained such information from Tenant or from its own investigations, except as provided herein.

Section 10.4 As-Is Conveyance. Except for the representations and warranties and covenants of Landlord contained in this Agreement, Tenant specifically acknowledges and agrees that Landlord is leasing and Tenant is leasing from Landlord the Leased Premises on an "as is with all faults" basis, and that Tenant is not relying on any representations or warranties of any kind whatsoever, express or implied, from Landlord as to any matters concerning the Leased Premises, including without limitation: (1) the quality, nature, adequacy and physical condition

of the Leased Premises (including, without limitation, topography, climate, air, water rights, water, gas, electricity, utility services, grading, drainage, sewers, access to public roads and related conditions); (2) the quality, nature, adequacy, and physical condition of soils, geology and groundwater; (3) the existence, quality, nature, adequacy and physical condition of utilities and other infrastructure serving the Leased Premises; (4) the development potential of the Leased Premises, and the Leased Premises' use, habitability, merchantability, or fitness, suitability, value or adequacy of the Leased Premises for any particular purpose; (5) the zoning or other legal status of the Leased Premises or any other public or private restrictions on the use of the Leased Premises; (6) the compliance of the Leased Premises or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity; (7) the presence or absence of Hazardous Materials on, under or about the Leased Premises or the adjoining or neighboring property; and (8) the condition of title to the Leased Premises.

ARTICLE 11. EMINENT DOMAIN

Section 11.1 Termination of Lease. Landlord and Tenant agree that, in the event of a Taking such that Tenant reasonably determines that the Leased Premises cannot continue to be operated, at reasonable cost, for its then-current use, then, subject to the rights and with the prior consent of all Mortgagees, this Lease shall, at Tenant's sole option, terminate as of the Taking Date.

Section 11.2 Continuation of Lease and Presumption of Restoration. Landlord and Tenant agree that, in the event of a Taking that does not result in the termination of this Lease pursuant to Section 11.1 above, this Lease shall continue in effect as to the remainder of the Leased Premises, and the Net Condemnation Award subject to the rights and with the prior consent of all Mortgagees will be disbursed in accordance with Section 11.4 below to Tenant or to Mortgagee and shall be used so as to make the remainder of the Leased Premises a complete, unified, and efficient operating unit as nearly as reasonably possible to the condition existing prior to the Taking, subject to any applicable requirements of Mortgagee.

Section 11.3 Temporary Taking. If there shall be a temporary Taking of a year or less with respect to all or any part of the Leased Premises or of Tenant's Estate, then the Term shall not be reduced and Tenant shall continue to pay all Rents, Impositions, and other charges required herein, without reduction or abatement thereof at the times herein specified; provided, however, that Tenant shall not be required to perform such obligations that Tenant is prevented from performing by reason of such temporary Taking.

Section 11.4 Award. Subject to the rights of Mortgagees, if there is a Taking, whether whole or partial, Landlord and Tenant shall be entitled to receive all awards for the Leased Premises and the Improvements, subject to the rights of the Mortgagees. If the Leased Premises shall be restored as is contemplated in Section 11.2 above, Tenant shall be entitled to recover the costs and expenses incurred in such restoration out of any Net Condemnation Award, subject to

the Mortgagees' right to elect to have such Net Condemnation Award paid directly to such Mortgagees, as set forth in the applicable Approved Financing Documents.

Section 11.5 Joinder. If a Mortgage exists, the Mortgagees, to the extent permitted by law, shall be made a party to any Taking proceeding.

ARTICLE 12. **DAMAGE OR DESTRUCTION**

Section 12.1 Damage or Destruction to Leased Premises. Tenant shall give prompt written notice to Landlord after the occurrence of any fire, earthquake, act of God, or other casualty to or in connection with the Leased Premises, the Improvements, or any portion thereof (hereinafter sometimes referred to as a "**Casualty**"). Subject to Section 12.2 below, and the rights of any Mortgagees, if during the Term the Improvements shall be damaged or destroyed by Casualty, Tenant shall repair or restore the Improvements, so long as Tenant determines, in its sole discretion, that it is feasible to do so and in such event Tenant provides or causes to be provided sufficient additional funds which, when added to such insurance proceeds, will fully effect such repair or restoration. Upon the occurrence of any such Casualty, Tenant, promptly and with all due diligence, shall apply for and collect all applicable insurance proceeds recoverable with respect to such Casualty. In the event that Tenant shall determine, subject to the rights and with the consent of Mortgagee, by notice to Landlord given within thirty (30) days after receipt by Tenant of any such insurance proceeds, that it is not economically practical to restore the Improvements and/or the Leased Premises to substantially the same condition in which they existed prior to the occurrence of such Casualty, Tenant may terminate this Lease as of a date that is not less than thirty (30) days after the date of such notice. If Tenant terminates this Lease pursuant to this Section 12.1, Tenant shall surrender possession of the Leased Premises to Landlord immediately.

Section 12.2 Damage or Destruction near End of Term. If, during the last seven (7) years of the Term, the Improvements shall be damaged by Casualty, then Tenant shall have the option, to be exercised within one hundred twenty (120) days after such Casualty:

(a) to repair or restore the Improvements as hereinabove provided in this Article 12;
or

(b) subject to the rights of Mortgagees, to terminate this Lease by notice to Landlord, which termination shall be deemed to be effective as of the date of the Casualty. If Tenant terminates this Lease pursuant to this Section 12.2, Tenant shall surrender possession of the Leased Premises to Landlord immediately and assign to Landlord (or, if same has already been received by Tenant, pay to Landlord) all of its right, title, and interest in and to the proceeds from Tenant's insurance upon the Leased Premises, subject to the prior rights of any Mortgagee therein, as referenced in Section 12.3 below.

Section 12.3 Distribution of Insurance Proceeds. In the event that insurance proceeds are not applied to restoration of the Leased Premises, the Improvements, or any portion thereof

and this Lease is terminated pursuant to Sections 12.1 or 12.2 hereof, the insurance proceeds received as the result of such Casualty shall be distributed to the First Mortgagee in accordance with the First Mortgage Loan Mortgage for the repayment of the First Mortgage Loan if such Casualty occurs while the First Mortgage Loan Mortgage is in effect and otherwise in accordance with Section 12.1 hereof; provided, however, that Tenant may retain the following amount of insurance proceeds: (i) any reasonable costs, fees or expenses incurred by Tenant in connection with the adjustment of the loss or collection of the proceeds; (ii) any reasonable costs incurred by Tenant in connection with the Leased Premises after the Casualty, which costs are eligible for reimbursement from such insurance proceeds; and (iii) the proceeds of any rental loss or business interruption insurance applicable prior to the date of surrender of the Leased Premises to Landlord.

ARTICLE 13. **EVENTS OF DEFAULT**

Section 13.1 Events of Default. Each of the following shall be an “**Event of Default**” by Tenant hereunder:

(a) failure by Tenant to pay any Rent when due or to pay or cause to be paid any Impositions, insurance premiums, or other liquidated sums of money herein stipulated to be paid by Tenant, if such failure shall continue for a period of sixty (60) days after written notice thereof has been given by Landlord to Tenant and Investor;

(b) failure by Tenant to perform or observe any of the provisions of this Lease stipulated in this Lease to be observed and performed by Tenant (including, but not limited to the failure to comply with Section 3.6) , if such failure shall continue for a period of ninety (90) days after written notice thereof has been given by Landlord to Tenant and Investor; provided, however, that if any such failure cannot reasonably be cured within such ninety (90)-day period, then Landlord shall not have the right to terminate this Lease or Tenant’s right to possession hereunder so long as Tenant or Investor promptly commences the curing of any such failure and thereafter proceeds in good faith and with due diligence to remedy and correct such failure within a reasonable period of time;

(c) A Developer Event of Default under the DDA related to the Leased Premises but caused by Tenant, as further described in Section 4(b)(i) of the Partial Assignment, provided that any Developer Event of Default under the DDA which is not caused by Tenant shall not constitute an Event of Default by Tenant under this Lease;

(d) the failure of Tenant to cure, within the prescribed time period, (i) any declaration of default by the holder of a Mortgage on Tenant’s Estate, (ii) any breach or violation of Applicable CC&Rs and Easements with which Tenant is obligated to comply under Section 3.3, following the expiration of any applicable notice and cure periods, or (iii) any breach or violation of any Approved Financing Document, following the expiration of any applicable notice and cure period;

(e) the subjection of any right or interest of Tenant in this Lease to attachment, execution, or other levy, or to seizure under legal process, if not released within one hundred twenty (120) days; provided that the foreclosure of any Mortgage shall not be construed as an Event of Default within the meaning of this Subsection 13.1(d);

(f) the appointment of a receiver, not including receivership pursuant to any Mortgage, to take possession of Tenant's Estate or of Tenant's operations on the Leased Premises for any reason, if such receivership is not terminated, dismissed, or vacated within one hundred twenty (120) days after the appointment of the receiver;

(g) the filing by Tenant of a petition for voluntary bankruptcy under the Bankruptcy Code or any similar law, state or Federal, now or hereafter in effect;

(h) the filing against Tenant of any involuntary proceedings under such Bankruptcy Code or similar law, if such proceedings have not been vacated or stayed within ninety (90) days of the date of filing;

(i) the appointment of a trustee or receiver for Tenant or for all or the major part of Tenant's property or the Leased Premises, in any involuntary proceeding, not including pursuant to any Mortgage, or taking of jurisdiction by any court over all or the major part of Tenant's property or the Leased Premises in any involuntary proceeding for the reorganization, dissolution, liquidation, or winding up of Tenant, if such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within ninety (90) days;

(j) a general assignment by Tenant for the benefit of creditors or Tenant's admittance in writing of its insolvency or inability to pay its debts generally as they become due or Tenant's consent to the appointment of a receiver or trustee or liquidator for Tenant, all or the major part of its property, or the Leased Premises.

To the extent cure is permitted hereunder, a member of Tenant shall have the right to cure any default or breach of this Lease by Tenant, and Landlord agrees to accept a timely cure tendered by a member.

Section 13.2 Rights and Remedies.

(a) At any time after the occurrence of an Event of Default hereunder and in addition to any remedies Landlord may have under the DDA, Landlord, subject in all respects to the provisions of this Lease with respect to Landlord's and Investor's rights to cure defaults by Tenant and with respect to the rights of any Mortgagees and Investors, and subject further to the provisions of Section 13.3 of this Lease, may terminate this Lease by giving Tenant written notice thereof (with a copy of such notice to the Mortgagees and to Investor), setting forth in such notice an effective date for termination which is not less than thirty (30) days after the date of such notice, in which event this Lease and Tenant's Estate created hereby and all interest of Tenant and all parties claiming by, through, or under Tenant shall automatically terminate upon

the effective date for termination as set forth in such notice, with the same force and effect and to the same extent as if the effective date of such notice had been the date originally fixed in Article 2 hereof for the expiration of the Term. In such event, Landlord, its agents, or representatives, shall have the right, without further demand or notice, to re-enter and take possession of the Leased Premises (including all buildings and other Improvements comprising any part thereof) at any time from and after the effective termination date without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of rent or existing breaches of covenants; provided that Landlord shall not be entitled to disturb possession of any tenants or others in possession pursuant to Resident Leases with Tenant so long as such tenants or others are not in default thereunder and attorn to Landlord as their Landlord.

(b) Upon the exercise of Landlord's remedies pursuant to this Section 13.2, Tenant shall execute such releases, deeds, and other instruments in recordable form as Landlord shall reasonably request in order to accurately set forth of record the then current status of Tenant's Estate and Tenant's rights hereunder.

Section 13.3 Deficiency Judgments. Landlord, for itself and for each and every succeeding owner of Landlord's Estate in the Leased Premises, agrees that it shall never be entitled to seek a personal judgment against Tenant or its members and that (a) upon any Event of Default hereunder, the rights of Landlord to enforce the obligations of Tenant, its successors, or assigns, or to collect any judgment, shall be limited to the termination of this Lease and of Tenant's Estate and the enforcement of any other rights and remedies specifically granted to Landlord hereunder, provided, however, that the limitations set forth in this Section 13.3 shall not be applicable to (i) fraud and (ii) misappropriation of any Net Condemnation Award or insurance.

Section 13.4 Default by Landlord.

(a) Events of Default. Landlord shall be in default of this Lease if it fails to perform any provision of this Lease that it is obligated to perform or if any of Landlord's representations or warranties is untrue or becomes untrue in any material respect, and if the failure to perform or the failure of such representation or warranty is not cured within thirty (30) days after written notice of the default has been given to Landlord. If the default cannot reasonably be cured within thirty (30) days, Landlord shall not be in default of this Lease if Landlord commences to cure the default within such thirty (30)-day period and diligently and in good faith continues to cure the default until completion, but in no event longer than one hundred twenty (120) days from the date of written notice of default.

(b) Right to Cure; Tenant's Remedies. Subject to Section 13.5 below, if Landlord shall have failed to cure a default by Landlord after expiration of the applicable time for cure of a particular default, Tenant, at its election, but without obligation therefor (i) may seek specific performance of any obligation of Landlord, after which Tenant shall retain, and may exercise and enforce, any and all rights that Tenant may have against Landlord as a result of such default, (ii) from time to time without releasing Landlord in whole or in part from the obligations to be performed by Landlord hereunder, may cure the default at Landlord's cost, (iii) may terminate

this Lease, and/or (iv) may exercise any other remedy given hereunder or now or hereafter existing at law or in equity. Any reasonable costs incurred by Tenant in order to cure such a default by Landlord shall be due immediately from Landlord, together with interest, and may be offset against any amounts due from Tenant to Landlord.

Section 13.5 Notices. Notices given by Landlord under Section 13.1 or by Tenant under Section 13.4 shall specify the alleged default and the applicable Lease provisions, and shall demand that Tenant or Landlord, as applicable, perform the appropriate provisions of this Lease within the applicable period of time for cure. No such notice shall be deemed a forfeiture or termination of this Lease unless expressly set forth in such notice.

Section 13.6 Bankruptcy of Landlord. If this Lease is rejected by Landlord or Landlord's trustee in bankruptcy following the bankruptcy of Landlord under the Bankruptcy Code, as now or hereafter in effect, Tenant shall not have the right to treat this Lease as terminated except with the prior written consent of all Mortgagees, and the right to treat this Lease as terminated in such event shall be deemed assigned to each and every Mortgagee whether or not specifically set forth in any such Mortgage, so that the concurrence in writing of Tenant and each Mortgagee shall be required as a condition to treating this Lease as terminated in connection with any such bankruptcy proceeding.

ARTICLE 14. **QUIET ENJOYMENT AND POSSESSION; INSPECTIONS**

Section 14.1 Quiet Enjoyment. Landlord covenants and warrants that Tenant, upon payment of all sums herein provided and upon performance and observance of all of its covenants herein contained, shall peaceably and quietly have, hold, occupy, use, and enjoy, and shall have the full, exclusive, and unrestricted use and enjoyment of, all of the Leased Premises during the Term, subject only to the provisions of this Lease, the Applicable CC&Rs and Easements, the Regulatory Agreements, and all applicable Legal Requirements.

Section 14.2 Landlord's Right of Inspection. Notwithstanding Section 14.1 above, Landlord, in person or through its agents, upon reasonable prior notice to Tenant, shall have the right, subject to the rights of tenants, to enter upon the Leased Premises for purposes of reasonable inspections performed during reasonable business hours in order to assure compliance by Tenant with its obligations under this Lease. In addition to the aforementioned inspection rights, Tenant grants a right of access to Landlord, or any of its authorized representatives, with respect to any books, documents, papers, or other records related to this Lease in order to make audits, examinations, excerpts, and transcripts.

ARTICLE 15. **VACATION OF LEASED PREMISES**

Tenant covenants that upon any termination of this Lease, whether by lapse of time or because of any of the conditions or provisions contained herein, Tenant will peaceably and quietly yield and surrender possession of the Leased Premises to Landlord. The foregoing,

however, will be subject to the rights of Residents or others in possession pursuant to Resident Leases with Tenant, provided that such tenants are not in default thereunder and attorn to Landlord as their Landlord. An action of forcible detainer shall lie if Tenant holds over after a demand for possession is made by Landlord. Notwithstanding anything to the contrary herein, Tenant shall not voluntarily vacate or surrender and Landlord shall not accept any voluntary vacating or surrendering of the Leased Premises by Tenant while a Mortgage remains outstanding or while an Investor shall remain a member in Tenant.

ARTICLE 16.
NON-MERGER

For so long as any debt secured by a Mortgage upon the leasehold created by this Lease shall remain outstanding and unpaid, or so long as an Investor shall remain a member in Tenant, unless Mortgagee shall otherwise consent in writing, there shall be no merger of either this Lease or Tenant's Estate created hereunder with the fee estate of the Leased Premises or any part thereof by reason of the fact that the same person may acquire, own, or hold, directly or indirectly, (a) this Lease, Tenant's Estate created hereunder, or any interest in this Lease or Tenant's Estate (including the Improvements), and (b) the fee estate in the Leased Premises or any part thereof or any interest in such fee estate (including the Improvements), unless and until all persons, including any assignee of Landlord, having an interest in (i) this Lease or Tenant's Estate created hereunder, and (ii) the fee estate in the Leased Premises or any part thereof, shall join in a written instrument effecting such merger and shall duly record the same, and shall have obtained the prior written consent of Mortgagee.

ARTICLE 17.
ASSIGNMENTS AND TRANSFERS; FORECLOSURE

Section 17.1 Consent Required. Except for Transfers as specifically permitted in the Regulatory Agreements and made pursuant to the Regulatory Agreements, no Transfer shall be made without Landlord's prior written approval. All Transfers desired to be made prior to the Commencement Date require the approval of Landlord, in its sole and absolute discretion. This Lease shall be binding upon and inure to the benefit of the successors and assigns of Landlord and Tenant, except that Tenant may not assign or sublet its interest in this Lease without the prior written consent of Landlord and any other consent required by the Regulatory Agreements. Any attempted transfer without such required consents shall be null and void. Any person to whom any Transfer is attempted without such consent shall have no claim, right, or remedy whatsoever hereunder against Landlord, and Landlord shall have no duty to recognize any person claiming under or through the same.

Section 17.2 Limitations on Consent Requirement. Notwithstanding the foregoing:

- (a) The consent of Landlord shall not be required for:
 - (1) a lease of any Residential Unit at the Leased Premises, subject to Landlord's prior approval of the form of Tenant Lease;

(2) Transfer of the Leased Premises to a limited partnership formed for the tax credit syndication of the Project, and of which Tenant or an affiliated nonprofit public benefit corporation or limited liability company is a general partner, provided Landlord has approved the Partnership Agreement;

(3) Transfer of the Leased Premises and Improvements to a Mortgagee by foreclosure or deed-in-lieu of foreclosure (or the leasehold equivalent thereof), or to a third-party purchaser pursuant to a foreclosure sale (or the leasehold equivalent thereof);

(4) after Closing, the Transfer by Investor of Investor's partnership interest to an affiliate of Investor provided that either Investor remains obligated to fund its equity contribution, or the affiliate assumes the obligations to fund Investor's equity contribution, in accordance with the terms of the Partnership Agreement (if at the time of the proposed transfer no equity contribution remains unpaid, then consent shall not be required for the transfer of any partner interest);

(5) grants and easements for the establishment, operation, and maintenance of utility services and such other facilities or other rights as may be reasonably necessary or desirable in connection with the construction or operation of the Improvements; or

(6) the removal of a general partner of Tenant pursuant to the Partnership Agreement and the replacement of such general partner with an affiliate of Investor, provided that the admission of a non-affiliate of Investor shall require the reasonable consent of Landlord.

(b) If Tenant requests the consent of Landlord to an internal reorganization of Tenant, or of any of the partners, members, or stockholders of Tenant, Landlord will not unreasonably withhold or delay such consent.

Section 17.3 Subsequent Assignment. In cases where Landlord's consent is required, Landlord's consent to one assignment will not waive the requirement that Landlord consent to any subsequent assignment.

Section 17.4 Request for Consent. If Tenant requests Landlord's consent to a specific assignment, Tenant shall provide to Landlord such information as may reasonably be required by Landlord.

Section 17.5 Consent of Landlord Not Required. The foreclosure of a Mortgage or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in any Mortgage, or any conveyance of Tenant's Estate to any Mortgagee or its affiliate through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not breach any provision of or constitute an Event of Default under this Lease, and upon such foreclosure, sale, or conveyance, Landlord shall recognize any Mortgagee or such affiliate or designee of any Mortgagee, or any purchaser at any such foreclosure sale, as Tenant hereunder. Provided, however, that Landlord may disapprove a subsequent Transfer after foreclosure, deed in lieu of foreclosure or other appropriate proceedings where the proposed transferee has (a) insufficient

prior experience in managing affordable multifamily rental housing, (b) demonstrated poor performance in managing affordable multifamily rental housing, or (c) has been debarred or suspended by HUD.

Section 17.6 Transfer After Foreclosure. This Lease may be transferred, without the consent of Landlord, to any Mortgagee or an affiliate thereof, pursuant to foreclosure or similar proceedings, or pursuant to a Transfer of this Lease to such Mortgagee (or its affiliate) in lieu thereof, and may be thereafter transferred by such Mortgagee (or its affiliate), and any Mortgagee (or its affiliate) shall be liable to perform the obligations herein imposed on Tenant only for and during the period it is in possession or ownership of the leasehold estate created hereby. Provided, however, that Landlord may disapprove a subsequent Transfer after foreclosure, deed in lieu of foreclosure, or other appropriate proceedings by Mortgagee (or its affiliate) where the proposed transferee has (a) insufficient prior experience in managing affordable multifamily rental housing, (b) demonstrated poor performance in managing affordable multifamily rental housing, or (c) has been debarred or suspended by HUD. In no event shall any Mortgagee (or its affiliate) be (i) liable for any prior act or omission of Tenant unless and to the extent such act or omission is continuing following the foreclosure or other transfer, or (ii) subject to any offsets or defenses which Landlord may have against Tenant.

Section 17.7 Grant of Purchase Option. Notwithstanding anything to the contrary set forth in any other provision of this Lease, nothing shall prohibit (i) the granting of a purchase option and/or right of first refusal to Eden Housing, Inc. or its affiliate to purchase Tenant's Estate as provided in the Right of First Refusal/Purchase Option and/or (ii) the exercise of such Right of First Refusal/Purchase Option in accordance with the Right of First Refusal/Purchase Option; provided, however, that any such option rights described in this Section 17.7 shall be subordinate to the Approved Financing Documents.

ARTICLE 18. **MISCELLANEOUS PROVISIONS**

Section 18.1 Entire Agreement: Modifications. This Lease supersedes all prior discussions and agreements between the Parties with respect to the leasing of the Leased Premises. This Lease contains the sole and entire understanding between the Parties with respect to the leasing of the Leased Premises pursuant to this Lease, and all promises, inducements, offers, solicitations, agreements, representations, and warranties heretofore made between the Parties, if any, are merged into this Lease.

Section 18.2 Amendments. Landlord shall not unreasonably withhold its consent to any amendments to this Lease that are reasonably requested by a Mortgagee; provided, however, Landlord may, in its sole and absolute discretion, refuse to consent to any proposed amendments to the description of the Leased Premises, the Term, Rent, or any other amendments which would materially change the rights and/or obligations of Landlord under this Lease. Landlord and Tenant each agree not to enter into any amendment or modification of the Lease without the prior written consent of each Mortgagee.

Section 18.3 Governing Law. This Lease, and the rights and obligations of the Parties hereunder, shall be governed by and construed in accordance with the substantive laws of the State of California.

Section 18.4 Binding Effect. This Lease shall inure to the benefit of and be binding upon the Parties hereto, their heirs, successors, administrators, executors, and permitted assigns.

Section 18.5 Severability. In the event any provision or portion of this Lease is held by any court of competent jurisdiction to be invalid or unenforceable, such holdings shall not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof, except to the extent the rights and obligations of the Parties have been materially altered by such unenforceability.

Section 18.6 Further Assurances. From and after the date of this Lease, Landlord and Tenant, at the request of the other Party, shall make, execute, and deliver or obtain and deliver all such affidavits, deeds, certificates, resolutions, and other instruments and documents, and shall do or cause to be done all such other things that either Party may reasonably require in order to effectuate the provisions and the intention of this Lease.

Section 18.7 Captions. All captions, headings, paragraphs, subparagraphs, letters, and other reference captions are solely for the purpose of facilitating convenient reference to this Lease, shall not supplement, limit, or otherwise vary the text of this Lease in any respect, and shall be wholly disregarded when interpreting the meaning of any terms or provisions hereof. All references to particular articles, sections, subsections, paragraphs, and subparagraphs by number refer to the text of such items as so numbered in this Lease.

Section 18.8 Gender. Words of any gender used in this Lease shall be held and construed to include any other gender, and words of a singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

Section 18.9 Exhibits. Each and every exhibit referred to or otherwise mentioned in this Lease is attached to this Lease and is and shall be construed to be made a part of this Lease by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full at length every time it is referred to and otherwise mentioned.

Section 18.10 References. All references to paragraphs or subparagraphs shall be deemed to refer to the appropriate paragraph or subparagraph of this Lease. Unless otherwise specified in this Lease, the terms "herein," "hereof," "hereinafter," "hereunder" and other terms of like or similar import, shall be deemed to refer to this Lease as a whole, and not to any particular paragraph or subparagraph hereof.

Section 18.11 Rights Cumulative. Except as expressly limited by the terms of this Lease, all rights, powers, and privileges conferred hereunder shall be cumulative and not restrictive of those provided at law or in equity.

Section 18.12 Notices. All notices, requests, demands, or other communications required or permitted to be given hereunder shall be in writing and shall be addressed and delivered by hand or by certified mail, return receipt requested, or by Federal Express or UPS, or by hand delivery by a recognized, reputable courier or by electronic mail, to each party at the addresses set forth below. Any such notice, request, demand, or other communication shall be considered given or delivered, as the case may be, on the date of receipt, except that any electronic mail notice received after 5:00 p.m. on a business day shall be deemed received on the next business day. Rejection or other refusal to accept or inability to deliver because of changed address of which proper notice was not given shall be deemed to be receipt of the notice, request, demand, or other communication. By giving prior written notice thereof, any Party, from time to time, may change its address for notices hereunder. Legal counsel for the respective Parties may send to the other Party any notices, requests, demands, or other communications required or permitted to be given hereunder by such Party. Any notice, request, demand, direction or other communication sent by electronic mail must be confirmed by letter mailed or delivered within two business days in accordance with one of the other delivery methods permitted above.

To Landlord: City of Alameda
Alameda City Hall, Rm 320
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Manager
Telephone: 510-747-4700
Facsimile: 510-865-1498
Email: jkeimach@alamedaca.gov

With a copy to: City of Alameda
Alameda City Hall, Rm 280
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Attorney
Telephone: 510-747-4752
Facsimile: 510-865-4028
Email: jkern@alamedacityattorney.org

To Tenant: Eden Housing, Inc.
22645 Grand Street
Hayward, CA 94541
Attn: President

Section 18.13 Counterparts. This Lease may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same agreement.

Section 18.14 Time of Essence. Time is and shall be of the essence in this Lease.

Section 18.15 Relationship of Parties. No relationship exists between Landlord and Tenant other than landlord and tenant. The Parties hereto expressly declare that, in connection with the activities and operations contemplated by this Lease, they are neither partners nor joint venturers, nor does a debtor-creditor, principal-agent, or any other relationship except as aforesaid, exist between them.

Section 18.16 Multiple Leasehold Mortgages. If at any time there shall be more than one Mortgage, the Mortgage under the First Mortgage Loan (“**First Loan Mortgage**”) shall be prior in lien and shall be vested with all of the rights of Mortgagee under this Lease (other than the provisions for receipt of notices) to the exclusion of any junior Mortgage and junior Mortgagee; provided, however, that: (a) if the First Loan Mortgagee fails to or refuses to exercise its rights set forth under this Lease, each holder of a junior Mortgage in the order of priority of their respective liens shall have the right to exercise such rights; and (b) with respect to the right of a Mortgagee under Section 8.7 (right to request a New Lease), such right may, notwithstanding the limitation of time set forth in Section 8.7, if any, be exercised by the holder of any junior Mortgage, in the event the holder of a senior Mortgage shall not have exercised such right within a reasonable amount of time.

Section 18.17 Conflicts with Mortgage. In the event of a default under a Mortgage, such Mortgagee may exercise with respect to the Leased Premises any right, power, or remedy under the Mortgage which is not in conflict with the provisions of this Lease. In the event of a conflict or inconsistency between any requirement contained in this Lease and any requirement contained in any document referred to in this Lease, including any Mortgage, the terms of this Lease shall in all instances be controlling.

Section 18.18 Attorneys’ Fees. In the event of litigation between the Parties arising out of this Lease, each Party shall bear its own costs and expenses, including attorneys’ fees, and any judgment or decree rendered in such a proceeding shall not include an award thereof.

Section 18.19 Non-Liability of Governmental Officials and Employees; Conflicts of Interest. No member, official, employee, commissioner, agent, consultant, or contractor of Landlord shall be personally liable to Tenant or any successor or assign of Tenant in the event of any default or breach by Landlord hereunder, or for any amount which may become due to Tenant or any successor or assign of Tenant as a result of such default or breach, or for any of Landlord’s obligations under this Lease; provided, however, that the foregoing shall not void or diminish the obligations of Landlord under this Lease.

Tenant represents and warrants that to Tenant’s actual knowledge no member, official, employee, commissioner, agent, consultant, or contractor of Landlord has any direct or indirect

personal interest in this Lease or participation in any decision relating to this Lease which affects his or her personal interests or the interests of any corporation, partnership, or other entity in which he or she is, directly or indirectly, interested. Tenant further represents and warrants to Landlord that it has not paid or given, and will not pay or give, to any third party (other than as specifically set forth in this Lease) any money or other consideration for obtaining this Lease.

Except as may be expressly set forth herein, no present or future partner, shareholder, participant, employee, agent, officer, or partner of or in Tenant shall have any personal liability, directly or indirectly, under or in connection with this Lease; provided, however, that the foregoing shall not void or diminish the obligations of Tenant under this Lease.

Section 18.20 Consent; Reasonableness. Except as otherwise specified herein, in the event that Tenant or Landlord shall require the consent or approval of the other Party in fulfilling any agreement, covenant, provision, or condition contained in this Lease, such consent or approval shall not be unreasonably withheld or delayed by the Party from whom such consent or approval is sought, and shall be given or disapproved within the times set forth herein, or, if no time is given, within ten (10) business days of request therefor. Except as may be otherwise expressly set forth herein, approvals and disapprovals on the part of Landlord may be given by Landlord's chief executive officer.

Section 18.21 Non-Waiver of Governmental Rights. Nothing in this Lease shall be construed to in any way obligate Landlord or any other Governmental Authority to take any discretionary action relating to the construction, development, or operation of the Project, including, but not limited to, condemnation, rezoning, variances, subdivision, environmental clearances, or any other governmental approvals which are or may be required pursuant to the Legal Requirements. Nothing in this Lease shall be construed to restrict or impair in any manner whatsoever any Legal Requirement or the exercise by Landlord of any governmental powers or rights thereunder.

ARTICLE 19. **PARTICULAR COVENANTS**

Section 19.1 Non-Discrimination. Tenant shall not discriminate against, or segregate any person or group of persons on the grounds of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry, or disability in the lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Leased Premises nor shall Tenant, or any person claiming under or through Tenant, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of residential tenants, subtenants, sub-tenants, or vendees of the Leased Premises. The foregoing covenant shall run with the land. Landlord shall be entitled to invoke any remedies available at law or in equity to redress any breach of this subsection or to compel compliance therewith by Tenant.

