

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

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

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

AFFORDABLE HOUSING AGREEMENT

DEL MONTE WAREHOUSE PROJECT

(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 _____, 2015 ("Effective Date"), by and among the CITY OF ALAMEDA, a municipal corporation ("City") and TL Partners, I, L.P., a California Limited Partnership ("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"). The Project is located in the City of Alameda and is, therefore, subject to the City Inclusionary Policy.

C. The Property is the site of a 380-unit residential development ("Project") to be developed by Developer in accordance with (a) City Council Ordinance No. 3115 approving Developer's Master Plan and Density Bonus Application, allowing for development of a mixed use project on the Del Monte Property comprised of up to 380 housing units (including fifty-five (55) affordable units) and 30,000 square feet of commercial space (the "Master Plan"), on file with the Planning and Building Department, as depicted on the approved site plans for the Project attached as Exhibit B; and (b) the City adopted Ordinance No. 3116, approving a Development Agreement with respect to the Del Monte Warehouse project, which Development Agreement has an effective date of January 15, 2015 (the "Development Agreement"). City of Alameda Planning Board Resolution Approving Development Plan and Design Review Applications for the Rehabilitation and Reuse of the Former Del Monte Warehouse Building Located at 1501 Buena

Vista Avenue, adopted on September 22, 2014, includes certain conditions of approval, including Condition of Approval No. 11, which requires that the Developer reserve at least 55 units in the Project for sale to moderate-, low- and very low-income households in accordance with the City Inclusionary Policy (the “Project Inclusionary Requirement”).

D. 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.

E. Developer and City recognize that the units to be developed for Low Income Households and Very Low Income Households may be developed separately and reconveyed from this Agreement in accordance with Section 2.3 below.

F. 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. 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 fifty-five (55) affordable units that are to be sold or rented 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 D.

F. “City” means the City of Alameda, a municipal corporation.

G. “City Inclusionary Policy” is defined in Recital B.

H. “Developer” means TL Partners, I, L.P., a California limited partnership.

- I. “Development Agreement” is defined in Recital C.
- 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. “Master Plan” is defined in Recital C.
- P. “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.
- Q. “Owner-Occupied Monthly Housing Payment” means the sum equal to the principal, interest, property taxes, property maintenance and repairs, reasonable allowance for utilities not including telephone, 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).
- R. “Phasing Schedule” is defined in Section 2.1.D.
- S. “Property” is defined in Recital A.
- T. “Project Inclusionary Requirement” is defined in Recital C.
- U. “Project” is defined in Recital C.
- V. “Project Units” means the Market Rate Units and the Affordable Units.
- W. “Resale Restriction” is defined in Section 2.1.E.4.
- X. “Term” is defined in Section 4.3.
- Y. “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. Subject to Section 2.3, Developer shall construct, or cause to be constructed, fifty-five (55) Affordable Units in the Project, which will be sold or rented to and occupied by Eligible Households, as follows: twenty-four (24) of the Affordable Units shall be sold or rented to and occupied by Moderate Income Households, fourteen (14) of the Affordable Units shall be sold or rented to and occupied by Low Income Households, and seventeen (17) of the Affordable Units shall be sold or rented 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 Master 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 attached as Exhibit C and incorporated herein (“Phasing Schedule”); provided that if the Low Income Units (as defined in Section 2.3 below) are developed in accordance with Section 2.3 hereof, such phasing may be revised upon the agreement of City, the Authority and Developer.

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 or for rent in accordance with this Article 2 shall be as required by Section 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 or rented to and be occupied by Eligible Households, as specified in subsection 2.1.A. Each Affordable Unit shall only be sold or rented to and be occupied by an Eligible Household at a cost that does not exceed the Affordable Sales Price or rental cost for such a household, subject to prior approval of the City as further described below.

2. For units to be sold, 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”), and each such sale shall comply with the following:

(a) 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.

(b) 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.

(c) 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.

(d) 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, SUPPLIED BY AND APPROVED BY CITY, AND FOR THE BENEFIT OF CITY OR THE AUTHORITY, AS ELECTED BY THE CITY. UPON RECORDATION OF THE RESALE RESTRICTION: (A) THIS AGREEMENT SHALL HAVE NO FURTHER FORCE OR EFFECT AS AN ENCUMBRANCE AGAINST THE AFFORDABLE UNIT ENCUMBERED BY THE RESALE RESTRICTION; AND (B) DEVELOPER SHALL HAVE NO FURTHER OBLIGATIONS OR LIABILITIES WITH RESPECT TO THE AFFORDABLE UNIT ENCUMBERED BY THE RESALE RESTRICTION, 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.

3. For rental units, the maximum total rents are set based on the appropriate household size for a given unit and specific income thresholds identified by the applicable subsidy program. If a rental unit does not participate in a subsidized program, the maximum rents may not exceed the current rents published by the State Department of Housing and Community Development for the appropriate income levels and bedroom size of the unit (Moderate-income housing cost based on 110% AMI, Low-income housing cost based on 80% AMI and Very Low Income housing cost based on 50% AMI). All gross rents must be adjusted by the current Utility Allowance published by the Housing Authority.

2.2 Maintenance and Management.

A. During the Term, the Property and the Project shall be maintained by a Homeowners' Association and/or a licensed management company 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.

B. Upon the sale and close of escrow on each for-sale 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. Notwithstanding the foregoing, the parties hereby agree and acknowledge that the Affordable Units for Low Income Households and Very Low Income Households shall be located on a separate parcel and shall not be subject to the CC&Rs.

C. The owner(s) and tenant(s) of the Affordable Units for Low Income Households and Very Low Income Households shall be subject to the Transportation Demand Management Plan for the Master Plan, approved by City of Alameda Planning Board on November 10, 2014 by Resolution PB-14-18 (the "TDM Plan"), provided that such owner(s) or tenant(s) shall not be required to make contributions or payments under the TDM Plan.

2.3 Separate Development of Low Income and Very Low Income Units. The City hereby acknowledges that Developer intends to satisfy its obligations hereunder as to the fourteen (14) Affordable Units to be sold or rented to and occupied by Low Income Households and the seventeen (17) Affordable Units to be sold or rented to and occupied by Very Low Income Households (collectively, the "Low Income Units") by causing the Authority to develop such properties through a tax credit partnership in which the general partner is an affiliate of the Authority. The Low Income Units are intended to be constructed on separate legal parcels from

the other Project Units. In the event Developer and the Authority agree to such development of the Affordable Units in compliance herewith, (a) the Affordable Housing Agreement attached hereto as Exhibit F shall be recorded against those legal parcels of the Property on which the Low Income Units will be constructed (the “Low Income Land”); (b) the Low Income Land shall be released from this Agreement; and (c) the Low Income Land shall be released from the CC&Rs. Developer hereby agrees that the tenants of the Low Income Units shall have the right to use any gathering areas that may be created around the perimeter of the Del Monte Warehouse building.

2.4 Authority Option. The City and the Developer hereby agree that the Authority shall have the right to purchase any one or more of the twenty-four (24) of the Affordable Units to be sold or rented to and occupied by Moderate Income Households at a purchase price equal to the Affordable Sales Price, as calculated pursuant to this Agreement. Effective upon the date that the Authority purchases such Affordable Unit intended for Moderate Income Households, the Developer shall be deemed to have completed its obligations as to such Affordable Unit, and such Affordable Unit shall be released from this Agreement in accordance with Section 2.1.E. The Authority is a third-party beneficiary of this Section 2.4.

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. (3) households containing two or more individuals (one bedroom units), three or more individuals (two bedroom units) or four or more individuals (three or four bedroom units). For persons and households who match more than one of these criteria, preference points shall be aggregated.

3.2 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 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.

3.3 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 Project Inclusionary Requirement. 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 the City 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:

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

With a copy to:

Alameda City Attorney
2263 Santa Clara Avenue, Room 280
Alameda, CA 94501
Attention: City Attorney

Carle, Mackie, Power & Ross LLP
100 B Street, Suite 400
Santa Rosa, CA 94952
Attention: Henry Loh II

Developer: TL Partners I, L.P.
12667 Alcosta Blvd., Suite 170
San Ramon, CA 95583
Attention: James L. Meek

With a copy to:

Buchalter Nemer, A Professional Corporation
55 Second Street, Suite 1700
San Francisco, CA 94105-3493
Attention: Alicia Guerra

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 enforceable by City and its successors and assigns, for a period of fifty-nine (59) years from the later of (a) initial occupancy of the Project, or (b) issuance of a certificate of occupancy for the Affordable Units ("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. or the Development Agreement, 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 Authority Executive Director, or his/her designee. The approval of the Authority Executive Director, or his/her 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 Priority of this Agreement. 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 form and substance approved by the City 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 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.

4.17 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.

4.18 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.

4.19 Authority as Agent for the City. The parties hereby acknowledge that the Authority may act as agent for the City for the purposes of this Agreement until such time as Developer receives written notice from the City or the Authority terminating such agency.

[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

Vanessa Cooper
Executive Director, Housing Authority

[Signature must be notarized]
Elizabeth D. Warmerdam,
Interim City Manager

APPROVED AS TO FORM:

Farimah Brown,
Senior Assistant City Attorney

DEVELOPER:

DEVELOPER:

TL Partners I, L.P.,
a California limited partnership

By: TL Management, Inc., a California
corporation, its General Partner

By: _____
[Signature must be notarized]
J. Timothy Lewis, President

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.

[illegible]

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

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

WITNESS my hand and official seal.

Signature_____

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

[illegible]

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

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

WITNESS my hand and official seal.

Signature_____

EXHIBIT A

Legal Description of Property
[To be inserted]

EXHIBIT B

Site Plans for Project
[To be inserted]

EXHIBIT C

Phasing Schedule
[To be inserted]

EXHIBIT D



INCLUSIONARY HOUSING PROGRAM BUYER SELECTION GUIDELINES

The City of Alameda Inclusionary Housing Program provides below market rate (BMR) homes for sale or rent at affordable cost to qualified purchasers. Developers of new residential projects are required to provide BMR homes concurrently with market rate homes in order to fulfill the developer's inclusionary housing obligation. BMR units will be made available to very low-, low- and moderate-income households. For for-sale BMR units, it is the developer's responsibility to select buyers who meet the qualification parameters of the Inclusionary Housing Program and to submit an application for each buyer to the City of Alameda, showing both that the buyer's income falls within the allowable range for the program, that the buyer's total monthly housing costs meet program requirements and that the applicant may not have owned a home within the past three years from the date of application. The City of Alameda makes the final determination as to whether the submitted applicant is a qualified purchaser. The Inclusionary Housing Program may be subject to administrative review and revision periodically in response to updated information.

ELIGIBILITY DETERMINATION

Applicants are determined to be qualified purchasers when their total household income falls within the applicable percentage of area median income, adjusted for household size, as defined by the current income limits for Oakland PMSA published by California HCD and the US Department of Housing and Urban Development (HUD). Income limits are subject to change. The following table identifies the HUD income categories with the corresponding Community Redevelopment Law (CRL) income categories and definitions. Information on current income limits is available from the City of Alameda.

% of Median Income	<30%	≤ 50%	≤80%	≤100%	≤120%
HUD Terminology	Extremely Low Income	Very Low Income	Low Income	Median Income	N/A
CRL Terminology	Extremely Low Income	Very Low Income	Lower Income	Median Income	Moderate or Middle Income
CRL Citation	Section 50106	Section 50105(a)	Section 50079.5(a)	Section 50093(c)	Section 50093(b)
CRL Definition	Extremely low income households means persons and families whose incomes do not exceed the qualifying limits for extremely low income families as established and amended from time to time by the Secretary of Housing and Urban Development as defined in Section 5.603(b) of Title 24 of the Code of Federal Regulations.	Very low income households means persons and families whose incomes do not exceed the qualifying limits for very low income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937.	Lower income households means persons and families whose incomes do not exceed the qualifying limits for low(er) income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937.	Persons and families of median income means persons and families whose income does not exceed the area median income, as adjusted by the department for family size in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937.	Persons and families of moderate income or middle income families means persons and families of low or moderate income whose income exceeds the income limit for lower income households.

