

RESOLUTION NO.16165

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF REDWOOD CITY ESTABLISHING AN AFFORDABLE HOUSING PRESERVATION PROGRAM, APPROVING THE GUIDELINES AND THE TEMPLATE LOAN DOCUMENTS FOR THE PROGRAM, AND AUTHORIZING THE CITY MANAGER TO FUND AFFORDABLE HOUSING ACQUISITION, REHABILITATION AND PRESERVATION LOANS UNDER THE PROGRAM WITHOUT RETURNING TO THE CITY COUNCIL

WHEREAS, preservation of existing affordable housing is one of the four housing priorities in the 2020 City Council Strategic Plan; and

WHEREAS, due to the rapid increase in housing prices and lack of available housing stock that is affordable to lower-income households, the risk of displacement in Redwood City has increased over the last decade, with 22.7% of Redwood City households living in neighborhoods susceptible to or experiencing displacement, and 9.4% living in areas at risk of or undergoing gentrification; and

WHEREAS, due to higher rates of poverty and a history of exclusionary federal and local housing policies limited access to housing opportunities, displacement pressures disproportionately affect the city's residents of color, including its Black, Hispanic or Latinx, and Indigenous communities; and

WHEREAS, the City of Redwood City is committed to preventing displacement by supporting safe, affordable housing for people at all income levels; and

WHEREAS, over a two-year period of consultation with residents, property owners, and local and regional housing experts and research, the City developed a set of policy recommendations to address the needs of residents at highest risk of displacement called the Anti-Displacement Strategy (ADS); and

WHEREAS, among the eight recommendations is creation of a Affordable Housing Preservation Program (Program), an over-the-counter, local fund accessible to developers to help finance preservation of affordable housing in the City; and

WHEREAS, on June 27, 2022, the City Council adopted the ADS; and

WHEREAS, timely implementation of the Program is needed to facilitate preservation projects in the city.

NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF REDWOOD CITY AS FOLLOWS:

1. The City Council hereby establishes an Affordable Housing Preservation Program (Program) to fund loans to support (1) acquisition/rehabilitation of existing multi-

family rental properties in incorporated Redwood City serving lower-income households for conversion to deed-restricted affordable housing; and (2) extension of the affordability term of existing deed-restricted rental properties in incorporated Redwood City with regulatory requirements expiring within five (5) years.

2. The City Council hereby approves the Housing Preservation Program Guidelines (Guidelines), attached hereto as Exhibit A, and the template loan documents, attached hereto as Exhibit B, required to implement the Program.

3. The City Council authorizes the City Manager or their designee to award funding to eligible projects consistent with the Guidelines and execute the template loan documents, subject to any minor, clarifying and conforming changes approved by the City Attorney, without returning to the City Council.

4. The City Council hereby authorizes the City Manager or their designee to modify the Guidelines and to take any other action with respect to the loan documents and the Program as required to implement the intent and direction of this Resolution.

5. The Resolution shall be effective immediately upon adoption.

* * *

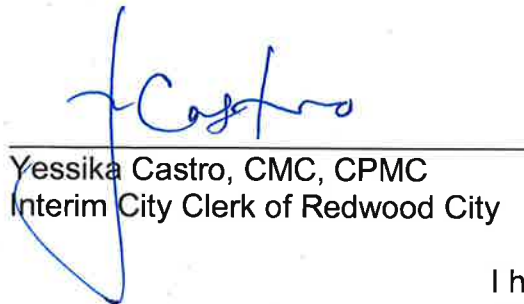
Passed and adopted by the Council of the City of Redwood City at a
Joint City Council/Successor Agency Board/Public Financing Authority Meeting
thereof held on the 24th day of July 2023 by the following votes:

AYES: Aguirre, Eakin, Howard, Martinez Saballos, Sturken, Vice
Mayor Espinoza-Garnica, and Mayor Gee
NOES: None
ABSENT: None
ABSTAINED: None
RECUSED: None



Jeff Gee
Mayor of the City of Redwood City

Attest:



Yessika Castro, CMC, CPMC
Interim City Clerk of Redwood City

I hereby approve the foregoing resolution this
24th day July 2023.



Jeff Gee
Mayor of the City of Redwood City



City of Redwood City
Affordable Housing Preservation Program
Program Guidelines
_____, 2023

Applications are accepted through an over-the-counter process. Hard copies will not be accepted. Applications must be submitted to housingrwc@redwoodcity.org. **If you have any questions, please contact Rachel Horst at rhurst@redwoodcity.org.**

Please be aware that under California Public Records Act, all documents submitted in response to this program are considered part of the public record and will be made available to the public, upon request, following the application deadline.

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OVERVIEW

Program Description

The City of Redwood City (City) Affordable Housing Preservation Program (Program) is an ongoing, over-the-counter Program designed to prevent displacement of lower-income households. Under this Program, the City will award funding to support 1.) acquisition/rehabilitation of existing multi-family rental properties in incorporated Redwood City serving lower-income households for conversion to deed-restricted affordable housing; or 2.) extending the affordability term of existing deed-restricted rental properties in incorporated Redwood City with regulatory requirements expiring within five (5) years.

Eligible projects should mitigate the displacement of lower-income households, serve extremely low-income households to the greatest degree possible, and be in the best position to move forward with acquisition and/or rehabilitation.

Applications will be reviewed by City staff against these objectives, as well as threshold requirements and project-specific criteria described in this document. Applicants are responsible for reviewing these Affordable Housing Preservation Program Guidelines (Guidelines) and any relevant exhibits and attachments to ensure their projects' compatibility with this Program.

Equity Priority Communities Prioritization

The Metropolitan Transportation Commission (MTC) has identified several areas in Redwood City known as [Equity Priority Communities](#) (previously known as Disadvantaged Communities) that have historically been underserved and face greater displacement pressures. Projects in Equity Priority Community areas will receive additional points on their application. Please refer to the map in Exhibit B.

Eligible Costs

Costs eligible for City funds include any costs of the project such as acquisition, hard costs, soft costs, developer fees, and reserves related to the rental housing. Program funds may be used to pay off a bridge/acquisition loan for projects acquired within six (6) months of application submission. The City's funds cannot pay for commercial costs or luxury items.

The City intends to use multiple funding sources to support preservation activities. Please see the current Available Funding document posted separately on the City's website to learn more about eligible costs based on the current sources.

Available Funding

As the Program is funded from multiple sources, the City will endeavor to match the appropriate funding source to the proposed project based on each source's specific

criteria. See the Available Funding document for descriptions of the funding sources and amounts currently available.

Please note that available funding levels for the Program will vary over time. The City reserves the right to re-allocate Program resources, as required, to ensure that overall City goals are achieved.

Bay Area Housing Finance Authority (BAHFA) Preservation Funds

Redwood City projects with the intent to preserve affordability may be eligible for additional funding through BAHFA. Applicants are encouraged to review the [BAHFA website](#) and contact BAHFA staff for possible leveraging opportunities and program details.

- **Staff Contact**
Somaya Abdelgany
sabdelgany@bayareametro.gov

SELECTION PROCESS

Projects will be reviewed and scored on a first-come, first-served basis. All projects that meet the minimum threshold requirements will be eligible for funding. If multiple projects have applied around the same time, projects that meet the threshold will be scored against each other (see Evaluation Criteria). The City will use the Evaluation Criteria to score eligible projects to determine the priority for awarding funds.

Minimum Threshold Criteria (Applicable to All Projects)

- 1) The application must be complete.
- 2) The funding request must be within the amount available (at the time of the request) for that Program funding area. See the Available Funding document for the funding sources and amounts currently available.
- 3) The proposal must meet the Program requirements.
- 4) The applicant must be a nonprofit organization, for-profit, local government agency, joint powers agency, or a joint venture that includes a qualified nonprofit organization.
- 5) Eligible projects include existing multi-family residential rental projects with:
 - a) ~~at least five (5)~~ units occupied by lower-income tenants and/or that offer ~~below market rate~~ lower-income rents¹, as demonstrated by the applicant;
or

¹ Refer to Health & Safety Code Sec. 50079.5 and Sec. 50053(b)(2-4).

- b) affordability restrictions set to expire within five (5) years of the application.

Projects proposed to comply with the City's Affordable Housing Ordinance (Article 29 of the Redwood City Zoning Code) or to meet any other affordable housing obligation as part of a project approval process (e.g., inclusionary requirements or community benefits) are not eligible for Program funding. However, affordable units provided in excess of that obligation may be considered for Program funding.

- 6) All units supported through this Program must serve households at or below 80% of Area Median Income (AMI). The City publishes annual income limits on its website ([Redwood City Income Limits](#)). Please note that some Program funding sources will require deeper affordability – please refer to the Available Funding document.

Mixed-income projects (i.e., projects that include some units over 80% Area Median Income/AMI) may be eligible, but City funds may only be used to subsidize the units at or below 80% AMI. Projects with all units restricted to 80% AMI households or below will ~~be considered first~~ receive priority.

- 7) Applicants must meet the following capacity and experience requirements:
- The developer must have completed at least two (2) projects similar to what is proposed in terms of scope, size, budget, financing structure, ability to obtain financing, and schedule, and that have been in service for at least three (3) years.
 - The developer, or the property manager, must have managed at least two (2) completed projects similar to what is proposed in terms of scope, size, operating budget, and services. Applicants may use key principals to qualify for experience.
- 8) The applicant must maintain direct and continuing control of the project throughout the regulatory period.
- 9) Applicants with existing City loans must be in good standing with the City's annual monitoring requirements.
- 10) Applicants must have site control. A purchase and sale agreement, option, disposition and development agreement, exclusive negotiating agreement, or grant deed are acceptable forms of evidence of site control.
- 11) Requested funds must fill a financing gap or pay off short-term financing, such as a bridge loan or acquisition loan. The project must not already be fully funded with permanent financing, and the City funds cannot replace other permanent funding on the project. Exceptions to this rule will be made only when a permanent funding source is no longer financially viable.