[signature pages follow]

IN WITNESS WHEREOF, this Lease is made and entered into as of Commencement Date.

LANDLORD:

CITY OF ALAMEDA

By: _____
Jill Keimach,
City Manager

Date: _____

Attest:

Recommended for Approval:

Lara Weisiger, City Clerk

Jennifer Ott, Base Reuse Director

Approved as to Form:

Andrico Q. Penick
Chief Real Estate Counsel

Authorized by City Council Ordinance No. _____

TENANT:

EDEN HOUSING, INC.,
A California nonprofit public benefit corporation

By: _____

Name: _____

Its: _____

EXHIBIT A

Leased Premises

The land referred to is situated in the County of Alameda, City of Alameda, State of California, and is described as follows:



March 2, 2017
BKF No: 20145170

EXHIBIT "A"
Legal Description
LOT 12 OF BLOCK 8

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

Being a portion of "ALA-72-EDC" as described in that certain Quitclaim Deed filed for record on June 6, 2013 as Document No. 2013-199810, Official Records of Alameda County, more particularly described as follows:

Commencing at a United States Coast and Geodetic Survey (USC&GS) monument in Main Street stamped "MAIN ATL", being South $0^{\circ}31'07''$ West, 1,179.82 feet of another USC&GS monument stamped "MAIN", as shown on that certain Record of Survey No. 2565, filed September 19, 2014, in Book 39 of Record of Surveys at Pages 88 to 100, inclusive, in the Office of the County Recorder of Alameda County;

Thence along the line between said USC&GS monuments, North $0^{\circ}31'07''$ East, 8.23 feet;

Thence perpendicular to said monument line, North $89^{\circ}28'53''$ West, 24.87 feet;

Thence South $0^{\circ}11'31''$ East, 113.44 feet;

Thence South $0^{\circ}33'45''$ West, 101.48 feet to the beginning of a tangent curve to the left, having a radius of 2,061.50 feet;

Thence along said curve, through a central angle of $5^{\circ}05'27''$, an arc length of 183.17 feet;

Thence North $85^{\circ}08'27''$ West, 311.14 feet to the southerly line of "ALA-37-EDC" as described in that certain Quitclaim Deed filed for record on June 6, 2013 as Document No. 2013-199810, Official Records of Alameda County;

Thence along said southerly line, the following eleven (11) courses:

- 1) North $3^{\circ}33'57''$ East, 106.06 feet;
- 2) North $1^{\circ}37'35''$ East, 118.73 feet;
- 3) South $81^{\circ}19'01''$ West, 98.50 feet;
- 4) North $27^{\circ}10'13''$ West, 91.43 feet;
- 5) North $61^{\circ}19'46''$ East, 17.53 feet;
- 6) North $4^{\circ}52'45''$ East, 41.15 feet;
- 7) North $4^{\circ}12'12''$ East, 213.10 feet;
- 8) North $86^{\circ}13'52''$ West, 125.51 feet;
- 9) North $3^{\circ}30'33''$ East, 396.18 feet;
- 10) North $85^{\circ}33'34''$ West, 278.08 feet;
- 11) South $4^{\circ}28'57''$ West, 178.59 feet;

4670 Willow Road
Suite 250
Pleasanton
California 94588
phone 925.396.7700
fax 925.396.7799
www.bkf.com

Sheet 1 of 2



March 2, 2017
BKF No: 20145170

Thence leaving said southerly line, South 85°08'27" East, 115.86 feet;

Thence South 4°51'33" West, 207.00 feet to the **True Point of Beginning** of this description;

Thence the following four (4) courses:

- 1) South 4°51'33" West, 153.00 feet;
- 2) North 85°08'27" West, 210.00 feet;
- 3) North 4°51'33" East, 153.00 feet;
- 4) South 85°08'27" East, 210.00 feet to the **True Point of Beginning**.

Containing an area of 32,130 square feet more or less.

As shown on plat attached hereto and by this reference made part hereof as Exhibit B.

For: BKF-Engineers



Davis Thresh, P.L.S. No. 6868

3-2-2017

Dated



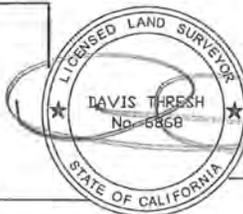
4670 Willow Road
Suite 250
Pleasanton
California 94588
phone 925.396.7700
fax 925.396.7799
www.bkf.com

Sheet 2 of 2

ANNOTATION & LEGEND

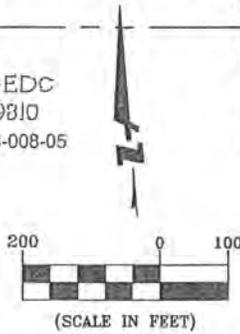
P.O.C. = POINT OF COMMENCEMENT
 (R) = RADIAL BEARING
 (T) = TOTAL
 T.P.O.B. = TRUE POINT OF BEGINNING

--- = MONUMENT LINE
 --- = LOT LINE
 - - - - = "SITE A" BOUNDARY LINE



ALA-37-EDC
 2013-199810
 APN 074-1368-008-05

"MAIN"
 USC&GS DISK PER
 39 RM 88-100

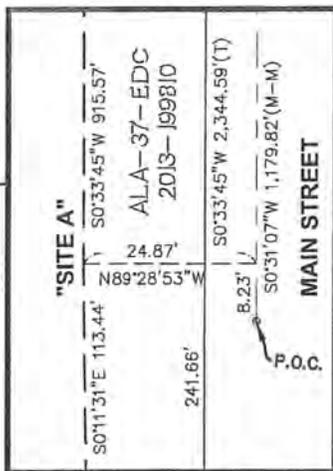


ALA-72-EDC
 2016-096063
 APN 074-1369-025

"MAIN ATL"
 USC&GS DISK PER
 39 RM 88-100

MAIN STREET

DETAIL A



LINE TABLE		
	DIRECTION	LENGTH
L1	S0°11'31"E	113.44'
L2	S0°33'45"W	101.48'
L3	N3°33'57"E	106.06'
L4	N1°37'35"E	118.73'
L5	S81°19'01"W	98.50'
L6	N27°10'13"W	91.43'
L7	N61°19'46"E	17.53'

LINE TABLE		
	DIRECTION	LENGTH
L8	N4°52'45"E	41.15'
L9	N86°13'52"W	125.51'
L10	S0°34'41"W	19.09'
L11	S11°23'41"E	51.68'
L12	S3°29'37"E	109.42'
L13	N78°38'44"W	25.24'
L14	N3°33'57"E	16.62'



4670 WILLOW RD
 SUITE 250
 PLEASANTON, CA 94588
 925-396-7700
 925-396-7799 (FAX)

Subject EXHIBIT B
 LOT 12 OF BLOCK 8
 Job No. 20145170
 By MR _____ Date 3/2/17 Chkd.WS _____
 SHEET 1 OF 1

EXHIBIT B

Memorandum of Lease

[see attached]

RECORDING REQUESTED BY:

City of Alameda

WHEN RECORDED MAIL TO:

2263 Santa Clara Avenue
Alameda, CA 94501

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

**MEMORANDUM OF GROUND LEASE
(ALAMEDA POINT, SITE A, BLOCK 8)**

THIS MEMORANDUM OF GROUND LEASE (this "**Memorandum**") is made as of _____, 20__, by and among the City of Alameda, a California charter city, ("**Landlord**") and Eden Housing, Inc., a California nonprofit public benefit corporation ("**Tenant**") with respect to that certain Ground Lease Agreement dated as of _____, 20__ (the "**Lease**"), between Landlord and Tenant.

Pursuant to the Lease, Landlord hereby leases to Tenant and Tenant leases from Landlord that certain real property, more particularly described in Exhibit A, attached hereto and incorporated herein, (the "**Property**") and Landlord grants to Tenant all the improvements existing or to be constructed on the Property for the term of the Lease. The Lease commenced as of _____, 201__ and shall continue from such date for eighty-seven (87) years as per Section 2.3 of the Lease. Section 17.7 of the Lease provides a superior right of first refusal and purchase option to Eden Housing, Inc. or its affiliates, at the end of the low-income housing tax credit compliance period.

This Memorandum shall incorporate herein all of the terms and provisions of the Lease as though fully set forth herein.

This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend, or supplement the Lease, of which this is a Memorandum.

[signature pages follow]

IN WITNESS WHEREOF, the parties have caused this Memorandum to be duly executed as of the date first above written.

LANDLORD:

CITY OF ALAMEDA

By: _____
Jill Keimach,
City Manager

Date: _____

Attest:

Recommended for Approval:

Lara Weisiger, City Clerk

Jennifer Ott, Base Reuse Director

Approved as to Form:

Andrico Q. Penick
Chief Real Estate Counsel

Authorized by City Council Ordinance No. _____

TENANT:

EDEN HOUSING, INC.,
A California nonprofit public benefit corporation

By: _____

Name: _____

Its: _____

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 ALAMEDA)

On _____, 2017, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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.

Name: _____
Notary Public

EXHIBIT A

PROPERTY DESCRIPTION

The land referred to is situated in the County of Alameda, City of Alameda, State of California, and is described as follows:



ENGINEERS
SURVEYORS
PLANNERS

March 2, 2017
BKF No: 20145170

EXHIBIT "A"
Legal Description
LOT 12 OF BLOCK 8

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

Being a portion of "ALA-72-EDC" as described in that certain Quitclaim Deed filed for record on June 6, 2013 as Document No. 2013-199810, Official Records of Alameda County, more particularly described as follows:

Commencing at a United States Coast and Geodetic Survey (USC&GS) monument in Main Street stamped "MAIN ATL", being South $0^{\circ}31'07''$ West, 1,179.82 feet of another USC&GS monument stamped "MAIN", as shown on that certain Record of Survey No. 2565, filed September 19, 2014, in Book 39 of Record of Surveys at Pages 88 to 100, inclusive, in the Office of the County Recorder of Alameda County;

Thence along the line between said USC&GS monuments, North $0^{\circ}31'07''$ East, 8.23 feet;

Thence perpendicular to said monument line, North $89^{\circ}28'53''$ West, 24.87 feet;

Thence South $0^{\circ}11'31''$ East, 113.44 feet;

Thence South $0^{\circ}33'45''$ West, 101.48 feet to the beginning of a tangent curve to the left, having a radius of 2,061.50 feet;

Thence along said curve, through a central angle of $5^{\circ}05'27''$, an arc length of 183.17 feet;

Thence North $85^{\circ}08'27''$ West, 311.14 feet to the southerly line of "ALA-37-EDC" as described in that certain Quitclaim Deed filed for record on June 6, 2013 as Document No. 2013-199810, Official Records of Alameda County;

Thence along said southerly line, the following eleven (11) courses:

- 1) North $3^{\circ}33'57''$ East, 106.06 feet;
- 2) North $1^{\circ}37'35''$ East, 118.73 feet;
- 3) South $81^{\circ}19'01''$ West, 98.50 feet;
- 4) North $27^{\circ}10'13''$ West, 91.43 feet;
- 5) North $61^{\circ}19'46''$ East, 17.53 feet;
- 6) North $4^{\circ}52'45''$ East, 41.15 feet;
- 7) North $4^{\circ}12'12''$ East, 213.10 feet;
- 8) North $86^{\circ}13'52''$ West, 125.51 feet;
- 9) North $3^{\circ}30'33''$ East, 396.18 feet;
- 10) North $85^{\circ}33'34''$ West, 278.08 feet;
- 11) South $4^{\circ}28'57''$ West, 178.59 feet;

4670 Willow Road
Suite 250
Pleasanton
California 94588
phone 925.396.7700
fax 925.396.7799
www.bkf.com

Sheet 1 of 2



March 2, 2017
BKF No: 20145170

Thence leaving said southerly line, South 85°08'27" East, 115.86 feet;

Thence South 4°51'33" West, 207.00 feet to the **True Point of Beginning** of this description;

Thence the following four (4) courses:

- 1) South 4°51'33" West, 153.00 feet;
- 2) North 85°08'27" West, 210.00 feet;
- 3) North 4°51'33" East, 153.00 feet;
- 4) South 85°08'27" East, 210.00 feet to the **True Point of Beginning**.

Containing an area of 32,130 square feet more or less.

As shown on plat attached hereto and by this reference made part hereof as Exhibit B.

For: BKF Engineers



Davis Thresh, P.L.S. No. 6868

3-2-2017

Dated



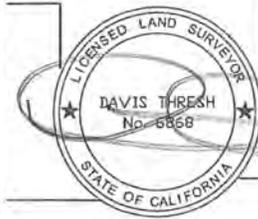
4670 Willow Road
Suite 250
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phone 925.396.7700
fax 925.396.7799
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Sheet 2 of 2

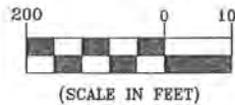
ANNOTATION & LEGEND

P.O.C. = POINT OF COMMENCEMENT
 (R) = RADIAL BEARING
 (T) = TOTAL
 T.P.O.B. = TRUE POINT OF BEGINNING

--- = MONUMENT LINE
 --- = LOT LINE
 --- = "SITE A" BOUNDARY LINE



ALA-37-EDC
 2013-199810
 APN 074-1368-008-05

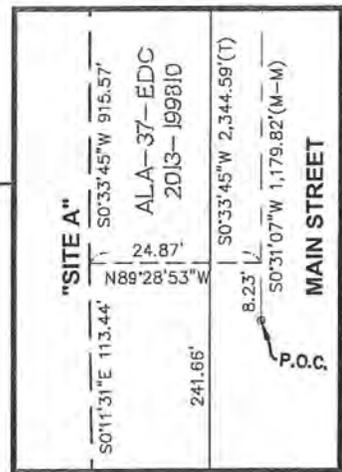


ALA-72-EDC
 2016-096063
 APN 074-1369-025



**LOT 12
 BLOCK 8
 32,130 SQ. FT.±**

DETAIL A



LINE TABLE		
	DIRECTION	LENGTH
L1	S0°11'31"E	113.44'
L2	S0°33'45"W	101.48'
L3	N3°33'57"E	106.06'
L4	N1°37'35"E	118.73'
L5	S81°19'01"W	98.50'
L6	N27°10'13"W	91.43'
L7	N61°19'46"E	17.53'

LINE TABLE		
	DIRECTION	LENGTH
L8	N4°52'45"E	41.15'
L9	N86°13'52"W	125.51'
L10	S0°34'41"W	19.09'
L11	S11°23'41"E	51.68'
L12	S3°29'37"E	109.42'
L13	N78°38'44"W	25.24'
L14	N3°33'57"E	16.62'



4670 WILLOW RD
 SUITE 250
 PLEASANTON, CA 94588
 925-396-7700
 925-396-7799 (FAX)

Subject EXHIBIT B
 LOT 12 OF BLOCK 8
 Job No. 20145170
 By MR _____ Date 3/2/17 Chkd. WS _____
 SHEET 1 OF 1

EXHIBIT C

Milestone Schedule
Affordable Housing Development Milestone Schedule

ACTION	DATE
<p>Tax Credit Application. The Tenant shall submit a timely and complete application for a 9% Tax Credit Reservation to TCAC for the Project. [§3.6(b)] If unsuccessful, the Tenant shall submit a second timely and complete application for a 9% Tax Credit Reservation to TCAC for the Project no later than July 31, 2018</p>	No later than March 31, 2018
<p>Tax Credit Reservation Allocation. Tenant shall have secured an allocation of tax credits for the Project. [§3.6]</p>	No later than June 30, 2018, but if application for first round is unsuccessful, Tenant shall, after submittal of a complete application for 9% credits no later than July 31, 2018 secure an allocation of tax credits no later than September 30, 2018.
<p>Funding Award. Tenant shall have obtained necessary funding awards from governmental funders to provide feasible funding plan for the Project</p>	No later than September 2018
<p>Phase Financing Plan. Tenant shall submit to the City Manager for approval the Affordable Housing Development Financing Plan [§3.4]</p>	No later than September 2018
<p>City Review of Phase Financing Plan. City shall review and approve or disapprove of the Phase Financing Plan</p>	Within 30 days of receipt
<p>Evidence of Financing. Tenant shall submit evidence that any conditions to release or expenditure of funds described in the Phase Financing Plan have been met or will be met prior to Closing [§4.3(a)(6) of the DDA]</p>	At least 30 days prior to Closing
<p>Supplemental Approvals. Tenant shall have obtained all Supplemental Approvals required for development of the Affordable Housing Development [§4.3(a)(10) of the DDA]</p>	At least 30 days prior to Closing
<p>Evidence of Insurance. Tenant shall provide</p>	At least 30 days prior to Closing

evidence of compliance with the insurance requirements [§4.3(a)(9) of the DDA]	
Affordable Housing Site Closing. Tenant shall have completed all conditions precedent to conveyance of Affordable Housing Site and City transfers possession of Affordable Housing Site. [§3.3]	No later than December 31, 2018.
Commencement of Construction. Tenant shall have commenced construction of the first phase of the Affordable Housing Development. [§4.1]	Within 180 days of a tax credit allocation reservation for the Affordable Housing Development.
Completion of Construction. Tenant shall have completed construction of the Affordable Housing Development [§4.1]	No later than two years from the date of receipt of a 9% tax credit allocation reservation for the Affordable Housing Development.

EXHIBIT D

Intentionally Omitted

EXHIBIT E

Form of Right of Entry

[see attached]

EXHIBIT E

FORM OF RIGHT OF ENTRY

(Site A, Block 8- Testing/Investigation)

This Right of Entry (Site A, Block 8- Testing/Investigation) (the "Permit") is entered into as of _____, 2017 (the "Effective Date"), by and between the City of Alameda, a municipal corporation ("City") and Eden Housing, Inc., a California nonprofit public benefit corporation ("Permittee"), with reference to the following facts, understandings and intentions:

A. City and Permittee have entered into one or more Ground Leases (the "Ground Leases"), whereby subject to Permittee meeting certain obligation, the City will convey possession of that certain property identified as Block 8 of Site A of Alameda Point (the "Block 8 Property") owned by City of Alameda.

B. To accomplish certain preliminary investigation and testing relating to Permittee's planned development of the Block 8 Property and related obligations under the Ground Leases, it is necessary for Permittee to enter the Block 8 Property as well as certain offsite property owned by the City (the "Offsite Property"), prior to conveyance of possession of the Block 8 Property to Permittee. The Property and the Offsite Property are collectively referred to herein as the "Property" and are shown on the Site Plan attached hereto as Exhibit A.

C. It is in the best interests of City to permit Permittee to enter onto the Property to perform the preliminary investigation and testing to be done in furtherance of the development project described in the Ground Leases.

NOW, THEREFORE, City hereby grants to Permittee a right to enter the Property based upon the conditions set forth in this Permit, all as more fully described below.

1. Ground Lease Definitions. The capitalized terms not otherwise defined herein shall have the meanings given in the Ground Leases.

2. License. City hereby grants to Permittee for use by Permittee and its employees, officers, agents; consultants, and contractors (collectively, "Agents") a personal, nonexclusive and nonpossessory right and license to enter upon and use the Property for the purposes and subject to the terms, conditions and restrictions set forth below. This Permit gives Permittee a license only and notwithstanding anything to the contrary herein, this Permit does not constitute a deed or grant by City of any ownership, leasehold, easement or other similar real property interest or estate whatsoever in the Property, or any portion thereof. This Permit is nonexclusive and, subject to the terms of the Ground Leases, shall be subject and subordinate to the rights of City to use the Property at its reasonable discretion for any use that does not materially interfere with Permittee's performance of the Work (as defined below). City and Permittee shall cooperate in the use of the Property during the term of this Permit.

3. Purposes. Permittee may enter the Property for the purposes of soil, groundwater, soil gas and geotechnical testing, including borings, potholing, cone penetrometer testing and other subsurface testing; topographic surveys; boundary surveys; utility location work; pre-demolition and renovation surveys affecting building interiors, exteriors and roofs; and other similar investigative

and design work (collectively, the "Work"). The Property shall not be used by Permittee for any other purpose, including, without limitation, grading, stockpiling, surcharging, demolition, or construction, without the express written consent of City.

4. Term.

a. The license conferred to Permittee pursuant to this Permit shall commence on the Effective Date and shall terminate on the earlier to occur of (i) ninety days after the effective date of the Ground Leases, or (ii) the date on which Permittee provides written notice to City that Permittee has completed the Work and no longer has any need to enter on or use the Property for the purposes provided for herein.

b. City reserves the right, without limiting any of its other rights and remedies, to issue a stop work order, remove Permittee from the Property and revoke this Permit if Permittee fails to comply with any terms of this Permit and such failure is not cured within fifteen (15) days after Permittee's receipt of written notice from City of such alleged failure (provided, however, if more than fifteen (15) days is reasonably required to complete the cure, then City shall not issue a stop work order and remove Permittee from the Property so long as Permittee has commenced the cure within such fifteen (15) day period and Permittee is diligently prosecuting such cure to completion).

5. Performance. Approvals: Due Care.

a. Permittee shall obtain all approvals and permits, including without limitation approvals and permits from the City of Alameda ("City"), California Department of Toxic Substances Control ("DTSC"), San Francisco Bay Conservation and Development Commission ("BCDC"), United States Navy ("Navy"), as applicable, and pay all fees (including, without limitation, inspection fees) required by all City departments, including the Department of Public Works, and any other governmental agencies having or claiming jurisdiction over the Property, that are required to commence and complete the Work, prior to Permittee's commencement of the Work. Prior to commencement of the Work, Permittee shall provide proof of all such required permits and approvals and business licenses to City, to the extent City was not the entity issuing the applicable permits and approvals. Permittee shall perform, or cause to be performed, all Work in compliance with such permits and approvals.

b. Permittee shall notify the Base Reuse Director or her designee forty-eight (48) hours prior to beginning the Work and upon completion of the Work, provided, however, Permittee shall submit to City a proposed work plan at least five (5) business days in advance of the date on which Permittee plans to perform any portion of the Work which is intrusive, such as, for example, subsurface sampling, and shall, prior to commencement of the Work, provide to the City evidence of all necessary permits for such intrusive Work, including without limitation permits and approvals issued by the Navy, City's Permit Center, DTSC and/or BCDC, as applicable.

c. Permittee shall use, and shall cause its Agents to use, due care at all times in performing the Work to avoid any damage or harm to City's property and any facilities, in, under, or on the Property. Permittee understands that portions of the Property are occupied and may not be accessible. Permittee shall take, and shall cause its Agents to take, all reasonable steps to minimize interference of the Work with existing operations at the Property.

d. All Work shall be performed in a workmanlike manner. Permittee shall protect all existing facilities. Permittee shall repair any damage to the Property caused by its Work or use of the Property, including but not limited to landscaping, curb, gutter, sidewalk and roadways. Permittee is responsible for daily cleanup of all rubbish, excess material, temporary structures and equipment used to accomplish the Work.

e. During performance of the Work, Permittee shall, at all times during such Work, control and minimize to the extent possible noise, vibrations, dust, obnoxious odors, fumes or emissions from emanating or being blown from the Property onto adjacent property in accordance with the standard requirements of the City and the Bay Area Air Quality Management District.

f. All Work shall be performed between 8:00A.M and 5:00P.M., Monday through Saturday, or such other additional hours as permitted by the City.

g. Permittee shall at all times during the performance of the Work, at its sole cost, maintain all portions of the Property affected by the Work in a safe and secure condition.

h. Permittee shall cause all of its contractors, subcontractors, and all other parties performing the Work to comply with the terms of this Permit. Upon the City's request, evidence of such requirement shall be provided to the City.

i. Permittee shall pay all utility service fees associated with the Work on the Property, including, without limitation, water, sewer, and electricity.

j. Prior to commencement of any intrusive Work, Permittee shall contact Underground Service Alert and shall locate all utilities with an underground utilities locator. Permittee shall "pot hole" for utility depth and shall use hydro excavation or hand dig and manually probe ahead of the excavator around utilities. Permittee shall take all necessary precautions to avoid contact with, or damage to any existing utilities.

6. Schedule. Prior to performing the Work, Permittee shall provide to City an initial schedule for the Work, and shall promptly provide to City all updates and modifications to the schedule.

7. Insurance.

a. Permittee shall maintain throughout the term of this Permit, at no cost to City, insurance as follows:

i. Comprehensive, broad form general liability insurance, in an amount not less than Six Million Dollars (\$6,000,000), combined single limit. At least \$1,000,000 shall be primary and the remainder may be maintained, as applicable as umbrella or excess liability coverage.

ii. Workers' compensation, as required by law, and employer's liability in an amount not less than One Million Dollars (\$1,000,000).

iii. Automobile liability insurance for owned, hired or non-owned vehicles, in an amount not less than One Million Dollars (\$1,000,000), combined single limit.

iv. Permittee shall cause their contractors and subcontractors to provide the following insurance coverages:

A. Comprehensive, broad form general liability insurance, including contractual liability, products and completed operations, in an amount not less than One Million Dollars (\$1,000,000), combined single limit. If such insurance is provided under a blanket policy, a separate general liability and completed operations aggregate limit shall apply to the Property; at least \$1,000,000 shall be primary and the remainder may be maintained, as applicable, as umbrella or excess liability coverage. Permittee shall use its reasonable efforts to cause the completed operations coverage to be maintained for at least three (3) years following completion of construction.

B. Liability insurance for owned, hired and non-owned vehicles, in an amount not less than One Million Dollars (\$1,000,000), combined single limit. At least \$1,000,000 shall be primary and the remainder may be maintained, as applicable, as umbrella or excess liability coverage.

C. Workers' compensation, as required by law, and employer's liability in an amount not less than One Million Dollars (\$1,000,000).

v. Solely with respect to the contractor(s) or subcontractor(s) that will be handling Hazardous Materials (as defined in Section 11 (d) below), while performing Work on the Property, contractor's pollution liability insurance, in an amount not less than Two Million Dollars (\$2,000,000), per pollution incident and in the aggregate. The phrase "handling Hazardous Materials" as used herein shall include without limitations containing, labeling and removal.

vi. Permittee shall cause its geotechnical and civil engineering consultants to maintain professional liability insurance in an amount not less than two million dollars (\$2,000,000) per occurrence. Permittee shall use its reasonable efforts to cause such professional liability insurance to have an inception date or a retroactive date coinciding with or prior to the date such consultant's services are first performed and to cause coverage to continue uninterrupted until at least three (3) years after the date such work or services are accepted.

b. General Requirements.

i. All insurance provided for under this Permit shall be effected under valid enforceable policies issued by insurers of recognized responsibility having a rating of at least A-VII in the most current edition of Best's Insurance Reports, or otherwise acceptable to City's Risk Manager.

ii. The professional liability policies required pursuant to this Section 7 shall be written on a "claims made" form with a "thirty day extended reporting provision" that survives this Permit. All other liability policies required hereunder shall be written on an occurrence basis. The required coverage may be provided by a blanket, multi-location policy, if such policy provides a separate aggregate limit per occurrence for the benefit of the Property and off-site areas subject to this Permit.

iii. Should any of the required insurance be provided under form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal

defense costs be included in such general annual aggregate limit, such general aggregates limit shall double the occurrence or claims limits specified.

iv. Comprehensive general and automobile liability insurance policies shall be endorsed or otherwise provide the following:

A. Name City and their commissions, boards, departments, officers, agents and employees, as additional named insureds, as their respective interests may appear hereunder.

B. All policies shall be endorsed to provide thirty (30) days' advance written notice to City's Risk Manager of cancellation, except in the case of cancellation for nonpayment of premium, in which case cancellation shall not take effect until ten (10) days prior written notice has been given to the City's Risk Manager. Permittee covenants and agrees to give City reasonable notice in the event that it learns or has any reason to believe that any such policy may be canceled or that the coverage of any such policy may be reduced.

v. All insurance provided for under this Permit are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Permit, and that insurance applies separately to each insured against whom claim is made or suit is brought. All policies shall include provisions denying such respective insurer the right of subrogation and recovery against the City. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

vi. Permittee shall deliver to City certificates of insurance and additional insured endorsements in form reasonably satisfactory to City, evidencing the coverages required hereunder on or before the Effective Date of this Permit ("Evidence of Insurance") and Permittee shall provide City with Evidence of Insurance thereafter before the expiration dates of expiring policies. In addition, Permittee shall deliver to City complete copies of the relevant policies upon request therefor from City. If Permittee shall fail to procure such insurance, or fails to deliver Evidence of Insurance as required herein, and such failure continues for more than ten (10) days following written notice from City to Permittee, City may, at its option, procure the same for the account of Permittee, and the reasonable cost thereof shall be paid to City within thirty (30) days after delivery to Permittee of bills therefor City shall notify Permittee within thirty (30) days of its receipt of Evidence of Insurance whether Evidence of Insurance is not acceptable to City.

vii. Notwithstanding anything to the contrary in this Permit, Permittee's compliance with this Section 7 shall in no way relieve or decrease liability of Permittee under Section 14 below, or any other provision of this Permit, and no insurance carried by the City shall be called upon to satisfy the Permittee's indemnification obligations under Section 15 or any other obligations of Permittee or its Agents under this Permit.

8. Compliance with Laws and Agreements.

a. All activities and operations of Permittee and/or its Agents under this Permit shall be in compliance with all applicable federal, state and local laws and regulations, including

without limitation, the City's Marsh Crust ordinance (City of Alameda Ordinance No. 2824), and in accordance with the all agreements between the Permittee and the City applicable to the Property. All contracts Permittee enters into for performance of the Work shall make appropriate provision for compliance with this Section 8.

b. All activities and operations of Permittee and/or its Agents under this Permit shall be in compliance with the Soil Management Plan ("SMP") dated March 29, 2015 attached hereto as Exhibit B. including any revisions thereto. The substantive portions of the SMP shall apply to all applicable Work, regardless of whether the area of such Work falls within the defined area of applicability of the SMP.

c. Permittee herein covenants for itself and for all persons claiming in or through it that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, age, sex, marital status, sexual orientation, disability, national origin or ancestry in the use, occupancy or enjoyment of the Property.

9. Signs. Permittee shall not place, erect, or maintain any sign, advertisement, banner or similar object on the Property, except for temporary safety and warning signs associated with the Work and as approved by City. Informational signage shall be subject to the approval of City, which approval shall not to be unreasonably withheld, conditioned or delayed.