HOUSEHOLD INCOME VERIFICATION

Developers must determine a household's gross income based on the anticipated annual income for the next twelve-month period. Developers should refer to California Code of Regulations, Title 25, Section 6914 for a definition of gross income. Income will include, but is not limited to:

- Gross earnings from all household members over the age of eighteen, including overtime and bonuses;
- Net income from operation of a business or profession;
- Interest and dividends;
- Periodic payments from social security, annuities, retirement funds, etc.;
- Payments in lieu of earnings;
- Public assistance;
- Periodic and determinable allowances such as alimony and child support;
- Pay of a member of the Armed Forces;
- For net assets in excess of \$5,000, actual asset income or 10% of the value, whichever is greater.

HOUSEHOLD SIZE VERIFICATION

BMR units are to be sold to households of appropriate size for the unit. Households must have at least as many members as number of bedrooms; a preference point will be applied for bedroom count plus one. The household may include:

- All people over the age of 18 who will reside in the home as their primary residence. (Income from these people will be counted in determining gross family income, as stated above.)
- All children for whom an adult household member has full or partial custody, as long as the child in a partial custody situation lives at least part-time in the home.
- Any child or adult claimed as a dependent who lives in the home.

AFFORDABLE MONTHLY HOUSING COST VERIFICATION

Developers must determine that buyers will pay an "affordable monthly housing cost" for the unit. The definition of affordable monthly housing cost varies by income level and by whether the unit is in a redevelopment area. In general, the affordable monthly housing cost is defined as a percentage of area median income adjusted for family size appropriate for the unit. The "family size appropriate for the unit" is a benchmark standard used only for affordable housing cost calculation purposes. The benchmark is defined as number of bedrooms plus one (e.g., a three person household for a two-bedroom unit). The following table summarizes the various affordable monthly housing cost definitions:

Category	Citywide	Extremely Low	Very Low	Lower	Moderate
CRL Citation	Section 30-16-3 of the Alameda Municipal Code	Section 50052.5(b)(1)	Section 50052.5(b)(2)	Section 50052.5(b)(3)	Section 50052.5(b)(4)
Affordable Housing Cost Definition	Monthly housing cost (including mortgage, insurance, utilities, taxes, assessments and home owner association costs, if any) that does not exceed one-twelfth of 30 percent of the maximum annual income for a Household of the applicable income (Very Low-, Low- or Moderate-Income).	For extremely low households the product of 30 percent times 30 percent of the area median income adjusted for family size appropriate for the unit.	For very low income households the product of 30 percent times 50 percent of the area median income adjusted for family size appropriate for the unit.	For lower income households whose gross incomes exceed the maximum income for very low income households and do not exceed 70 percent of the area median income adjusted for family size, the product of 30 percent times 70 percent of the area median income adjusted for family size appropriate for the unit.	For moderate-income households, affordable housing cost shall not be less than 28 percent of the gross income of the household, nor exceed the product of 35 percent times 110 percent of area median income adjusted for family size appropriate for the unit.

HOUSING COST DEFINITION

Developers should refer to California Code of Regulations, Title 25, Section 6920 for the definition of housing costs of a purchaser. Housing costs include, but are not limited to:

- Principal and interest on all loans (see attached Affordable Housing Program Loan Guidelines);
- Property taxes, including special assessments;
- Insurance;
- Utilities, not including telephone (City will provide utility allowance information);
- Maintenance & repairs;
- Home owner association and special fees;
- Space rent, if any.

SELECTION PROCESS

The City of Alameda encourages developers to use a lottery to select buyers for the BMR units. Developers are responsible for responding to all inquiries regarding BMR units and must adequately train staff to respond to questions that arise. The buyer selection process, including preference points, and all marketing and outreach materials must be approved by the City of Alameda prior to implementation. Adequate time should be allowed for City review and approval. If the Developer determines that an applicant does not meet the qualification criteria to purchase a BMR unit, the Developer should notify the applicant of this determination in writing, explaining why the applicant does not qualify. Developers should have a written appeals process for applicants who are disqualified from the program.

CITY DETERMINATION

For each BMR unit, the City of Alameda makes the final determination as to whether the submitted applicant is a qualified purchaser. Developers should not enter into a purchase agreement with an applicant until the following criteria are satisfied:

- The City has approved the applicant as income qualified to purchase the unit.
- The applicant has received full underwriting approval for all financing needed to complete purchase. Financing must conform to the attached City's Affordable Housing Program Loan Guidelines.
- The Developer has determined that the applicant's monthly housing costs fit within the parameters of the program (taking into account the loan obtained and downpayment required).
- The applicant has demonstrated sufficient funds to close.

If the City determines that the applicant is not a qualified purchaser, the applicant may file an appeal to the City in writing with the City Clerk not later than ten days from the date of this decision. The appeal should state completely and in detail the factual and legal grounds for the appeal. The City will consider the appeal at a public hearing within sixty days after the filing of the appeal. The decision of the City is final.



EXHIBIT E

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

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

RECORDED FOR THE BENEFIT OF THE HOUSING
AUTHORITY OF THE CITY OF ALAMEDA PURSUANT TO
GOVERNMENT CODE SECTION 6103; NO FEE PURSUANT TO
GOVERNMENT CODE SECTION 27383

**[HOUSING AUTHORITY FORM]
AFFORDABILITY, RESTRICTIONS ON RESALE,
AND
OPTION TO PURCHASE AGREEMENT**

Owner: _____

Address of Property: _____

Income Category of Owner: _____ **[Insert
as applicable: Very Low-, Low-, or Moderate-
Income]**

Purchase Price of Property ("Affordable Price"):
\$ _____

Median Income on Effective Date: _____

THIS AFFORDABILITY, RESTRICTIONS ON RESALE, AND OPTION TO PURCHASE AGREEMENT ("Agreement") is made as of _____, 20__, ("Effective Date") by and between the Housing Authority of the City of Alameda ("Authority"), a public body corporate and politic, and _____ **[Insert full name of primary and secondary contact]** ("Owner") and the 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 1 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 by and between the City of Alameda ("City"), a California municipal

corporation, and TL Partners, I, L.P., a California Limited Partnership (“Developer”), dated _____ (“Developer Affordable Housing Agreement”).

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”). The Property is located in the City of Alameda and is, therefore, subject to the City Inclusionary Policy.

C. In furtherance of the City Inclusionary Policy, the Property was developed in accordance with (a) City Council Ordinance No. 3115 approving Developer’s Master Plan and Density Bonus Application, allowing for development of a mixed use project on the Del Monte Property comprised of up to 380 housing units (including fifty-five (55) affordable units) and 30,000 square feet of commercial space (the “Master Plan”), on file with the Planning and Building Department, as depicted on the approved site plans for the Project; and (b) the City adopted Ordinance No. 3116, approving a Development Agreement with respect to the Del Monte Warehouse project, which Development Agreement has an effective date of January 15, 2015 (the “Development Agreement”). City Council Ordinance No. _____ includes certain conditions of approval, including Condition of Approval No. _____, which requires that the Developer reserve at least 55 units in the Project for sale or rent to moderate-, low- and very low-income households in accordance with the City Inclusionary Policy (the “Project Inclusionary Requirement”). The City entered into the Developer Affordable Housing Agreement to establish the Developer’s obligations to provide affordable housing for Very Low-, Low-, or Moderate-Income households in conformance with the City Inclusionary Policy.

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

E. The purpose of this Agreement is to establish the use, occupancy, and resale restrictions in accordance with the Master Plan, Project Inclusionary Requirement, the City Inclusionary Policy, the Developer Affordable Housing Agreement, and the Grant Deed (as defined below), and grant to the Authority certain remedies, including the right to purchase the Property, as covenants running with the land and equitable servitudes that benefit the Authority, City, and permitted successors and assigns and burden the Property, the Owner and all of its successors and assigns. The Property is being purchased by Owner as a [Moderate-Income] household at the “Affordable Price,” in accordance with the goals and purposes of the Master Plan, Project Inclusionary Requirement, the City Inclusionary Policy, and the Developer Affordable Housing Agreement.

F. In order to ensure the Property remains affordable to a Moderate-Income household for at least fifty-nine (59) years following the date of this Agreement, and as a condition of purchasing the Property at the Affordable Price, the Owner is required to execute this Agreement, the Authority Note and the Authority Deed of Trust, as such terms are defined below.

NOW, THEREFORE, in consideration for the ability to purchase the Property at a below fair market price, as described herein, which shall be deemed good and valuable consideration, the Owner and all of its heirs, successors, and assigns 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.

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 herein).

1.1. “Affordable Ownership Cost” shall be as defined as a sales price that results in a monthly housing cost (including mortgage payment, mortgage insurance (if any), homeowner’s insurance, property taxes, home owner’s association costs (if any), assessments (if any), and utilities) that does not exceed on twelfth of thirty percent (30%) of the maximum annual income for a household of the applicable income.

1.2. “Affordable Price” shall mean the below market rate purchase price paid by the Owner for the Property.

1.3. “Affordable Rent” shall have the meaning provided in Section 2.1(c).

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

1.5. “Appreciation Amount: shall have the meaning provided in Section 6.3(a).

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

1.7. “Authority” shall mean the Housing Authority of the City of Alameda.

1.8. “Authority Deed of Trust” shall mean the deed of trust executed by the Owner in favor of the Authority securing the Owner’s obligations under the Authority Note and this Agreement, substantially in the form of Exhibit 6.

1.9. “Authority Note” shall mean a promissory note executed by the Owner in favor of the Authority in the principal amount equal to the difference between the Market Value of the Property calculated at the time Owner acquired the Property and either (a) the Affordable 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 Authority’s Shared Appreciation, substantially in the form of Exhibit 5.

1.10. “Authority’s Purchase Option Price” shall mean an amount equal to the Eligible Buyer Purchase Price minus Repair Costs.

1.11. “Authority’s Purchase Option” shall have the meaning provided in Section 5.1.

1.12. “Authority Resale Costs” means any and all costs and fees incurred by the Authority, whether directly by Authority 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, and costs and expenses of application screening and processing, employment, credit and income verification, property inspections, and document preparation and processing. The Authority Resale Costs shall not exceed six percent (6%) and shall not be less than one percent (1%) of the Affordable Price.

1.13. “Authority Response Notice” shall have the meaning provided in Section 4.1.

1.14. “Authority’s Shared Appreciation” shall have the meaning provided in Section 6.3.

1.15. “Eligible Capital Improvements” shall mean any capital improvements or upgrades needed to address a health or safety issue affecting the Property, in the discretion of the Authority, (a) made or installed by the Owner that conform with applicable building codes; (b) approved in writing by Authority prior to installation; (c) whose initial costs are Two Thousand Dollars (\$2,000) or more; and (d) conform to Federal Housing Quality Standards. Authority, prior to an Owner commencing work on the Capital Improvements, shall in its sole and absolute discretion determine (i) whether the improvements qualify as Capital Improvements; (ii) the value of the Capital Improvements which value may be less than the actual cost of the Capital Improvements; and (iii) the depreciation value or rate, if any, to be applied to such value.

1.16. “City” shall mean the City of Alameda.

1.17. “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]**

1.18. “Eligible Buyer” shall mean any person or family of moderate income whose combined gross income for all adult persons does not exceed one hundred twenty percent (120%) of Area Median Income, whose family size is appropriate for the Property, and who meet the First-Time Homebuyer requirements provided in Section 1.25. For the purposes herein, “appropriate family size for the Property” shall be: a minimum of one person for a one-bedroom unit; a minimum of two persons for a two-bedroom unit; a minimum of three persons for a three-bedroom unit; and a minimum of four persons for a four-bedroom unit **[Establish maximum?]**.

1.19. “Eligible Buyer Purchase Price” shall mean the allowable purchase price to be paid by an Eligible Buyer for the Property as provided in Section 4.4.

1.20. “Event of Default” shall have the meaning provided in Section 8.10.