- 12) Projects must include services that are appropriate for the population served. If the proposed project targets a special needs population (e.g., people experiencing or transitioning out of homelessness, people with developmental disabilities or mental illness, or transition-age youth), a plan to provide supportive services is required and must be submitted as part of the application. This may include services provided directly by the applicant and/or memorandums of understanding (MOUs) with other organizations.

City Underwriting Guidelines

Housing Preservation Program Loan Underwriting Guidelines	
Item	Requirement
Loan term	55 years
Interest	3% simple paid from residual receipts
Regulatory term	55 years from when building reaches 80% occupancy of deed-restricted units with households at targeted incomes Developer must notify City when occupancy level is reached.
Income limits	Up to 80% Area Median Income (AMI) (See Health & Safety Code Sec. 50079.5) <u>Please refer to the separate Available Funding Document for income limits specific to the current funding sources, which may target lower income levels.</u> Refer to the Redwood City website for the current income limits: Redwood City Income Limits
Maximum rents	Lower Income, as defined in Health and Safety Code Sec. 50053(b)(4) <u>Please refer to the separate Available Funding Document for maximum rents specific to the current funding sources, which may target lower income levels.</u> Refer to the Redwood City website for current rents: Redwood City Rent Limits
Rent increases	Maximum 5% annually
Redwood City Monitoring Fee	Include \$162/unit in cash flow as an expense
Developer fee	10% of total project cost Deferred fee may be paid after all required operating costs and asset management fees but prior to residual receipts payments.

Replacement reserves	\$500/unit deposited from cash flow <u>on an annual basis over the 20-year period, or the equivalent thereof up-front</u> Reserves must be justified by Physical Needs Assessment and must exceed the minimum if necessary.
Capitalized operating reserves	Minimum 3 months' expenses, including: hard debt, monitoring fees, and replacement reserves
Debt coverage ratio	1.15-1.25 over the first 15 years of cash flow or loan term (whichever is longer)
Subsidy limit	\$300,000/unit
Asset management fee	Maximum \$25,000/year with 3.5% escalator
Subordination	City will subordinate its deed of trust to lenders with a greater investment (senior lenders). City will not subordinate its regulatory agreement to any deed of trust, but will subordinate its regulatory agreement to a senior lender's regulatory agreement.
Insurance	See Exhibit A.
Hard cost contingency	At least 20% of hard costs, including general requirements, overhead, profit, and contractor's contingency
Soft cost contingency	At least 5% of all costs except acquisition, hard costs, reserves, and developer fees
Relocation	Displacement or permanent relocation of existing tenants is not allowed. Temporary relocation during a renovation is allowed. All relocation must follow state and federal relocation laws.
Local Preference	Households who live or work in Redwood City must be given preference for City-restricted units, provided they meet other Federal, State, and local guidelines. Local preferences may be waived for Project-Based Section 8 units and units filled through Coordinated Entry.
Property Welfare Tax	Budget must clearly show when the property welfare tax exemption is expected to begin.

Schedule

The City has received approval from City Council to administratively approve and fund projects. After City Housing staff has approved a project for funding, the project must acquire the property and/or close on rehabilitation funding within 60 days six months. An application requesting changes from these Guidelines cannot be considered for

expedited approval at the staff level. Staff will determine whether an application seeking to deviate from the Guidelines may be brought to the City Council for approval.

The following schedule provides the timing for each segment of the Program application process, from application submission to closing of awarded City funds.

Schedule for Applicants Acquiring Properties Program Application Process	TIMING
Application Submission	Ongoing
Staff initial review of complete applications	10 business days from application submission
Submittal of additional information, if requested by staff	5 business days after initial review
Staff final review	3 business days from staff receipt of all information
Staff notification of results/ award letter issuance	1 business day from final review
<u>Acquisition-City Loan</u> Closing	60 days from award letter

Evaluation Criteria for Scored Projects

The purpose of scoring is to prioritize how to fund multiple projects that apply at the same time and meet threshold requirements. If there is only one application, it may not be scored.

EVALUATION CRITERIA	<u>POSSIBLE POINTS</u>
Readiness to Proceed	30
Timing of Acquisition Closing/Rehabilitation Finance Closing: Full points if within 3 months of the City's commitment, ½ points for within 6 months, 0 points if over 6 months.	30
Services	10
Supportive Services: Types of services provided should be appropriate for the population being served. <u>-If targeting a special population, f</u> Full points for 1.0 FTE of onsite supportive services staff, ½ points for less than 1.0 FTE of onsite supportive services staff. <u>(If serving the general population and no services required, full points.)</u>	10
Affordability	10
Extremely Low-Income (ELI): 5 points for each 5% of project units provided at 30% or less of AMI, up to the	10

maximum of 10 points.	
Budget Completeness and Accuracy	25
Hard costs: Full points if costs are justified by the Physical Needs Assessment.	5
Hard cost contingency: If project requires rehabilitation, budget must show a 20% hard cost contingency. (If project does not require rehabilitation, full points.)	2
Relocation: If project requires relocation, budget must include appropriate relocation costs. (If no relocation required, full points.)	3
Replacement reserves: Replacement reserves must meet City's standard.	3
Operating reserves: Operating reserves must meet City's standard.	2
Cash flow: Cash flow must be positive over 20-year period.	5
Rental/Operating subsidy: If rental/operating subsidy is needed, must demonstrate the rental/operating subsidy is committed. (If no subsidy is required, full points.)	5
Preservation Specific	25
Full points if located in an Equity Priority Community (see Exhibit B).	10
Full points if the project can document that a minimum of 50% of existing tenants have incomes at or below 80% AMI (vacant units count towards this number).	10
If anticipating a property welfare tax exemption, the nonprofit entity must be formed and part of the legal owner.	5
Total Points	100

APPEALS PROCESS

Applicants that wish to appeal points awarded on their proposal may do so by submitting a written appeal via email to the Housing Leadership Manager at alancaster@redwoodcity.org no later than 10 business days after applicants are notified of the City's decision. No appeals may be submitted after that date.

- 1) Basis of Appeals:
 - a. An appeal must be based on the contents of an applicant's original submission.
 - b. An appeal must be based on the points awarded under the rating criteria in the Program. Appeals may request reevaluation of points awarded under the Program rating criteria, based on clarification of information provided in the original submission.
 - c. Applicants may not submit new information to be considered in award of points as part of the appeals process.

- d. Applicants may not appeal points awarded to or ranking of another applicant's submission.
- 2) If an appeal is received by the deadline, the Housing Leadership Manager will have 20 business days after receipt of the written appeal to investigate and respond to the applicant with a decision. The Housing Leadership Manager may request additional information from the applicant making the appeal or from other applicants.
 - 3) If the applicant making the appeal is not satisfied with the Housing Leadership Manager's response, they may submit a written request for review/appeal to the Assistant City Manager within 10 business days of receiving the Housing Leadership Manager's response, with a copy to the Housing Leadership Manager. The Assistant City Manager will have 20 business days to respond. The decision of the Assistant City Manager is final.

QUESTIONS/FAQS: All questions must be submitted to Rachel Horst at rhurst@redwoodcity.org. The City will periodically post on its website a list of questions and answers.

APPLICATION SUBMITTAL REQUIREMENTS

Applications will be accepted anytime until funds are expended. The application should be submitted at housingrwc@redwoodcity.org.

Applications are to be straightforward, clear, concise, and specific to the information requested. In order for applications to be considered complete, the applicant must provide responses to all information requested. Submission to this Program is at the applicant's expense and no part of the costs of preparation shall be reimbursed by the City.

Applications in whole or in part, are NOT to be marked confidential or proprietary. City may refuse to consider any application or part thereof so marked. Applications submitted in response to this Program may be subject to public disclosure. City shall not be liable in any way for disclosure of any such records. Under the California Public Records Act, all documents submitted in response to this Program are considered part of the public record and will be made available to the public, upon request.

Applications must include the following, in the following order:

1. Cover letter with applicant, amount requested, project location, and project description (max 1 page).
2. Description of the project including units, incomes served, occupancy status, special populations served (if applicable), commercial spaces (if any), on-site amenities, neighborhood amenities, accessible units (if any) (max 2 pages).
3. Map identifying location of project.

4. Rent roll dated within 30 days of application with lease start date, rent, and subsidy information, if applicable.
5. Description of the applicant, including years of experience, types of projects, role in projects, and key principals with contact information (max 2 pages).
6. Organizational documents from the State, organizational chart, non-profit status (if applicable), operating agreements for partnerships.
7. Last 3 Years of Audited Financial Statements of entity or principals.
8. List of properties developed within the last 10 years that include developer's role, funding sources, income levels served, acquisition/new construction/rehabilitation, special populations served, total development costs and debt coverage ratio or expense coverage ratio (complete in Budget Template).
9. Description of property management company, including years of experience and types of projects managed (max 2 pages).
10. Proof of site control with a date that extends through the acquisition closing (deed, purchase/option contract, lease, exclusive negotiating agreement, Disposition and Development Agreement).
11. Schedule listing key dates through turnover of over-income tenants (if applicable), full lease-up, including acquisition, funding applications (if applicable), acquisition closing, building permits, rehabilitation start and completion (if applicable), etc.
12. Appraisal dated within 60 days of the application.
13. Preliminary title report dated within 60 days of the application.
14. Phase 1 dated within 1 year of the application.
15. Proof of Planning approvals, if applicable.
16. Budget spreadsheets with development sources and uses, operating, 20-year cash flow budgets, debt coverage ratio, unit mix, City restricted-unit mix. Applicant may use budget template provided by the City or provide their own budget.
17. Financing commitments.
18. Operating subsidy commitment, if applicable.
19. Supportive services plan and budget (if applicable) including FTE, staff/client ratios, types of onsite and offsite services, memorandums of understanding between external service provider (if applicable), funding commitment documents.
20. Relocation Plan and Budget, if applicable.
21. Physical Needs Assessment with replacement reserve analysis completed within 6 months of the application.
22. A timeline description of when over-income units are expected to turnover and become affordable units.

23. Insurance as required by Exhibit A. Property insurance will be required before acquisition closing.
24. Signed Certifications in Exhibit C.
25. Description of any changes from the Guidelines requested.
26. Any other materials required to evaluate scoring criteria.