10. Condition/Restoration of Condition of Property.

a. For purposes of this Permit, Permittee accepts the Property "as is" and entry upon the Property by Permittee is an acknowledgment by Permittee that all dangerous places and defects in the Property, except latent defects and dangerous places, are known to it and Permittee shall conduct the Work in a manner such that all portions of the Property affected by the Work are kept in a condition at least as secure as its condition prior to Permittee's performance of the Work. Permittee shall maintain all portions of the Property affected by the Work so that it will not be unsafe, unsightly or unsanitary. Upon termination of this Permit, Permittee shall remove any and all personal property located thereon and restore all portions of the Property affected by the Work to a neat, safe and secure condition. City shall have the right upon not less than fifteen (15) days' notice to Permittee to dispose of any property left by Permittee on the Property after termination of this Permit.

b. If any soil, groundwater, soil gas, or geotechnical investigation permitted hereby involves the drilling of holes or other excavation having a dimension that could create a safety hazard for persons, said holes and excavation shall be carefully safeguarded and shall upon the completion of said drilling operations be refilled (and compacted to the extent necessary) to the level of the original surface penetrated by the drilling and shall be approved by Permittee's geotechnical engineer: All soil, groundwater, and soil gas test data and final memoranda and reports prepared based thereon, obtained from these activities shall be provided to City.

c. In the event Permittee or its Agents stockpile soil or construct weight-bearing structures on the Property during the Term of this Permit that cause consolidation or differential settlement within the Property (other than as provided in the surcharge plan approved by the City), Permittee shall correct such consolidation or differential settlement in accordance with Permittee's geotechnical engineer's recommendations. The provisions of this Section 10 (c) shall survive the termination of this Permit.

d. Prior to the termination of this Permit, Permittee, at its sole cost and expense, shall appropriately contain, label and cause to be removed from the Property any Hazardous Materials (as defined below) extracted from the Property as a result of Permittee's Work or first introduced in, on, under or about the Property by Permittee or its Agents ("Permittee Hazardous Materials"), in compliance with all laws. All costs of storage, shipping and disposal of Permittee Hazardous Materials shall be the responsibility of Permittee including, without limitation, the costs of preparation of shipping papers. Permittee shall promptly inform City that such actions have been performed. To the extent required in connection with the transport or disposal of Hazardous Materials from the Property, the City shall be designated and shall sign any necessary manifests as the generator" of such materials. For purposes herein, the term "Hazardous Materials" shall mean any substance, material or waste which is (i) defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," or "restricted hazardous waste" under any provision of California law; (ii) petroleum; (iii) asbestos; (iv) polychlorinated biphenyls; (v) radioactive materials; (vi) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251 et seq. (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317); (vii) defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903) or its implementing regulations; (viii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601); or (ix) determined by California or federal governmental authority to be capable of posing an unacceptable risk to human health or the environment due to environmental exposures.

e. City makes no representations or warranties, express or implied, with respect to the environmental condition of the Property or the surrounding property (including, without limitation, all facilities, improvements, structures and equipment thereon and soil and groundwater thereunder), or compliance with any applicable Environmental Laws (as defined below), and gives no indemnification, express or implied, for any costs of liabilities arising out of or related to the presence, discharge, migration or release or threatened release of Hazardous Materials in or from the Property, except to the extent specifically provided in the Ground Leases.

f. Permittee recognizes that, in entering upon the Property and performing work under this Permit, its Agents may be working with, or be exposed to, substances or conditions which are toxic or otherwise hazardous. Permittee shall provide prior written notice to its Agents of the potential presence and exposure to such toxic or hazardous substances or conditions. Permittee agrees that, for purposes of this Permit and performance of the Work, it is assuming full responsibility for such risks.

g. All excavation, backfilling or other earthwork shall be performed in accordance with the recommendations of Permittee's geotechnical engineer.

11. City's Right to Cure Defaults by Permittee. If Permittee fails to perform its obligations, if any, under this Permit, then City may, at its sole option, remedy such failure for Permittee's account and at Permittee's expense by providing Permittee fifteen (15) days' prior written notice of City's intention to cure such default (except that no such prior notice shall be required in the event of an emergency as reasonably determined by City). If Permittee fails to cure such alleged failure within such fifteen (15) day period (provided, however, if more than fifteen (15) days is reasonably required to complete the cure, then City shall not undertake to remedy such failure so long as Permittee has commenced the cure within such fifteen (15) day period and Permittee is

diligently prosecuting such cure to completion). Such action by City shall not be construed as a waiver of any rights or remedies of City under this Permit, and nothing herein shall imply any duty of City to do any act that Permittee is obligated to perform. Permittee shall pay to City within fifteen (15) days following City's written demand and appropriate supporting documentation, all reasonable, out of pocket costs and expenses incurred by City, including, without limitation reasonable attorneys' fees, in remedying or attempting to remedy such default. Permittee's obligations under this Section 11 shall survive the termination of this Permit.

12. Costs. Subject to the terms of this Permit, Permittee shall bear all costs and expenses of any kind or nature in connection with its use of the Property, including, without limitation, any fines or penalties related to, or arising from performance of the Work and any costs incurred by the City caused by Permittee's or its Agents' failure to comply with this Permit.

13. Indemnification.

a. Permittee shall indemnify, defend and hold harmless City, and its boards, commissions, councils, officers, employees, and agents, and any successor to the City's former Community Improvement Commission's interest in the Property, from and against any and all claims, demands, losses, liabilities, damage, liens, obligations, interest, injuries, penalties, fines, lawsuits or other proceedings, judgments and awards and costs and expenses (including reasonable attorneys' fees and costs and consultant fees and costs and court costs) of whatever kind or nature, known or unknown, contingent or otherwise, including the reasonable costs to City of carrying out the terms of any judgment, settlement, consent, decree, stipulated judgment or other partial or complete termination of an action or procedure that requires City to take any action (collectively, "Indemnified Claims") which arise in any manner out of: (i) any injury to or death of any person or damage to or destruction of any property occurring in, on or about the Property, or any part thereof, whether the person or property of Permittee or its Agents, their invitees, guests or business visitors (collectively, "Invitees"), or third persons, resulting from any use or activity by Permittee or its Agents under this Permit, including any new release by Permittee of any Hazardous Materials on the Property, (ii) any failure by Permittee to faithfully observe or perform any of the terms, covenants or conditions of this Permit, or (iii) the use of the Property or any activities conducted thereon under this Permit by Permittee, its Agents or Invitees. Notwithstanding the foregoing, Permittee's indemnity obligations shall not include any Indemnified Claims to the extent they result from (i) the negligence or willful or other actionable misconduct of City or its boards, commissions, councils, officers, employees, and agents or (ii) the mere discovery or non-negligent exacerbation by Permittee of any preexisting Hazardous Materials (as defined in Section 10 (d) above). Permittee shall promptly notify the City of any such discovery and properly document and handle any such Hazardous Materials extracted from the Property in accordance with Section 10 (d) above. Permittee agrees to defend the indemnified parties against any claims that are actually or potentially within the scope of the indemnity provisions of this instrument, even if such claims may be groundless, fraudulent or false.

b. Notwithstanding anything in Section 13(a) to the contrary, to the extent that any of the terms of Section 13(a) conflict with the terms of the DDA, the DDA shall control.

c. Permittee shall not permit any mechanics' or material supplier's liens to be levied against the Property for any labor or material furnished to Permittee or claimed to have been furnished to Permittee or to its Agents and Permittee shall indemnify, defend and hold City free and harmless from any and all cost or expense connected with or arising from any Work undertaken on the Property by Permittee.

d. For the purposes of this Section 13, Permittee's operations and activities include, but are not limited to, those of its Agents.

e. Permittee's obligations under this Section 13 shall survive the expiration or other termination of this Permit.

f. The agreement to indemnify, defend and hold harmless set forth in Section 13 is in addition to and in no way shall be construed to limit or replace, any other obligations or liabilities which Permittee may have to City in the DDA this Permit, at common law or otherwise except as same may be limited by the provisions of the DDA or this Permit.

14. Notices. Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed received upon personal delivery or upon delivery by facsimile to the party to whom the notice is directed followed by delivery of a "hard" copy to the addresses listed below or if sent by mail three (3) business days following its deposit in the United States mail, postage prepaid, certified mail, return receipt requested or, if sent by FedEx or other reliable overnight courier, on the next business day following dispatch, and in any such events addressed to the City or Permittee as the case may be, at the addresses set forth below (or such other address as a party may specify by notice given pursuant to this Section):

City: City of Alameda
2263 Santa Clara Avenue, Room ___
Alameda, CA 94501
Attention: Jennifer Ott,
Alameda Point Chief Operating Officer

with copy to: City Attorney's office
2263 Santa Clara Avenue, Room 280
Alameda, CA 94501
Attention: City Attorney

Eden: Eden Housing, Inc.
22645 Grand Street
Hayward, CA 95451
Attn: President

with copy to:

15. No Assignment. This Permit is personal to Permittee and shall not be transferred by Permittee without City's prior written consent, which may be granted or denied in City's sole discretion. Any attempt to transfer this Permit in violation of the immediately preceding sentence shall be null and void and cause the immediate termination and revocation of this Permit. Notwithstanding the foregoing, City acknowledges that some or all of the Work may be performed by Permittee's Agents, and such performance shall not be construed as an assignment or transfer by Permittee of this Permit.

16. Strictly Construed. This Permit is to be strictly construed and no use other than that specifically stated herein is authorized hereby.

17. Non-Liability of City Officials. Employees and Agents. Notwithstanding anything to the contrary in this Permit, no elective or appointive board, commission, member, officer, employee or agent of City shall be personally liable to Permittee, its successors and assigns, in the event of any default or breach by City or for any obligation of City under this Permit, nor shall any officer, director, shareholder, partner or employee of Permittee be personally liable to City, its successors or assigns, in the event of any default or breach by Permittee or for any obligation of Permittee under this Permit.

18. No Joint Venture or Partnership: No Authorization. This Permit does not create a partnership or joint venture between City and Permittee as to any activity conducted by Permittee on, in or relating to the Property. Except as provided in this Permit, the giving of this Permit by City does not constitute authorization or approval by City of any activity conducted by Permittee on, in, or relating to the Property.

19. Taxes. Permittee agrees to pay any applicable taxes, including possessory interest taxes, in the event that this Permit creates a possessory interest subject to property taxation, that may be lawfully assessed on Permittee's interest under this Permit or use of the Property pursuant hereto. Permittee shall pay all such charges when they become due and payable and before delinquency. Nothing in this section shall be construed as indicating an intent to create a possessory interest subject to taxation, and City agrees that it will cooperate with Permittee in efforts to lawfully minimize or avoid any such assessments.

20. General Provisions.

a. This Permit may not be amended or modified except by a written instrument signed by an officer or other authorized representative of all parties hereto.

b. No waiver by any party of any of the provisions of this Permit shall be effective unless in writing and signed by the party granting the waiver, and only to the extent expressly provided in such written waiver.

c. All approvals and determinations of City required or permitted hereunder may be made in the reasonable discretion of City.

d. The section and other headings of this Permit are for convenience of reference only and shall be disregarded in the interpretation of this Permit.

e. Time is of the essence,

f. This Permit shall be construed and governed in accordance with the laws of the State of California.

g. If either party institutes any action or proceeding in court or before an arbitrator to enforce any provision hereof or for damages by reason of an alleged breach of any provision of this Permit, the prevailing party shall be entitled to receive from the other party court or arbitration costs or expenses incurred by the prevailing party including, without limitation, expert witness fees, document copying expenses, exhibit preparation costs, carrier expenses and postage and

communication expenses, and such amount as the court or arbitrator may judge to be reasonable attorneys' fees for the services rendered to the prevailing party in such action or proceeding.

h. Permittee may not record this Permit or any memorandum hereof.

i. Subject to the limitations on assignments or other transfers by Permittee hereunder, this Permit shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns.

j. Each of the exhibits referenced in this Permit is attached hereto and incorporated herein.

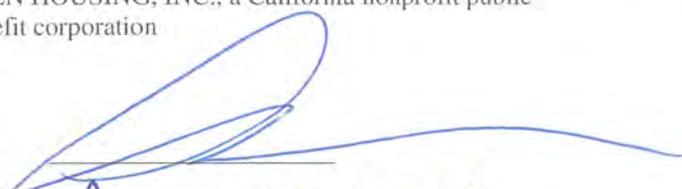
k. This Permit may be executed in counterparts.

l. For purposes herein, the designated representative for City shall be the Alameda Point Chief Operating Officer or her designee.

Signatures on next page

IN WITNESS WHEREOF, the parties hereto have executed this Permit as of the date first written above.

EDEN HOUSING, INC., a California nonprofit public
benefit corporation

By: 

Name: ANDRE MADEJTA

Title: SENIOR VP OF DEVELOPMENT

CITY OF ALAMEDA,
A Municipal Corporation

By: _____

Jill Keimach
City Manager

RECOMMENDED FOR APPROVAL:

By: 

Jennifer Ott
Base Reuse Director

APPROVED AS TO FORM

By: 

Andrico Q. Penick
Chief Real Estate Counsel

10/5/17.

IN WITNESS WHEREOF, the parties hereto have executed this Permit as of the date first written above.

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By: 

Name: ANDREE MADEIRA

Title: SENIOR VP OF DEV.

CITY OF ALAMEDA,
A Municipal Corporation

By: _____

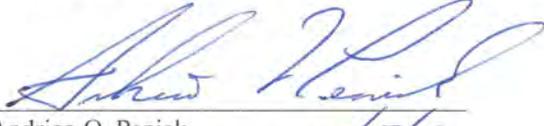
Jill Keimach
City Manager

RECOMMENDED FOR APPROVAL:

By: 

Jennifer Ott
Base Reuse Director

APPROVED AS TO FORM

By: 

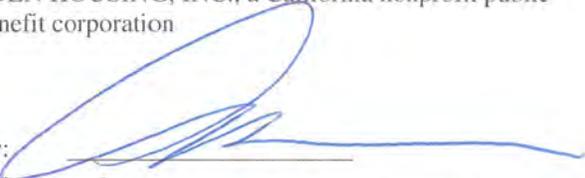
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EDEN HOUSING, INC., a California nonprofit public
benefit corporation

By:


Name: ANDRE MADEIZA
Title: SENIOR VP OF DEV.

CITY OF ALAMEDA,
A Municipal Corporation

By:

Jill Keimach
City Manager

RECOMMENDED FOR APPROVAL:

By:



Jennifer Ott
Base Reuse Director

APPROVED AS TO FORM

By:



Andrico Q. Penick
Chief Real Estate Counsel

10/5/17

EXHIBIT F

Affordable Housing Implementation Plan

AFFORDABLE HOUSING IMPLEMENTATION PLAN
(Alameda Point- Site A Affordable Housing)

This Affordable Housing Implementation Plan (this “Plan”) is appended as Exhibit M of that certain Disposition, Development Agreement, dated as of June 16, 2015, as may be amended (the “DDA”), by and among the City of Alameda, a California charter city (the “City”) and Alameda Point Partners, LLC, a Delaware limited liability company (the “Developer”). Execution of the DDA is deemed to be an agreement by the Developer to be bound by the terms of this Plan.

RECITALS

A. Under the DDA, the Developer has agreed to redevelop the property more particularly described in Exhibit A of the DDA (the “Property”) and shown on the site map attached as Exhibit B of the DDA, into a high quality, mixed-use “urbanistic” development which will include 800 Residential Units of new construction and up to 600,000 net new rentable square feet of permitted and conditionally permitted non-residential uses (including but not limited to, retail, commercial, civic and other commercial space) and, which may include the adaptive reuse of some of the existing structures on the Property, and approximately 15 acres of public open space and parks (the “Project”) to be the catalyst for the revitalization of the Alameda Point district.

B. The Project is a multi-phased mixed used transit oriented development. As part of the Project, the Developer must construct or cause to be constructed a sufficient number of Affordable Housing Units to comply with the Inclusionary Housing Ordinance, the Density Bonus Regulations and the Renewed Hope Settlement Agreement as further detailed in Article 2 of this Plan. The current Project approvals allow for the construction of 800 Residential Units of which not less than two hundred (200) are required to be Affordable Housing Units permanently restricted to occupancy by Very Low Income Households, Low Income Households and Moderate Income Households.

C. Subject to satisfaction of the conditions in the DDA, the City will transfer portions of the Property in phases directly to the Developer for the construction of the six hundred (600) Market Rate Residential Units and Seventy-two (72) of the Affordable Housing Units that will be permanently restricted for occupancy by Moderate Income Households and will be, to the maximum extent feasible, dispersed throughout the Residential Projects containing Market Rate Residential Units.

D. The Developer is also responsible for the development of one hundred twenty-eight (128) Affordable Housing Units that will be permanently restricted to Very Low Income and Low Income Households. The Developer intends to meet its obligation to develop the Very Low Income and Low Income Homes by partially assigning its obligation to construct the Affordable Housing Development to a Qualified Affordable Housing Developer pursuant to an Affordable Housing Plan Assignment approved by the City. The Developer will remain

responsible to provide the Project Infrastructure for the Affordable Housing Site pursuant to the terms of the DDA and this Plan and for the completion of all Affordable Housing Units.

E. Subject to the satisfaction of the conditions of the DDA and this Plan, the parties contemplate that the City will transfer the Affordable Housing Site directly to the Qualified Affordable Housing Developer to facilitate the construction and operation of the Affordable Housing Development, the construction of which is anticipated to occur in not more than two phases.

F. The purposes of this Plan, as more specifically set forth herein, are to: (1) document, implement and ensure compliance with the requirements of the Renewed Hope Settlement Agreement, the Inclusionary Housing Ordinance, and the Density Bonus Regulations as they apply to the Project; (2) enumerate the conditions for site control and the transfer of the Affordable Housing Site to the Developer or a Qualified Affordable Housing Developer; (3) provide for the orderly development and operation of the Affordable Housing Development and the Moderate Income Units; and (4) set forth the ongoing requirements for the operation of the Affordable Housing Units.

NOW, THEREFORE, in consideration of the mutual terms, covenants, conditions and promises set forth herein and in the DDA, the Parties agree as follows:

ARTICLE 1. TIME OF PERFORMANCE

Section 1.1 Milestone Schedules.

(a) Consistency with DDA Milestone Schedule. The Developer and the City are each required to perform certain tasks and to fulfill certain obligations as set forth in the DDA and this Plan. The schedule of the deadlines for performance of various conditions and requirements under the DDA and this Plan must be consistent with the requirements set forth in the DDA Milestone Schedule and the DDA Phasing Plan, incorporated herein by this reference. The DDA Milestone Schedule and DDA Phasing Plan may only be amended pursuant to the terms of the DDA, including Section 1.3 thereof.

(b) Affordable Housing Development Milestone Schedule. The schedule of the deadlines for the Developer's performance (and pursuant to the Affordable Housing Plan Assignment, the Qualified Affordable Housing Developer's performance) of various conditions and requirements applicable only to the Affordable Housing Development under this Plan are set forth in the Affordable Housing Development Milestone Schedule attached as Attachment A.

ARTICLE 2. AFFORDABLE HOUSING OBLIGATIONS AND PROJECT SPECIFIC IMPLEMENTATION

Section 2.1 Applicable Housing Requirements. The redevelopment of the Property is subject to the requirement under the Renewed Hope Settlement Agreement, the Inclusionary Housing Ordinance and the Density Bonus Regulations as further set forth below:

(a) Renewed Hope Settlement Agreement. Under the Renewed Hope Settlement Agreement twenty-five percent (25%) of all newly constructed housing units at Alameda Point must be made permanently Affordable as follows: (1) ten percent (10%) of all Residential Units shall be made permanently Affordable to Very Low Income Households and Low Income Household (households with incomes at or below 80% of median income); and (3) the remaining fifteen (15%) of all Residential Units shall be made permanently Affordable to Very Low Income Households, Low Income Households and Moderate Income Households under the criteria set forth in Health and Safety Code Section 33413(b)(2).

(b) Inclusionary Housing Ordinance. Under AMC 30-16-4 at least fifteen percent (15%) of the total units in the Project must be "inclusionary units" restricted for occupancy by Very Low Income Households, Low Income Households and Moderate Households Income Households. Specifically, the Inclusionary Ordinance requires that: (1) four percent (4%) of the units be restricted to occupancy by Very Low Income Households; (2) four percent (4%) of the units must be restricted to occupancy by Low Income Households; and (3) seven percent (7%) of the units must be restricted to occupancy by Moderate Income Households.

(c) Density Bonus Regulations. The Developer has filed an application for a Density Bonus waiver for the Project under the City's Density Bonus Regulations and in consideration for such waiver the Developer has agreed to make at least ten percent (10%) of the total units in the Project affordable to Low Income Households; or at least five percent (5%) of the total units in the Project affordable to Very Low Income Households; or at least ten percent (10%) of the total units in the Project affordable to Moderate Income Households.

(d) Project Specific Requirements. The City has determined that in order to comply with the combined requirements of the Inclusionary Housing Ordinance, the Density Bonus Regulations and the Renewed Hope Settlement Agreement, not less than twenty-five percent (25%) of the Residential Units to be constructed under the DDA shall be made permanently Affordable as follows: (1) six percent (6%) of all Residential Units shall be made permanently Affordable to Very Low Income Households; (2) ten percent (10%) of all Residential Units shall be made permanently Affordable to Low Income Households; and (3) nine percent (9%) of all Residential Units shall be made permanently Affordable to Moderate Income Households. The Developer agrees and acknowledges that based on the Project approvals contemplating eight hundred (800) Residential Units, the Developer is required to construct not less than 200 Affordable Housing Units in the following proportions:

(1) Forty-eight (48) Very Low Income Units are required to be made available to and occupied by Very Low Income Households.

(2) Eighty (80) Low Income Units are required to be made available to and occupied by Low Income Households.

(3) Seventy-two (72) Moderate Income Units are required to be made available to and occupied by Moderate Income Households.

Section 2.2 Recorded Restrictions.

(a) To ensure that all Affordable Housing Units constructed as part of the Project are permanently available to and occupied by income eligible households at an Affordable Housing Cost in compliance with this Plan, the parties hereby agree to execute and record in the public records with the Alameda County Recorder (the "Official Records"): (1) a City Regulatory Agreement in substantially the form attached as Attachment B restricting Very Low Income Homes and the Low Income Homes at the time of conveyance of the Affordable Housing Site to the Qualified Affordable Housing Developer; (2) a City Regulatory Agreement in substantially the form attached as Attachment B restricting the Moderate Income Units that are For-Rent Residential Units at the time that the City transfers to the Developer any portion of the Property that will contain a Moderate Income For-Rent Residential Unit; and (3) to record an Affordable Housing Covenant in substantially the form attached as Attachment C restricting the sale of Moderate Income Units that are For-Sale Residential Units at the time that the City transfers to the Developer any portion of the Property that will contain a Moderate Income For-Sale Residential Unit. The City Regulatory Agreement or Affordable Housing Covenant shall be recorded against title to the applicable property subject only to such liens, encumbrances and other exceptions to title approved in writing and in advance by the City. The parties agree to meet and confer if the priority lien position of the City Regulatory Agreement or Affordable Housing Covenant interferes with the Qualified Affordable Housing Developer's ability to obtain market rate debt financing. The Qualified Affordable Housing Developer must demonstrate to the City's reasonable satisfaction that subordination of the City Regulatory Agreement or Affordable Housing Covenant is necessary to secure adequate construction and/or permanent financing to ensure the viability of the Affordable Development. To satisfy this requirement, the Qualified Affordable Housing Developer must provide to the City, in addition to any other information reasonably required by the City, evidence demonstrating that the proposed amount of the senior debt is necessary to provide adequate construction and/or permanent financing to ensure the viability of the Affordable Development and adequate financing for the Affordable Development would not be available without the proposed subordination.

(b) The Developer further agrees that upon sale of any Affordable Housing Units that are For-Sale Residential Units the Developer will require that purchaser enter, execute and record the Affordable Resale Restriction in substantially the form attached as Exhibit E of the Affordable Housing Covenant attached hereto as Attachment C against title to the applicable property subject only to such liens, encumbrances and other exceptions to title approved in writing and in advance by the City.

(c) This Plan and the recorded restrictions required under this Section 2.2 shall satisfy the requirement for: (1) an "affordable housing agreement" ensuring the continuing affordability of housing pursuant to the Density Bonus Regulations as specified in AMC 30-17; and (2) an "affordable housing plan" ensuring the continuing affordability of housing constructed pursuant to the Inclusionary Housing Ordinance as specified AMC 30-16-10.

ARTICLE 3. CONDITIONS FOR AND DISPOSITION OF
AFFORDABLE HOUSING SITE

Section 3.1 Site Conveyance- Affordable Housing Development. The City shall convey to a Qualified Affordable Housing Developer, through an option agreement or purchase and sale agreement, the Affordable Housing Site in accordance with the terms of this Plan and the DDA. The parties agree that the City shall have no obligation to convey the Affordable Housing Site until and unless the Developer has Completed all infrastructure necessary to serve the Affordable Housing Site (with the exception of any Deferred Project Infrastructure which shall be governed by the procedures of Section 4.4 hereof) and the Developer or the Qualified Affordable Housing Developer has met the conditions to conveyance set forth in Article 3 of this Plan.

Section 3.2 Conditions to Conveyance of Affordable Housing Site. The conveyance by the City of the Affordable Housing Site for the Affordable Housing Development shall be subject to the satisfaction or waiver by the City of the following conditions:

(a) The City shall have approved the Qualified Affordable Housing Developer. Eden Housing, Inc., a California nonprofit public benefit corporation (“Eden Housing”) is hereby approved as the Qualified Affordable Housing Developer, provided however, the Developer may designate an alternative Qualified Affordable Housing Developer if: (1) Eden Housing cannot meet the conditions for conveyance of the Affordable Housing Site set forth in this Plan and the DDA within the time periods required by the Milestone Schedule and the Affordable Housing Development Milestone Schedule; or (2) the Affordable Housing Plan Assignment with Eden Housing is terminated prior to the conveyance of the Affordable Housing Site. The City approval of any alternative Qualified Affordable Housing Developer shall be required prior to conveyance of an Affordable Housing Site to the alternative Qualified Affordable Housing Developer.

(b) If the Qualified Affordable Housing Developer is proposing to develop affordable senior housing within the Affordable Housing Development, the Qualified Affordable Housing Developer shall provide evidence of a fully executed modification or amendment to the Renewed Hope Settlement Agreement as necessary to allow for the development of affordable senior housing at Alameda Point.

(c) The City shall have approved an Affordable Housing Plan Assignment that requires the Qualified Affordable Housing Developer to:

(1) Prepare an Affordable Housing Development Financing Plan in accordance with Section 3.4 of this Plan;

(2) Provide the City a breakdown of the number of Low Income Homes and Very Low Income Homes it intends to develop and rent at Affordable Housing Costs to Very Low Income Households and Low Income Households;

(3) Obtain all applicable Supplemental City Approvals, including without limitation design review approval in accordance with the Project Approvals (as defined in the DDA);

(4) Develop and construct the Affordable Housing Development in accordance with the applicable Project Approvals and any Supplemental City Approvals and to manage and operate the Affordable Housing Development consistent with the requirements of the DDA, this Plan and the applicable City Regulatory Agreement.

(5) Secure all financing necessary for the development and operation of the Affordable Housing Development consistent with the approved Phase Financing Plan and the Affordable Housing Development Financing Plan, and includes the requirement that the Qualified Affordable Housing Developer obtain Tax Credit Reservations for both phases of the Affordable Housing Development and apply for a commitment of AHSC Program Funds prior to conveyance of the Affordable Housing Site to the Qualified Affordable Housing Developer;

(6) Enter into and record a City Regulatory Agreement for the benefit of the City (which shall be binding on the respective successors and assigns of the City and the Qualified Affordable Housing Developer);

(7) Grant to the City an option to acquire the Affordable Housing Site, which option will be evidenced by the Memorandum of Option substantially in the form of Attachment D to be recorded against the Affordable Housing Site at the time of conveyance to the Qualified Affordable Housing Developer. In accordance with the terms of the Memorandum of Option, the City shall be entitled to exercise the option if the Qualified Affordable Housing Developer has failed to meet the performance standards in the City Regulatory Agreement or fails to Commence or Complete Construction of the Affordable Housing Development within the times specified in Affordable Housing Development Milestone Schedule. If the City exercises the Option and the Qualified Affordable Housing Developer has accepted a Deferred Infrastructure Liquidation Amount pursuant to Section 4.4 below and the Qualified Affordable Housing Developer has not installed the Deferred Infrastructure prior to the exercise of the option, the Affordable Housing Plan Assignment shall further require that the Qualified Affordable Housing Developer will be required to pay the Deferred Infrastructure Liquidation Amount to the City at time of transfer of Title on the Affordable Housing Site. The Affordable Housing Plan Assignment shall further require that if the City exercises the Option and takes title to the Affordable Housing Site, the City shall also be entitled to an assignment of plans, studies and other materials prepared by the Qualified Affordable Housing Developer related to the development (including design) of the Affordable Housing Development on the Affordable Housing Site at no cost to the City;

(8) Deliver to the Developer the Preliminary Development Notice required pursuant to Section 4.3 of this Plan as well as a written Commencement Notice at least six (6) months prior to the date the Qualified Affordable Housing Developer intends to Commence Construction and to provide the Developer with notice of any subsequent revision to the Qualified Affordable Housing Developer's Commencement of Construction date in order to allow the Developer sufficient time to coordinate and complete the applicable Project

Infrastructure required to provide access and utility service to the Affordable Housing Site prior to Commencement of Construction.

(d) The City shall have approved a Phase Financing Plan for the phase containing the Affordable Housing Site in accordance with Section 3.1(b) of the DDA and a Affordable Housing Development Financing Plan in accordance with Section 3.4 of this Plan.

(e) The Developer has Completed all infrastructure necessary to serve the Affordable Housing Site (with the exception of any Deferred Project Infrastructure which shall be governed by the procedures of Section 4.4 hereof), or Developer's obligation to Complete such infrastructure is covered in a subdivision improvement agreement governing the applicable infrastructure (including any Deferred Project Infrastructure) in which: (1) Developer is obligated to Complete the applicable infrastructure (other than any applicable Deferred Project Infrastructure) on the earlier of (i) the date that the Qualified Affordable Housing Developer Commences Construction of the Affordable Housing Development; or (ii) within the timeframes required under the subdivision improvement agreement; and (2) Developer's obligations to Complete the Project Infrastructure and Deferred Project Infrastructure is subject to Completion Assurances to the City.

Section 3.3 Conveyance to Qualified Affordable Housing Developer.

(a) Upon satisfaction of the conditions set forth in Section 3.2, satisfaction of the conditions for conveyance of Phase I of the Property to the Developer pursuant to the DDA, and other requirements of this Plan, the City shall convey the Affordable Housing Site to the Qualified Affordable Housing Developer at a cost of \$100. Within thirty (30) days of satisfaction of the conditions set forth in Section 3.2, the City shall deliver to Escrow a Quitclaim Deed substantially in the form of Exhibit I in the DDA. The City and the Qualified Affordable Housing Developer shall ensure that the document conveying title to the Affordable Housing Site to the Qualified Affordable Housing Developer provide sufficient access to the Developer to enable the Developer to complete the necessary in-tract infrastructure work.

(b) At close of escrow conveying the Affordable Housing Site to the Qualified Affordable Housing Developer, the City Regulatory Agreement and the City Option shall be recorded against the Affordable Housing Site.

(c) The City shall deliver title to the Affordable Housing Parcel to the Qualified Affordable Housing Developer in accordance with Section 4.5 of the DDA.

Section 3.4 Affordable Housing Development Financing Plan.

(a) Phase Financing Plan for Affordable Housing Development. In addition to the requirements set forth in Section 3.1(b) of the DDA, the Developer shall or shall cause the Qualified Affordable Housing Developer to submit to the City Manager for approval the Affordable Housing Development Financing Plan for each phase of the Affordable Housing Development which shall contain the following documents and information:

(1) An updated "sources and uses" breakdown of the costs of acquiring the Affordable Housing Site and constructing the Affordable Housing Development, and an updated operating proforma for the Affordable Housing Development. Such updated sources and uses breakdown shall reflect the Qualified Affordable Housing Developer's then current expectations for funding sources and development costs and may be in a form substantially similar to the most recently revised Phase Financing Plan, or in such other form as is mutually agreed upon by the Parties. The sources and uses breakdown shall include a project budget and include a disbursement schedule identifying the source of funds and the timing of disbursement.

(2) As requested by the City, financial information concerning the providers of the funds showing their ability to provide the committed funds;

(3) Any other information that is reasonably necessary to the City in determining that the Qualified Affordable Housing Developer has the financial capability to pay all costs of acquiring, constructing and operating the Affordable Housing Development, as applicable, such as evidence of the availability of equity funds other than tax credit investor equity; and

(4) Project cash flows showing the estimated costs of operating the Affordable Housing Development in accordance with this Plan, the City Regulatory Agreement and other project documents, for not less than fifty-five (55) years after their respective anticipated dates of completion.