1.21. “Excess Rental Proceeds” shall have the meaning provided in Section 2.1(c).

1.22. “Extraordinary Sale” shall mean a Sale conducted as provided in Article 6.

1.23. “Extraordinary Sale Price” shall have the meaning provided in Section 6.3(c).

1.24. “First Time-Homebuyer” shall mean an individual or individuals, or an individual and his or her spouse, who meets either of the following criteria:

(a) The individual or individuals, or an individual and his or her spouse, has not owned a principle residence during the 3-year period ending on the date of purchase of the Property; or

(b) A single parent who, while married, owned a home with his or her spouse or resided in a home owned by the spouse. A single parent is an individual who is unmarried or legally separated from a spouse and has one or more minor children for whom the individual has custody, joint custody, or is pregnant.

1.25. “Grant Deed” shall mean the grant deed executed by the Developer conveying the Property to the initial Owner, or the grant deed executed by the initial Owner or subsequent Owners conveying the Property to subsequent Owners.

1.26. “HUD Increase” shall mean the percentage increase in Area Median Income from the date of sale of the Property to an Owner (or Subsequent Owner, as the case may be) to the date of receipt by the City of the Owner’s Notice of Intent to Transfer or Notice of Intent to Sell. In no event shall the HUD Increase be less than zero.

1.27. “Initial Financing” shall have the meaning provided in Section 7.1(a).

1.28. “Market Value” shall mean the fair 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 Authority.

1.29. “Notice of Intent to Transfer” shall have the meaning provided in Section 3.1 and Exhibit 2.

1.30. “Notice of Intent to Sell” shall have the meaning provided in Section 4.1 and Exhibit 4.

1.31. “Notice of Extraordinary Sale” shall have the meaning provided in Section 6.2 and Exhibit 3.

1.32. “Owner” shall mean the purchaser of the Property as identified in the Preamble and Recital A, and includes all of Owner’s heirs, successors, and assigns, as allowed under this Agreement.

1.33. “Owner’s Gross Proceeds” is equal to the Eligible Buyer Purchase Price paid for the Property, as certified by the Owner under the penalty of perjury, and as evidenced by an executed purchase and sale agreement and estimated settlement statement.

- 1.34. “Permitted Transfer” shall mean a Transfer as provided in Section 2.2.
- 1.35. “Permitted Sale” shall mean a Sale as provided in Section 2.3.
- 1.36. “Prohibited Transfer” shall mean any Transfer that is not a Permitted Transfer as provided in Section 2.4.
- 1.37. “Prohibited Sale” shall mean any Sale that is not a Permitted Sale or Extraordinary Sale as prohibited in Section 2.4.
- 1.38. “Property” shall have the meaning provided in Recital A.
- 1.39. “Purchase Subsidy” shall have the meaning provided in Section 6.3(d).
- 1.40. “Refinancing” shall have the meaning provided in Section 7.1(b).
- 1.41. “Repair Costs” shall have the meaning provided in Section 4.3.
- 1.42. “Sale,” “Sell” or “Sold” shall mean a Transfer of the Property for monetary consideration.
- 1.43. “Senior Lien” shall have the meaning provided in Section 7.1.
- 1.44. “Senior Lender” shall have the meaning provided in Section 7.1(a).
- 1.45. “Senior Lender Deed of Trust” shall have the meaning provided in Section 7.3(c).
- 1.46. “Term” shall have the meaning provided in Section 8.16.
- 1.47. “Transfer” shall mean any sale, assignment, or transfer, whether voluntary or involuntary, of any interest in the Property, including without limitation a fee simple interest, tenancy in common, joint tenancy, community property, tenancy by the entireties, life estate, or other limited estate or use, rental, or tenancy therein.
- 1.48. “Transferee” shall mean the person or persons to whom the Property is Transferred or Sold.

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 THAT IS BELOW MARKET RATE FOR SUCH PROPERTY AND THAT THE PROPERTY IS SUBJECT TO THE RESALE RESTRICTIONS AND THE AUTHORITY’S PURCHASE OPTION CONTAINED IN THIS AGREEMENT GRANTING THE AUTHORITY 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 AUTHORITY'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 AUTHORITY.

(b) OWNER SHALL OCCUPY THE PROPERTY AS ITS PRINCIPAL RESIDENCE WITHIN SIXTY (60) DAYS OF CLOSE OF ESCROW ON THE PURCHASE OF THE PROPERTY BY OWNER. The Owner shall be considered to occupy the Property if the Owner is living in the Property for at least ten (10) months out of each calendar year. Upon request by the Authority, each Owner shall submit a declaration to the Authority certifying under penalty of perjury that the Property is the Owner's principal residence, and provide the Authority with a copy of valid driver's license of the Owner showing the Property address, recent copy of a utility bill in the name of the Owner, or other evidence of residency as deemed satisfactory to the Authority. If an Owner vacates the Property, or for any reason does not continue to occupy the Property as its principal residence, Authority may declare an Event of Default pursuant to Section 8.10 and exercise any or all of its rights and remedies hereunder, including without limitation the Authority'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 Authority Deed of Trust. The Owner 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 Authority immediately upon receipt thereof by the Owner. Such Excess Rental Proceeds shall be considered a recourse debt of the Owner to the Authority, as evidenced by the Authority Note, which the Authority may collect by legal action against Owner, including by foreclosure under the Authority Deed of Trust.

(d) The Owner's right to resell the Property at Market Value is limited and, in certain instances, the Authority will have the option to purchase the Property from the Owner. In order to ensure the Property shall remain available at an Affordable Housing Cost over the Term of this Agreement, the Owner's right to resell the Property is limited and is not 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 the Owner's ownership, and the Eligible Buyer Purchase Price may be less than the Affordable Price the Owner originally paid for the Property. 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 Authority, the following Transfers of the Property without monetary consideration are "Permitted Transfers":

- (a) Transfer to an existing spouse or Domestic Partner who is also an obligor under the Authority Note;
- (b) Transfer to an Owner's natural or adopted children, provided such children qualify as Eligible Buyers;
- (c) Transfer by the Owner to a spouse or Domestic Partner where the spouse or Domestic Partner becomes the co-owner of the Property;
- (d) Transfer between spouses as part of a marriage dissolution proceeding;
- (e) Transfer to an existing spouse or Domestic Partner of Owner by devise or inheritance following the death of Owner; and
- (f) Transfer by Owner into an inter vivos trust in which Owner is the beneficiary.

For the purposes of this Section 2.2, "Domestic Partners" shall mean two unmarried people, at least eighteen (18) years of age, who have lived together continuously for at least one (1) year and who are jointly responsible for basic living expenses incurred during their domestic partnership. Domestic Partners may not be persons related to each other by blood or adoption such that their marriage would be barred in the state of California. For purposes of this section, an individual shall be considered a domestic partner of Owner upon presentation of a declaration or other acceptable evidence by Owner to the Authority.

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 Authority, an Owner may Sell the Property to an Eligible Buyer ("Permitted Sale"). The Authority shall have the option to purchase the Property pursuant to the Authority's Purchase Option described in Article 5. If the Authority or the Owner are unable to identify an Eligible Buyer or the Authority has not exercised the Authority'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 Authority'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 Authority may have under this Agreement, the Authority shall have the right to exercise the Authority'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. Permitted Transfers. If an Owner desires to Transfer by a Permitted Transfer under Sections 2.2(d) or (e), the Owner shall provide the Authority with a Notice of Intent to Transfer in the form of Exhibit 2, together with any other documentation Authority may reasonably request in

order to ensure that the Transfer is a Permitted Transfer. Upon receipt of a Notice of Intent to Transfer, Authority shall have forty-five (45) days after receipt by the Authority 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. In the event the Authority approves the Transfer as a Permitted Transfer, the Transferee shall succeed to the Owner's interest and obligations under this Agreement, the Authority Note, and the Authority Deed of Trust and new documents shall be executed between the Transferee and the Authority and recorded against the Property.

3.2. Inheritance. In the event a Permitted Transfer occurs by devise or inheritance due to death of the Owner, the administrator of the Owner's estate or the person inheriting the Property shall provide written notice to the Authority of the Owner's death within thirty (30) days of the date of death and the following procedures shall apply:

(a) If the person inheriting the Property (the "Inheriting Owner") desires to occupy the Property, he or she shall succeed to the Owner's interest and obligations under this Agreement, the Authority Note, and the Authority Deed of Trust, and new documents shall be executed between the Inheriting Owner and the Authority and recorded against the Property.

(b) If the Inheriting Owner does not desire to occupy the Property, he or she shall be required to Transfer the Property to an Eligible Buyer at the Eligible Buyer Purchase Price, pursuant to Article 4, or the Authority may exercise the Authority's Purchase Option, pursuant to Article 5; provided, however, that the Inheriting Owner may own and occupy the Property for up to twelve (12) months prior to providing a Notice of Intent to Sell to the Authority pursuant to Section 4.1 below, and provided further that the Inheriting Owner remains in compliance with the Authority Deed of Trust. The Inheriting Owner shall not be required to occupy the Property during this twelve (12) month time period.

(c) Failure of an Inheriting Owner to follow the procedures and file the notices described in this Section 3.1 shall constitute an Event of Default under this Agreement and the City may then exercise any of the remedies set forth in Section 8.10 below, including, without limitation, exercise of the Authority's Purchase Option.

3.3. Transfer of the Property without Authority's Approval. If the Authority determines that the proposed Transfer is a Prohibited Transfer, the Owner shall not Transfer the Property. Any Transfer of the Property without Authority's approval shall be voidable and, in such event, in addition to all other rights and remedies the Authority may have under this Agreement, the Authority shall have the right to exercise the Authority'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 Intent to Sell; Authority Response Notice. If an Owner desires to Sell the Property, the Owner shall provide the Authority with a Notice of Intent to Sell in the form of Exhibit 3 and comply with the requirements set forth in the Notice of Intent to Sell. Within sixty (60) days after receipt of the Notice of Intent to Sell, the Authority shall notify the Owner whether

(a) Authority elects to exercise the Authority's Purchase Option pursuant to Section 5.1(a) or (b) that Authority will not exercise the Authority's Purchase Option and Owner may proceed to Sell the Property to an Eligible Buyer at the Eligible Buyer Purchase Price pursuant to Section 4.4 (the "Authority Response Notice"). The Authority Response Notice shall include: (a) any certifications required of an Eligible Purchaser; (b) the Repair Costs pursuant to Section 4.3; and (c) the Eligible Buyer Purchase Price pursuant to Section 4.4.

4.2. Permitted Sale to Eligible Purchaser. In the event the Authority permits the Owner to sell the Property to an Eligible Buyer, the Authority 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. Subject to the Authority's prior written approval, the Owner may have the option to identify an Eligible Buyer, which approval may take into consideration the requirements of the Developer Affordable Housing Agreement, the Grant Deed, and this Agreement. Owner shall Sell the Property to the Eligible Buyer at the Eligible Buyer Purchase Price within sixty (60) days after identification of the Eligible Buyer, unless otherwise agreed to in writing by the Authority.

4.3. Inspection; Repair Costs. Upon receipt of a Notice of Intent to Sell, the Authority shall have the right to enter the Property at reasonable times with twenty-four (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. In the event any damage or violations are discovered, the Authority shall determine the cost necessary to repair or correct any violations of applicable building, plumbing, electric, fire, or housing codes, or any other provisions of the City Building Code, as well as any other repairs the Authority deems necessary to put the Property into a "sellable condition" ("Repair Costs"). Items necessary to put the Property into sellable condition may include cleaning, painting, and making structural, mechanical, electrical, plumbing, fixed appliance repairs, pest control repairs, and other deferred maintenance repairs. Within thirty (30) days after the inspection, the Authority will prepare a written report describing the Repair Costs. The Owner shall have the option to either (a) repair or replace the items on such report at the Owner's cost prior to closing (without extending the closing date), or (b) at closing cause the escrow holder to pay the Repair Costs to the Authority. If an Owner elects to repair or replace the items on such report, the Authority shall have the right to re-inspect the Property under the terms of this Section 4.3 after the repairs and/or replacements are complete. If the Authority determines that deficiencies still remain, the Owner shall cause the escrow agent at closing to pay the Authority the Repair Costs from Owner's Gross Proceeds or the Extraordinary Sales Price.