GENERAL INFORMATION

Revisions

The City Manager is authorized to make minor changes to the Guidelines; substantive changes will require City Council action.

If it becomes necessary to modify any aspect of this Program, the City will prepare an addendum and post in on the City's website and will send it out to the City's listserv.

Expense of Preparation

The City is not responsible for any expense incurred in preparation of submittals or taking any action in connection with the process, or for the costs of any services performed in connection with submittal, interviews, or approval process.

Review process

Applications will be reviewed by City staff and/or consultants for completeness, for threshold requirements, and competitiveness (as applicable).

- Incomplete applications may not be accepted.
- Staff may ask clarifying questions of applicants and include this information in the review process.
- Proposals that do not meet the basic thresholds may be rejected.
- The City reserves the right to refuse funding for any and all applications.
- The City reserves the right to award funds to more than one applicant.
- The City will administratively approve projects and execute loan documents for the closing.

Evaluation Process

To be considered for funding, projects are reviewed for basic thresholds as outlined in this Program. If there are multiple projects applying at or around the same time, projects meeting threshold will then be rated based on the scoring criteria. The City reserves the right to split funds between projects as needed to expend funds in a timely fashion.

Interviews

The City reserves the right to conduct interviews in connection with responses submitted in response to this Program. If applicable, interviews will be conducted prior to staff final review. As such, all entities responding to this Program should be prepared to participate in a video phone call (Microsoft Teams, Zoom or similar format) upon request by the City.

Funding Award Recommendations

At the conclusion of the application evaluation process, all applicants will be notified by letter and email of the funding award recommendation(s), if any, by the City.

Reservation of Rights

The City reserves the right to conduct any investigation of the qualifications of any applicant that it deems appropriate, negotiate modifications to any of the items submitted, request additional information from any applicant, reject any or all submittals, and waive any irregularities. The City retains the right to negotiate the terms and services in any submittal.

Modifications

Applicants may not modify their submittal, except in direct response to a request from the City for clarification. Any submittal and proposed information items must be valid for at least 180 days after submission.

EXHIBIT A - INSURANCE REQUIREMENTS

Prior to initiating work on the Project and continuing through throughout the term of this Agreement, Owner shall obtain and maintain the following policies of insurance:

(a) a commercial general liability policy in the amount of ~~Two Million Dollars (\$2,000,000) each occurrence~~, Five Million Dollars (\$5,000,000) ~~annual aggregate~~, ~~together with Three Million Dollars (\$3,000,000) excess liability coverage~~, or such other policy limits as City may require in its reasonable discretion, including coverage for ~~bodily injury, property damage, products, completed operations and contractual liability coverage~~. Such policy or policies shall be written on an occurrence basis and shall name the Indemnitees as additional insureds. If the submitted policies contain aggregate limits, such limits will apply separately to the Services, project, or location that is the subject of this Agreement or the aggregate will be twice the required per occurrence limit. The Commercial General Liability insurance policy will be endorsed to name the City, its officers, agents, employees and volunteers as additional insureds, and to state that the insurance will be primary and not contribute with any insurance or self-insurance maintained by the City.

(b) a comprehensive automobile liability coverage in the amount of Two Million Dollars (\$2,000,000), combined single limit including coverage for owned and non-owned vehicles and shall furnish or cause to be furnished to City evidence satisfactory to City that Owner and any contractor with whom Owner has contracted for the performance of work on the Property or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law. ~~Automobile liability policies shall name the Indemnitees as additional insureds.~~

(c) Owner and Owner's general partners shall furnish or cause to be furnished to City evidence satisfactory to City that Owner and any contractor with whom Owner has contracted for the performance of work on the Property or otherwise pursuant to this Agreement carries statutory Workers' Compensation insurance and Employer's Liability insurance in a minimum amount of One Million Dollars (\$1,000,000) per accident. The policies shall contain a waiver of subrogation for the benefit of the City.

(d) Upon commencement of construction and continuing until issuance of a Certificate of Occupancy, Owner and all contractors working on behalf of Owner shall maintain a policy of builder's all-risk insurance in an amount not less than the full insurable cost of the Project on a replacement cost basis naming City as loss payee.

(e) Upon completion of Project construction, Owner shall maintain property insurance covering all risks of loss (other than earthquake), including flood for 100% of the replacement value of the Project with deductible, if any, in an amount acceptable to City, naming City as loss payee.

(f) Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A: VII. The Commercial General Liability and comprehensive automobile policies required hereunder shall name the Indemnitees as additional insureds. Builder's Risk and property insurance shall name City as loss payee as its interests may appear.

(g) Prior to commencement of construction, Owner shall furnish City with certificates of insurance in form acceptable to City evidencing the required insurance coverage and duly executed endorsements evidencing such additional insured status. The certificates shall contain a statement of obligation on the part of the carrier to notify City of any material adverse change, cancellation, termination or non-renewal of the coverage at least thirty (30) days in advance of the effective date of any such material adverse change, cancellation, termination or non-renewal.

(h) The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94. Upon request by City's Risk Manager, Owner shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(i) If any insurance policy or coverage required hereunder is canceled or reduced, Owner shall, within fifteen (15) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, City may, without further notice and at its option, procure such insurance coverage at Owner's expense, and Owner shall promptly reimburse City for such expense upon receipt of billing from City.

~~(j) Coverage provided by Owner shall be primary insurance and shall not be contributing with any insurance, or self insurance maintained by City, and the policies shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the City. Owner shall furnish the required certificates and endorsements to City prior to the commencement of construction of the Project, and shall provide City with certified copies of the required insurance policies upon request of City.~~

~~(k)(j) Deductibles/Retentions.~~ Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, City's Risk Manager. At the option of and upon request by City's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects the Indemnitees or Owner shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

Adjustments. The limits of the liability coverage and, if necessary, the terms and conditions of insurance, shall be reasonably adjusted from time to time (not less than every five (5) years after the Effective Date nor more than once in every three (3) year period) to address changes in circumstances, including, but not limited to, changes in the purchasing power of the dollar and the litigation climate in California. Within thirty (30) days following City's delivery of written notice of any such adjustments, Owner shall provide City with amended or new insurance certificates and endorsements evidencing compliance with such adjustments.

DRAFT

EXHIBIT B – EQUITY PRIORITY COMMUNITIES

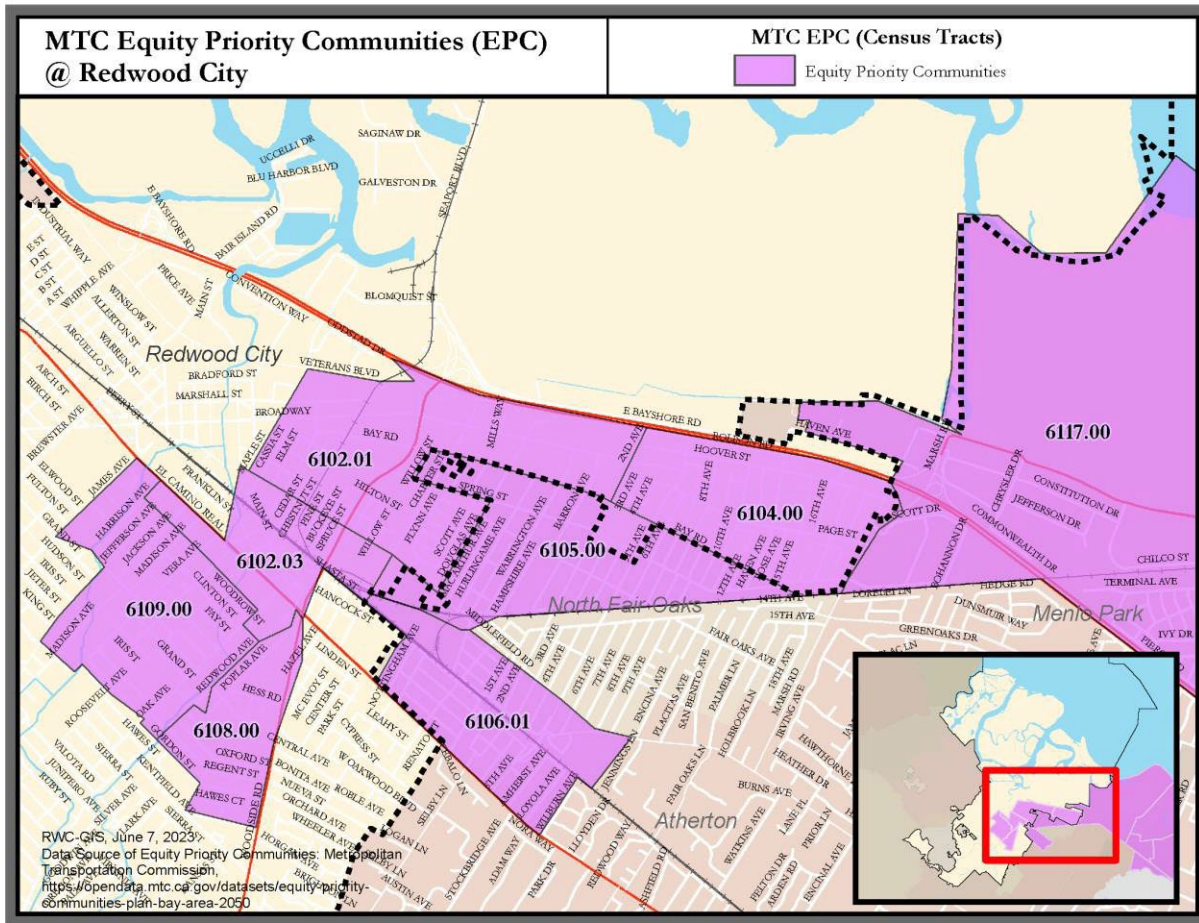


EXHIBIT C - APPLICANT CERTIFICATIONS

Applicant hereby certifies:

1. **Truth of Application**

That the information submitted in the project application and any supporting materials is true, accurate, and complete to the best of our knowledge. Applicant acknowledges and understands that if facts and/or information herein are found to be misrepresented, it shall constitute grounds for the default of the funding from which application is being made.