(b) The City's time periods for review and approval of the Affordable Housing Development Financing Plan shall be in accordance with the requirements for review and approval of the Phase Financing Plan set forth in Section 3.2 of the DDA.

Section 3.5 AHSC Program Grant.

(a) The parties acknowledge that the Qualified Affordable Housing Developer intends to utilize funding from the Affordable Housing and Sustainable Communities Program ("AHSC Program") to partially finance the development of the Affordable Housing Development. The AHSC Program is subject to a competitive application process implemented by HCD in coordination with the California Strategic Growth Council. Receipt by the Qualified Affordable Housing Developer of an AHSC Program grant in accordance with this Section shall be a condition precedent to the City's obligation to transfer the Affordable Housing Site for the Affordable Housing Development. To satisfy the requirements of this Section 3.5, the AHSC Program grant shall be for an amount sufficient to meet the requirements of the Affordable Housing Development Financing Plan to be approved by the City pursuant to Section 3.4 above.

(b) Not later than the time specified in the Affordable Housing Development Milestone Schedule, the Developer shall or shall cause the Qualified Affordable Housing Developer to submit a timely and complete concept proposal application for AHSC Program funds to HCD for the Affordable Housing Development. If the Qualified Affordable Housing Developer receives an invitation to submit a full application for AHSC program funds from HCD, then the Developer shall cause the Qualified Affordable Housing Developer to submit a timely and complete full application for AHSC Program funds within the time specified by

HCD. If the Qualified Affordable Housing Developer does not receive an invitation to submit a full application for AHSC program funds from HCD or an AHSC Program grant allocation, then the Developer shall cause the Qualified Affordable Housing Developer to submit a timely and complete concept proposal application for the AHSC Program funds to HCD for the next available AHSC funding cycle but in no event later than the time specified in the Affordable Housing Development Milestone Schedule.

(c) If the Qualified Affordable Housing Developer does not receive an invitation to submit a full application for AHSC Program funds, fails to receive an allocation of AHSC Program funds by the outside date specified in the Affordable Housing Development Milestone Schedule for receipt of an allocation of AHSC Program funds, or the AHSC Program regulations change such that the Qualified Affordable Housing Developer or the Affordable Housing Development does not qualify for AHSC Program funds, then the City, the Developer and the Qualified Affordable Housing Developer shall meet in good faith for a period not to exceed sixty (60) days to determine if the Qualified Affordable Housing Developer should submit a further applications to HCD in a subsequent concept proposal application rounds or if a feasible and mutually acceptable alternate arrangement can be made to finance development of the Affordable Housing Development. If no agreement is reached by the Parties within such sixty (60) day period regarding the alternative financing structure for the construction of the Affordable Housing Development, the Developer shall have sixty (60) days to provide the City with a feasible proposal for how it expects to meet the Affordable Housing obligations under the DDA. Failure of the Developer to submit to the City a feasible proposal for meeting the Affordable Housing obligations within sixty (60) days shall be considered a Developer Event of Default under the DDA, which after expiration of applicable notice and cure periods, will allow the City to exercise any of its remedies, including termination of the DDA. Any agreement that is reached between the parties regarding an alternative financing plan for the construction of the Affordable Housing Development shall be memorialized in an implementation agreement to this Plan.

Section 3.6 Tax Credits.

(a) The parties acknowledge that the Qualified Affordable Housing Developer intends to utilize Tax Credit Funds to partially finance the Affordable Housing Development, which are subject to a competitive application process implemented by TCAC. Receipt by the Qualified Affordable Housing Developer of a Tax Credit Reservation in accordance with this Section shall be a condition precedent to the City's obligation to transfer the Affordable Housing Site for the Affordable Housing Development. To satisfy the requirements of this Section 3.6, the Tax Credit Reservations shall be for an amount sufficient to meet the requirements of the Affordable Housing Development Financing Plan to be approved by the City pursuant to Section 3.4.

(b) Phase I Tax Credit Funds. Not later than the time specified in the Affordable Housing Development Milestone Schedule, the Developer shall or shall cause the Qualified Affordable Housing Developer to submit a timely and complete application for the Tax Credit Reservation to TCAC for the first phase of the Affordable Housing Development. If the Developer does not receive a Tax Credit Reservation in the first application round, then the Developer shall or shall cause the Qualified Affordable Housing Developer to submit a timely

and complete application for the Tax Credit Reservation to TCAC in each subsequent round of TCAC preliminary reservations.

(c) Phase II Tax Credit Funds. Not later than the time specified in the Affordable Housing Development Milestone Schedule, the Developer shall or shall cause the Qualified Affordable Housing Developer to submit a timely and complete application for a Tax Credit Reservation to TCAC for the second phase of the Affordable Housing Development. If a Tax Credit Reservation is not received for the second phase of the Affordable Housing Development in the first application round, then the Developer shall or shall cause the Qualified Affordable Housing Developer to submit a timely and complete application for the Tax Credit Reservation to TCAC in each subsequent round of TCAC preliminary reservations.

(d) If Tax Credit Reservations for Phase I or Phase II of the Affordable Housing Development are not received by the time specified in the Affordable Housing Development Milestone Schedule, then the City, the Developer and the Qualified Affordable Housing Developer shall meet in good faith for a period not to exceed ninety (90) days to determine if the Qualified Affordable Housing Developer should submit a further application to TCAC in a subsequent preliminary reservation round or if a feasible and mutually acceptable alternate arrangement can be made to finance development of the Affordable Housing Development. If no agreement is reached by the Parties within such ninety (90) day period regarding the alternative financing structure for the construction of the Affordable Housing Development, the Developer shall have ninety (90) days to provide the City with a feasible proposal for how it intends to meet the Affordable Housing obligations under the DDA. Failure of the Developer to submit to the City a feasible proposal for meeting the Affordable Housing obligations within ninety (90) days shall be considered a Developer Event of Default under the DDA, which after expiration of applicable notice and cure periods, will allow the City to exercise any of its remedies, including termination of the DDA. Any agreement that is reached between the parties regarding an alternative financing plan for the construction of the Affordable Housing Development shall be memorialized in an implementation agreement to this Plan.

(e) Upon an award of the Tax Credit Reservation from TCAC, the Developer shall or shall cause the Qualified Affordable Housing Developer to exercise diligent good faith efforts to obtain a funding commitment from a tax credit investor for the Tax Credit Funds. Such funding commitment shall be in a form reasonably acceptable to the City. Procurement of the Tax Credit Reservations and acceptable funding commitments for the Tax Credit Funds shall be a condition precedent to the City's obligation to convey the Affordable Housing Site to the Qualified Affordable Housing Developer.

Section 3.7 Other Financing. In addition to the Tax Credit Funds all other financing necessary to construct the Affordable Housing Development, as required and approved by the City in the Affordable Housing Development Financing Plan, shall be closed by the Qualified Affordable Housing Developer prior to, or simultaneously with, the transfer of an Affordable Housing Site. As a condition of conveyance of the Affordable Housing Site, the City shall have received evidence reasonably satisfactory to the City that any conditions to the release or expenditure of funds described in the approved Affordable Housing Development Financing Plan as the sources of funds to pay the costs of constructing the Affordable Housing Development have been met or will be met upon the transfer of an Affordable Housing Site.

Section 3.8 Developer Contribution. The Developer shall provide to the Qualified Affordable Housing Developer, a loan or equity contribution (the determination of the form of the assistance shall be at the Qualified Affordable Housing Developer's sole and absolute discretion and the assistance may be funded first to the City and then from the City to the Qualified Affordable Housing Developer) in the amount of Three million Dollars (\$3,000,000) for the construction of the Affordable Housing Development. As a condition to the conveyance of the Affordable Housing Site, the Developer shall provide evidence of the Developer Contribution to the City in a form reasonably satisfactory to the City. The Developer agrees to issue a formal binding commitment to the Qualified Affordable Housing Developer prior to submission by the Qualified Affordable Housing Developer of a Tax Credit Application in compliance with Section 3.6 above.

Section 3.9 City Use of Project-Generated Fees. The Developer shall receive a credit toward the Non-Residential Affordable Housing Fee imposed pursuant to AMC Section 27, for the construction of eighty (80) on site affordable housing units in excess of the affordable housing units required by the City's Inclusionary Housing requirements set forth in in this Plan. The Developer shall be obligated to pay the applicable Non-Residential Affordable Housing Fee, in excess of the 80 unit Fee credit, on any Non-Residential development in the Project, which fee shall be calculated using the 2014-15 effective rate. To the extent the Project generates any additional Non-Residential Affordable Housing Fee as a result of increase in the amount of commercial space developed, the City shall use all of the Non-Residential Affordable Housing Impact Fees generated from the Property only for purposes of providing funding assistance to the Affordable Housing Development through the date that commencement of construction of all Affordable Housing Development has occurred. Thereafter, any Non-Residential Affordable Housing Impact Fees generated from development of the Property shall be used to fund the City's general affordable housing.

Section 3.10 Right of Reverter. Subject to Section 17.5 of the DDA, the City shall have the right to reacquire title to the Affordable Housing Site if the Qualified Affordable Housing Developer fails to construct the Affordable Housing Development. If the City acquires the Affordable Housing Site pursuant to the right of reverter, the City shall take title subject to the Regulatory Agreement and the conditions set forth in this Plan. If the City exercises its right of reverter and the Qualified Affordable Housing Developer has accepted a Deferred Infrastructure Liquidation Amount pursuant to Section 4.8 below and the Qualified Affordable Housing Developer has not installed the Deferred Project Infrastructure prior to the exercise of the right of reverter, the Qualified Affordable Housing Developer will be required to pay the Deferred Infrastructure Liquidation Amount to the City at time of transfer of Title on the Affordable Housing Site. If the City exercises the right of reverter and takes title to the Affordable Housing Site, the City shall also be entitled to an assignment of all plans, studies and other materials prepared by the Qualified Affordable Housing Developer related to the development of the Affordable Housing Development.

ARTICLE 4. CONSTRUCTION OF AFFORDABLE HOUSING UNITS

Section 4.1 Schedule for Developing Affordable Housing Units.

(a) The Developer shall or shall cause the Qualified Affordable Housing Developer to construct and deliver the Affordable Housing Development within the times set forth in the Affordable Housing Development Milestone Schedule which at all times must be consistent with the DDA Milestone Schedule and the DDA Phasing Plan, subject to extension provisions of Section 1.3 of the DDA.

(b) The Developer shall construct and deliver the Moderate Income Units within the times set forth in the DDA Milestone Schedule and the DDA Phasing Plan.

Section 4.2 Timing of Construction

(a) The Developer contemplates that the Project shall be phased with construction and development occurring as set forth in the Phasing Plan contained in the DDA. The parties acknowledge and agree that the first phase of the Project will include the construction of the Affordable Housing Development, which the parties contemplate will be constructed in two phases (but could be combined into one phase). To the extent the Developer and the Qualified Affordable Housing Developer elect to develop Moderate Income Units in the Affordable Housing Development, the Developer shall submit to the City and obtain City approval of an amendment to the Development Plan to authorize the development of Moderate Income Units in the Affordable Housing Development.

(b) The City shall have no obligation to issue building permits for Residential Units in the first phase of the Project after the issuance of the building permit for the three hundred ninety-fifth (395th) market rate Residential Unit (specifically excluding any building permits issued for the construction of permanently restricted Moderate Income Units necessary to meet the Moderate Income Unit requirements) until and unless a Tax Credit Reservation has been received and executed for both phases of the Affordable Housing Development.

(c) If the City ceases to issue building permits for Residential Units after the issuance of the three hundred ninety-fifth (395th) Residential Unit building permit pursuant to Section 4.2 (b) above, the City shall not be obligated to commence issuance of further building permits for Residential Units unless and until: (1) the Qualified Affordable Housing Developer receives and executes a Tax Credit Reservation for both phases of the Affordable Housing Development and the Qualified Affordable Housing Developer has submitted and the City shall have approved a Phase Financing Plan for the phase containing the Affordable Housing Site in accordance with Section 3.1(b) of the DDA and a Affordable Housing Development Financing Plan in accordance with Section 3.4 of this Plan; or (2) the Developer records a Regulatory Agreement on undeveloped residential land in Phase 1 of the Project that will permanently restrict one hundred and seven (107) Low Income and Very Low Income future Residential Units as well as the requisite Moderate Income Units necessary to meet the Moderate Income Unit requirement of Phase 1 of the Project. If and to the extent, the Developer records a Regulatory Agreement on Phase 1 of the Project pursuant to this Section 4.2(c)(2), then the Developer shall be required to record a Regulatory Agreement on undeveloped residential land

in Phase 2 of the Project that will permanently restrict twenty-one (21) Low Income and Very Low Income future Residential Units as well as the requisite Moderate Income Units necessary to meet the Moderate Income Unit requirement of Phase 2 of the Project.

(d) The Developer shall have discretion to determine the exact number of Moderate Income Units to be developed in each market rate Residential Project, provided that the required number of Moderate Income Units provided in each Phase will allow the Developer to meet the Moderate Income Unit requirement for the Project. The Developer shall provide the City with written notice, prior to the conveyance of the first parcel to a vertical developer, or if the Developer intends to complete the vertical development, prior to the issuance of the first building permits for vertical construction, of the Residential Projects designated or anticipated to be designated to include Moderate Income Units. The Developer may update the designation of Residential Projects to include Moderate Income Units at any time as long as the designation in each Phase meets the required number of Moderate Income Units for the Project and is consistent with the DDA Phasing Plan. The Developer shall impose the requirement to provide Moderate Income Units in the Residential Projects designated by the Developer to include Moderate Income Units upon the vertical developers at time of sale or transfer of the parcels so designated and a covenant or other deed restriction acceptable to the City restricting the designated number of Moderate Income Units to be developed on that portion of the Property shall be recorded on each parcel transferred or prior to issuance of a building permit.

Section 4.3 Preliminary Development Notice.

(a) The planning, design and construction of the Affordable Housing Development and the associated Project Infrastructure and Deferred Project Infrastructure required to provide minimum access and utility services for the Affordable Housing Development will require cooperation and coordination between the City, the Developer and the Qualified Affordable Housing Developer, and coordination and cooperation will also be required of them with respect to the construction of other portions of the Project and Project Infrastructure that may, from time to time, also be concurrently under construction. The Qualified Affordable Housing Developer and Developer shall agree to cooperate and to take all acts reasonably necessary to reduce conflicts between the development of the Affordable Housing Development and the associated Project Infrastructure and the development of other portions of the Property and associated Project Infrastructure.

(b) The Affordable Housing Plan Assignment shall require the Qualified Affordable Housing Developer to provide the Developer with a preliminary development notice at the earlier of: (i) twelve (12) months prior to its targeted date for Commencement of Construction on an Affordable Housing Site; or (ii) the date that Qualified Affordable Housing Developer submits its first application for tax credit financing to TCAC (the "Preliminary Development Notice"). The Preliminary Development Notice shall include to the extent available, and if not then available, as soon thereafter as such information becomes available, the information reasonably required to prepare and coordinate approval of improvement plans, permits and agreements, including the Qualified Affordable Housing Developer's anticipated construction start date, preliminary construction schedule, description of the general location of buildings, parking areas, site access, schematic utility design, power loads, wet utility demands and sanitary discharge loads, and anticipated dates for completion of construction of the

Affordable Housing Development, when Deferred Project Infrastructure, including utility hookups and public access, will be required. The Preliminary Development Notice shall be updated on regular intervals, but not less frequently than every three months.

(c) The Qualified Affordable Housing Developer shall notify Developer and the City if at any time, or from time to time, its development plans, or changes thereto, are likely to require changes to the Project Infrastructure or Deferred Project Infrastructure, or to the noticed Completion dates thereof. The Qualified Affordable Housing Developer, Developer and City shall agree to negotiate in good faith with respect to any amendments to such construction schedule as may be necessary or appropriate from time to time to enable the Developer to prepare and obtain approval of necessary improvement plans, and to obtain required permits and authorizations for any Project Infrastructure changes.

(d) Developer shall provide the Qualified Affordable Housing Developer with a reasonable opportunity (of not less than thirty (30) days), to review and comment on draft improvement plans for Project Infrastructure and Deferred Project Infrastructure, provided that nothing herein shall require Developer to delay preparation or approval of improvement plans or construction to accommodate the Qualified Affordable Housing Developer's schedule for design and construction, absent notice and request from the Qualified Affordable Housing Developer and consent thereto by Developer.

Section 4.4 Coordination of Construction and Deferred Project Infrastructure.

(a) The Parties intend that Deferred Project Infrastructure related to the Affordable Housing Site will be completed by Developer in coordination with the development of the Affordable Housing Units on the Affordable Housing Site. Developer's obligation to Complete the Deferred Project Infrastructure will be secured by completion assurances given in accordance with the applicable Subdivision Improvement Agreement, and City shall provide Developer with all access needed to Complete the Deferred Project Infrastructure on the Affordable Housing Site. The Developer shall coordinate the construction of the Deferred Project Infrastructure with the construction of the Affordable Housing Development to ensure that: (1) the Deferred Project Infrastructure is Completed at or before completion of the Affordable Housing Development; (2) the utility laterals serving the Affordable Housing Site are Completed in coordination with the construction of the Affordable Housing Development; and (3) Developer's work does not interfere with or obstruct the Qualified Affordable Housing Developer's work during such construction to the maximum extent reasonably feasible and that the Qualified Affordable Housing Developer's work similarly does not interfere with Developer's work.

(b) Notwithstanding the foregoing, if Developer has Commenced the Project Infrastructure required to serve parcels adjacent to or in the same Phase of the Project and in the vicinity of the Affordable Housing Site, then Developer shall have the right to Commence and Complete the Deferred Project Infrastructure related to the Affordable Housing Site (other than the utility laterals for the Affordable Housing Site) even though design, development or construction of the Affordable Housing Development may not yet have Commenced to the same extent.

(c) Developer shall provide the Qualified Affordable Housing Developer and the City not less than ninety (90) days' notice of its intent to Commence the Deferred Project Infrastructure, and such right shall accrue unless: (1) the City or the Qualified Affordable Housing Developer objects within thirty (30) days following the receipt of Developer's notice; and (2) the City or Qualified Affordable Housing Developer, as applicable, and the Developer agree, within sixty (60) days following the objection, to a payment amount equal to Developer's anticipated cost of completing some or all of the Deferred Project Infrastructure on the Affordable Housing Site (the "Deferred Infrastructure Liquidation Amount"). The City, the Qualified Affordable Housing Developer, and the Developer shall meet and confer in good faith during the 60-day period (or such longer period as may be agreed to by the City, the Qualified Affordable Housing Developer and the Developer) to reach agreement on the Deferred Project Infrastructure Liquidation Amount. Developer shall provide its estimate of such costs, based upon the Deferred Project Infrastructure to be completed and substantiated by qualified contractor bid(s) or estimates(s) specifying the quantity and cost to complete the Deferred Project Infrastructure. If the City, Qualified Affordable Housing Developer and the Developer are able to reach agreement on the Deferred Infrastructure Liquidation Amount, then Developer shall promptly pay this sum to the then current owner of the Affordable Housing Site, either the City or the Qualified Affordable Housing Developer, and thereafter: (i) Developer shall be released from any further obligation to construct that portion of the Deferred Project Infrastructure for which Developer has paid the Deferred Infrastructure Liquidation Amount; and (ii) the City shall release any associated completion assurance given pursuant to the Subdivision Improvement Agreement.

(d) If the City receives the Deferred Infrastructure Amount, the City shall transfer the Deferred Infrastructure Liquidation Amount to the Qualified Affordable Housing Developer at time of the conveyance of the Affordable Housing Site. Upon receipt of the Deferred Infrastructure Liquidation Amount, the Qualified Affordable Housing Developer shall be responsible to construct the portion of the Deferred Project Infrastructure covered by the Deferred Infrastructure Liquidation Amount. If the City, Qualified Affordable Housing Developer and the Developer are not able to reach agreement on the Deferred Infrastructure Liquidation Amount within the time frame set forth above, then Developer shall proceed to install the Deferred Project Infrastructure related to the Affordable Housing Site. The Parties agree that completion of the utility laterals and other components of Deferred Project Infrastructure on the Affordable Housing Site in advance of the design development or related construction of the Affordable Housing Development on the Affordable Housing Site may result in the need to move or replace all or part of said Deferred Project Infrastructure. In order to avoid unnecessary costs and duplication of work, in the event the Developer elects to proceed and to install the Deferred Project Infrastructure serving the Affordable Housing Site prior to adequate design development or construction to define and locate said Deferred Project Infrastructure for the Affordable Housing Development, Developer shall Complete all of the Deferred Project Infrastructure except for the utility laterals and any other components of Deferred Project Infrastructure for which Developer does not have sufficient design information from the Qualified Affordable Housing Developer, and the Developer shall pay to the City or the Qualified Affordable Housing Developer a Deferred Infrastructure Liquidation Amount equal to the amount determined by Developer and approved by the City and the Qualified Affordable Housing Developer as the reasonably estimated cost of installing the utility lateral(s) or other deferred components of Deferred Project Infrastructure upon Completion of the remaining

Deferred Project Infrastructure and upon such payment: (i) Developer shall be released from any obligation to Complete such Deferred Project Infrastructure; and (ii) the City shall release any associated completion assurance pursuant to the applicable Subdivision Improvement Agreement.

Section 4.5 Schedule Adjustments. Developer's schedule under this Plan to deliver Project Infrastructure and Deferred Project Infrastructure required to service an Affordable Housing Development shall be subject to modification if and to the extent changes in the type, nature, locations, amount, cost or phasing of Project Infrastructure or Deferred Project Infrastructure are required to respond to the Qualified Affordable Housing Developer's request or to accommodate changes in the Affordable Housing Development from those assumed in the previously approved improvement plans and agreement. Developer shall have the right to reject such proposed Project Infrastructure changes if it would materially and adversely: (1) delay (unless such delay is accepted by the City and the Qualified Affordable Housing Developer) or increase the costs of Project Infrastructure for the Affordable Housing Development; (2) increase the costs to other Residential Projects or their associated Project Infrastructure; or (3) delay or interfere with actual construction of such other Project Infrastructure or such other Residential Projects. If Developer believes any adjustment to the Project Infrastructure or Deferred Project Infrastructure Completion dates related to the Affordable Housing Development is required, it shall provide City and the Qualified Affordable Housing Developer with notice and the detailed reasons therefor, and the Parties shall thereafter proceed in good faith to attempt to mutually agree upon a revised schedule, provided that the Developer shall have the right to modify the schedule as necessary to respond to such materially changed circumstances or information related to the design and development of the Affordable Housing Development.

Section 4.6 Performance.

(a) During the construction of Project Infrastructure and Deferred Project Infrastructure, Developer shall deliver status reports to the City and the Qualified Affordable Housing Developer advising of the status and progress of the preparation of improvement plans and the construction of the Project Infrastructure (or Deferred Project Infrastructure), including a report of any significant delays in the progress of such construction and whether such delays are due to Force Majeure Delay or Affordable Housing Development specific infrastructure changes, and updating, as necessary, the estimated Project Infrastructure Completion date.

(b) Notwithstanding the foregoing provisions of this Plan to the contrary, in no event shall Developer be in default of its obligation to Complete the Project Infrastructure (or Deferred Project Infrastructure) hereunder unless Developer's failure materially and adversely interferes with the Qualified Affordable Housing Developer's obtaining construction financing, permits and/or approvals for development of the Affordable Housing Development, or the construction, use or occupancy of the Affordable Housing Development thereon, materially increases the Qualified Affordable Housing Developer's costs with respect to such Affordable Housing Development, or materially delays the Qualified Affordable Housing Developer's construction or occupancy of the Affordable Housing Development (when compared to the development schedule, including any updates provided or agreed upon in good faith), and such failure continues for more than forty-five (45) days following Developer's receipt of written notice thereof from the Qualified Affordable Housing Developer; provided, however, that if

more than forty-five (45) days is reasonably required to sufficiently complete the Project Infrastructure (or Deferred Project Infrastructure) to eliminate the interference with or delay to the Qualified Affordable Housing Developer's obtaining construction permits or approvals for development or its construction, use or occupancy of the Affordable Housing Development, then Developer's will not be in default hereunder so long as: (1) temporary infrastructure is available to eliminate such interference or delay, including any interference or delay in the Qualified Affordable Housing Developer's obtaining construction permits or approvals for the Affordable Housing Development or, if applicable, a certificate of occupancy, and Developer provides such temporary infrastructure within thirty (30) days following Developer's receipt of the Qualified Affordable Housing Developer's notice described above; (2) Developer continues to so provide such temporary infrastructure until the completion of the Project Infrastructure (or Deferred Project Infrastructure); and (3) Developer diligently pursues completion of the Project Infrastructure (or Deferred Project Infrastructure).

(c) The Qualified Affordable Housing Developer's notice to Developer of Developer's failure to complete the Project Infrastructure (or Deferred Project Infrastructure) must specify, in reasonable detail, the basis for the Qualified Affordable Housing Developer's assertion that Developer's failure to complete the Project Infrastructure (or Deferred Project Infrastructure) constitutes a default in Developer's obligations as described above.

Section 4.7 Comparability of Housing Units.

(a) The Affordable Housing Units and Moderate Income Units shall include a range of sizes generally reflecting the range and numbers of bedrooms of Market Rate Residential Units (the Project as a whole) and shall be comparable and not distinguished in infrastructure, construction quality, exterior design, or materials in comparison to the Market Rate Residential Units.

(b) For-Sale Residential Unit that are Moderate Income Units may be smaller in size and have different interior finishes and features than market-rate For-Sale Residential Units so long as the interior features are durable, of good quality and consistent with contemporary standards for new housing as determined by the Community Development Director. All For-Sale Residential Unit that are Moderate Income Units shall reflect the range and numbers of bedrooms provided in the project as a whole, except that the Developer need not provide For-Sale Residential Unit that are Moderate Income Units of more than four bedrooms.

ARTICLE 5. ON GOING OBLIGATIONS FOR AFFORDABLE HOUSING UNITS

Section 5.1 Marketing. Prior to marketing an Affordable Housing Unit, the Developer or Qualified Affordable Housing Developer shall submit to the City: (a) a marketing plan for the applicable Affordable Housing Units; (b) the proposed rental charges and purchase prices for such Affordable Housing Units that are consistent with the requirements of this Plan; and (c) proposed eligibility and income-qualifications of renters and purchasers. The City shall review and approve or disapprove the marketing plan, such City approval shall not to be unreasonably withheld, within thirty (30) days of receipt. If the City disapproves the marketing

plan, it shall state its reasons for such disapproval in writing and with specificity. The Developer or Qualified Affordable Housing Developer shall resubmit a revised marketing plan addressing the City's reasons for disapproval prior to marketing the Affordable Housing Units. The City shall review and approve or disapprove the marketing plan, such City approval shall not to be unreasonably withheld, within thirty (30) days of receipt of a revised market plan.

Section 5.2 Satisfaction of Inclusionary Housing Obligations. The requirements of the Inclusionary Housing Ordinance, Density Bonus Regulations and Settlement Agreement shall be satisfied with respect to the Project if the Developer constructs or causes to be constructed the Affordable Housing Units in compliance with this Plan, and the Affordable Housing is made available to and occupied by income eligible households in compliance with the applicable City Regulatory Agreement and Affordable Resale Restriction. The Developer shall be deemed to have satisfied its obligations under the Inclusionary Ordinance only upon the issuance of a Certificate of Occupancy for the Affordable Housing Development. Units in the Affordable Development in excess of the units required under the Inclusionary Housing Ordinance with respect to the first phase of the Project shall be credited towards the satisfaction of requirements of the Inclusionary Housing Ordinance for future phases of the Project.

Section 5.3 Consistency with Palmer and Non-Applicability of Costa Hawkins.

(a) The Developer has or will submit an application for density bonus pursuant to the City's Density Bonus Regulations.

(b) The Parties understand and agree that the Costa-Hawkins Rental Housing Act (California Civil Code sections 1954.50 et seq.; the "Costa-Hawkins Act") does not and in no way shall limit or otherwise affect the restriction of rental charges for the Affordable Housing Units developed pursuant to this Plan and subject to the City Regulatory Agreement. This Plan falls within an express exception to the Costa-Hawkins Act because the Agreement is a contract with a public entity in consideration for a direct financial contribution and other forms of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the California Government Code. Accordingly, Developer, on behalf of itself and all of its successors and assigns, including all affiliates, successor and assigns, agrees not to challenge, and expressly waives, now and forever, any and all rights to challenge, Developer's obligations set forth in this Plan related to Affordable Housing Units, under the Costa-Hawkins Act, as the same may be amended or supplanted from time to time. Developer shall include the following language, in substantially the following form, in all agreements it enters into with Affiliates, successor or assigns transferring any portion of the Property:

"The Disposition and Development Agreement by and between the City of Alameda and Alameda Point Partners, LLC, dated _____ and recorded _____, at _____ implements City of Alameda policies and includes regulatory concessions, incentives and significant public investment in the Alameda Point Project. These public contributions result in identifiable, financially sufficient and actual cost reductions for the benefit of Developer and any successors and assigns, as contemplated by California Government Code Section 65915. In light of the City's authority under Government Code Section 53395.3 and in consideration of the direct financial contribution and other forms of public assistance described above, the Parties understand

and agree that the Costa-Hawkins Act does not and shall not apply to the Affordable Housing Units as defined in the Disposition and Development Agreement developed at the Alameda Point Property."

The Parties understand and agree that the City would not be willing to enter into the DDA or this Plan, without the agreement and waivers as set forth in this Plan.

ARTICLE 6. DEFINITIONS

Section 6.1 Definitions. Initially capitalized terms unless separately defined in this Plan have the meanings and content set forth elsewhere in the DDA. In addition to the terms defined elsewhere in this Plan, the following definitions shall apply:

(a) "Affordable" or Affordable Housing Cost" means (i) with respect to a Rental Residential Unit required to be Affordable to a Very Low Income Household a monthly rental charge, including a Utility Allowance, which does not exceed thirty percent (30%) of one-twelfth of fifty percent (50%) of the Area Median Income based on Assumed Household Size; (ii) with respect to a Rental Residential Unit Affordable to a Low Income Household a monthly rental charge, including a Utility Allowance which does not exceed thirty percent (30%) of one-twelfth of eighty percent (80%) of the Area Median Income based upon Assumed Household Size and (iii) with respect to Rental Residential Unit required to be Affordable to Moderate Income Household, a monthly rental charge, including a Utility Allowance, which does not exceed thirty percent (30%) of one-twelfth of one hundred twenty percent (120%) of Area Median Income based upon Assumed Household Size. With respect to a For-Sale Residential Unit, Affordable or Affordable Housing Cost means a purchase price determined such that the homeowner's total annual housing payment does not exceed thirty three percent (33%) of the maximum Area Median Income permitted for the applicable type of Residential Unit, based upon Assumed Household Size. For purposes of such For-Sale Residential Units, the total annual housing payment will include principal and interest on a fixed rate thirty (30) year mortgage with commercially reasonable rates, points, and fees, assuming a five percent (5%) down payment, taxes and assessments and any homeowners association dues.

(b) "Affordable Housing Covenant" means the Affordable Housing Covenant imposing the requirements of this Plan on the Affordable Housing Covenant will be recorded against any portion of the Property at the close of escrow for any portion of the Property transferred to the Developer for market-rate housing on which the Developer will build any For-Sale Residential Units at the time each such site is transferred. The form of the Affordable Housing Covenant is attached hereto as Attachment C, incorporated herein by this reference.