4.4. 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 Affordable Price paid by the Owner for the Property, plus (b) the HUD increase as defined in Section 1.26, plus (c) the depreciated value of any Eligible Capital Improvements approved by the Authority as described in Section 1.15. Notwithstanding anything to the contrary herein, in no event shall the Eligible Buyer Purchase Price exceed the Affordable Housing Cost allowable for a Moderate-Income household at the time of resale.

4.5. Appraisal; Authority Resale Costs; Authority Documents. Upon receipt of a Notice of Intent to Sell, the Authority 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 Authority the Authority Resale Costs at close of escrow. The Owner may pay the cost of the Appraisal and the Authority 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 4.6.

At close of escrow, the Eligible Buyer shall deliver or cause to be delivered into escrow:

(a) the Authority Note, fully executed by the Eligible Buyer in favor of the Authority in substantially the form of Exhibit 5 hereto. The Authority Note shall be in the principal amount equal to the Purchase Subsidy);

(b) the Authority Deed of Trust securing the Authority Note fully executed by the Eligible Buyer in recordable form, in substantially the form of Exhibit 6 hereto;

(c) a new Affordability, Restrictions on Resale, and Option to Purchase Agreement, in a form provided by the Authority to the Eligible Buyer and fully executed in recordable form by all appropriate parties; and

(d) the required down payment and all documents required by the Eligible Buyer's Senior Lender.

4.6. 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; and

(b) second, to pay all customary closing costs that a seller would pay in the County of Alameda, a basic one-year home warranty as provided in Section 4.9, and, to the extent not already paid by the Owner to the Authority, the costs of the Appraisal and the Authority Resale Costs under Section 4.5; and

(c) third, to pay to the Authority all Repair Costs (if any, and to the extent not already paid) that are owed to the Authority under Section 4.3; and

(d) fourth, any remaining amounts shall be paid to the Owner.

4.7. 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 the Authority in writing.

4.8. Real Estate Broker Commission. If the Authority identifies the Eligible Buyer, no real estate broker's commission shall be paid to any real estate broker unless otherwise approved by the Authority. If the Eligible Buyer is identified by the 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.

4.9. 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 ensuring 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) that 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 the County of Alameda.

ARTICLE 5 AUTHORITY'S PURCHASE OPTION

5.1. Purchase Option. By taking title to the Property, the Owner irrevocably grants, to the Authority, an option to purchase the Property (the "Authority's Purchase Option") at the Authority's Purchase Option Price upon the occurrence of any of the following:

- (a) in the event the Owner provides a Notice of Intent to Sell to the Authority pursuant to Section 4.1;
- (b) in the event of any Prohibited Transfer or Prohibited Sale by the Owner;
- (c) in the event the Owner is in default of the occupancy requirement set forth in Section 2.1;
- (d) as reserved to the Authority under Section 6.1 for the period of time from Owner's Notice of Extraordinary Sale pursuant to Section 6.1 hereof to the date of written acceptance by the Owner of an offer to purchase the Property from an Eligible Buyer;
- (e) in the event that escrow fails to close within the times set forth in Section 6.6; or
- (f) upon occurrence of an Event of Default (as defined in Section 8.10);

provided that, in the case of (b), (c), (d) or (e), above, the Authority'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 Authority's facilitation of the Transfers contemplated hereby, and its acts, commitments, and expenditures in furtherance thereof constitute adequate consideration for the grant of the Authority's Purchase Option.

5.2. Exercise of Option.

(a) Procedure Upon Exercise of Option. The Authority may exercise the Authority's Purchase Option by delivering written notice to the Owner (and to Transferee, if applicable) of its intent to exercise the Authority's Purchase Option pursuant to Section 5.1,

including, but not limited to the delivery of the Authority Response Notice to the Owner pursuant to Section 4.1.

(b) Assignment of Authority's Purchase Option. After the Authority has exercised the Authority's Purchase Option, the Authority may, without the Owner's or Transferee's consent, assign the Authority'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.

5.3. Close of Escrow.

(a) If the Authority's Purchase Option is available to the Authority pursuant to Section 5.1(a), the Authority or its assignee shall purchase the Property within ninety (90) days of the date of the Authority Response Notice and title shall be delivered by the Owner to the Authority by grant deed, free and clear of any mortgage or other liens, unless first approved in writing by the Authority.

(b) If the Authority's Purchase Option is available to the Authority Pursuant to Sections 5.1 (b), (c), (d), (e), or (f), the Authority or its assignee shall purchase the Property within thirty (30) days after delivering written notice to the Owner (and to Transferee, if applicable) of its intent to exercise the Authority's Purchase Option and title shall be delivered by the Owner to the Authority by grant deed, free and clear of any mortgage or other liens, unless first approved in writing by the Authority.

5.4. Power of Attorney. By taking title to the Property, the Owner grants to the Authority 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 Authority's Purchase Option.

ARTICLE 6 EXTRAORDINARY SALE; SHARED APPRECIATION

6.1. When Extraordinary Sale Permitted. The Owner shall have the right to make an Extraordinary Sale in accordance with the procedures set forth in this Article 6 if:

(a) The Authority or the Owner fail to identify an Eligible Buyer within one hundred and eighty (180) days of the date of the Authority Response Notice notifying the Owner that the Authority will not exercise the Authority's Purchase Option pursuant to Section 4.1; or

(b) The Authority fails to close escrow pursuant to Section 5.3(a) after exercising the Authority's Purchase Option.

Notwithstanding anything to the contrary herein, the Authority shall retain the Authority's Purchase Option for the period of time from the Owner's Notice of Extraordinary Sale pursuant to Section 6.1 to the date of written acceptance by the Owner of an offer to purchase the Property from a buyer. In no event shall the Owner have the right to make an Extraordinary Sale if there

has been 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; Authority Resale Costs. The Owner shall notify the Authority of the Owner's intent to make an Extraordinary Sale by delivering a Notice of Extraordinary Sale in the form of Exhibit 4. The Notice of Extraordinary Sale shall contain a request that the Authority 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 Authority shall use reasonable efforts to obtain the Appraisal within thirty (30) days after receipt of the Notice of Extraordinary Sale. The Authority shall provide the Owner with a copy of the Appraisal within ten (10) days after receipt by the Authority. All transfer documents relating to the Extraordinary Sale shall be submitted to the Authority for its review and approval, consistent with the terms of this Agreement. In addition, the Owner shall pay the Authority the Authority Resale Costs at close of escrow.

6.3. Authority's Shared Appreciation. In the event of an Extraordinary Sale, the Owner shall pay to the Authority the principal amount outstanding on the Authority Note and the Authority's Shared Appreciation, as defined herein. The Authority's Shared Appreciation shall not be credited to the subsequent purchase of the Property.

(a) "Appreciation Amount" shall mean the amount calculated by subtracting the Affordable Price from one of the following amounts, as applicable: (i) in the event of an Extraordinary Sale pursuant to Article 6, the Extraordinary Sales Price, minus the closing costs, including escrow fees, transfer taxes, recording fees, and brokerage commissions, paid by the Owner at acquisition of the Property, minus Eligible Capital Improvements, and minus the Authority Resale Costs; or (ii) in the event of a Transfer other than Sale of the Property, in the event of prepayment, or in the Event of Default, the Market Value of the Property, minus Eligible Capital Improvements; or (iii) in the event a creditor or third party acquires title to the Property through a deed in lieu of foreclosure, a trustee's deed upon sale, or otherwise, the amount paid for the Property at a creditor's sale of the Property, minus Eligible Capital Improvements.

(b) "Authority's Shared Appreciation" shall mean the interest, if any, due on the Purchase Subsidy, equal to the amount resulting from dividing the amount of the Purchase Subsidy by the Affordable Price multiplied by the Appreciation Amount.

(c) "Extraordinary Sale Price" means the amount received by the Owner as the sales price of the Property under an Extraordinary Sale pursuant to Article 6, as certified by the Owner under the penalty of perjury, and as evidenced by an executed purchase and sale agreement and estimated settlement statement. The Extraordinary Sales Price shall not be less than the current Market Value of the Property, unless otherwise approved by the Authority in writing.

(d) "Purchase Subsidy" shall mean the Authority's initial equity contribution, equal to the difference between the Market Value of the Property at the time of acquisition by the Owner and the Affordable Price. The Purchase Subsidy shall be provided to the Owner as a deferred contingent interest loan, as evidenced by the Authority Note.

[Example of Authority's Shared Appreciation in the Event of an Extraordinary Sale: Assume the following facts: the Market Value of the Property at acquisition of the Property was \$350,000 and the Affordable Price paid by the Owner for the Property was \$300,000. As a result, the Authority provided Owner a Purchase Subsidy in the form of a deferred contingent interest loan in the amount of \$50,000. In addition, the Owner paid closing costs at acquisition of \$2,000 and made \$2,500 of Eligible Capital Improvements on the Property. Prior to the expiration of this Agreement, Owner wants to sell the Property at the Extraordinary Sale Price of \$425,000. The Authority Resale Costs are \$18,000.

First, determine the Appreciation Amount by subtracting the Affordable Price of \$300,000, closing costs of \$2,000, Eligible Capital Improvements of \$2,500, and the Authority Resale Costs of \$18,000 from the Extraordinary Price of \$425,000 to equal the Appreciation Amount of \$82,500 ($\$425,000 - \$300,000 - \$2,000 - \$2,500 - \$18,000 = \$102,500$).

Second, determine the Authority's Shared Appreciation by dividing the Purchase Subsidy of \$50,000 by the Market Value of the Property at acquisition of the Property of \$350,000 ($\$50,000 \div \$350,000 = 14\%$) and multiplying the resulting percentage by the Appreciation Amount of \$102,500 ($14\% \times \$102,500 = \$14,350$) to equal the Authority's Shared Appreciation of \$14,350 ($\$50,000 \div \$300,000 \times \$82,500 = \$14,350$). The Owner's share of the Appreciation Amount is \$88,150 ($\$102,500 - \$14,350 = \$88,150$).

(e) The Authority's Shared Appreciation collected by the Authority shall be used by the Authority 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. At escrow, 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 the Owner's Senior Lien;
- (b) second, to pay to the Authority all amounts owing under the Authority Note and Authority Deed of Trust, except the Authority's Shared Appreciation;
- (c) third, 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;
- (d) fourth, to the extent not already paid by the Owner to the Authority, the costs of the Appraisal and the Authority Resale Costs under Section 6.2;
- (e) fifth, to pay to Authority all Repair Costs (if any, and to the extent not already paid) which are owed to the Authority under Section 4.3;
- (f) sixth, to pay the Authority's Shared Appreciation;
- (g) seventh, any remaining amounts to the Owner.

6.5. Time Requirements for Extraordinary Sale. The Owner shall complete an Extraordinary Sale within sixty (60) 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 Authority 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 Authority'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 Authority's Purchase Option. The Authority 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 Authority's Purchase Option.

6.7. Owner's Burden to Substantiate Costs; Extraordinary Sale; Foreclosure. Within thirty (30) days of the first scheduled date for the close of escrow of an Extraordinary Sale, the Owner shall submit evidence to the reasonable satisfaction of the Authority of the closing costs paid to be paid at resale of the Property as set forth in Section 6.4(c). To the extent such evidence is not submitted by the Owner to the reasonable satisfaction of Authority at least thirty (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. The Authority 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. 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 (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 Authority all administrative and document

preparation costs and fees incurred by the Authority in connection with the processing of any documents required to effectuate such Refinancing.

7.2. [Intentionally Omitted].

7.3. Default and Foreclosure.

(a) The Authority 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 2924. 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 Authority within three (3) business days of the Owner's receipt thereof.