2. **Applicant Will Abide by Program Rules**

That if Applicant is successful in receiving funds as a result of this Application, it will abide by all applicable rules and regulations governing the Program.

3. **Applications are Public Records**

That Applicant acknowledges that the information submitted as part of this application may be made available to the public pursuant to a request under the California Public Records Act.

4. **Material Changes to Project**

That Applicant acknowledges that any material changes to the project not disclosed to and approved by the City may result in termination of funding for the project. Material changes include but are not limited to: changes to the project's design, amenities, and number and size of units; changes to the development budget; changes to the proposed sales prices, rents or operating expenses; changes to the sources, amounts or terms of financing; changes to the ownership entity or key staff and consultants identified in the Application, or changes to other Application items.

5. **Acknowledgement of Financing Commitment Timeline**

That Applicant acknowledges their understanding that after receiving approval for the project's financing commitment, the project will be subject to commitment and expenditure deadlines as applicable to the rules and regulations governing the Program for which funding is sought.

6. **Legal Authority**

The signatory has the legal authority to submit this application on behalf of the entity.

7. **Civil and Legal Questions (include an explanation for any questions answered "Yes")**

- a. Has the applicant filed bankruptcy or receivership or had a bankruptcy or receivership commenced against it, defaulted on a loan or been foreclosed against in past ten years?

- b. Is the applicant currently a party to, or been notified that it may be become a party, to any civil litigation that may materially and adversely affect the financial condition of the applicant's business or project in this application?
- c. Have there been any administrative or civil settlements, decision, or judgements against the applicant within the past 10 years that materially and adversely affected the financial condition of the applicant's business or project in this application?
- d. Is the applicant currently subject to, or been notified that it may become subject to, any civil or administrative proceeding, examination, or investigation by a local, state, or federal licensing or accreditation agency, a local, state, federal taxing authority, or a local, state, or federal regulatory or enforcement agency?
- e. In the past 10 years, has the applicant been subject to any civil or administrative proceeding, examination, or investigation by a local, state, or federal licensing or accreditation agency, a local, state, or federal taxing authority, or a local, state, or federal regulatory or enforcement agency that resulted in a settlement, decision, or judgement?
- f. Is the applicant currently a party to, or the subject of, or been notified that it may become a party to or the subject of, any criminal litigation, proceeding, charge, complaint, examination or investigation, of any kind, involving, or that could result in felony charges against the applicant?
- g. Is the applicant currently a party to, or the subject of, or been notified that it may become a party to or the subject of, any criminal litigation, proceeding, charge, complaint, examination or investigation, of any kind, involving, or that could result in misdemeanor charges against the applicant for matters relating to the conduct of the applicant's business?
- h. Is the applicant currently a party to, or the subject of, or been notified that it may become a party to or the subject of, any criminal litigation, proceeding, charge, complaint, examination or investigation, of any kind, involving, or that could result in criminal charges against the applicant for any financial or fraud related crime?
- i. Is the applicant currently a party to, or the subject of, or been notified that it may become a party to or the subject of, any criminal litigation, proceeding, charge, complaint, examination or investigation, of any kind, involving, or that could result in criminal charges against the applicant that could affect the financial condition of the applicant's business?
- j. Within the past 10 years, has the applicant been convicted of any felony?
- k. Within the past 10 years, has the applicant been convicted of any misdemeanor related to the conduct of the applicant's business?

- I. Within the past 10 years, has the applicant been convicted of any misdemeanor for any financial or fraud related crime?

Applicant Name and Title:

Organization:

Signature

Date

DRAFT

CITY OF REDWOOD CITY AFFORDABLE HOUSING PRESERVATION FUNDS**FUNDS AVAILABLE AS OF ____, 2023****Total: \$6,553,963****Permanent Local Housing Allocation (PLHA) – \$1,078,463**

Permanent Local Housing Allocation Funds (PLHA) are provided by the State of California Housing and Community Development Department (HCD) to local governments for housing-related projects and programs that assist in addressing the unmet housing needs of their local communities. The purpose of PHLA is increase the supply of housing for households at or below 60% of area median income; increase assistance to affordable owner-occupied workforce housing; assist persons experiencing or at risk of homelessness; promote projects and programs to meet the local government's unmet share of regional housing needs allocation, and ensure geographic equity in the distribution of the funds. The City's PHLA funds must serve households at or below 60% of Area Median Income (AMI). Please refer to the [City's PLHA 5-Year Plan](#).

Former Redevelopment Agency Low and Moderate Income Housing Asset Fund (LMIHF) – \$4,000,000

Up until 2012, when they were dissolved by the State, Redevelopment Agencies provide tax-increment financing for housing and community development projects. The City provides funds remaining after the dissolution for affordable housing. At least \$2.4M of these funds must subsidize units serving households at or below 50% of AMI (very low income). Up to \$1.6M can be used to serve households at 80% AMI (low income). Please reference the subsidy limits in the Affordable Housing Preservation Fund Guidelines to determine how many units must be restricted.

Affordable Housing Impact Fees – \$630,000

To address the need for affordable housing, as identified in the City's Housing Element, the City adopted an Affordable Housing Ordinance. For nonresidential and smaller residential developments (between 5 and 19 units), the City charges an Affordable Housing Impact Fee, which is used to increase the supply of housing affordable to households of extremely low, very low, low, and moderate-incomes. Units funded from Affordable Housing Impact Fees must serve households at or below 80% AMI.

Prohousing Incentive Pilot Program (PIP) Funds – \$845,500

The Department of Housing and Community Development (HCD) Prohousing Designation Program provides incentives to cities and counties in the form of additional points or other preference in the scoring of competitive housing, community development, and infrastructure programs. Eligible governments are those with compliant Housing Elements that have shown a commitment to providing affordable

housing. The PIP provides grants to jurisdictions with the Prohousing designation that may be used for preservation and production of affordable housing.

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LOAN AGREEMENT

By and Between the

**CITY OF REDWOOD CITY,
a California municipal corporation**

and

[INSERT NAME OF DEVELOPER]

a **[Insert State of Origin and Business entity type (e.g., a California limited partnership)]**

[Insert Name of Development and/or Address]

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ATTACHMENTS

Attachment No. 1	Legal Description of Property
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Attachment No. 3	Scope of Rehabilitation [<i>For Expiring Covenants Loans replace with "[Reserved]"</i>]
Attachment No. 4	Project Budget
Attachment No. 5	Form of Note
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Attachment No. 9	Supplemental Conditions [<i>If no Supplemental Conditions required based on funding source, delete</i>]

LOAN AGREEMENT
(Insert Name and/or Address of Project)

This Loan Agreement (“**Agreement**”) is entered into as of _____, 20__, by and among the CITY OF REDWOOD CITY, a California municipal corporation (“**City**”), _____, a _____ (“**Borrower**”).

RECITALS

A. Borrower [*seeks to acquire/is the owner of*] certain property known as [**Insert Name of Development**] (“**Development**”), located at [**Insert Address**] in Redwood City, California, as more particularly described in Attachment No. 1 and depicted in Attachment No. 2, both incorporated herein by this reference. (the “**Property**”)

B. The Property [*For Acquisition/Rehab:*] [is not currently subject to income restrictions for the rental units] [*For Expiring Covenants:*] [is subject to certain affordable housing restrictions that are scheduled to expire in not more than five (5) years]. Without the imposition of new affordability restrictions, it is likely that rents for the rental units in the Development will increase, resulting in the loss of affordable housing units.

C. Borrower has requested a loan pursuant to the City’s Affordable Housing Preservation Program, adopted by the Council by Council Resolution No. _____ [*For Acquisition/Rehab:*] [to finance a portion of the costs to acquire and conduct rehabilitation of the Property] [*For Expiring Covenants:*] [as consideration for Borrowers agreement to consent to affordability restrictions to be impose against the Property]. In exchange for the City agreeing to make the requested loan, Borrower will record covenants against the Property that impose affordability restrictions on the rental of certain units within the Development as more specifically set forth herein.

D. The City desires to make a loan pursuant to the Affordable Housing Preservation Program to [*For Acquisition/Rehab:*] [support the acquisition and rehabilitation of affordable housing, a portion of which will serve low and extremely low income households, by financing a portion of Borrower’s acquisition costs for the Property] and [*For Expiring Covenants:*] [preserve the Property as Affordable Housing by] requiring that a regulatory agreement be recorded against the Property that will ensure the designated affordable units are preserved as safe, quality, affordable housing in the City.

E. The California Environmental Quality Act (Public Resources Code Sections 21000 *et seq.*) (“**CEQA**”), imposes no conditions on the City’s consideration and approval of this Agreement, because funding of a proposal is not subject to environmental review under CEQA, as it does not constitute a “project,” does not commit the City to a definite course of action, does not constitute discretionary approval of a specific project, and will not result in a direct or reasonably foreseeable indirect physical change in the environment, and in the alternative is exempt from CEQA.