(c) "Affordable Housing Development" means the Residential Project constructed by a Qualified Affordable Housing Developer in one or two buildings and up to two phases on a shared or separate podium on the Affordable Housing Site. The Affordable Housing Development will consist of not less than one hundred twenty-eight (128) Affordable Housing Units to be available to and occupied by Low Income Home and Very Low Income Households.

(d) "Affordable Housing Development Financing Plan" means the financing plan for each of the two construction phases of the Affordable Housing Development which

Developer shall or shall cause the Qualified Affordable Housing Developer to prepare and submit to the City for its approval not later than the date set forth in the Milestone Schedule for the approval of the Affordable Housing Development Financing Plan.

(e) “Affordable Housing Plan Assignment” means a written assignment agreement, in a form to be approved by the City, between the Developer and the Qualified Affordable Housing Developer, meeting the requirements of this Plan and setting forth the transferees express assumption of the obligations to construct the Affordable Housing Development in accordance with the DDA and this Plan. Notwithstanding anything to the contrary in the Affordable Housing Plan Assignment, the Developer shall remain liable for construction of the Affordable Housing Development.

(f) “Affordable Housing Site” means that portion of Site A, referred to as Block 8, depicted in the Affordable Housing Site Map attached hereto as Attachment E incorporated herein by this reference.

(g) “Affordable Housing Units” means one of the two hundred Residential Units required to be Affordable to Very Low Income Households, Low Income Households or Moderate Income Households, developed in accordance with this Plan subject to the City Regulatory Agreement or Affordable Resale Restriction. The Affordable Housing Units shall also serve as the “inclusionary units” for purposes of fulfilling the requirements of the City’s Inclusionary Housing Ordinance.

(h) “Affordable Resale Restriction” means the Resale Restriction and Option to Purchase Agreement between a homebuyer and the City in the form attached as Exhibit E to the Affordable Covenant attached hereto as Attachment C and incorporated herein by this reference, which places restrictions on the resale of the For-Sale Residential Unit that is also an Affordable Housing Units to specified eligible purchasers at specified eligible purchase prices, and which provides mechanisms to enforce such restrictions. The Affordable Resale Restriction will be recorded against each For-Sale Residential Unit that is an Affordable Housing Unit at the time of conveyance to an eligible household.

(i) “AHSC Program” has the meaning set forth in Section 3.5 hereof.

(j) “Area Median Income” means the median income for households in Alameda City, as established and periodically amended by HUD pursuant to Section 8 of the United States Housing Act of 1937, with adjustments for actual household size or Assumed Household Size as specified in this Plan.

(k) “City Regulatory Agreement” means the Regulatory Agreement and Declaration of Restrictive Covenants imposing the requirements of this Plan. The City Regulatory Agreement will be recorded against the Affordable Housing Site at the close of escrow for the transfer of the Affordable Housing Site and will be recorded against any portion of the Property transferred to the Developer for market-rate housing at the time each such site is transferred. The form of the City Regulatory Agreement is attached hereto as Attachment B, incorporated herein by this reference.

(l) “Commence Construction” or Commencement of Construction means, for

purposes of this Plan, commencement of excavation for or commencement of structural foundations for the Affordable Housing Development, as set forth in the Affordable Housing Development Milestone Schedule.

(m) “Completed” means, for purposes of this Plan, completion of all horizontal infrastructure required by the City in order to enable a Qualified Affordable Housing Developer to obtain a building permit to Commence Construction of the Affordable Housing Development and upon the completion of construction of the Affordable Housing Development, to obtain a permanent certificate of occupancy for the Affordable Housing Units located therein.

(n) “Costa Hawkins Act” means Chapter 2.7 of Title 5 of Part 4 of Division 3 of the California Civil Code.

(o) “Deferred Project Infrastructure” means items of horizontal infrastructure related to the Affordable Housing Site consisting of: (i) final, primarily behind the curb, right-of-way improvements, including, sidewalks, light fixtures, street furniture, landscaping, irrigation and drainage, and driveway cuts; and (ii) utility laterals serving the Affordable Housing Site, including storm, sewer, water, reclaimed water, dry utilities, and joint trench as necessary to provide operable electrical, gas, phone and cable, and utility boxes.

(p) “Density Bonus Regulations” means City of Alameda Ordinance 3012, set forth in Section 30-17 (Density Bonus Regulations) of Chapter XXX (Development Regulations) of the Municipal Code.

(q) “For-Rent or Rental Residential Unit” means a Residential Unit which is not a For-Sale Residential Unit.

(r) “For-Sale Residential Unit” means a Residential Unit which is intended to be offered for sale.

(s) “HCD” means the California Department of Housing and Community Development.

(t) “HUD” means the United States Department of Housing and Urban Development.

(u) “Inclusionary Housing Ordinance” means City of Alameda Ordinance 2926, set forth in Section 30-16 (Inclusionary Housing Requirements for Residential Projects) of Chapter XXX (Development Regulations), commencing with Section 30-16 of the Municipal Code.

(v) “Low Income Homes” means Residential Units constructed by a Qualified Affordable Housing Developer on the Affordable Housing Site which are available at an Affordable Housing Cost and rented to Low Income Households.

(w) “Low Income Household” means a household with an annual income which does not exceed eighty percent (80%) of Area Median Income, adjusted for actual

household size. The term Low Income Household shall be read to include a Very Low Income Household.

(x) "Market Rate Residential Unit" means a Residential Unit which has no restrictions or requirements under this Plan with respect to affordability levels or income restrictions for occupants other than the marketing requirements set forth in Section 5.1.

(y) "Memorandum of Option" has the meaning set forth in Section 3.2(b)(7) hereof.

(z) "Moderate Income Household" means households whose income does not exceed the moderate income limits applicable to Alameda City as published annually by HCD pursuant to Title 25 of the California Code of Regulations, Section 6932 (or its successor provision). The term Moderate Income Household shall be read to include a Very Low Income Household and Low Income Household.

(aa) "Moderate Income Units" means Residential Units which are Affordable to and occupied by Moderate Income Households, and which may be For-Sale Residential Units or a Rental Residential Units. The parties contemplate that the Moderate Income Units may be constructed in multiple phases within the market rate residential developments.

(bb) "Phase Financing Plan" means the financing plan for a particular phase of the Development prepared and approved in accordance with the terms of Section 3.1(b) of the DDA.

(cc) "Project Infrastructure" means the infrastructure required to be constructed as part of the Phase I Infrastructure Package described in more detail in Section 5.2 of the DDA.

(dd) "Qualified Affordable Housing Developer" means an organization including governmental or quasi-governmental agencies, nonprofits and limited partnership with the financial capacity and experience and a proven history of developing affordable housing consistent with the character and quality of the Residential Projects, the DDA, the Development Agreement and this Plan, approved by the City pursuant to Section 3.2(a) hereof.

(ee) "Renewed Hope Settlement Agreement" means that certain Settlement Agreement dated as of March 20, 2001 related to the Renewed Hope Housing Advocates and Arc Ecology v. City of Alameda, et al.

(ff) "Residential Project" means a Project containing Residential Units which may also contain other uses permitted under the DDA, the Development Agreement and the Project Approvals.

(gg) "Residential Unit" means a room or suite of two or more rooms that is designed for residential occupancy for 32 consecutive days or more, with or without shared living spaces, such as kitchens, dining facilities or bathrooms.

(hh) "Tax Credit Funds" means the proceeds from the syndication and sale of federal low-income housing tax credits established pursuant to Section 42 of the Internal

Revenue Code of 1986, as amended , in the amount of the Affordable Housing Finance Plan approved by the City.

(ii) “Tax Credit Reservation” means a preliminary reservation letter from TCAC under which TCAC reserves an allocation of 9% or 4% Low Income Housing Tax Credits.

(jj) “TCAC” means the California Tax Credit Allocation Committee.

(kk) “Utility Allowance” means a utility allowance based on the utility allowance schedule published by the City of Alameda Housing Authority or the TCAC.

(ll) “Very Low Income Homes” means Residential Units constructed by a Qualified Affordable Housing Developer on an Affordable Housing Site which are available at an Affordable Housing Cost and rented to Very Low Income Households.

(mm) “Very Low Income Household” means a household with an annual income which does not exceed fifty percent (50%) of Area Median Income, adjusted for actual household size.

Section 6.2 Attachments: Each Attachment to this Plan is incorporated herein and made a part hereof as if set forth in full

<u>Attachment A:</u>	Affordable Housing Development Milestone Schedule
<u>Attachment B:</u>	Form City Regulatory Agreement
<u>Attachment C:</u>	Form of Affordable Housing Covenant
<u>Attachment D:</u>	Memorandum of City Option
<u>Attachment E:</u>	Legal Description of Affordable Housing Site

Attachment A

Affordable Housing Development Milestone Schedule

ACTION	DATE
<p>AHSC Concept Proposal Application. The Qualified Affordable Housing Developer shall submit a timely and complete application for the AHSC Program Grant to HCD. [§3.5]</p>	<p>The deadline for submission of concept proposal application for funding in March 2016, or such date HCD issues as the deadline for submission of a full application.</p> <p>If the Qualified Affordable Housing Developer’s concept proposal application is successful, the Qualified Affordable Housing Developer will submit a full application in April 2016, or such date HCD issues as the deadline for submission of a full application. If Qualified Affordable Housing Developer does not receive a AHSC Program grant allocation in the April 2016 round, or such date HCD issues as the deadline for submission of a full application, then the Qualified Affordable Housing Developer shall submit a timely concept proposal application for funding in March 2017 or some other earlier round if available.</p>
<p>AHSC Full Application. The Qualified Affordable Housing Developer shall submit a timely and complete full application for the AHSC Program Grant to HCD. [§3.5]</p>	<p>The deadline for submission of full applications for funding provided by HCD after submission of the Concept Proposal Application. If the Qualified Affordable Housing Developer’s concept proposal application is successful in the March 2017 round, or such date HCD issues as the deadline for submission of a concept application, the Qualified Affordable Housing Developer will submit a full application in April 2017, or such date HCD issues as the deadline for submission of a full application</p> <p>If the Qualified Affordable Housing Developer does not receive an invitation to submit a full application for AHSC Program grant allocation in the April 2017 round, then the Qualified Affordable Housing Developer shall meet with the City as required under 3.6(c).</p>
<p>Phase I Tax Credit Application. The Qualified Affordable Housing Developer shall submit a timely and complete application for a 9% Tax Credit Reservation to TCAC for the first phase of the Affordable Housing Development. [§3.6(b)]</p>	<p>In the first competitive application round of TCAC preliminary reservation application of 2017 and each subsequent preliminary reservation application round up to and including the second competitive round in 2018, and in no event later than July 2018, unless the Developer applies for as is granted extensions under the DDA.</p>
<p>Phase II Tax Credit Application. The Qualified Affordable Housing Developer shall submit a</p>	<p>In the non-competitive application round of TCAC commencing June 2017 and each</p>

timely and complete application for a 4% Tax Credit Reservation to TCAC and a tax exempt bond application to CDLAC for the second phase of the Affordable Housing Development. [§3.6(c)]	subsequent preliminary reservation application rounds through October 2018.
Phase I Tax Credit Reservation Allocation. The Qualified Affordable Housing Developer shall have secured an allocation of tax credits for the first phase of the Affordable Housing Development. [§3.6]	No later than December 2018.
Phase II Tax Credit Reservation Allocation. The Qualified Affordable Housing Developer shall have secured an allocation of tax credits for the second phase of the Affordable Housing Development. [§3.6]	No later than December 2018.
AHSC Award. The Qualified Affordable Housing Developer shall have obtained an award of AHSC Program funds. [§3.5]	No later than June 2018 or such date that HCD awards AHSC program funds from the first full application round in 2018.
Affordable Housing Site Conveyance. The Qualified Affordable Housing Developer shall have completed all conditions precedent to conveyance of Affordable Housing Site and City transfers Affordable Housing Site. [§3.3]	No later than December 31, 2018.
Phase I Building Permit. The Qualified Affordable Housing Developer shall have obtained a Tax Credit Reservation for the first phase of the Affordable Housing Development. [§4.2(b)]	Prior to the issuance of the building permit for the three hundred ninety-sixth (396 th) market rate Residential Unit.
Phase II Building Permit. The Qualified Affordable Housing Developer shall have obtained a building permit for the second phase of the Affordable Housing Development. [§4.2(c)]	Prior to the issuance of any building permit for the development of residential or commercial private development for Phase II of the Project.
Phase I Commencement of Construction. The Qualified Affordable Housing Developer shall have commenced construction of the first phase of the Affordable Housing Development. [§4.1]	Within 180 days of a 9% tax credit allocation reservation for Phase I of the Affordable Housing Development.
Phase II Commencement of Construction. The Qualified Affordable Housing Developer shall have commenced construction of the second phase of the Affordable Housing Development. [§4.1]	Within 90 days of a 4% tax credit allocation reservation for Phase II of the Affordable Housing Development.

<p>Phase I Completion of Construction. The Qualified Affordable Housing Developer shall have completed construction of the first phase of the Affordable Housing Development [§4.1]</p>	<p>No later than two years from the date of receipt of a 9% tax credit allocation reservation for Phase I of the Affordable Housing Development.</p>
<p>Phase II Completion of Construction. The Qualified Affordable Housing Developer shall have completed construction of the second phase of the Affordable Housing Development [§4.1]</p>	<p>No later than two years from the date of receipt of a 4% tax credit reservation and CDLAC allocation for Phase II of the Affordable Housing Development.</p>

Attachment B

Form of City Regulatory Agreement

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Alameda
2263 Santa Clara Avenue, Rm 320
Alameda, California 94501
Attention: City Manager

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

(Space Above This Line for Recorder's Use Only)
[Exempt from recording fee per Gov. Code § 27383]

APN: _____

[CITY FORM]
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 Alameda Point Partners, a California limited liability company ("**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**"), consistent with the intent of State law that local governments use the powers vested in them to make adequate provision for the housing needs of all economic segments of the community.

C. The Property is the site of approximately 800 units of residential housing located in the City of Alameda ("Housing Project") and is, therefore, subject to the City Inclusionary Policy. The Housing Project shall be developed by Developer in accordance with City Council Ordinance No. _____ approving the Disposition and Development Agreement dated _____ (the "**DDA**") as depicted on the approved site plans for the Housing Project attached as Exhibit B.

D. The Developer has received a discretionary approval from the City to construct the Housing Project which requires that the Developer reserve at least 25% of the units in the Project for rent to very low-, low- and moderate- income households (each an "**Affordable Unit**," and collectively, the "**Affordable Units**") in accordance with the City Inclusionary Policy.

E. The Housing Authority of the City of Alameda ("Authority") is responsible for administering the City's affordable housing programs, including implementing the City Inclusionary Policy pursuant to that certain Staffing Services Agreement between the City and Authority, dated July 1, 2000, as amended

F. Pursuant to the City Inclusionary Policy and the conditions of approval for the Project, the Developer is required to enter into this Agreement on terms acceptable to the City. This Agreement shall be executed and recorded against the Property prior to the recordation of any parcel map or final map or issuance of any building permit for the Project. The purpose of this Agreement is to set forth the terms and conditions for producing and marketing the Affordable Units in greater specificity and to ensure that the Affordable Units are built as part of the Project. The 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 permanently upon the 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, low or moderate income households, adjusted for family size appropriate to the unit, less a utility allowance (including garbage collection, sewer, water, electricity, gas, other heating, cooking and refrigeration fuel, but not telephone or cable television service), 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.

1.02 "**Eligible Households**" shall mean households meeting the income restrictions as set forth in Section 2.01.

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.

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.

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, low or moderate income households whose income does not exceed the limits set forth below:

- (a) Very Low Income. Not less than ___ 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) Low Income. Not less than ___ 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.
- (c) Moderate Income. Not less than ___ of the Affordable Units constructed on the Property shall be available to Eligible Households whose gross income does not exceed one hundred twenty percent (120%) of the Area Median Income at an Affordable Rent. *[Note: Delete if no Moderate Income units in the project.]*

[Optional resident manager provision – insert if 100% affordable project or delete if mixed market and affordable project, as applicable] Notwithstanding the foregoing, Developer may, in its sole reasonable judgment, elect to have a full-time property manager residing on the Property, in which event one (1) of the Affordable Units may be designated as a resident manager's unit, and such Affordable Unit shall not be subject to the above affordability restrictions so long as such Affordable Unit is occupied by a full-time on-site manager for the Housing Project.

No less than one (1) person per bedroom shall be allowed. No more than two (2) persons shall be permitted to occupy a studio Affordable Unit, no more than two (2) persons shall be permitted to occupy a one (1) bedroom Affordable Unit, no more than four (4) persons shall be permitted to occupy a two (2) bedroom Affordable Unit, and no more than six (6) persons shall be permitted to occupy a three (3) bedroom Affordable Unit. City may make exceptions to the

foregoing occupancy standards to the extent such exceptions are required 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 by Developer under this Agreement.

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 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. 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 *[Insert (a), (b) and/or (c), 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 or the highest rent allowable under regulatory restrictions 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.

In lieu of designating another comparable Housing Project unit as the replacement Affordable Unit to meet the income requirements of paragraph *[insert (a), (b) and/or (c), 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 *[insert (a),*

(b) and/or (c), 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.

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. 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.

2.04 Agreement to Limitation on Rents. The City has provided a waiver of AMC 30-53 for the Housing Project as part of the concession specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code. Civil Code Sections 1954.52(b) and 1954.53(a)(2) provide that where an owner has received a form of concessions specified in Chapter 4.3, certain provisions of Civil Code Section 1954.51 et seq. (Costa-Hawkins Act) do not apply to the project if the Developer has so agreed by contract. Developer hereby agrees to limit rents as provided in this Agreement in consideration of Developer's receipt of the waiver of AMC 30-53 as the concession specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code, and further agrees that the limitations on rents imposed by this Agreement are in conformance with Civil Code Section 1954.51 et seq. (Costa-Hawkins Act).

2.05 Satisfaction of Affordable Housing Requirement. The City Inclusionary Policy shall be satisfied with respect to the Property if the Developer constructs or causes to be constructed the Affordable Units meeting the requirements of Article 2 above, in compliance with the schedule set forth in the DDA.

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 E or in such other format as may be reasonably requested by City.

Annual income recertification shall also contain those documents used to certify eligibility. The 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 sixty (60) 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 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.

To the extent allowable under applicable regulatory restrictions, the 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.

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 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 permanently following the Effective Date. The covenants against discrimination contained in Article 6 of this Agreement shall run with the land in perpetuity, unless otherwise terminated by the City.

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.

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

With a copy to: _____

Attention: _____

To Developer Alameda Point Partners

Attention: _____

With a copy to: _____

Attention: _____

Any party may change the address to which notices are to be sent by notifying the other parties of the new address, in the manner set forth above.

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 F, 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 an amount of _____ Dollars (\$ _____) which fee shall be due on the initial date of occupancy and each year on the anniversary date of the initial date of occupancy

ARTICLE 16. INDEMNIFICATION

Except for an award of attorney's fees to Developer, Developer will indemnify and hold harmless (without limit as to amount) the Authority and City and their elected officials, officers, employees, and agents in their official capacity (hereinafter collectively referred to as "Indemnitees"), and any of them, from and against all claims, damages, losses and expenses including attorney's fees arising out of the performance of this Agreement, arising out of or

relating in any manner to the Project, the Affordable Units, or Developer's performance or non-performance under this Agreement, including without limitation the construction or sale of any unit in the Project, caused in whole or part by any negligent act or omission of the Developer, except where caused by the gross negligence or willful misconduct of the Authority and/or the City, and shall protect and defend Indemnitees, and any of them with respect thereto. The provisions of this Article 16 shall survive expiration or other termination of this Agreement or any release of part or all of the Property from the burdens of this Agreement, and the provisions of this Article 16 shall remain in full force and effect.

ARTICLE 17. 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. Nothing contained in this Agreement or any document executed pursuant to this Agreement shall be construed as creating a joint venture or partnership between the City, the Authority and Developer. Nothing contained in this Agreement shall create or justify any claim against the Authority or City by any person that Developer may have employed or with whom Developer may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the Property or the construction of the Project.

[The Remainder of this Page is Intentionally Left Blank]

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

Executive Director, Housing Authority

City Manager
[Signature must be notarized]

APPROVED AS TO FORM:

City Attorney

- and -

DEVELOPER::

Alameda Point Partners, a California limited liability company

By: _____
[Signature must be notarized]

Print Name: _____

Its: _____

By: _____
[Signature must be notarized]

Print Name: _____

Its: _____

EXHIBIT A

Description of Property

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]

EXHIBIT F

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Alameda
2263 Santa Clara Avenue, Rm 320
Alameda, CA 94501
Attention: City Manager

*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:

City of Alameda ("City") and
_____ ("Owner").

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

as Document No. _____, official records of _____ County, on _____; or

concurrently with this Notice, official records of _____ 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:
_____.

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: permanent, commencing on the date of recordation of _____ and terminating only upon termination of the Affordable Housing Restrictions.

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__

By: _____
City Manager

OWNER:

Dated: _____, 20__

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 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.

Name: _____
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

[To Be Inserted]

Attachment C

Form of Affordable Housing Covenant

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Alameda
2263 Santa Clara Avenue, Rm 320
Alameda, California 94501
Attention: City Manager

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

(Space Above This Line for Recorder's Use Only)
[Exempt from recording fee per Gov. Code § 27383]

[CITY FORM]

AFFORDABLE HOUSING AGREEMENT

(For Sale Units Required Pursuant to City Inclusionary Housing Requirements
Set Forth in Section 30-16 of the City Municipal Code)

THIS AFFORDABLE HOUSING AGREEMENT ("Agreement") is entered into as of the _____ day of _____, 20__ ("Effective Date"), by and among the CITY OF ALAMEDA, a municipal corporation ("City") and Alameda Point Partners, LLC, a Delaware limited liability company ("Developer").

RECITALS

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") and wishes to construct residential units on the 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"), consistent with the intent of State law that local governments use the powers vested in them to make adequate provision for the housing needs of all economic segments of the community.

C. The Property is the site of approximately 800 units of residential development located in the City of Alameda ("Project") and is, therefore, subject to the City Inclusionary Policy. The Project is to be developed by Developer in accordance with City Council Ordinance No. _____ approving the Disposition and Development Agreement dated _____ (the "DDA"), as depicted on the approved site plans for the Project attached as Exhibit B.

D. The Developer has received a discretionary approval from the City to construct the Project which requires that the Developer reserve at least _____ units in the Project for sale

to [moderate-, low- and very low-income] households (each an "Affordable Unit," and collectively, the "Affordable Units") in accordance with the City Inclusionary Policy (the "Project Inclusionary Requirement").

E. The Housing Authority of the City of Alameda ("Authority") is responsible for administering the City's affordable housing programs, including implementing the City Inclusionary Policy pursuant to that certain Staffing Services Agreement between the City and Authority, dated July 1, 2000, as amended.

F. Pursuant to the City Inclusionary Policy and the conditions of approval for the Project, the Developer is required to enter into this Agreement on terms acceptable to the City. This Agreement shall be executed and recorded against the Property prior to the recordation of any parcel map or final map or issuance of any building permit for the Project. The purpose of this Agreement is to set forth the terms and conditions for producing and marketing the Affordable Units in greater specificity and to ensure that the Affordable Units are built as part of the Project. The Developer and City desire to set forth Developer's obligations to provide affordable housing in a recorded document.

NOW, THEREFORE, Developer and City agree as follows:

ARTICLE 1 DEFINITIONS

The following terms shall have the meanings set forth in this Article 1:

A. "Agreement" means this Affordable Housing Agreement between the Developer and City.

B. "Affordable Sales Price" means the maximum purchase price that will be affordable to the specified target income household that includes a reasonable down payment and results in a monthly housing payment that is affordable. A maximum purchase price shall be considered affordable only if the Owner-Occupied Monthly Housing payment is equal to or less than the "affordable housing cost" for such household as defined in Health and Safety Code Section 50052.5(b), or any successor statute thereto.

C. "Affordable Unit" means each of the ____ () affordable units that are to be sold to and occupied by Eligible Households only pursuant to Article 2.

D. "Applicable Law" means all laws, ordinances, statutes, codes, rules, regulations, orders and decrees, of the United States, the State of California, the County of Alameda, the City, and of any other political subdivision, agency or instrumentality exercising jurisdiction over Developer or the Property.

E. "Authority" is defined in Recital E.

F. "City" means the City of Alameda, a municipal corporation.

G. "City Inclusionary Policy" is defined in Recital B.

- H. "Developer" means _____, a _____.
- I. "Deed of Trust" means the deed of trust, in the form provided by the City or the Authority, executed by each buyer of an Affordable Unit, securing the buyer's performance under the Resale Restriction and the Note
- J. "Effective Date" means the effective date of this Agreement, as first set forth above.
- K. "Eligible Household" means a person or household (i) meeting the definition of "Moderate Income Household," "Low Income Household," or "Very Low Income Household," as applicable, under this Article 1; and (ii) meeting Developer's standard criteria for determining eligibility for occupancy, which may include an evaluation of the applicant's ability to pay the mortgage, employment status and credit history. These standard criteria may vary from time to time, but must be uniformly applied at all times.
- L. "Inclusionary Ownership Guidelines" is defined in Section 2.1E.2.
- M. "Low Income Household" means a household whose annual income does not exceed the qualifying limits set for "lower income households" in Section 50079.5 of the California Health and Safety Code, or any successor statute thereto.
- N. "Market Rate Units" means units in the Project, the sale and occupancy of which are not regulated by this Agreement.
- O. "Moderate Income Households" means a household whose annual income does not exceed the qualifying limits set for "persons and families of low or moderate income" in Section 50093 of the California Health and Safety Code, or any successor statute thereto.
- P. "Note" means the promissory note, in the form provided by the City or the Authority, executed by each buyer of an Affordable Unit.
- Q. "Notice of Affordability Restrictions" means the Notice of Affordability Restrictions on Transfer of Property attached here to as Exhibit ____.
- R. "Owner-Occupied Monthly Housing Payment" means the sum equal to the principal, interest, property taxes, property maintenance and repairs, reasonable allowance for utilities (including garbage collection, sewer, water, electricity, gas, other heating, cooking and refrigeration fuel, but not including telephone or cable television service), homeowner's insurance and homeowner's association dues, and any other applicable elements of "housing cost" as defined in Section 6290 of Title 25 of the California Code of Regulations, paid on an annual basis divided by twelve (12).
- S. "Phasing Schedule" is defined in Section 2.1.D. [If applicable]
- T. "Property" is defined in Recital A.
- U. "Project Inclusionary Requirement" is defined in Recital C.

- V. "Project" is defined in Recital C.
- W. "Project Units" means the Market Rate Units and the Affordable Units.
- X. "Resale Restriction" is defined in Section 2.1.E.4.
- Y. "Term" is defined in Section 4.3.

Z. "Very Low Income Household" means a household whose annual income does not exceed the qualifying limits set for "very low income households" in Section 50105 of the California Health and Safety Code, or any successor statute thereto.

ARTICLE 2 PROJECT INCLUSIONARY REQUIREMENT

2.1 Affordability Requirements and Restrictions.

A. Developer shall construct ___ () Affordable Units in the Project, which will be sold to and occupied by Eligible Households, as follows: ___ () or 9% of the Affordable Units shall be sold to and occupied by Moderate Income Households, ___ () or 10% of the Affordable Units shall be sold to and occupied by Low Income Households, and ___ () or 6% of the Affordable Units shall be sold to and occupied by Very Low Income Households.

B. The Annual Household Income shall be considered for purposes of calculating the applicable income of the Eligible Household. "Annual Household Income" means the combined "gross income" for a person or family living in a dwelling unit as calculated pursuant to Section 6914 of Title 25 of the California Code of Regulations.

C. The Affordable Units shall be consistent with the architectural character, size, floor plans and location shown for the housing type identified in the Phasing Plan. Affordable Units shall be comparable in exterior appearance and overall quality of construction to Market Rate Units in the Project.

D. Developer shall construct the Market Rate Units and Affordable Units according to the phasing schedule outlined in the Affordable Housing Implementation Plan, incorporated herein by this reference.

E. Developer shall make a written designation to City, at the time the final subdivision map for the Site is recorded, of the units that shall be the Affordable Units, which designation shall be consistent with the terms of this Agreement. The total number of Affordable Units being offered for sale in accordance with this Article 2 shall be as required by subsection 2.1.A. above. During the Term of this Agreement, the Affordable Units shall be subject to all of the requirements of this Agreement, including without limitation the following additional restrictions and requirements:

1. The Affordable Units shall only be sold to and be occupied by Eligible Households, as specified in subsection 2.1.A. Each Affordable Unit shall only be sold to and be

occupied by an Eligible Household at a price that does not exceed the Affordable Sales Price for such a household, subject to prior approval of the City as further described below.

2. Each Affordable Unit shall only be sold to an Eligible Household approved by City in accordance with this Agreement, the City Inclusionary Policy, and the City's "Inclusionary Housing Program Buyer Selection Guidelines," attached hereto as Exhibit D, as they may be amended from time to time (the "Inclusionary Ownership Guidelines"). At least thirty (30) calendar days prior to entering any agreement with a prospective buyer related to any proposed sale or other transfer of any Affordable Unit during the Term, Developer shall submit to the City: (a) a copy of the proposed written agreement of purchase and sale; (b) an application for City approval of the prospective purchaser/transferee in a form to be provided by the City, along with such supporting documentation as City may require to document the proposed purchaser's/transferee's status as an Eligible Household, including the prospective purchaser's/transferee's payroll stubs and most recent income tax return, and to otherwise determine compliance with the terms of this Agreement, including the requirement that the sale price for each Affordable Unit not exceed the Affordable Sales Price for the purchasing Eligible Household; and (c) the income certification to be provided to any lender making a loan on the Affordable Unit. Developer shall bear all costs and expenses associated with such certification and eligibility determination process. Within thirty (30) calendar days from receipt of the documentation, City shall render a decision of eligibility or noneligibility. Provided the prospective purchaser/transferee qualifies as an Eligible Household, the purchase price of the Affordable Unit meets the definition of Affordable Sales Price, and the sale or transfer complies with the City Inclusionary Policy and the Inclusionary Ownership Guidelines, the City shall within such thirty (30) calendar days issue a letter of approval confirming that the proposed transaction complies with the requirements of this Article 2. If the prospective purchaser/transferee does not qualify as an Eligible Household, the purchase price of the Affordable Unit does not meet the definition of Affordable Sales Price, or the sale or transfer does not comply with the City Inclusionary Policy or the Inclusionary Ownership Guidelines, the City shall so notify the Developer in writing, within such thirty (30) calendar days, stating the basis for its determination in reasonable detail and the Developer shall not sell the Affordable Unit to such non-Eligible Household.

3. THERE SHALL BE NO SALE OR OTHER TRANSFER OF AN AFFORDABLE UNIT WITHOUT ISSUANCE OF A LETTER OF APPROVAL BY CITY THAT THE PURCHASER/TRANSFEREE IS AN ELIGIBLE HOUSEHOLD, THE PURCHASE PRICE OF THE AFFORDABLE UNIT MEETS THE DEFINITION OF AFFORDABLE SALES PRICE FOR SUCH PURCHASER/TRANSFEREE AND THE CATEGORY OF SUCH AFFORDABLE UNIT, AND THE SALE OR TRANSFER COMPLIES WITH CITY'S INCLUSIONARY POLICY AND THE INCLUSIONARY OWNERSHIP GUIDELINES. ANY SALE OR OTHER TRANSFER OF THE AFFORDABLE UNIT IN VIOLATION OF THIS AGREEMENT SHALL BE VOID.