(b) In the event of default and foreclosure, the Authority 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 Authority 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 Authority 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 (the "Senior Lender 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 Authority all amounts owing under the Authority Note and Authority Deed of Trust, including, but not limited to the Authority's Shared Appreciation;

(iii) third, to pay any amounts due to person or persons legally entitled thereto, as required by law; and

(iv) fourth, to pay any remaining amounts, if any, to the Owner.

(d) Upon written request by the Authority, the 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 Authority.

(e) By making a loan to the Owner, the Senior Lender grants to the Authority the option to purchase the Senior Lien from the 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 Authority 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 Authority may exercise this option by giving the Senior Lender written notice of its intent to do so (i) with respect to a foreclosure, at any time prior to the filing of a notice of sale under the Senior Lien, and (ii) with respect to a deed-in-lieu of foreclosure, within fifteen (15) days after receiving written notice from the 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 Authority, the Senior Lender shall promptly give the Authority 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 Authority gives such written notice, the Authority shall establish an escrow at such title company and concurrently therewith give the Senior Lender written notice thereof, and the Authority shall deposit the purchase price in such escrow. Within fifteen (15) days after the 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 Authority, the original 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 the Authority a CLTA Form No. 104.1 endorsement to the title policy, showing the Authority as the Senior Lender's assignee with respect to the Senior Lender Deed of Trust. The Senior Lender and the Authority 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 Authority shall pay the escrow fees, 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 Authority 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 Authority's Purchase Option, nor shall Authority in any way be obligated or liable to any Owner for any failure of Authority to purchase the Property or to comply with the terms of the Authority'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 Authority 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 Authority 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 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 the 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, 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.

8.4. 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.

8.5. Controlling Agreement. The Owner covenants that it has not executed, and will not execute without the Authority's prior written approval, any other agreement with provisions contradictory to or in opposition to the provisions of this Agreement.

8.6. 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.

8.7. 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.

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

If to Owner: «Address__Street_1_Assigned_Property»
«Address__City_Assigned_Property»,
«Address__State_Assigned_Property»
«Address__Zip_Code_Assigned_Property»

8.9. 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 and inure to the benefit of the Authority and its successors and assigns. The covenants benefit and bind the Authority, the Property, and all owners and successor owners. 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.

8.10. Defaults.

(a) Event of Default. Any one of the following events shall constitute a “Event of Default” by the Owner under this Agreement:

(i) The Authority determines that the Owner has made a material misrepresentation to obtain the benefits of purchase of the Property or in connection with its obligations under this Agreement.

(ii) The Owner actually Transfers, or attempts to Transfer, the Property in violation of this Agreement.

(iii) The Owner fails to owner-occupy the Property in violation of Section 2.1 of this Agreement.

(iv) The Owner rents or leases the Property in violation of Section 2.1 of this Agreement.

(v) The Owner fails to provide information to the Authority necessary to determine Owner’s compliance with the requirements of this Agreement.

(vi) A notice of default is issued under any other financing secured by the Property, or the Authority receives any notice of default pursuant to Civil Code Section 2924b, or the Owner is in default on any financing secured by the Property.

(vii) A lien is recorded against the Property other than the lien of the Senior Lender or a loan approved by the Authority.

(viii) Judicial foreclosure proceedings are commenced regarding the Property.

(ix) The Owner executes any deed in lieu of foreclosure transferring ownership of the Property.

(x) The Owner fails to comply with any other requirements of this Agreement.

(b) Remedies. Upon a declaration of Event of Default by the Authority under this Agreement, the Authority may:

(i) Declare Excess Rental Proceeds immediately due and payable without further demand, if applicable;

(ii) Accelerate payments due under the Authority Note;

(iii) Invoke the power of sale under the Authority Deed of Trust;

(iv) Apply to a court of competent jurisdiction for such relief at law or in equity as may be appropriate;

(v) Take such enforcement actions as are authorized under the City Municipal Code;

(vi) Declare an Event of Default under the Authority Note and the Authority Deed of Trust and pursue all Authority remedies under the Authority Note and the Authority Deed of Trust; or

(vii) Exercise the Authority's Purchase Option pursuant to Article 5 of this Agreement.

(c) Notice and Cure. Upon an Event of Default, the Authority may give written notice to the Owner specifying the nature of the violation. If the violation is not corrected to the satisfaction of the Authority within a reasonable period of time, which period of time shall not be longer than thirty (30) days after the date the notice is mailed, or within such further time as the Authority determines is necessary to correct the violation or as set forth in this Agreement, the Authority may declare an Event of Default under this Agreement. However, if the Owner is in default under any financing secured by the Property, the Authority may declare an Event of Default upon receipt of any notice given to the Authority pursuant to Civil Code section 2924 or through any other means and may exercise its rights as provided in Section 7.3 and this Section.

8.11. Nonliability and Indemnification of the Authority.

(a) The Authority shall have no obligation to exercise any option granted it under this Agreement. In no event shall the Authority become in any way liable or obligated to the Owner or any successor-in-interest to the Owner by reason of the Authority's Purchase Option under Article 5 nor shall the Authority be in any way obligated or liable to the Owner or any successor-in-interest to the Owner for any failure to exercise its option to purchase.

(b) The Owner acknowledges, understands, and agrees that the relationship between the Owner and the Authority is solely that of an owner and an administrator of an inclusionary housing program, and that the Authority does not undertake or assume any responsibility for or duty to the Owner to select, review, inspect, supervise, pass judgment on, or inform Owner of the quality, adequacy, or suitability of the Property or any other matter. The Authority owes no duty of care to protect the Owner against negligent, faulty, inadequate, or defective building or construction or any condition of the Property, and the Owner agrees that neither the Owner, nor the Owner's heirs, successors, or assigns shall ever claim, have, or assert any right or action against the Authority for any loss, damage, or other matter arising out of or resulting from any condition of the Property, and will hold the Authority harmless from any liability, loss, or damage for these things.

(c) The Owner, at its sole cost and expense, agrees to indemnify, defend, and hold harmless the Authority and its respective commissioners, 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) the Authority may incur as a direct or indirect consequence of any action by the Owner, including, but not limited to: (i) Owner's default, performance, or failure to perform any obligations as and when required by this Agreement or the Authority Deed of Trust; (ii) the failure at any time of any of the Owner's

representations to the Authority to be true and correct; or (iii) the Owner's purchase or ownership of the Property. The Owner agrees that if any claims, demands, suits, or other legal proceedings are made or instituted by any person against the Authority that arise out of any of the matters relating to this Agreement, the Owner shall cooperate fully with Authority in the defense or other disposition.

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 Authority'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 neutral, 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 6.6. Upon such termination of this Agreement, on request of the then record Owner of the Property, the Authority 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. 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 the Authority. The modifications shall be effective when recorded in the Official Records of Alameda County, California.

8.15. Term. This Agreement shall become effective upon its execution and delivery and unless sooner terminated in accordance with Section 8.13, shall remain in full force and effect for fifty-nine (59) years from the date of recordation of this Agreement.

8.16. Compliance Monitoring.

(a) The Authority (or its designee) may enter the Property for inspection following two (2) business days advance written notice to the Owner.

(b) The Owner shall retain all records related to compliance with obligations under this Agreement for a period of not less than five (5) years, and shall make such records available to the Authority or its designee for inspection and copying upon five (5) business days advance written notice.

(c) The Authority shall monitor the Owner's compliance with the requirements of this Agreement and the City Inclusionary Policy on an annual basis. The Owner shall cooperate with Authority monitoring and provide required certifications and other information required by the Authority to determine compliance within ten (10) days of receipt of a written request by the Authority.

8.17. Nondiscrimination. The Owner covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age, disability, sex, sexual orientation, marital status, ancestry, or national origin in the sale, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall the Owner or any person claiming under or through the Owner establish or permit any such practice or practices of discrimination or segregation with reference to the use, occupancy, or transfer of the Property. The foregoing covenant shall run with the land.

8.18. Payment of Authority Fee for Administrative Costs of Processing Agreement. Owner acknowledges and agrees to pay Authority 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 Authority at Owner's close of escrow for purchase of the Property.

8.19. 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 7, shall be recorded against the Property in the Official Records of Alameda County.

8.20. Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference:

- Exhibit 1: Property Description
- Exhibit 2: Notice of Intent to Transfer
- Exhibit 3: Notice of Intent to Sell
- Exhibit 4: Notice of Extraordinary Sale
- Exhibit 5: Authority Note
- Exhibit 6: Authority Deed of Trust
- Exhibit 7: Notice of Affordability Restrictions on Transfer of Property

[Signature page follows]

IN WITNESS THEREOF, the parties have executed this Agreement as of the year and date first written above.

AUTHORITY:

HOUSING AUTHORITY OF THE
CITY OF ALAMEDA, a public body
corporate and politic

By: _____
[Insert name], Executive Director

[Signature must be notarized]

OWNER(S):

«FULL_NAME_PRIMARY_CONTACT»

[Signature must be notarized]

«FULL_NAME_HOUSEHOLD_MEMBER_2»

[Signature must be notarized]

RECOMMENDED FOR APPROVAL:

APPROVED AS TO FORM:

[Insert name], Assistant General Counsel

EXHIBIT 1

Property Description

[To be inserted on sale of unit]

EXHIBIT 2

NOTICE OF INTENT TO TRANSFER

Date _____

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

The undersigned «FULL_NAME_PRIMARY_CONTACT» AND
«FULL_NAME_HOUSEHOLD_MEMBER_2», owner of that certain real property located in
Alameda, California, commonly known as
«ADDRESS__STREET_1_ASSIGNED_PROPERTY»,
«ADDRESS__CITY_ASSIGNED_PROPERTY»,
«ADDRESS__STATE_ASSIGNED_PROPERTY»
«ADDRESS__ZIP_CODE_ASSIGNED_PROPERTY», (the “Property”) hereby notifies you of
its intent to Transfer in compliance with Section 3.1 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 the Housing Authority of the City of Alameda’s receipt of this notice. The
undersigned further acknowledges and agrees that any such transfer is subject to the provisions of
the Agreement.

«FULL_NAME_PRIMARY_CONTACT»

«FULL_NAME_HOUSEHOLD_MEMBER_2»

EXHIBIT 3

NOTICE OF INTENT TO SELL

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

Date _____

The undersigned «FULL_NAME_PRIMARY_CONTACT» AND «FULL_NAME_HOUSEHOLD_MEMBER_2», owner of that certain real property located in Alameda, California, commonly known «ADDRESS__STREET_1_ASSIGNED_PROPERTY», «ADDRESS__CITY_ASSIGNED_PROPERTY», «ADDRESS__STATE_ASSIGNED_PROPERTY» «ADDRESS__ZIP_CODE_ASSIGNED_PROPERTY», (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 the Housing Authority of the City of Alameda’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 Authority 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.

By: _____
Owner

By: _____
Owner

EXHIBIT 4

NOTICE OF EXTRAORDINARY SALE

Date: _____

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

The undersigned «FULL_NAME_PRIMARY_CONTACT» AND «FULL_NAME_HOUSEHOLD_MEMBER_2», (“Owner”) is the owner of that certain real property located in Alameda, California, commonly known as «ADDRESS__STREET_1_ASSIGNED_PROPERTY», «ADDRESS__CITY_ASSIGNED_PROPERTY», «ADDRESS__STATE_ASSIGNED_PROPERTY» «ADDRESS__ZIP_CODE_ASSIGNED_PROPERTY», (“Property”). On _____, 20____, the Owner provided the Authority with written notice of its intent to sell the Property. The Authority and the Owner have failed to identify an Eligible Buyer in accordance with Section 6.1(a) of the Affordability, Restrictions on Resale, and Option to Purchase Agreement (“Agreement”) or the Authority has failed to exercise the Authority’s Purchase Option in accordance with Section 6.1(b) of the Agreement. Accordingly, the Owner hereby notifies the Authority of its intent to make an Extraordinary Sale of the Property in accordance with Article 6 of the Agreement.

The Owner hereby requests that the Authority 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 Authority shall retain the Authority’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 Authority’s receipt of this Notice.

Terms not defined in this Notice shall have the meaning given in the Agreement.