NOW, THEREFORE, City and Borrower hereby agree as follows:

AGREEMENT**100. DEFINITIONS**

101. Terms. The following terms, as used in this Agreement, shall have the meaning ascribed them in this Section:

a. **“Additional Borrower Financing”** has the meaning set forth in Section 401.

b. **“Affiliate”** means any other Person Controlling or Controlled by or under common Control with a specified Person.

c. **“Agreement”** means this Loan Agreement.

d. **“Annual City Loan Payment”** has the meaning set forth in Section 202.3.

e. **“Annual Operating Expenses”** means for each calendar year, the following costs reasonably and actually incurred for operation and maintenance of the Development: (i) Property taxes and assessments imposed on the Development; (ii) debt service currently due on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Development) on the Additional Borrower Financing; (iii) on-site service provider fees for tenant social services, provided the City has approved, in writing, the plan and budget for such services before such services begin; (iv) property management fees and reimbursements, on-site property management office expenses, and salaries of property management and maintenance personnel, not to exceed amounts that are standard in the industry and which are pursuant to a management contract approved by the County and the City; (v) an asset management fee payable to Borrowers’s general partner/managing member, not to exceed \$25,000, subject to annual increases of 3.5%; (ix) premiums for insurance required for the Property or the improvements thereon to satisfy the requirements of any lender of Approved Financing; (x) utility services not paid for directly by tenants, including water, sewer, and trash collection; (xi) maintenance and repair expenses and services; (xii) any annual license or certificate of occupancy fees required for operation of the Development; (xiii) security services; (xiv) advertising and marketing; (xv) cash deposited into the replacement reserve account or operating reserve account as required by the City pursuant to this Agreement along with such further replacement or operating reserves as approved by the City, which approval shall not be unreasonably withheld, conditioned or delayed; (xvii) extraordinary operating costs specifically approved in writing by the City; (xix) the City of Redwood City Asset Management Fee as required pursuant to this Agreement; (xx) payments of deductibles in connection with casualty insurance claims not normally paid from reserves, the amount of uninsured losses actually replaced, repaired or restored, and not normally paid from reserves, and other ordinary and reasonable operating expenses approved in writing by the City and not listed above; (xxi) annual payment towards Borrower’s deferred developer fee as permitted pursuant to this Agreement (xxii) in and other ordinary and reasonable operating expenses approved in writing by the City and not listed above. Annual Operating Expenses do not include the following: depreciation, amortization, depletion or other non-cash expenses, initial deposits to capitalize a reserve account, any amount expended from a reserve account, and any capital cost associated with the Development.

f. **“Approved Financing”** means the Loan and the Additional Borrower Financing.

g. **“Area Median Income”** means the area median income for San Mateo County as published by the U.S. Department of Housing and Urban Development (HUD), adjusted for household size.

h. **“Automobile Liability Insurance”** means insurance coverage against claims of personal injury (including bodily injury and death) and property damage covering all owned, leased, hired and non-owned vehicles used by Borrower. Such insurance shall be provided by a business or commercial vehicle policy and may be provided through a combination of primary and excess or umbrella policies, all of which shall be subject to pre-approval by City, which approval shall not be unreasonably withheld.

i. **“Borrower”** has the meaning set forth in the introduction to this Agreement.

j. **“City”** means the City of Redwood City.

k. **“City Share of Residual Receipts”** means _____ percent (___%) of Residual Receipts.

l. **“Claim”** means any claim, loss, cost, damage, expense, liability, Lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind.

m. **“Close of Escrow”** means the date upon which all conditions of the City as set forth in Section 204.1 of this Agreement, along with any conditions required by any lender providing Additional Borrower Financing for the acquisition of the Property, but not later than *[Insert Outside Date for the Close of Escrow]*.

n. **“Conditions Precedent to Disbursement”** has the meaning set forth in Section 204.1.

o. **“Control”** means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person and contractually bind such Person, whether by ownership of Equity Interests, by contract, or otherwise.

p. **“Construction”** means any alteration, construction, excavation, demolition, grading, development, expansion, reconstruction, redevelopment, repair, restoration, or other work affecting the Property.

q. **“County”** means the County of San Mateo, California.

r. **“Deed of Trust”** has the meaning set forth in Section 201.

s. **“Development”** means the multifamily rental housing development located on the Property, which includes *[insert total number of units]* apartment units that have been constructed and are in operation on the Property. The Development includes (i) _____

units that will be available and rented to households whose income does not exceed the maximum income for Extremely Low Income Households (collectively, the “Extremely Low Income Units”), (ii) [REDACTED] units that will be available and rented to households whose income does not exceed the maximum income for Very Low Income Households (the “Very Low Income Units”), and (iii) [REDACTED] units that will be available and rented to households whose income does not exceed the maximum income for Low Income Households (the “Low Income Units”) as a condition of the making of this Loan by City. Additionally, one (1) unit will be an unrestricted managers’ unit.

t. **“Disbursement”** has the meaning set forth in Section 204.1.

u. **“Effective Date”** means the date first set forth in this Agreement above.

v. **“Environmental Claim”** means any and all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements and expenses, including reasonable attorney’s fees and costs and costs of environmental consultants and other experts, and all foreseeable and unforeseeable damages or costs of any kind or of any nature whatsoever, directly or indirectly, relating to or arising from any actual or alleged violation of any Environmental Law or Hazardous Substance Discharge.

w. **“Environmental Document”** means any exemption determination, any Negative Declaration (mitigated or otherwise) or any Environmental Impact Report (including any addendum or amendment to, or subsequent or supplemental Environmental Impact Report) required or permitted pursuant to the National Environmental Policy Act (codified as 42 U.S.C. §§ 4321 *et seq.*) or the California Environmental Quality Act (codified as Public Resources Code Sections 21000 *et seq.*), as applicable, to issue any discretionary Approval required to approve this Agreement.

x. **“Environmental Law”** means any Federal or California law regarding any of the following at, in, under, above, or upon the Property: (a) air, environmental, ground water, or soil conditions; or (b) clean-up, remediation, control, disposal, generation, storage, release, discharge, transportation, use of, or liability or standards of conduct concerning, Hazardous Substances, as now or may, at any later time, be in effect.

y. **“Extremely Low Income Households”** shall have the same meaning as that term is defined in Section 50106 of the Health and Safety Code.

z. **“GAAP”** means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession), or in such other statements by such other entity as may be in general use by significant segments of the United States accounting profession, which are applicable to the circumstances as of the date of determination.

aa. **“Governmental Requirements”** means all laws, ordinances, statutes, codes, rules, regulations, orders and decrees, of the United States, the state, the county, City, or

any other political subdivision in which the Property is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over City, Borrower or the Property.

bb. “Gross Revenue” means for each calendar year, all revenue, income, receipts, and other consideration actually received from the operation and leasing of the Development. Gross Revenue includes, but is not limited to: (i) all rents, fees and charges paid by tenants; (ii) Section 8 payments or other rental subsidy payments received for the dwelling units; (iii) deposits forfeited by tenants; (iv) all cancellation fees; (v) price index adjustments and any other rental adjustments to leases or rental agreements; (vi) net proceeds from vending and laundry room machines; (vii) the proceeds of business interruption or similar insurance not paid to senior lenders; (viii) the proceeds of casualty insurance not used to rebuild the Development and not paid to senior lenders; and (ix) condemnation awards for a taking of part or all of the Development for a temporary period. Gross Revenue does not include tenants’ security deposits, loan proceeds, capital contributions or similar advances.

cc. “Hazardous Substance” means any flammable substances, explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, explosives, petroleum, petroleum products and any “hazardous” or “toxic” material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, including any material, substance or waste that is: (a) defined as a “hazardous substance” under Section 311 of the Water Pollution Control Act (33 U.S.C. § 1317), as amended; (b) substances designated as “hazardous substances” pursuant to 33 U.S.C. § 1321; (c) defined as a “hazardous waste” under Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, *et seq.*, as amended; (d) defined as a “hazardous substance” or “hazardous waste” under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. § 9601, *et seq.*, or any so-called “superfund” or “superlien” law; (e) defined as a “pollutant” or “contaminant” under 42 U.S.C. § 9601(33); (f) defined as “hazardous waste” under 40 C.F.R. Part 260; (g) defined as a “hazardous chemical” under 29 C.F.R. Part 1910; (h) any matter within the definition of “hazardous substance” set forth in 15 U.S.C. § 1262; (i) any matter, waste or substance regulated under the Toxic Substances Control Act (“TSCA”) [15 U.S.C. Sections 2601, *et seq.*]; (j) any matter, waste or substance regulated under the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, *et seq.*; (k) those substances listed in the United States Department of Transportation (DOT) Table [49 C.F.R. 172.101]; (l) any matter, waste or substances designated by the U.S. Environmental Protection Agency (“EPA”), or any successor authority, as a hazardous substance [40 C.F.R. Part 302]; (m) any matter, waste or substances defined as “hazardous waste” in Section 25117 of the California Health and Safety Code; (n) any substance defined as a “hazardous substance” in Section 25316 of the California Health and Safety Code; (o) any matter, waste, or substance that is subject to any other Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source; or (p) other substances, materials, and wastes that are, or become, regulated or classified as hazardous or toxic under Law or in the regulations adopted pursuant to said Law, including manure, asbestos, polychlorinated biphenyl, flammable explosives and radioactive material. Notwithstanding the foregoing, “Hazardous Substances”

shall not include such products in quantities as are customarily used in the construction, maintenance, development or management of residential developments or associated buildings and grounds, or typically used in residential activities in a manner generally used in other comparable residential developments, or substances commonly ingested by a significant population living within the Development including, without limitation, alcohol, aspirin, tobacco and saccharine.

dd. “Hazardous Substance Discharge” means any deposit, discharge, generation, release, or spill of a Hazardous Substance that occurs at on, under, into or from the Property, or during transportation of any Hazardous Substance to or from the Property, or that arises at any time from the Construction, use or operation of the Development or any activities conducted at on, under or from the Property, whether or not caused by a Party.

ee. “HCD” means the California State Department of Housing and Community Development.

ff. “Insurance Requirements” means the “Insurance Requirements” attached hereto as Attachment No. 8, which Borrower must comply with prior to the initial disbursement of the Loan.

gg. “Land Use Laws” has the meaning set forth in Section 403.

hh. “Loan” has the meaning set forth in Section 201.

ii. “Loan Documents” means the documents, instruments and agreements evidencing and securing the Loan including, but not limited to, this Agreement, the Note, the Deed of Trust, and the Regulatory Agreement.

jj. “Low Income Households” shall have the same meaning as the term “Lower Income Households” is defined in Section 50079.5 of the Health and Safety Code.

kk. “Note” has the meaning set forth in Section 201.

ll. “Official Records” means the Official Records of the County of San Mateo, State of California.

mm. “Person” means any association, corporation, governmental entity or agency, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization or other entity of any kind.