4. EACH PURCHASER OF AN AFFORDABLE UNIT SHALL ENTER INTO AND RECORD AT THE CLOSE OF ESCROW AN AFFORDABILITY COVENANT, RESALE RESTRICTION AND OPTION TO PURCHASE ("RESALE RESTRICTION"), IN A FORM SUBSTANTIALLY SIMILAR TO EXHIBIT E, ATTACHED HERETO, THE NOTE AND THE DEED OF TRUST SUPPLIED BY AND APPROVED BY CITY, AND FOR THE

BENEFIT OF CITY. UPON RECORDATION OF THE RESALE RESTRICTION AND THE DEED OF TRUST: (A) THIS AGREEMENT SHALL HAVE NO FURTHER FORCE OR EFFECT AS AN ENCUMBRANCE AGAINST THE AFFORDABLE UNIT ENCUMBERED BY THE RESALE RESTRICTION AND DEED OF TRUST; AND (B) DEVELOPER SHALL HAVE NO FURTHER OBLIGATIONS OR LIABILITIES WITH RESPECT TO THE AFFORDABLE UNIT ENCUMBERED BY THE RESALE RESTRICTION AND THE DEED OF TRUST, INCLUDING WITHOUT LIMITATION ANY RESPONSIBILITY FOR COMPLIANCE BY THE BUYER OR ITS SUCCESSORS WITH THE TERMS AND CONDITIONS OF THE RESALE RESTRICTION SIGNED BY PURCHASER, PROVIDED THAT DEVELOPER HAS COMPLIED WITH THE TERMS OF THIS AGREEMENT.

2.2 Maintenance and Management. During the Term, the Property and the Project shall be maintained by a Homeowners' Association formed to manage, operate and maintain the Project. The maintenance obligations will include maintenance of the improvements and landscaping. Developer agrees to maintain the Affordable Units in a clean and orderly condition and in good condition and repair, including the maintenance of improvements and landscaping, and to keep the Affordable Units free from accumulation of debris and waste materials, until the close of escrow of the Affordable Units. Upon the sale and close of escrow on each Affordable Unit, the Eligible Household which purchased the Affordable Unit will be a member of the Homeowners' Association and will be responsible for the payment of Homeowners' Association assessments as provided in the Covenants, Conditions and Restrictions ("CC&R's") for the Project. Developer represents and warrants that such Homeowners' Association assessments will equal approximately \$ _____ per Affordable Unit per year, subject to increases as provided for in the CC&R's.

2.3 Satisfaction of Affordable Housing Requirement. The City Inclusionary Policy shall be satisfied with respect to the Property if the Developer constructs or causes to be constructed and sold to eligible households the Affordable Units meeting the requirements of Article 2 above, in compliance with the schedule set forth in the DDA.

2.4 Immediately following the Effective Date, this Agreement and the Notice of Affordability Restrictions shall be recorded against the Property in the Official Records of Alameda County.

ARTICLE 3 MARKETING

3.1 Marketing and Sales Program and Marketing Reports.

A. On or before issuance of the building permit for the first home to be developed as part of the Project, Developer shall design and deliver to the Authority Executive Director a marketing and sales plan for the Affordable Units. Such plan shall conform to the terms of this Agreement, the City Inclusionary Policy, and the Inclusionary Ownership Guidelines, and shall be subject to the Authority Executive Director's review and approval, not to be unreasonably withheld or delayed.

B. To the extent permitted by law, the marketing and sales program for the Affordable Units referenced in subsection A above shall give preference in the sale of the Affordable Units according to a point system that allots one preference point to persons and households who meet each of the following criteria: (1) persons who live or work in the City of Alameda; (2) persons who are first-time buyers; and (3) households containing four or more individuals. For persons and households who match more than one of these criteria, preference points shall be aggregated.

3.2 Verification of Citizenship or Qualified Alien Status. At the time of sale of an Affordable Unit, Developer shall verify the citizenship or qualified alien status of all adult buyers as required under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law No. 104-193, 8 U.S.C. §1621). Developer shall verify the citizenship or qualified alien status by causing the applicants for purchase 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 forwarded by Developer to City.

3.3 Restrictions on Sales of Affordable Units. Developer shall not sell the Affordable Units to any of the following: (a) any partner, officer, shareholder or employee of Developer or any Family Member (defined below) of any partner, officer, shareholder or employee of Developer; (b) any member of the Authority, or any member of any City board or commission; and (c) any City or Authority employee who exercises any function or responsibility in connection with the Property or who has, or whose Family Member (defined below) has, an economic interest in the Property pursuant to the provisions of the Political Reform Act, Government Code section 87100 *et seq.* "Family Member" shall mean the spouse or child of the individual at issue or the individual's or his or her spouse's parent, grandparent, brother, sister, aunt, uncle, niece or nephew.

3.4 Effect of Article 3. This Article 3 shall terminate and be of no further force and effect as to Developer upon the first to occur of: (a) the last day of the Term; or (b) with respect to each Affordable Unit, the closing of the sale by Developer of, and the transfer of title to, the Affordable Unit pursuant to Article 2 above.

ARTICLE 4 GENERAL PROVISIONS

4.1 Conditions of Approval. This Agreement is intended to give effect to the City Inclusionary Policy and Condition of Approval No. _____ imposed by the City pursuant to City Council Ordinance No. _____. In the event of any conflict between this Agreement and the City Inclusionary Policy, the City Inclusionary Policy in effect as of the date of this Agreement shall prevail.

4.2 Notices. Notices required to be given to Authority or Developer shall be given by hand delivery, recognized overnight courier (such as UPS, DHL or FedEx) or certified mail, return receipt requested, to the following addresses, or to such other address(es) as a party may designate from time to time by written notice to the other:

To the Developer:

Alameda Point Partners, LLC

Attention: _____

with a copy to:

Attention: _____

To the City:

City of Alameda
2263 Santa Clara Avenue
Alameda, California 94501
Attention: City Manager

with a copy to:

City of Alameda
Alameda City Hall, Rm 280
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Attorney

To the Authority:

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

with a copy to:

City of Alameda
Alameda City Hall, Rm 280
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Attorney

Any party may change the address to which notices are to be sent by notifying the other parties of the new address, in the manner set forth above.

4.3 Duration. The covenants set forth herein on the Affordable Units shall be covenants running with the land and shall inure to the benefit of City and its successors and assigns, and shall be permanently enforceable by City and its successors and assigns, ("Term"); provided, however, in the event an Affordable Unit is sold during the Term, the new owner shall be responsible for the resale and refinance restrictions as set forth in a new Resale Restriction agreement executed in the form attached as Exhibit E that will reset the time limit for the affordability restrictions on the Affordable Unit. Developer and City shall confirm the commencement and expiration dates of the Term in a written, recordable instrument. The parties agree that for the Term, all future deeds for or transfers of interest in the Affordable Units shall show or reference the applicable restrictions of this Agreement. Upon recordation of the Resale Restriction as to each Affordable Unit, this Agreement shall have no further force or effect as an encumbrance against each Affordable Unit to which such Resale Restriction pertains, and Developer shall have no further obligations or liabilities with respect to the Affordable Unit, including without limitation, any responsibility for compliance by the buyer or its successors with the terms and conditions of the Resale Restriction, provided that Developer has complied with the terms of this Agreement.

4.4 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 Owner, 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. This covenant shall run with the land in perpetuity.

4.5 Amendment. This Agreement may be amended only in writing by City and Developer.

4.6 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 mortgage, deed of trust or other financing or security instrument; provided, however, that any successor of Developer to the Property 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.

4.7 Successors and Assigns.

A. Binding Effect; Covenants Run with Land. The covenants contained in this Agreement shall inure to the benefit of City and its successors and assigns and shall be binding upon Developer and any successor in interest. Upon the transfer by Developer of all or any portion of its interest in the Property, all references in this Agreement to Developer thereafter shall mean and refer to such successor in interest of Developer as may then be the owner of the Property or such portion thereof, or interest therein. In the event that Developer transfers the Property or any portion thereof or interest therein to more than one successor in interest, all successors in interest shall be collectively required to comply with the provisions of this

Agreement and shall be jointly and severally liable for any breach or failure to comply, unless each successor and City enter into an agreement outlining the specific obligations of each successor for compliance with this Agreement. The covenants in this Agreement shall run in favor of City and its successors and assigns for the entire period during which such covenants shall be in force and effect. City and its successors and assigns, in the event of any breach of any such covenants, 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.

B. Transfer by Developer of Property. Except as expressly permitted by this subsection B., Developer shall not sell, transfer, convey, assign or ground lease the Property or any part thereof or interest therein ("Transfer") during the period between the Effective Date and the closing date for the sale of the last Affordable Unit pursuant to Article 2 above without prior written approval of the City Manager, the Authority Executive Director, or their respective designee. The approval of the City Manager Authority Executive Director, or their designee shall not be unreasonably withheld or delayed. This restriction shall not apply to (i) any Transfer of Developer's interest in the Property to any trust, partnership, corporation, limited liability company or other entity that is managed and controlled by Developer, or (ii) any Transfer after the closing date for the last Affordable Units sold to an Eligible Household pursuant to Article 2 above. This restriction on Transfer shall not be deemed to limit or restrict the sale of the Market Rate Units, nor shall it be deemed to limit the making of dedications or granting of easements or permits to facilitate the development of the Property. This restriction on Transfer shall also not be deemed to prohibit, limit or restrict the assignment or granting of any security interests in the Property for the purpose of securing loans or funds to be used for financing the construction of the improvements on the Property, or the exercise by any lenders of their rights and remedies, including without limitation foreclosure, under the agreements and instruments evidencing or securing any such financing.

4.8 Distribution of Foreclosure Proceeds. Upon recording, this Agreement shall have priority over the liens of any and all mortgages or deeds of trust encumbering the Project, or any portion thereof, and Developer shall be required to furnish to City subordination agreements in a form substantially similar to the Subordination Agreement attached hereto as Exhibit F, subordinating the liens of any deeds of trust or mortgages existing as of such recording to this Agreement.

4.9 No Third Party Beneficiaries. Notwithstanding anything in this Agreement to the contrary, there are no third party beneficiaries of this Agreement.

4.10 Effect of Agreement. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement shall have any force or effect on any buyer or buyer's right, title or interest in or to any unit other than the Affordable Units, except that the buyer of an Affordable Unit shall execute and be subject to the Resale Restriction. The foregoing exemption and release shall be self-executing and require no further instruments or assurances to be effective.

4.11 Default and Remedies.

A. Any failure by Developer to perform any term or provision of this Agreement shall constitute an "Event of 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 cannot reasonably be cured within such thirty (30) day period, Developer does not within such thirty (30) day period commence substantial efforts to cure such failure or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure.

B. Any notice of default given hereunder shall specify in detail the nature of the failure in performance alleged by City and the manner in which such failure of performance may be satisfactorily cured in accordance with the terms and conditions of this Agreement. During the time periods herein specified for cure of a failure to perform, Developer shall not be considered to be in default of this Agreement for any purposes.

C. Any failure or delay by City in asserting any of its rights or remedies as to any Event of Default shall not operate as a waiver of any Event of 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.

D. In the event of an Event of Default under this Agreement, City shall have the right to exercise all of the rights and remedies, and to maintain any actions under this Agreement, the City Inclusionary Policy, at law, in equity, or other remedy proceedings.

E. Notwithstanding the foregoing, in the event that Developer fails to comply with the terms of this Agreement, City may suspend issuance of building permits for Market Rate Units, building inspections of Market Rate Units, or issuance of occupancy permits for Market Rate Units, or pursue any other remedy available to it.

4.12 California Law. The laws of the State of California, without regard to conflict of laws principles, shall govern the interpretation and enforcement of this Agreement.

4.13 Counterparts. This Agreement may be signed in multiple counterparts each of which shall be deemed to be an original.

4.14 Severability. Should any provision of this Agreement be found invalid or unenforceable by a court or other body of competent jurisdiction, said invalidity, unenforceability or ineffectiveness shall not affect the validity of the remaining provisions which shall remain in force and effect pursuant to the limitations and duration agreed to herein.

4.15 Entire Agreement. This Agreement constitutes the entire agreement between the parties and no modification hereof shall be binding unless reduced to writing and signed by the parties hereto. The exhibits attached to this Agreement are incorporated by reference.

4.16 Indemnification. Except for an award of attorney's fees to Developer under 4.18, Developer will indemnify and hold harmless (without limit as to amount) the Authority and City and their elected officials, officers, employees, and agents in their official capacity (hereinafter collectively referred to as "Indemnitees"), and any of them, from and against all claims, damages, losses and expenses including attorney's fees arising out of the performance of this Agreement, arising out of or relating in any manner to the Project, the Affordable Units, or Developer's performance or non-performance under this Agreement, including without limitation

the construction or sale of any unit in the Project, caused in whole or part by any negligent act or omission of the Developer, except where caused by the gross negligence or willful misconduct of the Authority and/or the City, and shall protect and defend Indemnitees, and any of them with respect thereto. The provisions of this Section 4.16 shall survive expiration or other termination of this Agreement or any release of part or all of the Property from the burdens of this Agreement, and the provisions of this Section 4.16 shall remain in full force and effect

4.17 Interpretation. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The words "include" and "including" shall be construed as if followed by the words "without limitation." The parties acknowledge that each party and its respective counsel have reviewed and revised this Agreement and that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by either party in connection herewith. The captions in this Agreement are for convenience of reference only and shall not be used to interpret this Agreement. Reference to section numbers are to sections in this Agreement, unless expressly stated otherwise.

4.18 Attorney Fees. In the event that any party to this Agreement brings an action to interpret or enforce its rights under this Agreement, the prevailing party in such action shall be entitled to recover its costs and reasonable attorneys' fees as awarded by the court in such action.

4.19 Authorized Signatories. Each of the undersigned hereby warrants and represents that he/she is duly authorized to execute this Agreement on behalf of the entity for whom he/she signs.

4.20 No Joint Venture. Nothing contained in this Agreement or any document executed pursuant to this Agreement shall be construed as creating a joint venture or partnership between the City, the Authority and Developer. Nothing contained in this Agreement shall create or justify any claim against the Authority or City by any person that Developer may have employed or with whom Developer may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the Property or the construction of the Project.

[Signature page follows]

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

RECOMMENDED FOR APPROVAL:

CITY:

CITY OF ALAMEDA, a municipal corporation

Executive Director, Housing Authority

[Signature must be notarized]

City Manager

APPROVED AS TO FORM:

City Attorney

DEVELOPER:

Alameda Point Partners, LLC, a Delaware limited liability company

By: _____
[Signature must be notarized]

Print Name: _____

Its: _____

By: _____
[Signature must be notarized]

Print Name: _____

Its: _____

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 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.

Name: _____
Notary Public

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 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.

Name: _____
Notary Public

EXHIBIT A

Legal Description of Property

EXHIBIT B

Site Plans for Project

EXHIBIT C

Phasing Schedule

EXHIBIT D

Inclusionary Housing Program Buyer Selection Guidelines

EXHIBIT E

RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO:)

City of Alameda)
2263 Santa Clara Avenue, Rm 320)
Alameda, California 94501)
Attention: City Manager)

This document is exempt from the payment of a recording fee pursuant to Government Code § 27383.

[CITY FORM – FOR-SALE UNITS]

**AFFORDABILITY, RESTRICTIONS ON RESALE
AND
OPTION TO PURCHASE AGREEMENT**

THIS AFFORDABILITY, RESTRICTIONS ON RESALE AND OPTION TO PURCHASE AGREEMENT ("Agreement") is made as of _____, 20 __, ("Effective Date") by and between _____ ("Owner," as further defined below) and the City of Alameda ("City") with reference to the following facts:

RECITALS

A. Owner is acquiring fee title to that certain real property in the City of Alameda, County of Alameda, State of California, which is more particularly described in Exhibit A attached hereto, together with all improvements now or hereafter located thereon and all appurtenances thereto ("Property"), subject to the terms and conditions of that certain Affordable Housing Agreement entered into between the City of Alameda, a California charter city ("City") and Alameda Point Partners, LLC, a Delaware limited liability company ("Developer") dated _____ ("Developer Affordable Housing Agreement").

B. In furtherance of the goals of preserving, improving and increasing the supply of low- and moderate-income housing within the City, Section 30-16 of the City Municipal Code was added by Ordinance No. 2965-NA adopted on June 15, 2004, setting forth certain inclusionary housing requirements for residential development in the City ("City Inclusionary Policy"). City entered into the Developer Affordable Housing Agreement with Developer to set forth the Developer's obligations to provide affordable housing for *[insert as applicable: very low-income, low-income, moderate-income]* households in conformance with the City Inclusionary Policy.

C. The Developer Affordable Housing Agreement requires Developer to sell the Property to Owner at an Affordable Housing Cost, as defined below, subject to the covenants, conditions, restrictions and option to purchase set forth herein.

D. In order to ensure the Property remains permanently affordable to a *[insert as applicable: very low-income, low-income, moderate-income]* household, the Owner is required to execute the City Note and City Deed of Trust, as such terms are defined below.

E. The purpose of this Agreement is to establish the use, occupancy and resale restrictions in accordance with the City Inclusionary Policy, the Developer Affordable Housing Agreement and the Grant Deed (as defined below), and grant to the City certain remedies, including the right to purchase the Property, as covenants running with the land and equitable servitudes that benefit the City, and permitted successors and assigns and burden the Property, the Owner and all of its successors and assigns. The Property was purchased by Owner as a *[insert as applicable: very low-income, low-income, moderate-income]* household at a below fair market price in accordance with the goals and purposes of the City Inclusionary Policy and the Developer Affordable Housing Agreement.

F. The Housing Authority of the City of Alameda ("Authority") is responsible for administering the City's affordable housing programs, including implementing the City Inclusionary Policy pursuant to that certain Staffing Services Agreement between the City and Authority, dated July 1, 2000, as amended.

NOW, THEREFORE, in order to establish the use, occupancy and resale restrictions of the Property, in accordance with the City Inclusionary Policy, the Developer Affordable Housing Agreement, and Grant Deed and to reserve certain remedies (including the right to purchase the Property) as covenants running with the land and equitable servitudes that benefit City and that burden the Property, the Owner and all of its respective successors and assigns, Owner hereby agrees that the Property shall be held, sold and conveyed subject to the following covenants, conditions and restrictions, and option to purchase, all of which shall run with the Property and be binding on all parties having any rights, title or interest in the Property, its heirs, successors and assigns, and shall inure to the benefit of the City, and that entering into this Agreement is good and reasonable consideration for the ability to purchase the Property at a below fair market price as described herein.

ARTICLE 1 DEFINITIONS

As used in this Agreement, the terms set forth below shall have the following meanings (other defined terms in this Agreement not referenced below shall have the meanings where first used).

1.1 "Affordable Housing Cost" shall be as defined in Health and Safety Code Section 50052.5 or any successor thereto in effect at the time of purchase of the Property, for persons and families of *[insert as applicable: very low, low or moderate]* income whose gross income does not exceed ___% *[insert appropriate percentage for income category i.e., 50%, 80% or 120%]* of Area Median Income adjusted for family size appropriate for the Property. For

the purposes hereof, "family size appropriate for the Property" shall be two persons for a one-bedroom unit, three persons for a two-bedroom unit, four persons for a three-bedroom unit, and five persons for a four-bedroom unit. If the statute is no longer in effect and no successor statute is enacted, the City shall establish the Affordable Housing Cost for purposes of this Agreement.

1.2 "Appraisal" shall mean an appraisal setting forth the Market Value of the Property assuming no affordability requirements or other similar restrictions on income requirements, occupancy or resale of the Property, prepared by an appraiser approved by City and who is an MAI member of the American Institute of Real Estate Appraisers or a CREA membership designation from the National Association of Real Estate Appraisers (or, in the event such professional designations are modified or discontinued, the most nearly equivalent successor designations).

1.3 "Area Median Income" shall mean the median household income (adjusted for household size) of the Metropolitan Statistical Area in which Alameda County is located, as established in accordance with Section 50093 of the California Health and Safety Code.

1.4 "Assumption Agreement" shall mean the Disclosure, Acknowledgment and Assumption Agreement in the form attached as Exhibit G.

1.5 "Authority" is defined in Recital F.

1.6 "Capital Improvements" shall mean any capital improvements or upgrades made by Owner to the Property which significantly increases the value of the Property, and which are pre-approved in writing by City. City, prior to an Owner commencing work on the Capital Improvements, shall in its sole and absolute discretion determine (a) whether the improvements qualify as Capital Improvements; (b) the value of the Capital Improvements which value may be less than the actual cost of the Capital Improvements; and (c) the depreciation value or rate, if any, to be applied to such value. By way of example, upgrading an appliance shall not be a Capital Improvement, but upgrading all appliances, flooring, countertops and cabinetry in the kitchen could be approved by the City as a Capital Improvement under the particular circumstances presented.

1.7 "City" shall mean the City of Alameda.

1.8 "City Deed of Trust" shall mean the deed of trust executed by Owner in favor of City securing Owner's obligations under the City Note, substantially in the form of Exhibit F.

1.9 "City Note" shall mean a promissory note executed by Owner in favor of the City in the principal amount equal to the difference between the Market Value of the Property calculated at the time Owner acquired the Property and (a) the Initial Price, in the case of the first Owner, or (b) the Eligible Buyer Purchase Price, in the case of subsequent Owners, plus a contingent deferred amount equal to the City's Shared Appreciation, substantially in the form of Exhibit E.

1.10 "City Option Price" shall mean an amount equal to the Eligible Buyer Purchase Price less Repair Costs.

1.11 "City's Purchase Option" shall have the meaning given in Section 5.1.

1.12 "City Resale Costs" means any and all costs and fees incurred by City whether directly by City or City staff or indirectly under Authority or City contract with affordable housing program service providers, in connection with the processing and implementation of a Permitted Sale under Articles 4 or 5 or an Extraordinary Sale under Article 6, including, without limitation, real estate brokerage fees or commissions, recording fees, escrow charges, and costs and expenses of application screening and processing, employment, credit and income verification, property inspections and appraisals, and document preparation and processing.

1.13 "City's Shared Appreciation" shall have the meaning given in Section 6.3.

1.14 "CC&Rs" shall mean that certain Declaration of Covenants, Conditions, and Restrictions recorded on _____, as Document No. _____ in the Official Records of Alameda County, as amended from time to time. [*Delete if inapplicable*].

1.15 "Eligible Buyer" shall mean those persons and families meeting the income requirements described in Section 1.1.

1.16 "Eligible Buyer Purchase Price" shall mean the allowable purchase price to be paid by an Eligible Buyer of the Property as determined under Section 4.3.

1.17 "Event of Default" shall have the meaning given in Section 8.11.

1.18 "Extraordinary Sale" shall mean a Sale conducted under the provisions of Article 6.

1.19 "Extraordinary Sale Price" means the actual gross sales price for the Property under an Extraordinary Sale, pursuant to Section 6.2.

1.20 "Grant Deed" shall mean the grant deed executed by Developer conveying the Property to Owner for the initial Owner, or the grant deed executed by the initial Owner or subsequent Owners conveying the Property to subsequent Owners.

1.21 "Initial Financing" shall have the meaning given in Section 7.1(a).

1.22 "Initial Price" shall mean the initial purchase price of the Property paid by the Owner, in the case of the initial Owner, or the Eligible Buyer Purchase Price, in the case of a subsequent Owner.

1.23 "Market Value" shall mean the market value of the Property, assuming no affordability or resale restrictions, as determined by an Appraisal of the Property obtained from time to time. The cost of the Appraisal shall be paid by the Owner, and the Owner shall promptly provide the Appraisal to the City.

1.24 "Maximum Affordable Housing Costs" means the maximum affordable housing cost allowable for a [*insert as applicable: very low, low or moderate*] income household, as

determined under California Health and Safety Code Section 50052.5 calculated at the time of a Permitted Sale.

1.25 "Notice of Intent to Transfer" is described in Section 3.2 and Exhibit B.

1.26 "Notice of Intent to Sell" is described in Section 4.1 and Exhibit C.

1.27 "Notice of Extraordinary Sale" is described in Section 6.2 and Exhibit D.

1.28 "Owner" shall mean the purchaser of the Property as identified in the Preamble and Recital A, and includes all of Owner's successors and assigns, as permitted under this Agreement.

1.29 "Owner's Gross Proceeds" is equal to the Eligible Buyer Purchase Price paid for the Property.

1.30 "Owner's Net Proceeds" means the net amount available to Owner pursuant to Section 4.5(d) in case of a Permitted Sale, or Section 6.4(e) in the case of an Extraordinary Sale.

1.31 "Permitted Transfer" shall mean a Transfer described in Section 2.2.

1.32 "Permitted Sale" shall mean a Sale described in Section 2.3.

1.33 "Prohibited Transfer" shall mean any Transfer that is not a Permitted Transfer as described in Section 2.4.

1.34 "Prohibited Sale" shall mean any Sale that is not a Permitted Sale or Extraordinary Sale as described in Section 2.4.

1.35 "Property" shall have the meaning given in Recital A.

1.36 "Refinancing" shall have the meaning given in Section 7.1(b).

1.37 "Repair Costs" shall have the meaning given in Section 4.2.

1.38 "Sale," "Sell" or "Sold" shall mean a Transfer of the Property for monetary consideration.

1.39 "Senior Lien" shall have the meaning given in Section 7.1.

1.40 "Senior Lender" shall have the meaning given in Section 7.1.

1.41 "Term" shall have the meaning given in Section 8.17.

1.42 "Transfer" shall mean any voluntary or involuntary assignment or transfer of ownership of or any interest in the Property, including without limitation a fee simple interest, tenancy in common, joint tenancy, community property, tenancy by the entirety, life estate or other limited estate or use, rental or tenancy therein.

1.43 "Transferee" shall mean the person or persons to whom the Property, is Transferred or Sold.

1.44 "Unit Amenities" shall have the meaning given in Section 4.2.

ARTICLE 2 RESTRICTIONS

2.1 Owner Acknowledgments and Agreements. Owner hereby acknowledges and agrees that taking title to the Property shall constitute Owner's acknowledgment and agreement of the following:

A. THE PROPERTY IS BEING ACQUIRED BY OWNER AT A COST WHICH IS BELOW MARKET RATE FOR SUCH PROPERTY AND THAT SUCH PROPERTY IS SUBJECT TO THE RESALE RESTRICTIONS AND CITY'S PURCHASE OPTION CONTAINED IN THIS AGREEMENT GRANTING THE CITY AN IRREVOCABLE POWER OF ATTORNEY COUPLED WITH AN INTEREST TO ACT ON THE OWNER'S BEHALF TO EXECUTE, ACKNOWLEDGE AND DELIVER ANY AND ALL DOCUMENTS RELATING TO THE CITY'S PURCHASE OPTION. THERE SHALL BE NO SALE OR TRANSFER OF THE PROPERTY EXCEPT IN ACCORDANCE WITH THIS AGREEMENT. ANY SALE OR OTHER TRANSFER OF THE PROPERTY IN VIOLATION OF THIS AGREEMENT SHALL CONSTITUTE A DEFAULT AND SHALL BE VOIDABLE BY THE CITY.

B. OWNER SHALL OCCUPY THE PROPERTY AS ITS PRINCIPAL RESIDENCE FOR THE DURATION OF ITS OWNERSHIP. Upon request by the City, each Owner shall submit an affidavit to the City certifying under penalty of perjury that the Property is the Owner's principal residence, and provide City with a recent utility bill or other evidence of residency satisfactory to the City. If an Owner vacates the Property, or for any reason does not continue to occupy the Property as its principal residence, City may declare an Event of Default pursuant to Section 8.11 and exercise any or all of its rights and remedies hereunder, including without limitation the City's Purchase Option pursuant to Article 5.

C. The Owner shall not rent or lease the Property to another party. Any rental or lease of the Property in violation of this Agreement is prohibited, and shall be a default under this Agreement and the Deed of Trust. The Owner further agrees that, in the event the Owner rents or leases the Property to a third party in violation of this Section, any excess rents ("Excess Rental Proceeds") paid to the Owner by the lessee over the Affordable Rent shall be due and payable to the City immediately upon receipt thereof by the Owner. Such Excess Rental Proceeds shall be considered a recourse debt of the Owner to the City, as evidenced by the City Note, which the City may collect by legal action against Owner, including by foreclosure under the City Deed of Trust

D. Owner's right to resell the Property at Market Value is very limited, in certain instances, City will have the option to purchase the Property from Owner. In order to ensure the Property shall remain available at an Affordable Housing Cost over

the Term of this Agreement, Owner's right to resell the Property may not be as favorable as the rights of other property owners whose properties are not affected by this Agreement and are not encumbered by similar agreements.

E. The Property will not necessarily appreciate in value during the duration of Owner's ownership, and the Eligible Buyer Purchase Price may be less than the Initial Price that Owner originally paid for the Property and, thus, when the Owner sells the Property it may receive less than it originally paid for the Property.

2.2 Permitted Transfers. Subject to compliance with the procedures described in Article 3, including but not limited to providing required notices to the City, the following Transfers of the Property without monetary consideration are "Permitted Transfers":

(a) Transfer of title by gift, devise, or inheritance to an Owner's spouse or state registered domestic partner;

(b) Transfer of title by devise or inheritance to an Owner's natural or adopted children, provided such children qualify as Eligible Buyers;

(c) Transfer of title by an Owner's death to a surviving joint tenant, tenant by entirety, or a surviving spouse of community property;

(d) Transfer of title to a spouse or state registered domestic partner as part of divorce or dissolution proceedings; or

(e) Transfer of title or any interest in the Property to the spouse or state registered domestic partner in conjunction with marriage or establishment of a registered domestic partner relationship.

2.3 Permitted Sales. Subject to compliance with the procedures described in Article 4 and Article 5, including but not limited to providing required notices to the City, an Owner may Sell the Property to an Eligible Buyer ("Permitted Sale"). If the City or the Owner are unable to identify an Eligible Buyer as provided in Article 4, then City shall have the option to purchase the Property pursuant to the City's Purchase Option described in Article 5. If the City or the Owner are unable to identify an Eligible Buyer and the City has not exercised the City's Purchase Option, the Owner shall have the right to Sell the Property to a non-Eligible Buyer in accordance with the provisions of Article 6.

2.4 Prohibited Transfers; Prohibited Sales. Any Transfer other than a Permitted Transfer is a Prohibited Transfer. A Prohibited Transfer specifically includes any Transfer of a use, rental or leasehold interest in the Property. Any Sale of the Property other than a Permitted Sale, the City's Purchase Option, or an Extraordinary Sale is a Prohibited Sale. If an Owner attempts or makes a Prohibited Transfer or Prohibited Sale, then in addition to all other rights or remedies the City may have under this Agreement, the City shall have the right to exercise the City's Purchase Option described in Article 5, which may be exercised against the Transferee or the Owner under such Prohibited Transfer or Prohibited Sale.

ARTICLE 3 TRANSFER PROCEDURES

3.1 Transfer by Devise or Inheritance. If an Owner has made a Permitted Transfer (other than by gift) by devise, inheritance or rights of survival under Sections 2.2(a), (b) or (c), the trustee, executor or new owner shall notify City in writing of the change in ownership of the Property within 20 days of such event giving rise to such Permitted Transfer. Any such Transferee shall be bound by and subject to the provisions of this Agreement and the trustee, executor or new owner shall execute, acknowledge and deliver to the City, within such 20-day period, an Assumption Agreement in the form of Exhibit G, and the failure to do so shall constitute a default under Section 8.11; provided that such Transferee shall be bound by and subject to the provisions of this Agreement notwithstanding its failure to deliver such executed and recordable Assumption Agreement.