«FULL_NAME_PRIMARY_CONTACT»

«FULL_NAME_HOUSEHOLD_MEMBER_2»

EXHIBIT 5
FORM OF AUTHORITY NOTE
(Shared Appreciation Loan)

\$ _____

Alameda, California

FOR VALUE RECEIVED, «FULL NAME PRIMARY CONTACT» AND «FULL NAME HOUSEHOLD MEMBER 2» (“Borrower”) promises to pay the HOUSING AUTHORITY OF THE CITY OF ALAMEDA (“Authority”) or order at Housing Authority of the City of Alameda, a public body corporate and politic, 701 Atlantic Avenue, Alameda, California 94501, Attention: Executive Director, or such other place as the Authority may designate in writing, the principal sum of _____ Dollars (\$ _____), plus Shared Appreciation and Excess Rental Proceeds, as applicable (collectively, the “Loan”).

1. PROPERTY. The “Property” is that certain real property commonly known as «ADDRESS STREET 1 ASSIGNED PROPERTY», 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 former Community Improvement Commission of the City of Alameda (“Commission”), City of Alameda, and _____ (“Developer”) dated _____ (“Developer Affordable Housing Agreement”). Under the Developer Affordable Housing Agreement, the Developer was required to sell the Property to the Borrower at an Affordable Housing Price, as defined below, subject to the covenants, conditions, restrictions, and option to purchase set forth herein. Borrower assumes title to the Property subject to that certain Affordability, Restrictions on Resale, and Option to Purchase Agreement (“Resale Restrictions”), between the Borrower and Authority, as the former Commission’s successor in interest to the Commission’s housing rights and obligations, recorded on _____, 20____, as Document No. _____, in the Official Records of Alameda County, California. 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 Borrower shall pay the Authority the principal sum of _____ Dollars (\$ _____) (the “Principal” or the “Purchase Subsidy”). The Purchase Subsidy is an amount equal to the difference between the Affordable Price and the fair market value of the Property, as established based on an Appraisal of the Property at the time the Property is acquired by the Borrower. The Borrower acknowledges and agrees that the Purchase Subsidy represents the amount by which the purchase price of the Property has been reduced as a

result of the Authority's covenants, conditions, and restrictions placed on the Property as set forth in the Developer Affordable Housing Agreement.

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 Borrower in favor of the Authority, which Deed of Trust is dated concurrently herewith and recorded against the Property.

5. REPAYMENT OF NOTE.

(a) Term. The term of this Note shall be the same as the Term of the Resale Restrictions, as set forth in Section 8.16 of the Resale Restrictions.

(b) Deferral. Repayment of the Loan shall be deferred for the Term, except as provided in subsection (c) below.

(c) Repayment in Full. The total amount of the Principal and any Authority Shared Appreciation owed under this Note (together with any Excess Rent Proceeds due the Authority pursuant to the Resale Restriction Agreement) shall immediately become due and payable (i) in the Event of a Default by the Borrower under this Note, the Resale Restrictions, the Deed of Trust, or the Senior Loan; (ii) in the event of an Extraordinary Sale pursuant to Article 6 of the Resale Restrictions; (iii) on the date of a Prohibited Sale or Prohibited Transfer, or (iv) at the end of the Term of this Note. Failure to declare such amounts due shall not constitute a waiver on the part of the Authority to declare them due in the event of a subsequent Transfer.

(d) Prepayment. Borrower may prepay all or part of the balance due under this Note. If the Borrower prepays all of the balance due under this Note, such prepayment shall include the Authority's Shared Appreciation as calculated at the time the prepayment is made. The Authority's Shared Appreciation shall be based on the Market Value of the Property at the time of the prepayment. If the Borrower makes a partial prepayment, such partial prepayment shall be applied only to the principal. If the principal and Shared Appreciation of this Note is entirely prepaid, the Deed of Trust shall remain on the Property to secure payment of the Excess Rental Proceeds, if any, and the Resale Restrictions. In addition, prepayment of this Note shall not affect the Resale Restrictions, which shall remain in full force and effect for the Term, regardless of any prepayment.

6. AUTHORITY'S SHARED APPRECIATION. In the event of an Extraordinary Sale pursuant to Article 6 of the Resale Restrictions or an event of default by Borrower under this Note, the Deed of Trust, the Resale Restrictions, or Senior Lien, the Borrower shall pay to the Authority the outstanding Principal owed under this Note and the Authority's Shared Appreciation, as defined herein. The Authority's Shared Appreciation shall not be credited to the subsequent purchase of the Property.

(a) "Appreciation Amount" shall mean the amount calculated by subtracting the Affordable Price from one of the following amounts, as applicable: (i) in the event of an Extraordinary Sale pursuant to Section 6.2 of the Resale Restrictions, the Extraordinary Sales Price, minus the closing costs, including escrow fees, transfer taxes, recording fees, and brokerage commissions, paid by the Borrower at acquisition of the Property, minus Eligible Capital

Improvements, and minus the Authority Resale Costs; or (ii) in the event of a Transfer other than Sale of the Property, in the event of prepayment, or in the Event of Default, the Market Value of the Property, minus Eligible Capital Improvements; or (iii) in the event a creditor or third party acquires title to the Property through a deed in lieu of foreclosure, a trustee's deed upon sale, or otherwise, the amount paid for the Property at a creditor's sale of the Property, minus Eligible Capital Improvements.

(b) "Affordable Price" shall mean the below market rate purchase price in the amount of _____ Dollars (\$_____) paid by the Borrower for the acquisition of the Property.

(c) "Authority Resale Costs" means any and all costs and fees incurred by the Authority, whether directly by the Authority or indirectly under Authority 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 of the Resale Restrictions, 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 document preparation and processing. The Authority Resale Costs shall not exceed six percent (6%) of the Affordable Price.

(d) "Authority's Shared Appreciation" shall mean the interest, if any, due on the Purchase Subsidy, equal to the amount resulting from dividing the amount of the Purchase Subsidy by the Affordable Price multiplied by the Appreciation Amount.

(e) "Eligible Capital Improvements" shall mean any capital improvements or upgrades needed to address a health or safety issue affecting the Property, in the discretion of the Authority, (a) made or installed by the Owner that conform with applicable building codes; (b) approved in writing by Authority prior to installation; (c) whose initial costs are Two Thousand Dollars (\$2,000) or more; and (d) conform to Federal Housing Quality Standards. Authority, prior to an Owner commencing work on the Capital Improvements, shall in its sole and absolute discretion determine (i) whether the improvements qualify as Capital Improvements; (ii) the value of the Capital Improvements which value may be less than the actual cost of the Capital Improvements; and (iii) the depreciation value or rate, if any, to be applied to such value.

(f) "Extraordinary Sale Price" means the amount received by Borrower as the sales price of the Property under an Extraordinary Sale pursuant to Article 6 of the Resale Restrictions, as evidenced by an executed purchase and sale agreement and estimated settlement statement and as certified by the Borrower under the penalty of perjury. The Extraordinary Sales Price shall not be less than the current Market Value of the Property, unless otherwise approved in advance by the Authority in writing.

(g) "Market Value" shall mean the fair market value of the Property, assuming no affordability or resale restrictions, as determined by an Appraisal of the Property obtained from time to time.

[Example of Authority's Shared Appreciation in the Event of an Extraordinary Sale: Assume the following facts: the Market Value of the Property at acquisition of the Property was \$350,000 and

the Affordable Price paid by the Borrower for the Property was \$300,000. As a result, the Authority provided Borrower a Purchase Subsidy in the form of a deferred contingent interest loan in the amount of \$50,000. In addition, the Borrower paid closing costs at acquisition of \$2,000 and made \$2,500 of approved Capital Improvements on the Property. Prior to the expiration of this Agreement, Borrower wants to sell the Property at the Extraordinary Sale Price of \$425,000. The Authority Resale Costs are \$18,000.

First, determine the Appreciation Amount by subtracting the Affordable Price of \$300,000, down payment of \$20,000, closing costs of \$2,000, Capital Improvements of \$2,500, and the Authority Resale Costs of \$18,000 from the Extraordinary Price of \$425,000 to equal the Appreciation Amount of \$82,500 ($\$425,000 - \$300,000 - \$2,000 - \$2,500 - \$18,000 = \$82,500$).

Second, determine the Authority's Shared Appreciation by dividing the Purchase Subsidy of \$50,000 by the Market Value of the Property at acquisition of \$350,000 ($\$50,000 \div \$350,000 = 14\%$) and multiplying the resulting percentage by the Appreciation Amount of \$82,500 ($14\% \times \$82,500 = \$11,550$) to equal the Authority's Shared Appreciation of \$11,550 ($\$50,000 \div \$350,000 \times \$82,500 = \$11,550$). The Borrower's share of the Appreciation Amount is \$70,950 ($\$82,500 - \$11,550 = \$70,950$).

7. DEFAULT. The Borrower shall be in default under this Note if the Borrower (i) is in default under the this Note, the Resale Restrictions, the Deed of Trust, or a Senior Lien, (ii) fails to pay any money when due under this Note; or (iii) breaches any representation or covenant made in this Note or the Resale Restrictions.

8. NONLIABILITY FOR NEGLIGENCE, LOSS, OR DAMAGE. Borrower acknowledges, understands, and agrees that the relationship between Borrower and Authority is solely that of borrower and lender, and that the Authority and its designated agents neither undertake nor assume any responsibility for or duty to Borrower to select, review, inspect, supervise, pass judgment on, or inform the Borrower of the quality, adequacy, or suitability of the Property or any other matter. The Authority and its designated agents owe no duty of care to protect the Borrower against negligent, faulty, inadequate, or defective building or construction or any condition of the Property, and the Borrower agrees that neither the Borrower, nor the Borrower's heirs, successors, or assigns shall ever claim, have, or assert any right or action against the Authority or its agents for any loss, damage, or other matter arising out of or resulting from any condition of the Property, and will hold Authority and its agents harmless from any liability, loss, or damage for these things.

9. INDEMNITY. Borrower agrees to defend, indemnify, and hold the Authority and its respective commissioners, officers, directors, employees, and agents, harmless from all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorneys fees that the Authority and its designated agents may incur as a direct or indirect consequence of:

- (a) the making of the loan to the Borrower;
- (b) the Borrower's failure to perform any obligations as and when required by this Note, the Deed of Trust, and the Resale Restrictions; or

(c) the failure at any time of any of the Borrower's representations or warranties to be true and correct.

10. ACCELERATION. Upon the occurrence of a default as defined in Section 7 of this Note, the Authority shall have the right to declare the full amount of the principal along with any Shared Appreciation, Excess Rental Proceeds, or other amounts due under this Note immediately due and payable. Any failure by the Authority to pursue its legal and equitable remedies upon default shall not constitute a waiver of the Authority's right to declare a default and exercise all of its rights under this Note, the Resale Restrictions, and the Deed of Trust. Nor shall acceptance by the Authority of any payment provided for herein constitute a waiver of the Authority's right to require prompt payment of any remaining principal and interest owed.

11. NO OFFSET. Borrower hereby waives any rights of offset it now has or may hereafter have against the Authority, its successors, and assigns, and agrees to make the payments called for herein in accordance with the terms of this Note.

12. WAIVER. Borrower and any endorsers or guarantors of this Note, for themselves, their heirs, legal representatives, successors, and assigns, respectively, severally waive diligence, presentment, protest, and demand, and notice of protest, notice of dishonor, and notice of non-payment of this Note, and expressly waive any rights to be released by reason of any extension of time or change in terms of payment, or change, alteration, or release of any security given for the payments hereof, and expressly waive the right to plead any and all statutes of limitations as a defense to any demand on this Note or agreement to pay the same, and jointly and severally agree to pay all costs of collection when incurred, including reasonable attorneys' fees.

13. SEVERABILITY. 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.

14. NOTICES. All notices required in this Note 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 Authority: Housing Authority of the City of Alameda
701 Atlantic Avenue
Alameda, CA 94501
Attention: Executive Director

If to Owner: «Address__Street_1_Assigned_Property»
 «Address__City_Assigned_Property»,
«Address__State_Assigned_Property» «Address__Zip_Code_Assigned_Property»

15. CONTROLLING LAW. This Note shall be construed in accordance with and be governed by the laws of the State of California.