nn. “Prevailing Wage Action” means any of the following: (a) any determination by the California Department of Industrial Relations that prevailing wage rates should have been paid, but were not; (b) any determination by the California Department of Industrial Relations that higher prevailing wage rates than those paid should have been paid; (c) any administrative or legal action or proceeding arising from any failure to comply with the Federal Davis-Bacon Act (codified as 40 U.S.C. §§ 3141 *et seq.*) or California Labor Code Sections 1720 through 1781, as amended from time to time, regarding prevailing wages, including maintaining certified payroll records; or (d) any administrative or legal action or proceeding to recover wage amounts at law or in equity.

oo. **“Project Budget”** means the “Project Budget” attached hereto as Attachment No. 4.

pp. **“Regulatory Agreement”** means the Regulatory Agreement and Declaration of Restrictive Covenants executed by Borrower and City pursuant to this Agreement and to be recorded in the Official Records, in substantially the form attached hereto as Attachment No. 7, for the purpose of ensuring that the Development shall be operated as an affordable multi-family residential development for the full term of the Loan in accordance with the terms of this Agreement.

qq. **“Rehabilitation Work”** means the work to be performed as described in the “Scope of Rehabilitation,” defined below. [*For Expiring Covenant Loans, delete*]

rr. **“Relocation Laws”** shall have the meaning as set forth in Section 404 of this Agreement.

ss. **“Residual Receipts”** means for each calendar year, the amount by which Gross Revenue exceeds Annual Operating Expenses.

tt. **“Scope of Rehabilitation”** means the “Scope of Rehabilitation” attached hereto as Attachment No. 3. [*For Expiring Covenant Loans, delete*]

uu. **“Supplemental Conditions”** shall mean the Supplemental Conditions to the Loan that are set forth in Attachment No. 9, attached hereto and incorporated herein by this reference. Borrower shall comply with all Supplemental Conditions at the time and in the manner as set forth in Attachment No. 9. [*If Loan Funding Source includes additional requirements, include as Supplemental Conditions In Att. No. 9. If no additional funding requirements, delete this section*]

vv. **“Third Person”** means any Person that is not a Party, an Affiliate of a Party, or an elected official, officer, director, manager, shareholder, member, principal, partner, employee or agent of a Party.

ww. **“Very Low Income Households”** shall have the same meaning as defined in Section 50105 of the Health and Safety Code.

200. LOAN AGREEMENT

201. **Loan.** City hereby agrees to make a total loan (the **“Loan”**) to Borrower in a total amount not to exceed [_____ DOLLARS (\$ _____)], subject to the terms and conditions of the Loan Documents. The Loan shall be (i) evidenced by, and repayable in accordance with, a Promissory Note (**“Note”**), which is secured by a Deed of Trust (**“Deed of Trust”**), recorded against the Property. The form of the Note, Deed of Trust, and Regulatory Agreement for each property are attached as Attachments 5, 6, and 7. City and Borrower shall execute the Note, Deed of Trust, and Regulatory Agreement for the Property, concurrently with the execution of this Agreement by City, and the Deed of Trust and the Regulatory Agreement shall thereafter be recorded in the Official Records.

202. Repayment of Loan.

202.1 Maturity Date. The Loan shall be due and payable in full at the earlier of (i) any sale of the Property by Borrower, to any Party other than an Affiliate of Borrower; (ii) an uncured Default under this Agreement; or (iii) fifty-five (55) years after the date of execution of the Promissory Note (the “Maturity Date”).

202.2 Interest Rate. The Loan shall be repaid pursuant to the terms of the Note and in accordance with Section 202.3 of this Agreement, and shall bear simple interest at the rate of three percent (3%) per annum on the amounts disbursed to Borrower, commencing upon the date of the closing of the Loan.

202.3 Repayment Terms. Commencing on June 1, 20__, and on June 1 of each year thereafter during the Term, Borrower shall make a loan payment in an amount equal to the City Share of Residual Receipts for the prior calendar year (each such payment, an “**Annual City Loan Payment**”). The City shall apply all Annual City Loan Payments to the Loan as follows: (1) first, to accrued interest, (2) second to principal on the Loan.

203. Use of Funds. The Loan may be used only to pay costs as set forth in the Project Budget.

204. Disbursement of Loan Funds.

204.1 Conditions Precedent to Initial Disbursement. The City shall disburse the Loan Funds pursuant to this Agreement (the “**Disbursement**”) for the acquisition of the Property, subject to the conditions precedent, or waiver by City of each and all of the conditions precedent, described below (“**Conditions Precedent to Initial Disbursement**”), which are solely for the benefit of the City, and which shall be fulfilled or waived by the time periods provided for herein.

a. Subject to expiration of any applicable cure period, Borrower shall not be in default of any of its obligations under the terms of this Agreement.

b. Execution and delivery of the Note, the Deed of Trust, the Regulatory Agreement, a Notice of Affordability Restrictions on a form provided by the City.

c. Delivery of a binding commitment by a title insurance company acceptable to the City to issue a lender’s policy of title insurance with any endorsements the City may reasonably require, insuring the City in the principal amount of the Loan, of the validity and priority of the Deed of Trust upon the Property, subject only to liens and matters of record approved by the City in writing, and showing fee simple title to the Property in the name of the Borrower.

d. Borrower shall have provided the City with a copy of the resolution of the Borrower approving and authorizing execution of this Agreement and all documents contemplated hereby on behalf of Borrower and with such other documentation required by the City regarding Borrower’s creation, status and authority to enter into this transaction.

e. Borrower shall have provided and City shall have approved insurance certificates demonstrating compliance with the Insurance Requirements as set forth herein.

f. Borrower shall have provided City with a certificate showing it to be in good standing under the laws of the State of California.

g. *[For Expiring Covenant Loans, delete]* Borrower shall have delivered to City evidence that Borrower has obtained all approvals and commitments for the Additional Borrower Financing necessary and sufficient to acquire the Property and complete the Rehabilitation Work.

h. *[For Expiring Covenant Loans, delete]* Deposit of all funds and properly executed documents into the escrow account established for this transaction as necessary to effect the conveyance of the Property from the current owner of the Property to Borrower.

i. If this Loan is required to be subordinated to one or more Senior Loans, City shall have approved (i) the terms of the Senior Loan or Loans and (ii) the form of any subordination agreements by and between City and the lender making the approved Senior Loan.

j. *[For Expiring Covenant Loans, or if Rehabilitation is minor in nature and does not require building permits, delete]* Borrower shall have obtained all City and other governmental permits required for the applicable portions of the Rehabilitation Work, and the City shall be ready to issue building permits for such portions of the Rehabilitation Work upon the payment of the applicable fees by Borrower.

k. *[For Expiring Covenant Loans, or if Rehabilitation is minor in nature and does not require general contractor, delete]* Borrower shall have secured and delivered to City one or more construction contract(s) for the Rehabilitation Work in a form reasonably acceptable to the City, provided, however that if the City shall not have delivered notice to Borrower of any objections to the applicable construction contract within 5 business days after receipt, then the applicable construction contract shall be deemed approved.

l. *[For Expiring Covenant Loans, or if Rehabilitation is minor in nature and does not require building permits, delete]* Borrower shall have obtained and maintain performance and completion bonds or such other reasonable construction assurances as may be acceptable to the City for the Rehabilitation Work.

m. Borrower shall have satisfied all of the applicable terms and conditions set forth in this Agreement.

n. Borrower shall have complied with all Supplemental Conditions that are conditions precedent to disbursement of Loan funds. *[If no Supplemental Conditions, delete this section]*

o. All of the representations and warranties made by the Borrower in this Agreement and in the Note, the Deed of Trust and the Regulatory Agreement shall be true and correct in all material respects as of the date of the Initial Disbursement.

204.2 *[For Expiring Covenant Loans, or where Loan is made solely for acquisition, or through a single disbursement, delete]* Conditions Precedent to Subsequent Disbursements. The City's obligation to make disbursements subsequent to the Initial

Disbursement (“**Subsequent Disbursements**”) upon the satisfaction or waiver by City of each and all of the conditions precedent described below (“**Conditions Precedent to Subsequent Disbursements**”), which are solely for the benefit of the City, and which shall be fulfilled or waived by the time periods provided for herein.

a. All conditions precedent for the Initial Disbursement have been satisfied or waived by the City.

b. The City has received a written draw request from the Borrower, setting forth the proposed uses of funds consistent with the Project Budget, the amount of funds needed, and, where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred. When a disbursement is requested to pay any contractor in connection with improvements on the Property, the written request must be accompanied by (i) certification by the Borrower's architect reasonably acceptable to the City that the work for which disbursement is requested has been completed (although the City reserves the right to inspect the Property and make an independent evaluation); and (ii) lien releases and/or mechanics lien title insurance endorsements reasonably acceptable to the City.

205. Repayment of Loan. Borrower shall repay the Loan pursuant to the terms of the Note.

206. Subordination of Loan. The City Manager shall have the authority to execute and deliver subordination agreements as they determine are commercially reasonable and consistent with the purpose and effect of this Agreement subordinating the Deed of Trust to one or more Senior Loans as approved by the City. Notwithstanding the foregoing, the Regulatory Agreement implements the affordability requirements required as a condition for the making of the Loan, and must be senior to all financing, except that the City may subordinate the Regulatory Agreement, to regulatory agreements required as a condition of financing for an approved Senior Loan.

207. City Not Liable. In no event shall City be liable to Borrower or any other party, including but not limited to any lender, contractor or subcontractor, for any damage whatsoever which may result in whole or in part from any action or inaction of City hereunder, including without limitation, failure or delay in making any disbursement of Loan funds, except to the extent of City's gross negligence or willful misconduct.

300. REPRESENTATIONS AND WARRANTIES

301. City Representations. City represents and warrants to Borrower as follows:

301.1 Authority. City has full power and authority to execute and deliver this Agreement, to execute and deliver all applicable Loan Documents and to perform and observe the terms and provisions of all of the above.

301.2 No Conflict. To the best of City's knowledge, City's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which City is a party or by which it is bound.

301.3 No Bankruptcy. City is not the subject of a bankruptcy proceeding.

301.4 No Condemnation. No condemnation proceeding or moratorium is pending or threatened against the Property or any portion thereof that would impair the use, occupancy or full operation of the Property in any manner whatsoever.