3.2 Other Permitted Transfers. If an Owner desires to Transfer the Property by gift under Section 2.2(a) or by a Permitted Transfer under Sections 2.2(d) or (e), Owner shall provide City with a Notice of Intent to Transfer, together with any other documentation City may reasonably request in order to ensure that the Transfer is a Permitted Transfer. Upon receipt of a Notice of Intent to Transfer, City shall have 45 days after receipt by the City of such Notice of Intent to Transfer and other documentation to deliver written notice to the Owner of its approval or disapproval of the Transfer as a Permitted Transfer. The Transfer shall be deemed a Permitted Transfer if City fails to disapprove the proposed Transfer within such 45 day period. The Owner shall complete the Permitted Transfer, including recordation of all applicable documents, within 60 days after receipt of approval of the Transfer. Any such Transferee shall be bound by and subject to the provisions of this Agreement as an Owner and shall execute, acknowledge and deliver to the City an Assumption Agreement in the form of Exhibit G, and the failure to do so shall constitute a default under Section 8.11; provided that such Transferee shall be bound by and subject to the provisions of this Agreement as an Owner notwithstanding its failure to deliver such executed and recordable Assumption Agreement.

3.3 Transfer of the Property without City's Approval. If the City determines that the proposed Transfer is a Prohibited Transfer, the Owner shall not Transfer the Property. Any Transfer of the Property without the City's approval shall be voidable and in such event, in addition to all other rights and remedies the City may have under this Agreement, the City shall have the right to exercise City's Purchase Option pursuant to Article 5, which may be exercised against the Transferee or the Owner under such Prohibited Transfer.

ARTICLE 4 SALE PROCEDURES

4.1 Notice of Permitted Sale. If an Owner desires to Sell the Property, the Owner shall provide City with a Notice of Intent to Sell. Within 60 days after receipt of the Notice of Intent to Sell, the City shall use its reasonable efforts to identify an Eligible Buyer, taking into consideration the requirements of the Developer Affordable Housing Agreement, the Grant Deed and this Agreement. If City identifies an Eligible Buyer, the Owner shall Sell the Property to the Eligible Buyer at the Eligible Buyer Purchase Price (as determined pursuant to Section 4.3 herein) within 30 days after identification of the Eligible Buyer. If the Sale to the Eligible Buyer

does not occur within said 30-day period, City may either extend the period of time for the Sale to occur or may, within 30 days thereafter, identify another Eligible Buyer, in which case all the provisions of this Section 4.1 shall be applicable to such Eligible Buyer, including the provisions of this sentence. If City is unable to identify an Eligible Buyer within the applicable time periods set forth above, then the Owner shall have the option to identify an Eligible Buyer, subject to City's written approval, which approval may take into consideration the requirements of the Developer Affordable Housing Agreement, the Grant Deed and this Agreement. If City (or the Owner) fails to identify an Eligible Buyer within the applicable time periods set forth above, City shall have 30 days from the expiration of the final applicable period to exercise City's Purchase Option under Article 5.

4.2 Inspection; Repair Costs. Upon receipt of a Notice of Intent to Sell, the City shall have the right to enter the Property at reasonable times with 24 hours advance notice to the Owner to inspect the dwelling unit on the Property to determine whether any damage or violations of applicable laws or ordinances exist. City shall conduct its inspection within 15 days after receipt of the Notice of Intent to Sell. In the event any damage or violations are discovered, City shall determine the cost of repair or correction of such condition ("Repair Costs"). By way of example, Repair Costs would include the cost of repairing or replacing such things as broken, damaged or worn appliances, fixtures (including lights, shelving, bathroom fixtures, cabinets, countertops, tubs and vanities) walls, ceilings and paint and exterior surfaces, window coverings and carpets (collectively "Unit Amenities") due to stains, extreme wear, damage or destruction. Within 30 days after the inspection, the City will prepare a written report describing the Repair Costs. The Owner shall have the option to either (i) repair or replace the items on such report at Owner's cost prior to closing (without extending the closing date), or (ii) at closing cause the escrow holder to pay the Repair Costs to City. If an Owner elects to repair or replace the items on such report, the City shall have the right to re-inspect the Property under the terms of this Section 4.2 after the repairs and/or replacements are complete. If the City determines that deficiencies still remain, the Owner shall cause the escrow agent at closing to pay the City from the Owner's Gross Proceeds the Repair Costs in such amounts as City determines are necessary to complete the remaining repairs and/or replacements. The City shall use any Repair Costs paid to it to make the necessary repairs and/or replacements.

4.3 Eligible Buyer Purchase Price. The Purchase Price to be paid by an Eligible Buyer for the Property shall be the total sum of (a) the Initial Price paid by Owner for the Property, plus (b) the product of the Initial Price multiplied by the percentage increase in the Affordable Housing Cost that has occurred since the Owner's purchase of the Property to the date when the Notice of Intent to Sell, plus (c) the depreciated value of any Capital Improvements approved by the City as described in Section 1.12. Notwithstanding anything to the contrary herein, in no event shall the Eligible Buyer Purchase Price exceed the Maximum Affordable Housing Cost allowable for a [*insert as applicable; very low, low or moderate*] income household. The Eligible Buyer Purchase Price shall be established by the City in accordance with this Section 4.3, within 20 days following City's receipt of a Notice of Intent to Sell delivered pursuant to Section 4.1.

4.4 Appraisal; City Resale Costs; City Documents. Upon receipt of a Notice of Intent to Sell, the City shall cause an Appraisal to be completed prior to close of escrow to determine the Market Value of the Property as of the date of such Notice. The cost of such Appraisal shall

be paid by the Owner at close of escrow. In addition, the Owner shall pay the City the City Resale Costs at close of escrow. The Owner may pay the cost of the Appraisal and the City Resale Costs from any sources, including, but not limited to, the Owner's Gross Proceeds, to the extent there are any available, as provided in Section 4.5 (b).

At close of escrow, the Eligible Buyer shall deliver or cause to be delivered into escrow:

(a) the City Note, fully executed by the Eligible Buyer in favor of the City in substantially the form of Exhibit E hereto. The City Note shall be in the principal amount equal to the difference between the then current Market Value of the Property, and the Eligible Buyer Purchase Price being paid for the Property (defined as the Differential Amount in the City Note);

(b) the City Deed of Trust securing the City Note fully executed by the Eligible Buyer in recordable form, in substantially the form of Exhibit F hereto;

(c) the Assumption Agreement, fully executed in recordable form by all appropriate parties, in substantially the form of Exhibit G hereto; and

(d) the required down payment and all documents required by the Eligible Buyer's Senior Lender.

4.5 Proceeds from Permitted Sale. Owner's Gross Proceeds from a Permitted Sale shall be distributed in the following priority to the extent funds from Owner's Gross Proceeds are available:

(a) first, to pay any amounts owed under the Owner's Senior Lien;

(b) second, to pay all customary closing costs that a seller would pay in Alameda County and a basic one-year home warranty as provided in Section 4.8, and, to the extent not already paid by the Owner to the City, the costs of the Appraisal and the City Resale Costs under Section 4.4; and

(c) third, to pay to the City all Repair Costs (if any, and to the extent not already paid) which are owed to the City under Section 4.2; and

(d) fourth, any remaining amounts shall be paid to the Owner as the Owner's Net Proceeds.

4.6 Personal Property. Any sums paid to an Owner by an Eligible Buyer for personal property shall not be part of the Eligible Buyer Purchase Price. No other consideration of any nature whatsoever shall be paid by an Eligible Buyer to the Owner unless first fully disclosed to and approved by City in writing.

4.7 Real Estate Broker Commission. If the City identifies the Eligible Buyer, no real estate broker's commission shall be paid to any real estate broker unless otherwise approved by the City. If the Eligible Buyer is identified by Owner, as between the Owner and the Eligible Buyer, the Owner shall have the sole and exclusive obligation to pay any real estate broker's commission regardless of whether the broker was engaged by the Owner or Eligible Buyer.

4.8 Closing. At closing, the Owner shall convey fee title to the Eligible Buyer by standard title company form Grant Deed. The Owner shall cause the title company to issue to the Eligible Buyer a CLTA standard coverage owner's form of title insurance policy in the amount of the Eligible Buyer Purchase Price insuring title to the Property is vested in the Eligible Buyer, subject to exclusions from coverage, exceptions for current taxes and assessments not yet due, this Agreement and all documents recorded pursuant to this Agreement and such other matters (other than encumbrances created or suffered by the Owner) which were exceptions to title on the date of this Agreement. The Owner shall pay for a basic one-year home warranty contract issued by a reputable and established company to the Eligible Buyer. The Eligible Buyer shall pay the costs of any longer or more extensive warranty. All other closing costs shall be paid by the Owner or the Eligible Buyer pursuant to the custom in Alameda County.

ARTICLE 5 CITY'S PURCHASE OPTION

5.1 Purchase Option. By taking title to the Property, each Owner irrevocably grants, to the City an option to purchase the Property (the "City's Purchase Option") at the City Option Price upon the occurrence of any of the following:

- (a) in the event the City or the Owner is unable to identify an Eligible Buyer pursuant to and within the times set forth in Section 4.1;
- (b) in the event of any Prohibited Transfer or Prohibited Sale by the Owner;
- (c) in the event that the Owner is in default of the occupancy requirement set forth in Section 2.1.B.;
- (d) upon occurrence of an Event of Default (as defined in Section 8.11);
- (e) in the event that escrow fails to close within the times set forth in Section 4.1 or Section 6.5; or
- (f) as reserved to City under Section 6.1 for the period of time from Owner's Notice of Extraordinary Sale pursuant to Section 6.2 hereof to the date of written acceptance by Owner of an offer to purchase the Property from a buyer;

provided, that in the case of (b), (c), (d) or (e), above, the City's Purchase Option shall be in addition to any other remedy provided in this Agreement for an Event of Default. By taking title to the Property, the Owner agrees that the City's facilitation of the Transfers contemplated hereby and its acts, commitments and expenditures in furtherance thereof constitute adequate consideration for the grant of the City's Purchase Option.

5.2 Exercise of Option.

(a) Permitted Sale. If the City's Purchase Option is available to the City pursuant to Subsection 5.1(a), then City may exercise the City's Purchase Option within the 30-day period described in Section 4.1 and in accordance with Section 5.4.

(b) Prohibited Transfer, Prohibited Sale, Failure to Occupy or Event of Default. If the City's Purchase Option is available to the City pursuant to Subsection 5.1(b), (c), or (d) above, then City may exercise its option in accordance with Section 5.4.

(c) Failure to Close Escrow. If the City's Purchase Option is available to the City pursuant to Section 5.1(e) or (f), then City shall exercise its option in accordance with Section 5.4.

5.3 Assignment of City's Purchase Option. After City has notified Owner of its intent to exercise the City's Purchase Option, City may, without the Owner's or Transferee's consent, assign the City's Purchase Option to an Eligible Buyer or to a governmental agency or non-profit organization that agrees to be subject to this Agreement; provided, however, that any such assignment shall not extend any time limits contained in this Agreement.

5.4 Procedure Upon Exercise of Option. The City shall exercise the City's Purchase Option by delivering written notice to the Owner (and to Transferee, if applicable). Closing of escrow shall occur within 110 days (plus any time delays caused by the Owner), or such additional time as reasonably determined by the City is necessary under the circumstances after the date of City's written notice exercising the City's Purchase Option.

5.5 Failure to Close. If after City exercises the City's Purchase Option pursuant to Section 5.1(a), the City fails to close escrow pursuant to Section 5.4, then the Owner may conduct an Extraordinary Sale under Article 6. If after City exercises the City's Purchase Option pursuant to Section 5.1(b), (c), (d), (e) or (f), the City fails to close escrow pursuant to Section 5.4, then the City shall be deemed to retain all remedies available under Section 8.11.

5.6 Power of Attorney. By taking title to the Property, each Owner grants to the City an irrevocable power of attorney coupled with an interest to act on the Owner's behalf to execute, acknowledge and deliver any and all documents relating to the City's Purchase Option.

ARTICLE 6 EXTRAORDINARY SALE

6.1 When Extraordinary Sale Permitted. If City or an Owner fails to identify an Eligible Buyer within the times set forth in Section 4.1 after City's receipt of a Notice of Intent to Sell, and:

(a) The City fails to exercise the City's Purchase Option within the times set forth in Sections 4.1 and 5.2(a), or

(b) The City fails to close escrow pursuant to Section 5.4 after exercising the City's Purchase Option pursuant to Section 4.1 and 5.2(a),

then the Owner shall have the right to make an Extraordinary Sale in accordance with the procedures set forth in this Article 6; provided, however that City shall retain the City's Purchase Option for the period of time from Owner's Notice of Extraordinary Sale pursuant to Section 6.2 hereof to the date of written acceptance by Owner of an offer to purchase the Property from a buyer. In no event shall an Owner have the right to make an Extraordinary Sale in the event of

any attempted or actual Prohibited Transfer or Prohibited Sale by the Owner or if there is any other Event of Default by the Owner under this Agreement.

6.2 Notice of Extraordinary Sale; Appraisal; City Resale Costs. Each Owner shall notify the City of the Owner's intent to make an Extraordinary Sale by delivering a Notice of Extraordinary Sale. The Notice of Extraordinary Sale shall contain a request that the City calculate the current Market Value of the Property based upon an Appraisal, the cost of which shall be paid by the Owner through escrow. The City shall provide the Owner with a copy of the Appraisal within 10 days after receipt by the City. The City shall use reasonable efforts to obtain the Appraisal within 60 days after receipt of the Notice of Extraordinary Sale. The Owner shall be required to Sell the Property at a price not less than the current Market Value, unless otherwise approved by the City in writing. All transfer documents relating to the Extraordinary Sale shall be submitted to the City for its review and approval as consistent with the terms of this Agreement. The actual gross sales price for the Property under any such sale is the "Extraordinary Sale Price." In addition, the Owner shall pay the City the City Resale Costs at close of escrow.

6.3 City's Shared Appreciation. In the event of an Extraordinary Sale, the Owner whose Property is the subject of the Extraordinary Sale shall pay to the City in addition to the principal amount of the City Note, a share of the appreciation (the "City's Shared Appreciation") in the value of the Property between the time the Property was acquired by the Owner and the Extraordinary Sale in accordance with California Civil Code Section 1917.006 and as provided for herein.

The appreciation in the value of the Property shall be determined based on the difference between the Appraisal prepared at the time the Property was acquired by the Owner, and the Extraordinary Sale Price. The distribution of any appreciation in value of the Property to City or Owner shall only be available after payment of all other sums set forth in Section 6.4 (a) through (e) and shall be shared by the Owner and the City in proportion to the amount of initial equity contributed by each party as follows:

(a) The City's initial equity contribution shall equal the principal amount of the City Note (which shall be equal to the difference between the Market Value of the Property at the time of acquisition by the Owner and the Initial Price, in the case of the original Owner, or the applicable Eligible Buyer Purchase Price, in the case of a subsequent Owner, and which is defined as the Differential Amount in the City Note).

(b) The Owner's initial equity contribution shall be equal to the amount of the down-payment paid by the Owner at the time Owner acquired the Property plus any escrow fees, transfer taxes, recording fees, brokerage commissions and similar costs of acquisition actually paid by the Owner for the acquisition of the Property, as substantiated by the Owner pursuant to Section 6.7 hereof.

[Example: If, (i) at the time an Owner acquired the Property, the Owner paid a down-payment equal to \$18,000 and, escrow fees, transfer taxes, recording fees, brokerage commissions and similar costs of acquisition actually paid by Owner equal to \$2,000, resulting in a total Owner equity amount of \$20,000, and (ii) the City Note for such transaction reflected a

principal amount of \$80,000, then (iii) after payment of all other sums set forth in Section 6.4 (a) through (d), the Owner would receive 20% of any remaining appreciation value, and the City would receive 80% of any remaining appreciation value at the time of an Extraordinary Sale.]

(c) The City's Shared Appreciation shall be included in the City Note as a contingent deferred amount payable to City in the event of an Extraordinary Sale.

(d) The amount of City's Shared Appreciation collected by City shall be used by City to assist in the provision of housing that is affordable to persons and families of low and moderate income in accordance with Civil Code Section 1917.006(a)(1).

6.4 Distribution of Proceeds. The Extraordinary Sale Price shall be distributed in the following priority to the extent funds are available:

(a) first, to pay any amounts owed under the selling Owner's Senior Lien;

(b) second, subject to the provisions of Section 6.7 below, to pay all customary closing costs and escrow fees that are the responsibility of the selling Owner, and, to the extent not already paid by Owner to City, the costs of the Appraisal and the City Resale Costs under Section 6.2;

(c) third, to pay to City all amounts owing under the City Note and City Deed of Trust, including the initial principal amount and any other amounts owed pursuant to the City Note, except the City's Shared Appreciation;

(d) fourth, subject to the provisions of Section 6.7 below, to pay the selling Owner the following:

- i. amount of down payment paid by the Owner at the time the Owner acquired the Property;
- ii. amount of installment payments of mortgage principal repaid on Owner's Senior Lien by Owner prior to the Extraordinary Sale;
- iii. amount of escrow fees, transfer taxes, recording fees, brokerage commissions and similar costs of acquisition actually paid by the Owner;
- iv. amount of money paid by the Owner for Capital Improvements to the Property; and
- v. amount equal to the "legal rate of interest" (as defined in the City Note) on cash payments by Owner as identified in (i) through (iv) above.

(e) fifth, to pay any remaining balance pro-rata on the basis of percentages determined in accordance with Sections 6.3 (a) and (b), to the City for the amounts owing under

the City Note for the City's Shared Appreciation and to the selling Owner, as the Owner's Net Proceeds.

6.5 Time Requirements for Extraordinary Sale. Each Owner shall complete an Extraordinary Sale within 120 days after receipt of the Appraisal under Section 6.2. If the Extraordinary Sale is not completed within such time, and the Owner is not bound by written contract with a buyer to Sell the Property, the City may either (i) designate an Eligible Buyer for the Property pursuant to Section 4.1, in which case the provisions of Article 4 shall apply in lieu of the provisions of this Article 6, or (ii) exercise the City's Purchase Option under Section 5.1, in which case the provisions of Article 5 shall apply in lieu of the provisions of this Article 6.

6.6 Effect of Extraordinary Sale. Upon the close of escrow for an Extraordinary Sale in compliance with the provisions of this Article 6, the purchaser at the Extraordinary Sale shall acquire title to the Property free and clear of the provisions of this Agreement, including the City's Purchase Option. Pursuant to Section 8.13 and in accordance with this Section 6.6, City agrees to execute, acknowledge and record a release or other documentation sufficient to release the Property sold at an Extraordinary Sale from the provisions of this Agreement, including the City's Purchase Option.

6.7 Owner's Burden to Substantiate Costs; Extraordinary Sale; Foreclosure. Prior to the close of escrow in the event of an Extraordinary Sale, selling the Owner shall submit evidence to the reasonable satisfaction of the City not less than 30 days prior to the first scheduled date for the close of escrow to allow the City to verify the evidence provided by the Owner of the Owner's initial equity as set forth in Section 6.3(b) and the Owner's costs as set forth in Section 6.4(b) and (d). To the extent such evidence is not submitted by Owner to the reasonable satisfaction of City at least 30 days prior to the first scheduled date for the close of escrow, such costs shall be deemed waived by the Owner and the Owner shall not be entitled to have such costs, as applicable, included as part of the Owner's initial equity under Section 6.3(b) or to receive payment of the sums set forth in Section 6.4(b) and (d). The City acknowledges that such evidence may include, by way of example and not limitation, the Owner's original closing statement, bank statements, copies of cancelled checks, and invoices from contractors, and shall be considered reasonable evidence of the Owner's initial equity as set forth in Section 6.3(b). In the event of a foreclosure sale, this Section 6.7 shall operate to require the same obligations of the Owner as in an Extraordinary Sale and all references to the "close of escrow" shall be replaced by "foreclosure sale."

ARTICLE 7 LENDER PROVISIONS

7.1 Senior Liens. Mortgages, deeds of trust, sales and leases-back or any other form of conveyance required for any reasonable method of financing (subject to Section 7.2, the "Senior Lien") are permitted, but only as follows:

(a) for the sole purpose of securing a purchase money loan of funds to be used by an Owner for financing the acquisition of the Property by the Owner ("Initial Financing"), provided such Initial Financing shall be obtained through a bank, savings and loan association, insurance

company, pension fund, publicly traded real estate investment trust, governmental agency, or charitable organization engaged in making residential real estate loans ("Senior Lender"); or

(b) for the sole purpose of refinancing an Owner's Initial Financing ("Refinancing"), provided such Refinancing shall be limited solely to the outstanding principal balance owed under the Owner's Initial Financing, and shall not include any additional amounts, such as fees or costs associated with such Refinancing or additional funds disbursed to the Owner and refinancing shall not include secondary financing such as subordinate deeds of trust or home equity loans; and provided the Owner has paid the City all administrative and document preparation costs and fees incurred by the City in connection with the processing of any documents required to effectuate such Refinancing.

7.2 Subordination. The City may, at its sole discretion, enter into a subordination agreement with a Senior Lender to subordinate the provisions of this Agreement and its lien under the City Note and City Deed of Trust to the Senior Lien. Any such subordination agreement shall require the Senior Lender to agree to the Default and Foreclosure provisions set forth in Section 7.3, below, and may contain any other provisions required by or acceptable to the City.

7.3 Default and Foreclosure.

(a) The City shall record a request for notice of default and any notice of sale under any deed of trust or mortgage with a power of sale encumbering the Property pursuant to California Civil Code Section 2924b. Whether or not a request for a notice of default is recorded, the Owner shall provide a true and correct copy of any notice of default to the City within three (3) business days of the Owner's receipt thereof.

(b) In the event of default and foreclosure, the City shall have the same right as the Owner to cure any defaults, reinstate the loan (not less than a specified number of times to be set forth in the subordination agreement between the City and the Senior Lender) or redeem the Property prior to foreclosure sale or the acceptance of a deed in lieu of foreclosure by the Senior Lender. Such redemption shall be subject to the same fees, charges and penalties that would otherwise be assessed against the Owner. Nothing herein shall be construed as creating any obligation on the part of the City to cure any such default, nor shall this right to cure and redeem operate to extend any time limitations in the default provisions of the underlying deed of trust or mortgage.

(c) If the trustee set forth in Senior Lender's deed of trust sells the Property at a foreclosure sale the proceeds shall be delivered in the following priority to the extent funds are available:

- (i) first, to pay all sums due and owing under the Senior Lien, including without limitation the principal amount, interest, fees and costs of sale;
- (ii) second, to pay to the City all amounts owing under the City Note and City Deed of Trust, including the initial principal amount and any other amounts owed pursuant to the City Note, except the City's Shared Appreciation;

(iii) third, subject to the provisions of Section 6.7, to pay the Owner the following:

1. amount of down payment paid by the Owner at the time the Owner acquired the Property;
2. amount of installment payments of mortgage principal repaid on the Owner's Senior Lien by Owner prior to the foreclosure sale;
3. amount of escrow fees, transfer taxes, recording fees, brokerage commissions and similar costs of acquisition actually paid by the Owner;
4. amount of money paid by the Owner for Capital Improvements to the Property; and
5. amount equal to the "legal rate of interest" (as defined in the City Note) on cash payments by Owner as identified in (1) through (4) above.

(iv) fourth, to pay any remaining balance pro-rata in the percentages determined in accordance with Sections 6.3 (a) and (b), to the City for the amounts owing under the City Note for the City's Shared Appreciation, and to the Owner or the person or persons legally entitled thereto, as required by law.

(d) By taking a loan from a Senior Lender, each the Owner represents that it has provided Senior Lender the necessary consent and authorization to provide the City, upon the City written request, with a report of the payment status of the Owner and all other financial information concerning the Owner to the City. Therefore, upon written request by the City, Senior Lender is hereby authorized by the Owner to furnish a report of the payment status of the Owner and all other financial information concerning the Owner to the City.

(e) Except as otherwise expressly provided in a City-approved subordination agreement, by making a loan to the Owner, Senior Lender grants to the City the option to purchase the Senior Lien from Senior Lender at any time after the filing of a notice of default under the Senior Lien but prior to consummation of the foreclosure or the giving of a deed-in-lieu of foreclosure. Pursuant to this subsection, the City may purchase the Senior Lien from the Senior Lender for an amount equal to the entire indebtedness secured by the Senior Lender's deed of trust. The City may exercise this option by giving the Senior Lender written notice of its intent to do so (A) with respect to a foreclosure, at any time prior to the filing of a notice of sale under the Senior Lien, and (B) with respect to a deed-in-lieu of foreclosure, within ten (10) days after receiving written notice from Senior Lender of its intent to accept a deed-in-lieu of foreclosure with respect to the Property. Upon receipt of such written notice from the City, the Senior Lender shall promptly give the City a written statement setting forth the amount of the total indebtedness secured by the Senior Lender deed of trust, which shall be the purchase price for the Senior Lien, and a copy of the policy of title insurance insuring the priority and validity of the Senior Lender deed of trust. Within ten (10) days after the City gives such written notice, City shall establish an escrow at such title company and concurrently therewith give Senior the

Lender written notice thereof, and the City shall deposit the purchase price in such escrow. Within fifteen (15) days after Senior Lender's receipt of notice of the opening of the escrow, the Senior Lender shall deposit in the escrow the promissory note evidencing the Senior Lien endorsed in favor of the City, the original of the Senior Lender deed of trust, an assignment of the Senior Lender deed of trust duly executed by the Senior Lender and in recordable form and all other documents, instruments, agreements, certificates and other items that evidence, secure or otherwise relate to the Senior Lien. The escrow holder shall be instructed to close the escrow within two (2) business days after receipt of all such items and upon such close of escrow to issue to City a CLTA Form No. 104.1 endorsement to the title policy, showing the City as the Senior Lender's assignee with respect to the Senior Lender deed of trust. The Senior Lender and the City shall execute and deliver escrow instructions and such other documents as may be necessary or appropriate in connection with such escrow and to implement the intent hereof. The City shall pay the escrow fees (irrespective of whether the escrow closes), recording fees and the premium for the CLTA Form No. 104.1 endorsement.

ARTICLE 8 MISCELLANEOUS

8.1 No Option Assignment Liability. In no event shall the City in any way become liable to the Owner or become obligated in any manner to any other party by reason of the assignment of the City's Purchase Option, nor shall City in any way be obligated or liable to any Owner for any failure of City to purchase the Property or to comply with the terms of the City's Purchase Option.

8.2 Distribution of Insurance and Condemnation Proceeds. If the Property is condemned or the improvements damaged or destroyed, all proceeds from insurance or condemnation shall be distributed in accordance with the CC&Rs or, if not covered by the CC&R's, to Owner or its successors or assigns, for purposes of restoring or replacing the Property, unless the Senior Lender deed of trust or, if not covered by the Senior Lender Deed of Trust, the City Deed of Trust provides otherwise, in which case the Senior Lender Deed of Trust or, if not covered by the Senior Lender Deed of Trust, the City Deed of Trust shall control.

8.3 Maintenance and Use. Each Owner shall maintain the Property, including all structures and landscaping [*Insert: "in a good and clean condition" or "in accordance with the CC&Rs", if applicable*]. Each Owner shall maintain the interior of the single-family dwelling unit on the Property in a clean condition and all appliances and fixtures in good working order. The Property shall be used and occupied by each Owner solely for residential purposes, and in addition to the residential purpose may also be used for any accessory uses that comply with the provisions of the City's Zoning Ordinance, as it may be amended from time to time, and the provisions of the Grant Deed, and the Developer Affordable Housing Agreement [*Insert if applicable: "and the CC&R's"*]. No Owner shall grant use of, rent or lease all or any part of the Property, but shall occupy the Property as its principal residence as provided in Article 2.

8.4 Default Remedies. In addition to any other rights or remedies set forth in this Agreement or allowed by law or equity, in the event of a default by an Owner of any of the Owner's obligations under this Agreement, City may apply to a court of competent jurisdiction for specific performance of this Agreement, for an injunction prohibiting a proposed Sale or

Transfer in violation of this Agreement or for enforcing the City's Purchase Option, or for any such other relief as may be appropriate (including, but not limited to, monetary damages).

8.5 Attorneys' Fees and Costs. If any action is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

8.6 Controlling Agreement. The Owner covenants that it has not executed, and will not execute without the City's prior written approval, any other agreement with provisions contradictory to or in opposition to the provisions of this Agreement.

8.7 Severability. If any one or more of the provisions contained in this Agreement for any reason shall be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein.

8.8 Time of the Essence. Time is of the essence of this entire Agreement. Whenever the time for performance falls on a day which is not a business day, such time for performance shall be extended to the next business day.

8.9 Notices. All notices, demands, requests for approval and other communications provided for in this Agreement shall be in writing and shall be deemed received if sent to the addresses set forth below (a) on the date of delivery when personally delivered; (b) one business day after deposit with a reputable overnight courier or delivery service with all delivery charges paid; or (c) date of receipt by party if deposited in the United States first class mail, postage prepaid, registered or certified, return receipt requested. Any party may change its address by notice delivered in the manner specified above.

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

If to Owner: At the Property address of the Owner

8.10 Covenants Running with the Land. All provisions of this Agreement, including the benefits and burdens, are equitable servitudes, run with the land and are binding upon the heirs, successors, assigns and personal representatives of the Owner hereto and inure to the benefit of City and its permitted successors and assigns. The covenants benefit and bind the City, the Property, and all owners and successor owners thereto. Each and every contract, deed or other instrument covering, conveying or otherwise transferring the Property or any interest therein shall conclusively be held to have been executed, delivered and accepted subject to this Agreement regardless of whether the other party or parties have actual knowledge of this Agreement.

8.11 Default. If an Owner defaults in the performance or observance of any covenant, agreement or obligation of Owner set forth in this Agreement, and if such default remains

uncured for a period of 30 days after written notice has been given by the City (or if such cure reasonably takes longer than 30 days, if such cure has not been commenced within the 30-day period and thereafter diligently prosecuted to completion), or in the event an Owner has provided false information or documentation required in connection with the purchase or sale of the Property, then the City may declare an "Event of Default" has occurred, and City may exercise any or all of its rights or remedies under this Agreement, including without limitation any or all of the following:

(a) by any suit, action or proceeding at law or in equity, require the Owner to perform its obligations and covenants under this Agreement or enjoin any unlawful acts;

(b) by taking such other action at law or in equity as may appear necessary or desirable to enforce the Owner's obligations, covenants and agreements; or

(c) by exercising the City's Purchase Option pursuant to Article 5.

8.12 Construction. The rule of strict construction does not apply to this Agreement. This Agreement shall be given a reasonable construction to create a valid and enforceable City's Purchase Option and to prevent any Prohibited Transfer or Prohibited Sale or any use of the Property in violation of this Agreement. Whenever the context and construction so requires, all words used in the singular shall be deemed to be used in the plural, all masculine shall include the feminine and neuter, and vice versa.

8.13 Termination of Agreement. This Agreement shall terminate as to the Property as a result of an Extraordinary Sale pursuant to Section 6.5. In addition, if the City has subordinated this Agreement pursuant to Section 7.2, this Agreement shall terminate as a result of foreclosure through a trustee's sale, a judicial foreclosure sale or deed in lieu of foreclosure. Upon termination of this Agreement, on request of the then record Owner of the Property, City shall execute, acknowledge and record a termination of this Agreement. To the extent permitted by law, any unfulfilled obligations of any Owner shall survive the termination of this Agreement but this Agreement shall no longer affect title to the Property.