16. ASSIGNMENT BY AUTHORITY. The Authority may assign its right to receive the proceeds under this Note to any person and, upon notice to the Borrower by the Authority, all payments shall be made to the assignee. The Authority may not transfer or assign the Note to a profit-making entity without first obtaining approval of the Senior Lender. The Authority may transfer or assign this Note to a government agency or non-profit entity without obtaining approval of the Senior Lender.

17. ENTIRE AGREEMENT. This Note (along with the Resale Restrictions and Deed of Trust) sets forth the entire understanding and agreement of the Authority and the Borrower and any amendment, alteration, or interpretation of this Note must be in writing signed by both the Authority and the Borrower.

18. ATTORNEYS FEES AND COSTS. The Borrower agrees to pay all costs and expenses of collection and reasonable attorney fees paid or incurred by the Authority or its designated agents in connection with the collection or enforcement of this Note, whether or not suit is filed.

19. JOINT AND SEVERAL OBLIGATIONS. This Note is the joint and several obligation of all makers, sureties, guarantors, and endorsers, and shall be binding upon them and their successors and assigns.

20. NO WAIVER BY AUTHORITY. No waiver of any breach, default, or failure of condition under the terms of this Note shall be implied from any failure of the Authority to take, or any delay by the Authority in taking, action with respect to such breach, default, or failure or from any previous waiver of any similar or unrelated breach, default, or failure. A waiver of any term of the Note must be made in writing and shall be limited to the express written terms of such waiver.

BORROWER:

«FULL_NAME_PRIMARY_CONTACT»

«FULL_NAME_HOUSEHOLD_MEMBER_2»

Address:

«Address__Street_1_Assigned_Property»,

«Address__City_Assigned_Property»,

«Address__State_Assigned_Property»

«Address__Zip_Code_Assigned_Property»

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

[To Be Inserted]

EXHIBIT 6

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

THIS DOCUMENT IS RECORDED ON BEHALF
OF THE HOUSING AUTHORITY OF THE CITY
OF ALAMEDA AND IS EXEMPT FROM RECORDING
FEES PURSUANT TO GOVERNMENT SECTION CODE
6103, NO FEE 27383

_____ [Space Above This Line For Recording Data] _____

SHORT FORM DEED OF TRUST

This DEED OF TRUST made this _____ day of _____, 20____,
among the trustor «FULL NAME PRIMARY CONTACT» AND
«FULL NAME HOUSEHOLD MEMBER 2», (“Trustor”), whose address is
«ADDRESS STREET 1 ASSIGNED PROPERTY»,
«ADDRESS CITY ASSIGNED PROPERTY»,
«ADDRESS STATE ASSIGNED PROPERTY»
«ADDRESS ZIP CODE ASSIGNED PROPERTY» and FIRST AMERICAN TITLE
 (“Trustee”) and the Housing Authority of the City of Alameda as Beneficiary.

(A) **“Security Instrument”** means this document, which is dated _____, _____, together
with all Riders to this document.

(B) **“Note”** means the promissory note signed by Trustor and dated _____, _____.
The Note states that the Trustor owes the Beneficiary Purchase Subsidy. The Trustor has promised
to pay this debt in the event of Extraordinary Sale. There shall be no payments due under this
Note unless payments are otherwise due pursuant to provision of Sections at 5(c) and (d) of Exhibit
5 FORM OF AUTHORITY NOTE.

(C) **“Property”** means the property that is described below under the heading “Transfer of
Rights in the Property.”

(D) **“Riders”** mean all Riders to this Security Instrument that are executed by Borrower. The
following Riders are to be executed by Borrower [check box as applicable]:

- | | | |
|------------------------------------------------|---------------------------------------------------------|---------------------------------------------------------------|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Second Property Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Planned Unit Development Rider | |
| <input type="checkbox"/> 1-4 Family Rider | <input type="checkbox"/> Biweekly Payment Rider | <input type="checkbox"/> Rider to Commission
Deed of Trust |

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Beneficiary: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Trustor's covenants and agreements under this Security Instrument and the Note. For this purpose, Trustor irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County of ALAMEDA:

which currently has the address of «ADDRESS__STREET_1_ASSIGNED_PROPERTY»,
«ADDRESS__CITY_ASSIGNED_PROPERTY»,
«ADDRESS__STATE_ASSIGNED_PROPERTY»
«ADDRESS__ZIP_CODE_ASSIGNED_PROPERTY» ("Property Address").

TOGETHER WITH all the improvements now or hereafter erected on the Property, and all easements, appurtenances, and fixtures now or hereafter a part of the Property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

TRUSTOR COVENANTS that Trustor is lawfully seised of the estate hereby conveyed and that the Property is unencumbered, except for encumbrances of record. Trustor warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

BY SIGNING BELOW, Trustor accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Trustor and recorded with it

Witnesses:

«FULL_NAME_PRIMARY_CONTACT» _____ (Seal)

«FULL_NAME_HOUSEHOLD_MEMBER_2» _____ (Seal)

_____ **[Space Below This Line For Acknowledgment]** _____

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

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

WITNESS my hand and official seal.

Signature _____

EXHIBIT 7

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

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

THIS DOCUMENT IS RECORDED ON BEHALF OF THE
HOUSING AUTHORITY OF THE CITY OF ALAMEDA AND IS
EXEMPT FROM RECORDING FEES PURSUANT TO
GOVERNMENT SECTION CODE 6103, NO FEE 27383

Only

Space Above This Line For Recorder's Use

**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.

Title of Document Containing Affordable Housing Restrictions: Affordability, Restrictions on Resale, and Option to Purchase Agreement, dated INSERT DATE

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

Parties to Affordable Housing Restrictions:

Housing Authority of the City of Alameda (“Authority”) and

«FULL_NAME_PRIMARY_CONTACT» AND

«FULL_NAME_HOUSEHOLD_MEMBER_2» (“Owner”).

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

- ☐ on _____, as Document No.
_____, in the Official Records of Alameda
County, on _____; or
- ☐ concurrently with this Notice, as Document No.
_____, in the Official Records of Alameda
County.

Legal Description of Property: See Exhibit A (Attached hereto)

Street Address of Property:

«ADDRESS__STREET_1_ASSIGNED_PROPERTY»,

«ADDRESS__CITY_ASSIGNED_PROPERTY»,

«ADDRESS__STATE_ASSIGNED_PROPERTY»

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.
- ☐ The Owner must give notice to the Authority before resale of the Property.
- ☐ The Owner has granted the Authority 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.

☐ Term of Restrictions: 59 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 that 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 filed by the Authority (as housing successor to the former Community Improvement Commission of the City of Alameda pursuant to California Health and Safety Code section 34176(a)) in compliance with Health and Safety Code section 33334.3(f)(3) and (4), and shall be indexed against the Authority and the current Owner of the Property.

IN WITNESS WHEREOF, the parties have executed this Notice of Affordability Restrictions on Transfer of Property on or as of the date first written above.

**HOUSING AUTHORITY OF THE CITY
OF ALAMEDA:**

Dated: _____, 20____

By: _____
[Insert Name], Executive Director

OWNER:

Dated: _____, 20____

«FULL_NAME_PRIMARY_CONTACT»

Dated: _____, 20____

«FULL_NAME_HOUSEHOLD_MEMBER
_2»

ACKNOWLEDGMENTS

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

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____

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

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

[To Be Inserted]

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

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

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

APN: _____

AFFORDABLE HOUSING AGREEMENT

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

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

RECITALS

The following recitals are a substantive part of this Agreement.

A. Developer is the owner of that certain real property located in the City of Alameda, County of Alameda, State of California, more particularly described in Exhibit 1 attached hereto (“**Property**”).

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

C. The Property is the site of a 31-unit residential development located in the City of Alameda (“**Housing Project**”) that shall be developed as affordable housing pursuant to the City Inclusionary Policy. The Housing Project shall be developed by Developer in accordance with (a) City Council Ordinance No. 3115 approving Developer’s Master Plan and Density Bonus Application, allowing for development of a mixed use project on the Del Monte Property comprised of up to 380 housing units (including fifty-five (55) affordable units) and 30,000 square feet of commercial space (the “**Master Plan**”), on file with the Planning and Building Department, as depicted on the approved site plans for the Project; and (b) the City adopted Ordinance No. 3116, approving a Development Agreement with respect to the Del Monte

Warehouse project, which Development Agreement has an effective date of January 15, 2015 (the “**Development Agreement**”). City Council Ordinance No. _____ includes certain conditions of approval, including Condition of Approval No. _____, which requires that the Developer reserve all 31 units in the Project for sale to low- and very low-income households (each an “**Affordable Unit**”, and collectively, the “**Affordable Units**”) in accordance with the City Inclusionary Policy.

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

NOW THEREFORE, the parties acknowledge and agree as follows:

ARTICLE 1. DEFINITIONS

1.01 “**Affordable Rent**” is the amount of rent considered as “affordable rent” for very low and low income households, adjusted for family size appropriate to the unit, less a utility allowance, pursuant to California Health and Safety Code Section 50053 or any successor statute thereto. If the statute is no longer in effect and no successor statute is enacted, the City shall establish the Affordable Rent for purposes of this Agreement. For purposes of this Section 1.01 “adjusted for family size appropriate to the unit” shall mean a household of two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

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

- (a) Not less than seventeen (17) of the Affordable Units constructed on the Property shall be available to Eligible Households whose gross income does not exceed fifty percent (50%) of the Area Median Income at an Affordable Rent.
- (b) Not less than fourteen (14) of the Affordable Units constructed on the Property shall be available to Eligible Households whose gross income does not exceed eighty percent (80%) of the Area Median Income at an Affordable Rent.

Notwithstanding 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 2. If an occupant of an Affordable Unit no longer qualifies as an Eligible Household due to an increase in income above the limitation set forth in paragraph (a) and/or (b), as appropriate, of this Section 2.01, the occupant may continue to occupy the former Affordable Unit; provided, however, Developer may increase the rental rate for such former Affordable Unit to market rate and Developer shall rent the next available comparable unit within the Housing Project (i.e., same number of bedrooms and bathrooms) as an Affordable Unit. Developer shall send written notice to City with the address and bedroom/bathroom mix of the Affordable Unit designated by Developer as the replacement Affordable Unit.

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

2.02 Designation of Affordable Units. The initial designation and location of the Affordable Units is set forth in the Site Plan attached hereto as Exhibit 3. 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 4 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.

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

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

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

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

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

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

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

ARTICLE 4. PROVISION OF SERVICES AND MAINTENANCE OF PROPERTY

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

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

ARTICLE 5. NO TRANSFER

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

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

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

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 until the date which is fifty-nine (59) years following the Effective Date. The covenants against discrimination contained in Article 6 of this Agreement shall run with the land in perpetuity.

ARTICLE 9. SUCCESSORS AND ASSIGNS

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

City acknowledges and consents to Developer entering a ground lease (the "**Ground Lease**") with respect to the Property with a tax credit limited partnership (the "**Partnership**") as tenant, which tax credit limited partnership shall assume the obligations of Developer hereunder. City agrees that upon execution of the Ground Lease, (a) the Partnership and any of its partner(s) may cure any default hereunder upon the same terms and conditions as Developer, and (b) the

Partnership and its limited partner(s) shall be provided copies of all notices to Developer hereunder upon written notice from Developer to City of the addresses of the Partnership and limited partner(s). City acknowledges that this Agreement (including, without limitation, Article 5) shall not prevent any change in the partners or equity holders of the Partnership.