302. Borrower's Representations. To induce City to enter into the Loan and provide the Loan Funds pursuant hereto, Borrower hereby makes the following representations and warranties to City. The Borrower shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section not to be true, immediately provide written notice of such fact or condition to City.

302.1 Organization. Borrower is a duly organized [Insert form of business entity (e.g., limited partnership)] in good standing under the laws of the State of [redacted]. The copy of the [insert formation document for business entity (e.g., Limited Partnership Agreement/Articles of Organization)] which has been delivered to City is a true and complete copy of the original, as amended to the date of Borrower's execution of this Agreement.

302.2 Authority to Borrow. Borrower has full power and authority to execute and deliver this Agreement, to make and accept the Loan contemplated hereunder, to execute and deliver all applicable Loan Documents and to perform and observe the terms and provisions of all of the above.

302.3 Authority of Persons Executing Documents. The applicable Loan Documents have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Borrower, and all actions required under the Borrower's organizational documents and applicable governing law for the authorization, execution, delivery and performance of the Loan Documents have been duly taken.

302.4 No Conflict. The execution, delivery and performance by Borrower of the Loan Documents to which it is a party will not (i) violate any provision of any law, statute, rule or regulation or any order, writ, judgment, injunction, decree, determination or award of any court, governmental agency or arbitrator presently in effect having applicability to Borrower or the Property; or (ii) result in a breach of or constitute a default under any indenture, loan or credit agreement or any other agreement, lease or instrument to which Borrower is a party or by which any of its properties may be bound or, except as specifically contemplated herein, result in the creation of any lien on any asset of Borrower.

302.5 Compliance with Laws; Consent and Approvals. Borrower shall comply with all Governmental Requirements, including all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency as applicable.

302.6 Valid Binding Agreement. The Loan Documents executed by Borrower constitute, or if not yet executed, will constitute when so executed, legal, valid and binding obligations of Borrower enforceable by and against it in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting the rights of creditors generally and general principals of equity.

302.7 Pending Proceedings. Borrower is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Borrower, threatened against or affecting Borrower, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Borrower, materially and adversely affect Borrower's ability to repay the Loan.

302.8 Financial Statements. All financial statements and information delivered to City by or on behalf of Borrower, including information relating to the financial condition of Borrower and the Property, fairly and accurately represent the financial condition of the subject thereof and have been prepared in accordance with GAAP, consistently applied, or another sound accounting practice consistently applied as previously submitted by Borrower to City and approved by City. Borrower acknowledges and agrees that City may request and obtain additional information from third parties.

302.9 No Material Adverse Event. There has been no material adverse change in the value or physical condition of the Property or in the financial condition of Borrower since the dates of the latest financial statements of Borrower furnished to City, and except as otherwise disclosed to City in a specified writing, Borrower has not entered into any material transaction that is not disclosed in such financial statements.

302.10 Accuracy. All reports, documents, instruments, information and forms of evidence delivered to City concerning the Loan or security for the Loan or required by the Loan Documents are accurate, correct and sufficiently complete to give City true and accurate knowledge of their subject matter and do not contain any misrepresentation or omission.

302.11 Disclosure of Information. All material information concerning the Property known to Borrower, or that should have been known to Borrower in the exercise of reasonable care, has been disclosed to City. There are no facts or information known to Borrower, or that should have been known to Borrower in the exercise of reasonable care, that would make any of the information furnished to City by Borrower inaccurate, incomplete, or misleading in any material respect.

302.12 No Condemnation. No condemnation proceeding or moratorium is pending or threatened against the Property or any portion thereof that would impair the use, occupancy or full operation of the Property in any manner whatsoever.

302.13 Eligible Costs. The proceeds of the Loan shall be used only for the acquisition of the Property.

302.14 FIRPTA. Borrower is not a "Foreign Person" within the meaning of FIRPTA, or is exempt from the provisions of FIRPTA, and Borrower has complied and will comply with all of the requirements under FIRPTA.

400. COVENANTS OF BORROWER

401. Borrower's Financing. In addition to the Loan provided for herein, the Borrower has secured or will secure financing from **[Insert Name of Senior Lender—if multiple lenders,**

repeat for each lender] in the amount of [] Dollars (\$) (the “**Senior Loan**”) for the purpose of financing the acquisition of and minor rehabilitation the Property (the “**Additional Borrower Financing**”).

402. Rehabilitation Work. Within [] days following Close of Escrow, Borrower shall complete the Rehabilitation Work in accordance with the provisions of this Agreement (including the Scope of Rehabilitation) and in a good and worker-like manner in accordance with sound building practices as well as all Governmental Requirements. Borrower shall comply with all existing and future Governmental Requirements and other laws, regulations, orders, building codes, restrictions and requirements of, and all agreements with and commitments to, all governmental, judicial or legal authorities having jurisdiction over the Property, including those pertaining to the construction of the Rehabilitation Work, and with all recorded covenants and restrictions affecting the Property. Borrower shall ensure that no existing tenants are required to be temporarily or permanently relocated from the Property due to the Rehabilitation Work. In the event of any material deviations from the terms of this Agreement, unworker-like performance, the use of defective materials, or the filing of any unapproved liens, City may order that the construction cease immediately, and Borrower agrees immediately to correct and remedy the same at its sole expense. *[For Expiring Covenant Loans, delete this paragraph, replace with [Reserved]]*

403. Permits, Licenses and Approvals. Borrower shall properly obtain, comply with and keep in effect all permits, licenses and approvals which are required to be obtained under local, state, or federal law (“**Land Use Laws**”) in order to perform the Rehabilitation Work. *[For Expiring Covenant Loans, delete this paragraph, replace with [Reserved]]*

404. Relocation. Borrower shall have the sole and exclusive responsibility for providing relocation assistance and paying all relocation costs if required to comply with all applicable federal and state laws, rules, and regulations, including but not limited to the California Relocation Assistance Law, Government Code Section 7260, *et seq.*, and the implementing regulations thereto codified in California Code of Regulations, Title 25, Chapter 6, Section 6000, *et seq.* (collectively, the “**Relocation Laws**”). Any relocation shall be performed in accordance with a relocation plan approved by the City. Borrower shall indemnify, defend, and hold harmless the City from and against any alleged or actual claims, liabilities, damages, remedies, causes of action, demands, losses, and other liabilities made against them related to (1) the acquisition or the use of the Property by Borrower; (2) compliance with the Relocation Laws; (3) displacement or benefits owned to tenants on the Property including without limitation claims for relocation assistance and inverse condemnation; and (4) any other compensation of whatever kind or nature arising from current or prior occupancy or use of the Property, and/or any move, displacement, relocation therefrom.

405. Replacement Reserve Account. Borrower shall make annual deposits to a replacement reserve account in an amount equal to Five Hundred Dollars (\$500) per unit, increasing by the applicable consumer price index every five (5) years, *[or such greater amount required in connection with the [Add Ownership Documents, as applicable, e.g., Partnership Agreement] or any permanent financing]*, and approved by the City. The annual deposits into the replacement reserve account shall be funded out of Gross Revenues from the Development, prior to use of any cash flow to pay deferred developer Fee, partnership management or similar fees.

406. Operating Reserve Account. Borrower shall establish an operating reserve account or sub-account within the Development's general operating account concurrently with Close of Escrow. Developer shall fund the operating reserve account with an initial deposit in an amount as specified in the Project Budget, and shall maintain an amount in the operating reserve account equal to a minimum of three months' expenses for the Development, including but not limited to required monthly debt service payments, monitoring fees and required deposits into the replacement reserve account. Borrower shall fully replace any withdrawals from the operating reserve account using out of Gross Revenues from the Development, prior to use of any cash flow to pay deferred developer fee, partnership management or similar fees.

407. City Asset Management Fee. Borrower shall pay to City an annual Asset Management Fee in an amount established in the City's regularly adopted fee schedule, as it may be adjusted from time to time, to fund City costs of monitoring the Development and fulfilling City's responsibilities pursuant to the Loan Documents. The City Asset Management Fee shall be funded out of Gross Revenues from the Development, prior to use of any cash flow to pay deferred developer fee, partnership management or similar fees.

408. Notices to City. Borrower shall promptly notify City in writing of:

a. Any litigation affecting Borrower, where the amount claimed is One Hundred Thousand Dollars (\$100,000.00) or more;

b. Any communication, whether written or oral, that Borrower may receive from any governmental, judicial or legal authority, giving notice of any claim or assertion that any portion of the Property, **the Rehabilitation Work [For Expiring Covenant Loans, delete highlighted language]** or the Development fail in any respect to comply with any Governmental Requirement;

c. Any default by any contractor, design professional, subcontractor, material supplier or surety in the performance of its or their obligations with respect to the construction, or any material adverse change in the financial condition or operations of any of them;

d. Any material adverse change in the physical condition of the Property (including any damage suffered as a result of earthquakes or floods), or in Borrower's business condition (financial or otherwise), operations, properties or prospects, or Borrower's ability to repay the Loan; or

e. The institution of any litigation, arbitration or governmental proceeding, or the rendering of a judgment or decision in such litigation or proceeding, which may cause a material adverse effect to Borrower, the Property or the completion of the construction.

409. Insurance. To protect City against all insurable Claims resulting from the actions of Borrower in connection with this Agreement, at the sole cost and expense of Borrower, Borrower shall maintain for the Development insurance in accordance with the Insurance Requirements attached hereto as Attachment No. 8 and incorporated herein by this reference.