8.14 Indemnification. Each Owner, at its sole cost and expense, agrees to indemnify, defend, and hold harmless the City and its respective officers, directors, employees and agents from and against all liabilities, losses, claims, actions, damages, judgments, costs and expenses (including, without limitation, reasonable attorney's fees) incurred by the City arising out of or relating to any action by the Owner. Each Owner agrees that if any claims, demands, suits or other legal proceedings are made or instituted by any person against City which arise out of any of the matters relating to this Agreement, the Owner shall cooperate fully with the City in the defense or other disposition.

8.15 Entire Agreement and Modifications. This Agreement, together with the exhibits attached hereto, represents the entire agreement between the parties with respect to the subject matter set forth herein and replaces and supersedes any and all prior or contemporaneous oral or written agreements, subject to Section 8.16. This Agreement may be modified only in a writing duly signed by the affected Owner or Owners and an authorized agent of City. The

modifications shall be effective when recorded in the Official Records of Alameda County, California.

8.16 Modification of Covenants. Each Owner hereby agrees as follows:

(a) To the extent any amendments to sections of the California Health & Safety Code referenced in this Agreement or any amendments to the City Inclusionary Policy retroactively impose requirements upon the ownership or operation of the Property more restrictive than those imposed by this Agreement, and if such requirements are applicable to the Property, this Agreement shall be deemed to be automatically amended to impose such additional or more restrictive requirements.

(b) Each Owner and City shall execute, deliver and, if applicable, record any and all documents and instruments necessary to effectuate the intent of this Section 8.16, and each Owner hereby appoints the City as its true and lawful attorney-in-fact to execute, deliver and, if applicable, record on behalf of the Owner and City, as applicable, any such document or instrument (in such form as may be approved in writing by the City) if the Owner defaults in the performance of its obligations under this subsection (b).

8.17 Term. This Agreement shall become effective upon its execution and delivery and unless sooner terminated in accordance with Section 8.13, shall permanently remain in full force and effect from the date of recordation of this Agreement. The non-discrimination covenant in Section 8.18 shall run with the land in perpetuity.

8.18 No Discrimination. Notwithstanding the following, Owner acknowledges under this Agreement that it is expressly prohibited from leasing the Property and is required to occupy the Property as its principal residence at all times:

Owner 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 Owner, 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. This covenant shall run with the land in perpetuity.

8.19 Compliance Monitoring. The Owner acknowledges and agrees that the City is obligated to monitor compliance with this Agreement on an annual basis. The Owner agrees to cooperate with City's annual monitoring requirements by supplying true, correct and complete annual owner information as required by Authority's Affordable Housing Ownership Program Qualified Household Annual Update Questionnaire.

8.20 Payment of City Fee for Administrative Costs of Processing Agreement. Owner acknowledges and agrees to pay City a portion of its administrative costs for preparing and processing this Agreement in the amount of Three Hundred Dollars (\$300), which amount may

be part of the closing costs and shall be paid to City at Owner's close of escrow for purchase of the Property.

8.21 Recordation of Agreement. Immediately following the Effective Date, this Agreement, and pursuant to Health and Safety Code Section 33334.3(f)(3), the Notice of Affordability Restrictions on Transfer of Property, in the form attached hereto as Exhibit H, shall be recorded against the Property in the Official Records of Alameda County.

8.22 Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference:

- Exhibit A: Property Description
- Exhibit B: Notice of Intent to Transfer
- Exhibit C: Notice of Intent to Sell
- Exhibit D: Notice of Extraordinary Sale
- Exhibit E: City Note
- Exhibit F: City Deed of Trust
- Exhibit G: Disclosure, Acknowledgment and Assumption Agreement
- Exhibit H: Notice of Affordability Restrictions on Transfer of Property

IN WITNESS THEREOF, the parties have executed this Agreement as of the year and date first written above.

CITY:

OWNER(S):

CITY OF ALAMEDA, a public body
corporate and politic

[Signature must be notarized]

By: _____
City Manager
[Signature must be notarized]

[Signature must be notarized]

RECOMMENDED FOR APPROVAL:

Executive Director
Housing Authority of the City of Alameda

APPROVED AS TO FORM:

City Attorney

EXHIBIT A
Property Description

EXHIBIT B

NOTICE OF INTENT TO TRANSFER

Date _____

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

The undersigned _____, owner of that certain real property located in Alameda, California, commonly known as _____ [insert address] _____, (the "Property") hereby notifies you of its intent to Transfer in compliance with Section 3.2 of the Affordability, Restrictions on Resale and Option to Purchase Agreement (the "Agreement"). The reason or circumstances relating to such transfer are as follows: _____

_____. Any additional information regarding the proposed transferee will be provided to you immediately upon request. The undersigned acknowledges that all applicable time periods under the Agreement commence only upon City's receipt of this notice. The undersigned further acknowledges and agrees that any such transfer is subject to the provisions of the Agreement.

Owner

EXHIBIT C

NOTICE OF INTENT TO SELL

Date _____

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

The undersigned _____, owner of that certain real property located in Alameda, California, commonly known as _____ [insert address] _____, (the "Property") hereby notifies you of its intent to Sell the Property in compliance with Section 4.1 of the Affordability, Restrictions on Resale and Option to Purchase Agreement (the "Agreement").

The undersigned acknowledges that all applicable time periods under the Agreement commence only upon City's receipt of this notice and that terms not defined in this Notice shall have the meaning given in the Agreement.

A. The following information is provided to the City pursuant to Section 4.1 of the Agreement:

1. Address of Property: _____
2. Date Owner purchased Property: _____
3. Purchase Price paid by Owner when Property was purchased: _____
4. Date Owner intends to vacate Property: _____
5. Date Property will be placed on market: _____
6. Name and phone number of person for Authority to contact to schedule inspection: _____ and _____
(name) (phone number)

B. The following documents are attached to this Notice:

1. Copy of HUD-1 Settlement Statement from Owner's purchase of the Property

2. If the Owner believes the Property is in good condition with no deferred maintenance and no deduction for repairs will be necessary, check box below:

Yes, I believe the Property is in good condition and that no deduction for repairs will be necessary pursuant to Section 4.3 of the Agreement. I hereby authorize the Authority or its designee to enter and inspect the Property to verify its condition.

3. If the Owner has made Eligible Capital Improvements and wants such improvements included in the calculation of the Eligible Buyer Purchase Price for the Property pursuant to Section 4.4, check the box below.

Yes, include my Eligible Capital Improvements in the price calculation. I am attaching a copy of the Authority letter approving these improvements and documentation of costs incurred.

C. I have not yet listed the Property for sale with a multiple listing service, or contacted a real estate broker or financial institution. I agree to prepare the Property for sale by:

1. obtaining a pest control report within thirty (30) days of the date of this Notice,
2. repairing all damage noted in the pest report within the sooner of: (i) sixty (60) days from the date of this Notice, or (ii) two (2) weeks prior to close of escrow or the transfer of the Property,
3. allowing the Authority or its designee to inspect the Property within thirty (30) days of this Notice,
4. if requested by the Authority following the Authority's inspection, I will obtain a home inspection report from a licensed home inspector,
5. maintaining utility connections until the Property is transferred, and
6. permitting a walk through by the Authority prior to close of escrow or the transfer.

This Owner's Notice of Intent to Transfer is certified by Owner to be true and correct and is signed on _____ [insert date] under penalty of perjury.

Owner

EXHIBIT D

NOTICE OF EXTRAORDINARY SALE

Date: _____

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

The undersigned _____, ("Owner") is the owner of that certain real property located in Alameda, California, commonly known as _____ [insert address] _____, ("Property"). On _____, 20____, the Owner provided the City with written notice of its intent to sell the Property. The City has failed to identify an Eligible Buyer in accordance with Section 4.1 of the Affordability, Restrictions on Resale and Option to Purchase Agreement ("Agreement") and the City has failed to exercise the City's Purchase Option pursuant to Article 5, or failed to close escrow within the time set forth in Section 5.4 of the Agreement. Accordingly, the Owner hereby notifies City of its intent to make an Extraordinary Sale of the Property in accordance with Section 6.2 of the Agreement. The Owner hereby requests that City calculate the Market Value of the Property based on an Appraisal in accordance with Article 6 of the Agreement. The Owner hereby acknowledges that the City shall retain the City's Purchase Option until the time that the Owner has accepted in writing an offer to purchase the Property from a buyer, and that all applicable time periods for an Extraordinary Sale under the Agreement commence only upon the City's receipt of this Notice.

Owner

EXHIBIT E
FORM OF CITY NOTE
(Shared Appreciation Loan)

Differential Amount

Alameda, California

FOR VALUE RECEIVED, _____ ("Maker") promises to pay the CITY OF ALAMEDA, a California charter city ("City") the Differential Amount, as defined and calculated under Section 3 below and payable under Section 5 below, plus a contingent deferred amount equal to the City's Shared Appreciation as calculated and payable under Section 6, below, any additional amounts due and owing pursuant to Sections 8 and 10, below, any additional amounts due and owing pursuant to the Deed of Trust (as defined below), and any additional amounts due and owing as permitted by law.

1. PROPERTY. The "Property" is that certain real property commonly known as _____ [insert address] _____, Alameda, California, and more particularly described on Exhibit A, attached hereto and incorporated herein, which together with all improvements located thereon is referred to in this promissory note ("Note") as the "Property." The Property is part of a residential development known as " _____ [insert housing project name] _____ " ("Project").

2. AFFORDABILITY COVENANTS, RESALE RESTRICTIONS. The Property, along with certain other residential lots in the Project, is part of an affordable housing program designed to create, preserve, maintain and protect housing for persons of low and moderate income as described in and pursuant to an Affordable Housing Agreement between the City and _____ ("Developer") dated _____ ("Developer Affordable Housing Agreement"). Under the Developer Affordable Housing Agreement, the Developer was required to sell the Property to Maker at an Affordable Housing Cost, as defined below, subject to the covenants, conditions, restrictions and option to purchase set forth herein. Maker assumes title to the Property subject to that certain Affordability, Restrictions on Resale and Option to Purchase Agreement, between the Maker and City recorded on _____, 20__, as Document No. _____, in the Official Records of Alameda County, California ("Resale Restrictions"). Capitalized terms used herein and not defined in this Note shall have the meanings set forth in the Resale Restrictions.

3. BASIS OF PRINCIPAL AMOUNT OF NOTE. In the event that this Note is due and payable pursuant to Section 5 below, the Maker shall pay the City an amount equal to the difference between the fair market value of the Property, as established based on an Appraisal of the Property at the time the Property was acquired by the Maker, and the Initial Price (the "Differential Amount"). The Maker acknowledges and agrees that the Differential Amount represents the amount by which the purchase price of the Property has been reduced as a result of the City's covenants, conditions and restrictions placed on the Property as set forth in the Developer Affordable Housing Agreement, and which amount is reflected above as the Differential Amount of this Note.

4. DEED OF TRUST. Payment of this Note is secured by a deed of trust, assignment of rents, security agreement and fixture filing (the "Deed of Trust") from the Maker in favor of the City, which Deed of Trust is dated concurrently herewith and recorded against the Property.

5. REPAYMENT OF NOTE. There shall be no payments due under this Note, unless payments are otherwise due pursuant to provisions of Sections 5 (c) and (d) of this Note. All amounts due under this Note shall be assumed, repaid and/or cancelled, as follows:

a. In the event of a Permitted Transfer pursuant to Section 2.2 and Article 3 of the Resale Restrictions, the Transferee shall assume the rights and obligations of Maker under this Note and the Deed of Trust securing this Note.

b. In the event of a Permitted Sale to an Eligible Buyer pursuant to Section 2.3 and Article 4 of the Resale Restrictions, or upon acquisition of the Property by the City pursuant to the City's Purchase Option provided in Section 2.3 and Article 5 of the Resale Restrictions, then this Note, and all amounts due and owing to the City hereunder, shall be cancelled. In such event, the City shall execute and deliver for the benefit of Maker any documents necessary to effectuate such cancellation and release of the lien under this Note and the Deed of Trust.

c. In the event of an Extraordinary Sale to a non-Eligible Buyer pursuant to and in compliance with the requirements of Section 2.3 and Article 6 of the Resale Restrictions, Maker shall pay to the City, through escrow and from the proceeds of such sale, all amounts owing under this Note and Deed of Trust, including the initial Differential Amount of this Note and any other amounts owed pursuant to this Note, except for the contingent deferred amount of the City's Shared Appreciation which shall be paid to the City in accordance with Section 6 of this Note and Section 6.4 of the Resale Restrictions. Upon receipt of such payments, the City shall execute and deliver any documents necessary to effectuate such cancellation and release of the lien under this Note and the Deed of Trust.

d. In the event of a default by Maker under this Note or under the Deed of Trust, all amounts owing under this Note and Deed of Trust, including the initial Differential Amount and any other amounts owed pursuant to this Note, except for the contingent deferred amount of the City's Shared Appreciation, shall be due and payable in full, at City's option, without notice or demand. The City's Shared Appreciation shall be due and payable to the City in accordance with Section 6 of this Note and Section 6.4 of the Resale Restrictions. If Maker defaults in the performance or observance of any agreement or obligation of Maker set forth in this Note or the Deed of Trust, and if such default remains uncured for a period of 30 days after written notice has been given by the City (or if such cure reasonably takes longer than 30 days, if such cure has not been commenced within the 30-day period and thereafter diligently prosecuted to completion), then the City may declare an "Event of Default" has occurred, and City may exercise any or all of its rights or remedies under this Note and the Deed of Trust.

6. CITY'S SHARED APPRECIATION. In the event of an Extraordinary Sale pursuant to and in compliance with the requirements of Section 2.3 and Article 6 of the Resale Restrictions or in the event of a default by Maker under this Note or under the Deed of Trust, City shall receive, and Owner shall to pay to City in addition to the unpaid Differential Amount of this Note, a share of the appreciation ("City's Shared Appreciation") in the value of the Property between the time the Property was acquired by Maker and the Extraordinary Sale in accordance with California Civil Code Section 1917.006 and as provided for herein. The distribution of any appreciation in the value of the Property to City shall be determined based on the difference between the Appraisal prepared at the time the Property was acquired by Maker, and the Extraordinary Sale Price. The distribution of any appreciation in value shall be shared by Maker and the City in proportion to the amount of initial equity contributed by each party as follows.

- a. The City's initial equity contribution shall equal the Differential Amount of this Note, as calculated in accordance with Section 3 of this Note.
- b. Maker's initial equity contribution shall be equal to the aggregate amount of the following:
 - i. amount of the down payment paid by Maker at the time Maker acquired the Property; and
 - ii. escrow fees, transfer taxes, recording fees, brokerage commissions and similar costs of acquisition actually paid by Maker.

[Example of Maker's initial equity: If, (i) at the time Maker acquired the Property, the Maker paid a down payment equal to \$18,000 and, escrow fees, transfer taxes, recording fees, brokerage commissions and similar costs of acquisition actually paid by Maker equal \$2,000 resulting in a total Maker equity amount of \$20,000, and (ii) the Differential Amount of this Note were \$80,000, then (iii) the Owner would receive 20% of any remaining appreciation value available for distribution, and the City would receive 80% of any remaining appreciation value available for distribution at the time of an Extraordinary Sale.]

- c. The City's right to receive the City's Shared Appreciation shall be subject to the Maker's superior right to receive repayment of the following items as described in California Civil Code Section 1917.006(a)(3) and the requirements of Section 6(e) below:
 - i. amount of the down payment paid by Maker at the time Maker acquired the Property;
 - ii. amount of installment payments of mortgage principal repaid to a Senior Lender by Maker prior to the Extraordinary Sale;
 - iii. amounts of escrow fees, transfer taxes, recording fees, brokerage commissions and similar costs of acquisition actually paid by Maker;
 - iv. money paid by Maker for Capital Improvements to the Property; and
 - v. amount equal to the "legal rate of interest" (as defined herein in Section 6(d) below) on cash payments by Maker as identified in (i) through (iv) above.

d. Because there is no generally accepted definition of "legal rate of interest," as the term is used in Civil Code Section 1917.006(a)(3), Maker and City stipulate and agree that the "legal rate of interest" for purposes of this Note shall be calculated using the annual compound interest rate for the Long-Term Applicable Federal Rate (AFR) as defined in 26 U.S.C. Section 1274(d) and as is issued by the United States Internal Revenue Service monthly, as then in effect at the time this Note is executed. Based on the foregoing, the legal rate of interest for purposes of this Note is stipulated to be _____ percent (_____ %) per annum, compounded annually.

e. Prior to payment to Maker of the amounts set forth in Section 6(c) of this Note, Maker shall submit evidence not less than 30 days prior to the first scheduled date for the close of escrow or foreclosure sale to allow the City to verify the evidence provided by Maker to the reasonable satisfaction of the City of the Maker's initial equity as set forth in Section 6(b) and Maker's actual payments as set forth in Section 6(c). To the extent such evidence is not timely submitted by Maker to the reasonable satisfaction of City, such costs shall be deemed waived by the Maker and Maker shall not be entitled to have such costs, as applicable, included as part of Maker's initial equity under Section 6(b) or to receive payment of the sums set forth in Section 6(c) herein. City acknowledges that such evidence may include, by way of example and not limitation, Owner's original closing statement, bank statements, copies of cancelled checks, and invoices from contractors.

7. PAYMENTS. Payments shall be made payable to the City of Alameda, 2263 Santa Clara Avenue, Alameda, California 94501, Attention: City Manager (*or Authority Executive Director*). The place of payment may be changed from time to time as City may from time to time designate in writing. Payments shall be made in lawful money of the United States of America.

8. COLLECTION. This Note is secured by a Deed of Trust recorded against the Property. Maker agrees to pay all collection and enforcement costs, expenses and attorneys' fees paid or incurred by the City or adjudged by a Court in any litigation or controversy connected with this Note, or security for it, including but not limited to actions for declaratory relief that the City is required to prosecute or defend and actions for relief based on rescission, or actions to cancel this Note that the City is required to defend.

9. SHARED APPRECIATION LOAN. This Note evidences a "Shared Appreciation Loan" as defined in California Civil Code Section 1917.006 and the parties therefore intend this Note to be exempt from any usury limitations. Notwithstanding anything to the contrary contained herein, to the extent the City's Shared Appreciation is deemed interest (other than as permitted under California Civil Code Section 1917.006) and therefore subject to limitation by usury law, that portion of interest in excess of applicable usury limitation shall be forgiven.

10. COSTS. Maker agrees to pay immediately upon demand all costs and expenses of City including reasonable attorneys' fees:

- a. If after default and the expiration of all notice and cure periods this Note is placed in the hands of an attorney or attorneys for collection,
- b. If after a default hereunder or under the Deed of Trust and after the expiration of all notice and cure periods City finds it necessary or desirable to secure the services or advice of one or more attorneys with regard to collection of this Note against Maker, any guarantor or any other party liable therefor or to the protection of its rights under this Note or the Deed of Trust, or
- c. If City seeks to have the Property abandoned by or reclaimed from any estate in bankruptcy, or attempts to have any stay or injunction prohibiting the enforcement or collection of this Note or prohibiting the enforcement of the Deed of Trust or any other agreement evidencing or securing this Note lifted by any bankruptcy or other court.

If City shall be made a party to or shall reasonably intervene in any action or proceeding, whether in court or before any governmental entity, affecting the Property or the title thereto or the interest of the City under the Deed of Trust, including, without limitation, any form of condemnation or eminent domain proceeding, City shall be reimbursed by Maker immediately upon demand for all costs, charges and reasonable attorneys' fees incurred by City in any such case, and the same shall be secured by the Deed of Trust as a further charge and lien upon the Property.

11. MISCELLANEOUS. This Note, the Deed of Trust, the Resale Restrictions, and any other documents executed by the parties relating thereto, embody the entire agreement between the City and Maker. The obligations of the Maker hereunder shall run with the land and be enforceable against Maker and the successors and assigns of Maker approved in writing by the City. Except in the event of a Permitted Transfer pursuant to Section 2.2 and Article 3 of the Resale Restrictions, Maker shall not assign or transfer any of its interest and obligations under this Note without the express prior written consent of City. The City, at its sole option, may negotiate transfer or assumption of this Note. This Note may not be modified or amended except by an instrument in writing executed by the parties sought to be bound thereby. This Note shall be governed by and construed in accordance with the laws of the State of California. If any provision of this Note 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.

MAKER:

Address:

Address:

EXHIBIT F

FORM OF CITY DEED OF TRUST

The City Deed of Trust shall be a standard title company deed of trust with a rider in the form set forth below.

RIDER TO CITY DEED OF TRUST

This Rider to Deed of Trust is executed by _____
("Trustor") for the benefit of the CITY OF ALAMEDA ("Beneficiary").

1. This Deed of Trust also secures the obligations of the Trustor under that certain Affordability, Restrictions on Resale and Option to Purchase Agreement dated _____ and recorded on _____ as Document No. _____ in the Official Records of Alameda County, California ("Agreement"), against the property encumbered by this Deed of Trust. A default under the Agreement shall be considered a default under this Deed of Trust.

2. This Deed of Trust secures a Shared Appreciation Loan and Note.

Trustor

EXHIBIT G

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN 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*

DISCLOSURE, ACKNOWLEDGMENT
AND
ASSUMPTION AGREEMENT

THIS AGREEMENT is made by and among _____ ("Seller" or "Transferor"), _____ ("Buyer" or "Transferee") and the CITY OF ALAMEDA ("City").

WHEREAS, Seller is the current owner of the real property commonly known as [insert street address], Alameda, California, more particularly described on Exhibit A, which together with all improvements located thereon is referred to in this Agreement as the "Property"; and

WHEREAS, Seller wishes to sell, transfer and convey the Property to the Buyer; and

WHEREAS, the Property is subject to affordability restrictions applicable to the Property as described in the Affordability, Restrictions on Resale and Option to Purchase Agreement, recorded on _____, 20__, as Document No. _____, in the Official Records of Alameda County, California (the "Resale Restrictions") which restricts the Property from being sold at its fair market value; and

WHEREAS, the Property is being sold to Buyer subject to a Shared Appreciation Loan that may result in the Buyer being obligated to pay a contingent deferred amount as discussed below in Section 2; and

WHEREAS, the Buyer is purchasing, or otherwise acquiring, the Property and will assume the obligations of an Owner under the Resale Restrictions; and

WHEREAS, capitalized terms used herein and not defined in this Agreement shall have the meanings set forth in the Resale Restrictions.

NOW THEREFORE, the parties hereto agree as follows:

1. THE BUYER HEREBY ACKNOWLEDGES AND AGREES TO THE FOLLOWING:

a. THAT THE PROPERTY IS SUBJECT TO THE RESALE RESTRICTIONS AND, BUYER AGREES AS AN OWNER TO BE BOUND BY ALL OF THE CONDITIONS AND COVENANTS CONTAINED IN THE RESALE RESTRICTIONS. THE PROPERTY IS PART OF AN AFFORDABLE HOUSING PROGRAM OPERATED BY THE CITY AND DESIGNED TO CREATE, PRESERVE, MAINTAIN AND PROTECT HOUSING AFFORDABLE TO PERSONS OF LOW AND MODERATE INCOME. BUYER ACKNOWLEDGES THAT IT HAS RECEIVED A COPY OF THE RESALE RESTRICTIONS AND UNDERSTANDS AND ACKNOWLEDGES THAT ITS RIGHT TO SELL THE PROPERTY AT FAIR MARKET VALUE IS VERY LIMITED, AND THAT, IN CERTAIN INSTANCES, THE CITY WILL HAVE THE OPTION TO PURCHASE THE PROPERTY FROM BUYER. THESE RESTRICTIONS WILL BE IN EFFECT UNTIL _____. IF BUYER SELLS THE PROPERTY IN VIOLATION OF THE RESALE RESTRICTIONS, THE CITY IS ENTITLED TO EXERCISE THE CITY'S PURCHASE OPTION UNDER THE RESALE RESTRICTIONS.

b. THAT BUYER SHALL OCCUPY THE PROPERTY AS ITS PRINCIPAL RESIDENCE FOR THE DURATION OF ITS OWNERSHIP.

c. THAT THE PROPERTY WILL NOT NECESSARILY APPRECIATE IN VALUE DURING THE DURATION OF ITS OWNERSHIP, AND THAT THE RESALE PRICE (THE ELIGIBLE BUYER PURCHASE PRICE AS DEFINED IN THE RESALE RESTRICTIONS) MAY BE LESS THAN WHAT BUYER ORIGINALLY PAID FOR THE PROPERTY AND THUS WHEN BUYER SELLS THE PROPERTY IT MAY RECEIVE LESS THAN IT PAID FOR THE PROPERTY.

2. City Note and City Deed of Trust.

a. If Buyer is an Eligible Buyer, as provided in Section 4.1 of the Resale Restrictions, the Buyer has concurrently with this Agreement executed a new City Note and a new City Deed of Trust in favor of the City, as provided in Section 4.4 of the Resale Restrictions. The City Note is in the initial principal amount equal to the difference between the market value of the Property and the Eligible Buyer Purchase Price being paid for the Property (defined as the Differential Amount in the City Note). The new City Note also provides for payment to the City of the City's Shared Appreciation in the event of an Extraordinary Sale under the Resale Restrictions; or

b. If Buyer is taking title through a Permitted Transfer, as provided in Section 2.2 and Article 3 of the Resale Restrictions, then Buyer hereby assumes the City Note and the City Deed of Trust as provided for under Section 5(a) of the City Note and Buyer agrees to be bound by and subject to the provisions of the Resale Restrictions, the City Note and the City Deed of Trust.

3. The City hereby consents to the transfer of the Property to the Buyer as an Eligible Buyer or to the Transferee under a Permitted Transfer within the meaning of the Resale Restrictions.

4. All questions with respect to the interpretation of this Agreement, and the rights and liabilities of the parties hereto, shall be governed by the laws of the State of California.

5. This Agreement shall inure to the benefit of, and shall be binding upon, the assigns, successors in interest, personal representatives, estates, heirs and legatees of each of the parties hereto.

6. Buyer hereby grants to City an irrevocable power of attorney coupled with an interest to act on Buyer's behalf to execute, acknowledge and deliver any and all documents relating to the City's Purchase Option under Article 5 of the Resale Restrictions.

7. This Agreement and the City's lien under the City Note and City Deed of Trust shall be subordinate to that certain deed of trust in favor of _____ recorded concurrently herewith, subject to the conditions set forth in Article 7 of the Resale Restrictions.

Executed on _____, 20__, at Alameda, California.

SELLER:

Dated: _____

Print name: _____

BUYER:

Dated: _____

Print name: _____

-AND-

CITY:

CITY OF ALAMEDA

Dated: _____

By: _____

Print name: _____

Its: City Manager

ATTEST:

By: _____

NOTARY ACKNOWLEDGMENTS

[TO BE INSERTED]

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

All that certain real property located in the City of Alameda, County of Alameda and more particularly described as Lot ___ as shown on that certain final subdivision map entitled " _____ " recorded on _____, 20__ as Document No. _____ in the Official Records of Alameda County.

EXHIBIT H

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") that 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: Affordability, Restrictions on Resale and Option to Purchase Agreement (referred to in this Notice as the "Affordable Housing Restrictions").

Parties to Affordable Housing Restrictions:

City of Alameda ("City") and
_____ ("Owner").

The Affordable Housing Restrictions are recorded: (check one)

- as Document No. _____, official records of Alameda County, on _____; or
- concurrently with this Notice, as Document No. _____, 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 Property is restricted for resale to a low- or moderate-income household at a purchase price affordable to a low- or moderate-income household, as applicable.
- The Owner must occupy the Property as the Owner's principal residence, unless approved in writing by the Authority or the City.
- The Owner must give notice to the Authority and the City before resale of the Property.
- The Owner has granted the City an option to purchase the Property upon resale or default.

- The Owner's rights to pledge the Property as security for a debt are limited.
- 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:
_____.
- 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: _____ years, commencing on _____ and terminating on _____.

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__

By: _____
City Manager

OWNER:

Dated: _____, 20__

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 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.

Name: _____
Notary Public

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 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.

Name: _____
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

[To Be Inserted]

Attachment D

Memorandum of City Option

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

(Space Above This Line For Recorder's Use)

**MEMORANDUM OF
PURCHASE OPTION**

This Memorandum of Purchase Option (this "Memorandum") is entered into as of _____, 20____, by and between Alameda Point Partners LLC, a Delaware limited liability company (the "Developer"), and the City of Alameda, a California charter City (the "City"), with respect to certain rights provided under that certain Affordable Housing Implementation Plan (the "Housing Implementation Plan") dated as of _____, 2015, appended as Exhibit M of that certain Disposition, Development Agreement, dated as of _____, 2015, as may be amended (the "DDA").

This Memorandum confirms that pursuant to Section 3.2(c)(7) of the Affordable Housing Implementation Plan, the Developer has granted to the City an option to purchase the property owned by the Developer, located in the City of Alameda, County of Alameda, California, more particularly described in Exhibit A attached hereto (the "Property").

This Memorandum shall incorporate all of the terms and provisions stated in the Affordable Housing Implementation Plan as though fully set forth herein.

This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the provisions of the Affordable Housing Implementation Plan.

This Memorandum may be executed in any number of counterparts, all of which shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the date first written above.

CITY:

CITY OF ALAMEDA, a California charter city

By: _____

Elizabeth D. Warmerdam, Interim City Manager

Approved as to Form:

Farimah F. Brown
Senior Assistant City Attorney

Andrico Q. Penick
Assistant City Attorney

DEVELOPER:

ALAMEDA POINT PARTNERS, LLC,
a Delaware limited liability company

By: Alameda Point Properties, LLC,
a California limited liability company,
its managing member

By: NCCH 100 Alameda, L.P.,
a Delaware limited partnership,
its managing member

By: Maple Multi-Family Development,
L.L.C., a Texas limited liability
company,
its General Partner

By: _____

Name: _____

Title: _____

[SIGNATURES MUST BE NOTARIZED]

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

**[NOTE: Legal Descriptions To Be Inserted At The Time Option Is Recorded Against
Parcels are conveyed pursuant to terms of DDA and Housing Implementation Plan.]**

Attachment E

Legal Description of Affordable Housing Site



ENGINEERS
SURVEYORS
PLANNERS

DESCRIPTION FOR:
ALAMEDA POINT SITE A
AFFORDABLE HOUSING PARCEL

All that real property situate in the City of Alameda, Alameda County, California, described as follows:

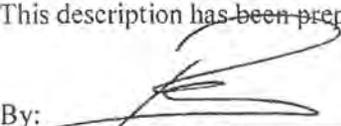
Commencing at a U.S.C & G.S. brass disk, labeled "MAIN-ATL", as said disk is shown on Record of Survey "RS No. 2565", recorded in Book 39 of Maps, at Page 88, Alameda County records, a U.S.C & G.S. brass disk, labeled "MAIN" bears North $00^{\circ}31'07''$ East 1179.82 feet;

Thence North $84^{\circ}38'27''$ West 734.21 feet to the **Point of Beginning**; Thence North $85^{\circ}08'27''$ West 210.00 feet; Thence North $4^{\circ}51'33''$ East 360.00 feet; Thence South $85^{\circ}08'27''$ East 210.00 feet; Thence South $4^{\circ}51'33''$ West 360.00 feet to the **Point of Beginning**.

Containing 75,600 square feet, 1.74 acres, more or less

This description is not to be used for any purpose that would violate the California Subdivision Map Act

This description has been prepared by me or under my supervision for BKF Engineers

By: 

Barry T. Williams P.L.S. No. 6711
License Expires: 06/30/2016

Dated: 6-2-15