ARTICLE 10. SUBORDINATION AGREEMENT

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

ARTICLE 11. DEFAULT

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

ARTICLE 12. NOTICES, DEMANDS AND COMMUNICATIONS

Any approval, disapproval, demand, document or other notice to be provided under this Agreement shall be given in writing and shall be sent: (a) for personal delivery by a delivery service that provides a record of the date of delivery, the individual to whom delivery was made, and the address where delivery was made; (b) by first-class certified United States mail, postage prepaid, return receipt requested; or (c) by a nationally recognized overnight courier service and marked for next day business delivery. All notices shall be addressed to the party to whom such notice is to be given at the property address stated herein or to such other address as a party may designate by written notice to the other. Any written notice, demand or communication shall be deemed received: (a) immediately if delivered by personal delivery as provided hereinabove; (b) on the third (3rd) day from the date it is postmarked if delivered by first-class mail, postage prepaid, return receipt requested; and (c) on the next business day if sent via nationally

recognized overnight courier and marked for next day business delivery. Notices sent by a party's attorney on behalf of such party shall be deemed delivered by such party.

To City:	City of Alameda 2263 Santa Clara Avenue Alameda, CA 94501 Attention: City Attorney
	Housing Authority of the City of Alameda 701 Atlantic Avenue Alameda, CA 94501 Attention: Executive Director
To Developer	Housing Authority of the City of Alameda 701 Atlantic Avenue Alameda, CA 94501 Attention: Executive Director
With a copy to:	Carle, Mackie, Power & Ross LLP 100 B Street, Suite 400 Santa Rosa, CA 94952 Attention: Henry Loh II

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 6, shall be recorded against the Property in the Official Records of Alameda County.

ARTICLE 15. COMPLIANCE MONITORING FEE

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

ARTICLE 16. MISCELLANEOUS

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

[SIGNATURES ON FOLLOWING PAGE]

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

CITY:

RECOMMENDED FOR APPROVAL:

CITY OF ALAMEDA, a municipal corporation

Executive Director, Housing Authority

City Manager
[Signature must be notarized]

APPROVED AS TO FORM:

City Attorney

- and -

DEVELOPER::

Housing Authority of the City of Alameda,
a public body corporate and politic

By: _____
[Signature must be notarized]
Vanessa M. Cooper
Executive Director

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.

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.

WITNESS my hand and official seal.

Signature_____

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

[illegible]

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

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

WITNESS my hand and official seal.

Signature_____

EXHIBIT 1

LEGAL DESCRIPTION OF THE PROPERTY

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

PARCEL ONE:

BEGINNING AT A POINT ON THE EASTERN LINE OR SHERMAN STREET, DISTANT THEREON SOUTH 3° 07' 30" WEST 75.61 FEET FROM THE DIRECT EXTENSION EASTERLY OF THE SOUTHERN LINE OF EAGLE AVENUE; RUNNING THENCE ALONG SAID LINE OF SHERMAN STREET SOUTH 3° 07' 30" WEST 129.39 FEET TO A POINT DISTANT THEREON NORTH 3° 07' 30" EAST 95 FEET FROM THE NORTHERN LINE OF BUENA VISTA AVENUE; THENCE SOUTH 86° 52' 30" EAST 39 FEET; THENCE SOUTH 3° 07' 30" WEST 95 FEET TO SAID LINE, OF BUENA VISTA AVENUE; THENCE ALONG THE LAST NAMED LINE SOUTH 86° 52' 30" EAST 321 FEET TO THE DIRECT EXTENSION NORTHERLY OF THE EASTERN LINE OF MORTON STREET; THENCE ALONG THE LAST SAID EXTENDED LINE NORTH 3° 07' 30" EAST 15 FEET TO THE NORTHERN LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED BY ALASKA PACKERS ASSOCIATION TO ALAMEDA BELT LINE BY DEED DATED October 27, 1926 RECORDED November 23, 1926 IN BOOK 1467 OF OFFICIAL RECORDS OF ALAMEDA COUNTY, PAGE 239, UNDER RECORDER'S SERIES NO. W-98941; THENCE ALONG THE LAST NAMED LINE NORTH 86° 52' 30" WEST 55 FEET, MORE OR LESS, TO THE POINT FROM WHICH THE CENTER OF A CIRCLE HAVING A RADIUS OF 329.77 FEET BEARS NORTH 3° 07' 30" EAST; THENCE CONTINUING ALONG THE LAST NAMED LINE WESTERLY ON THE ARC OF SAID CIRCLE TO THE RIGHT, A DISTANCE OF 127.90 FEET TO THE MOST NORTHERN CORNER OF SAID LAND DESCRIBED IN SAID DEED; THENCE NORTH 3° 08' EAST 14.09 FEET TO A POINT FROM WHICH THE CENTER OF A CIRCLE HAVING A RADIUS OF 234.90 FEET BEARS NORTH 19° 25' 52" EAST; THENCE ALONG THE ARC OF LAST SAID CIRCLE NORTHWESTERLY 105.10 FEET TO A POINT FROM WHICH THE CENTER OF A CIRCLE HAVING A RADIUS OF 323.27 FEET BEARS NORTH 45° 04' 08" EAST; THENCE ALONG THE ARC OF LAST SAID CIRCLE NORTHWESTERLY, A DISTANCE OF 147.79 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION DESCRIBED IN THE DEED TO ALAMEDA BELT LINE, A CALIFORNIA CORPORATION, RECORDED November 23, 1926, INSTRUMENT NO. W-98941, BOOK 1467, PAGE 239, OFFICIAL RECORDS.

APN: 072-0383-001-00

PARCEL TWO:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERN LINE OF BUENA VISTA AVENUE, WITH THE EASTERN LINE OF SHERMAN STREET, FORMERLY ST.

GEORGE STREET; RUNNING THENCE EASTERLY ALONG THE SAID LINE OF BUENA VISTA AVENUE 39 FEET; THENCE AT RIGHT ANGLES NORTHERLY 95 FEET; THENCE AT RIGHT ANGLES WESTERLY 39 FEET TO THE SAID LINE OF SHERMAN STREET; THENCE SOUTHERLY ALONG THE SAID LINE OF SHERMAN STREET 95 FEET TO THE SAID LINE OF BUENA VISTA AVENUE AND THE POINT OF BEGINNING.

BEING A PORTION OF LOTS 1 AND 2, IN BLOCK "B" AS THE SAID LOTS AND BLOCK ARE SHOWN ON THE "MAP OF 144 LOTS IN PAGE TRACT, ALAMEDA CO.", ETC., FILED February 25, 1874 IN BOOK 6 OF MAPS, AT PAGE 7, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

APN: 072-0383-002-00

EXHIBIT 2

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 3

Site Plan

[To be inserted]

EXHIBIT 4

Materials, Amenities and Finishes

[To be inserted]

EXHIBIT 5

CERTIFICATION OF CONTINUING COMPLIANCE

Project Name and Address: _____

Date: _____

Total Affordable Housing Units in Project:

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

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

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

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

Signed: _____
Developer/ Agent

Date: _____

[See Attached]

ANNUAL COMPLIANCE REPORT

Project Name and Address:_____ Date: _____

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

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

(Attach additional sheets as required.)

Signed:_____ Date: _____
Developer / Agent

ANNUAL COMPLIANCE REPORT

Project Name and Address: _____ Date: _____

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

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

(Attach additional sheets as required.)

Signed: _____ Date: _____
Developer / Agent

ANNUAL COMPLIANCE REPORT

Project Name and Address:_____ Date: _____

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

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

(Attach additional sheets as required.)

Signed:_____ Date: _____
Developer / Agent

EXHIBIT 6

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

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

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

Space Above This Line For Recorder's Use Only

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

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

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

Title of Document Containing Affordable Housing Restrictions:

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

Parties to Affordable Housing Restrictions:

City of Alameda (“City”) and
the Housing Authority of the City of Alameda (“Owner”).

The Affordable Housing Restrictions are recorded: (check one)

☐ as Document No. _____, official records of _____ 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: _____ 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____

Housing Authority of the City of Alameda,
a public body corporate and politic

By: _____
[Signature must be notarized]
Vanessa M. Cooper
Executive Director

ACKNOWLEDGMENTS

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

[illegible]

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

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

WITNESS my hand and official seal.

Signature_____

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

[illegible]

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

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

WITNESS my hand and official seal.

Signature_____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

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

PARCEL ONE:

BEGINNING AT A POINT ON THE EASTERN LINE OR SHERMAN STREET, DISTANT THEREON SOUTH 3° 07' 30" WEST 75.61 FEET FROM THE DIRECT EXTENSION EASTERLY OF THE SOUTHERN LINE OF EAGLE AVENUE; RUNNING THENCE ALONG SAID LINE OF SHERMAN STREET SOUTH 3° 07' 30" WEST 129.39 FEET TO A POINT DISTANT THEREON NORTH 3° 07' 30" EAST 95 FEET FROM THE NORTHERN LINE OF BUENA VISTA AVENUE; THENCE SOUTH 86° 52' 30" EAST 39 FEET; THENCE SOUTH 3° 07' 30" WEST 95 FEET TO SAID LINE, OF BUENA VISTA AVENUE; THENCE ALONG THE LAST NAMED LINE SOUTH 86° 52' 30" EAST 321 FEET TO THE DIRECT EXTENSION NORTHERLY OF THE EASTERN LINE OF MORTON STREET; THENCE ALONG THE LAST SAID EXTENDED LINE NORTH 3° 07' 30" EAST 15 FEET TO THE NORTHERN LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED BY ALASKA PACKERS ASSOCIATION TO ALAMEDA BELT LINE BY DEED DATED October 27, 1926 RECORDED November 23, 1926 IN BOOK 1467 OF OFFICIAL RECORDS OF ALAMEDA COUNTY, PAGE 239, UNDER RECORDER'S SERIES NO. W-98941; THENCE ALONG THE LAST NAMED LINE NORTH 86° 52' 30" WEST 55 FEET, MORE OR LESS, TO THE POINT FROM WHICH THE CENTER OF A CIRCLE HAVING A RADIUS OF 329.77 FEET BEARS NORTH 3° 07' 30" EAST; THENCE CONTINUING ALONG THE LAST NAMED LINE WESTERLY ON THE ARC OF SAID CIRCLE TO THE RIGHT, A DISTANCE OF 127.90 FEET TO THE MOST NORTHERN CORNER OF SAID LAND DESCRIBED IN SAID DEED; THENCE NORTH 3° 08' EAST 14.09 FEET TO A POINT FROM WHICH THE CENTER OF A CIRCLE HAVING A RADIUS OF 234.90 FEET BEARS NORTH 19° 25' 52" EAST; THENCE ALONG THE ARC OF LAST SAID CIRCLE NORTHWESTERLY 105.10 FEET TO A POINT FROM WHICH THE CENTER OF A CIRCLE HAVING A RADIUS OF 323.27 FEET BEARS NORTH 45° 04' 08" EAST; THENCE ALONG THE ARC OF LAST SAID CIRCLE NORTHWESTERLY, A DISTANCE OF 147.79 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION DESCRIBED IN THE DEED TO ALAMEDA BELT LINE, A CALIFORNIA CORPORATION, RECORDED November 23, 1926, INSTRUMENT NO. W-98941, BOOK 1467, PAGE 239, OFFICIAL RECORDS.

APN: 072-0383-001-00

PARCEL TWO:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERN LINE OF BUENA VISTA AVENUE, WITH THE EASTERN LINE OF SHERMAN STREET, FORMERLY ST.

GEORGE STREET; RUNNING THENCE EASTERLY ALONG THE SAID LINE OF BUENA VISTA AVENUE 39 FEET; THENCE AT RIGHT ANGLES NORTHERLY 95 FEET; THENCE AT RIGHT ANGLES WESTERLY 39 FEET TO THE SAID LINE OF SHERMAN STREET; THENCE SOUTHERLY ALONG THE SAID LINE OF SHERMAN STREET 95 FEET TO THE SAID LINE OF BUENA VISTA AVENUE AND THE POINT OF BEGINNING.

BEING A PORTION OF LOTS 1 AND 2, IN BLOCK "B" AS THE SAID LOTS AND BLOCK ARE SHOWN ON THE "MAP OF 144 LOTS IN PAGE TRACT, ALAMEDA CO.", ETC., FILED February 25, 1874 IN BOOK 6 OF MAPS, AT PAGE 7, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

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