410. Indemnity.

410.1 Borrower Indemnity Obligations. Borrower shall indemnify, defend, and hold the City and its elected officials, officers, employees and agents (collectively “City Parties”) harmless against any and all claims, suits, actions, losses, and liability of every kind, nature and description made against it and expenses (collectively “Claims”) which arise out of or in connection with this Agreement to the extent such Claims arise from any wrongful intentional act or negligence of Borrower. Borrower shall also indemnify City Party against any and all of the following: (a) any application made by or at Borrower’s request; (b) any agreements that Borrower (or anyone claiming by or through Borrower) makes with a Third Person regarding the Property or the Rehabilitation Work; (c) any workers compensation claim or determination relating to any employee of Borrower or their contractors; (d) any Prevailing Wage Action relating to this Agreement or the Rehabilitation Work; (e) any claim for relocation benefits arising from the Rehabilitation Work conducted at the Development; and (e) any Environmental Claim attributable to any action or failure to act by Borrower. Borrower assumes the risk of delays and damages that may result to Borrower from any Third Person legal actions related to City’s approval of this Agreement or any associated approvals, even in the event that an error, omission or abuse of discretion by City is determined to have occurred. If a Third Person files a legal action regarding City’s approval of this Agreement or any associated approval (exclusive of legal actions alleging violation of Government Code Section 1090 by elected officials of City), Borrower shall indemnify City Party against such Third Person legal action, including all legal costs, monetary awards, sanctions, attorney fee awards, expert witness and consulting fees, and the expenses of any and all financial or performance obligations resulting from the disposition of the legal action. City shall reasonably cooperate in its defense in any legal action subject to this Section 410 subject to Borrower’s indemnity obligations for such legal action. Nothing contained in this Section 410 is intended to be nor shall be deemed or construed to be an express or implied admission that City may be liable to Borrower or any other party for damages or other relief regarding any alleged or established failure of City to comply with any law. Any legal action that is subject to this Section 410 (including any appeal periods and the pendency of any appeals) shall constitute an Enforced Delay and the time periods for performance by any Party under this Agreement may be extended pursuant to the provisions of this Agreement in Section 803.

410.2 Independence of Insurance Obligations. The indemnification obligations made by Borrower under this Agreement shall not be construed or interpreted as in any way restricting, limiting, or modifying Borrower insurance or other obligations under this Agreement. Borrower’s obligation to indemnify City Party under this Agreement is independent of Borrower’s insurance and other obligations under this Agreement. Borrower’s compliance with its insurance obligations and other obligations under this Agreement shall not in any way restrict, limit, or modify Borrower’s indemnification obligations under this Agreement and are independent of Borrower’s indemnification and other obligations under this Agreement.

410.3 Survival of Indemnification and Defense Obligations. The indemnity and defense obligations of the Parties under this Agreement shall survive the expiration or earlier termination of this Agreement, until any and all actual or prospective claims regarding any matter subject to an indemnity obligation under this Agreement are fully, finally, absolutely and completely barred by applicable statutes of limitations.

410.4 Indemnification Procedures. Wherever this Agreement requires any Party to indemnify the other Party:

a. *Prompt Notice.* The indemnifying Party shall promptly notify the other Party of any claim.

b. *Selection of Counsel.* The indemnifying Party shall select counsel reasonably acceptable to the other Party. Counsel to indemnifying Party's insurance carrier that is providing coverage for a claim shall be deemed reasonably satisfactory, except in the event of a potential or actual conflict of interest for such counsel regarding such representation or such counsel proves to be incompetent regarding such representation. Even though the indemnifying Party shall defend the claim, the other Party may, at its option and its own expense, engage separate counsel to advise it regarding the claim and its defense. The other Party's separate counsel may attend all proceedings and meetings. The indemnifying Party's counsel shall actively consult with the other Party's separate counsel. The indemnifying Party's counsel shall, however, control the defense, except to the extent that the other Party waives its rights to indemnity and defense of such Claim.

c. *Cooperation.* The other Party shall reasonably cooperate with the indemnifying Party's defense of the other Party.

d. *Settlement.* The indemnifying Party may only settle a claim without the consent of other Party, if the claim is within the policy limits of applicable insurance policies provided in satisfaction of the requirements of this Agreement and such settlement procures a release of other Party from the subject claims, does not require other Party to make any payment to the claimant and neither the indemnified Party nor indemnifying Party on behalf of the indemnified Party admits any liability.

e. *Insurance Proceeds.* The indemnifying Party's obligations shall be reduced by any net insurance proceeds actually received by the other Party for the matter giving rise to the indemnification obligation.

411. Financial Statements and Reports. Borrower shall furnish to City, within ten (10) days after demand, the financial statements of Borrower, which may be internally prepared, on a consolidating and consolidated basis and in conformity with GAAP, consisting of at least statements of income, cash flow, changes in financial position and stockholders' equity, and a consolidated balance sheet, setting forth in each case in comparative form corresponding figures from the previous financial statements delivered to City pursuant to this Section.

412. Books and Records. Borrower shall keep adequate and proper records and books of account in connection with the Development, in which full and correct entries will be made of its dealings, business and affairs. Upon reasonable advanced notice to Borrower, all records and books of accounts and other materials deemed to be relevant to the Development shall be accessible at any time during normal business hours to the authorized representatives of City for the purpose of examination or audit. Any expenditure from the Loan proceeds that is not authorized by this Agreement or that cannot be adequately documented shall be disallowed and must be reimbursed to City or its designee by Borrower immediately. Expenditures not described in this Agreement shall be deemed authorized if the performance of such activities is approved in writing by City prior to their commencement. Absent fraud or mistake on the part of City, the determination by City of the qualification of any expenditure shall be final.

413. Compliance. Borrower shall comply and shall cause the Property and the Development to comply at all times in all material respects with all Governmental Requirements to which they may be subject.

500. REHABILITATION [*For Expiring Covenant Loans, delete Sections 500-502, replace this Header with [Reserved]*]

501. Covenant to Complete the Rehabilitation Work. Borrower covenants to and for the exclusive benefit of City that Borrower shall commence, pursue and complete the Rehabilitation Work in accordance with the timeframes and other requirements of this Agreement, the Scope of Rehabilitation Work and the Project Budget. The covenants of this Section shall run with the Property until the issuance of a Certificate of Completion for the Rehabilitation Work.

502. Cost of Rehabilitation Work. All cost and expense in performing the construction of the Rehabilitation Work, and for all materials and equipment related thereto, shall be in conformance with the Project Budget, and shall be borne solely by Borrower.

600. USE AND MAINTENANCE OF THE PROPERTY; NONDISCRIMINATION; RIGHTS OF SECURITY FINANCING HOLDERS

601. Restrictive Covenants. Borrower covenants and agrees for itself, its successors, assigns, and every successor in interest to devote the Property to the operation of an affordable housing development in accordance with the terms of the Regulatory Agreement and this Agreement for the period of time specified therein. The foregoing covenant shall run with the land.

602. Maintenance of the Property. For the period of time set forth in Section 606, Borrower shall keep the Property in good condition, order and repair and shall not commit waste or permit impairment, demolition or deterioration of the Property; shall comply with all applicable state and federal regulations addressing the physical condition of the Property and buildings located on the Property and all applicable standards of the City including but not limited to building standards, planning regulations, and utilities code; shall complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed and to pay when due all claims for labor performed and materials furnished; shall maintain the buildings in a habitable condition; and do all other acts which from the character or use of the Property may be reasonably necessary. City shall have the right to inspect the Property during normal business hours, provided Borrower and the occupant are given at least seventy-two (72) hours written notice prior to any such inspection.

603. Obligation to Refrain from Discrimination. The Borrower covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property, or any part thereof, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, source of income, age, marital status, physical or mental disability, medical condition, ancestry, or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Borrower 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, sublessees or vendees of the Property. The foregoing covenants shall run with the land and shall remain in effect in perpetuity.

604. Form of Nondiscrimination and Nonsegregation Clause. The Borrower shall refrain from restricting the rental, sale or lease of the Property on the basis of race, color, creed, religion, sex, sexual orientation, source of income, age, marital status, physical or mental disability, medical condition, ancestry, or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses. Agency understands that the wording of certain services agreements are not within the control of Borrower, and to such extent that Borrower does not have control of the wording, then Borrower is excused from complying with this section.

In deeds. “The grantee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through them, 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 land herein conveyed, nor shall the grantee himself, or any person claiming under or through him, 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, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land.”

In leases. “The lessee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, and this lease is made and accepted upon and subject to the following conditions: “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 leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall the lessee himself, or any person claiming under or through him, 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, sublessees, subtenants or vendees in the land herein leased.”

In contracts. “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 land, nor shall the transferee himself, or any person claiming under or through him, 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, sublessees or vendees of the land.”

605. Rights of Access. For the purposes of assuring compliance with this Agreement, representatives of the City shall have the reasonable right of access to the Property without charges or fees for the purpose of inspection of the Property as to maintenance of the improvements

thereon. Such representatives of the City shall be those who are so identified in writing by the City Manager, or their designee.

606. Effect and Duration of Covenants. The covenants contained in Sections 601, 602 and 605 of this Agreement shall remain in effect for the term of the Regulatory Agreement, but not less than fifty-five (55) years from the date the Regulatory Agreement is recorded on the Property. The covenants against discrimination contained in Sections 603 and 604 of this Agreement shall remain in effect in perpetuity. The covenants established in this Agreement shall, without regard to technical classification and designation, be binding on the part of the Borrower and any successors and assigns to the Property or any part thereof, and the tenants, lessees, sublessees and occupants of the Property, for the benefit of and in favor of the City and any successor in interest thereto.

700. DEFAULTS AND REMEDIES

701. Default. A party to this Agreement shall be in default if it fails to perform or satisfy any obligation or requirement set forth (A) herein after thirty (30) days of receiving written Notice from the non-defaulting party of such default, provided that in the case of a default that cannot with reasonable diligence be cured within thirty (30) days after the effective date of such Notice, such thirty (30) day period shall automatically be extended if and only for so long as Borrower does all of the following: (i) within thirty (30) days after Notice of such default, advise the City of the intention of Borrower to take all reasonable steps to cure such default; (ii) duly commence such cure within such period, and then diligently prosecute such cure to completion; and (iii) complete such cure within a reasonable time under the circumstances; or (B) under any applicable Loan Document after any applicable cure period.

702. Remedies.

702.1 City. Upon default by Borrower subject to applicable notice and cure periods, City shall not be obligated to disburse any Loan proceeds pursuant to this Agreement and Borrower shall immediately remit to City all cost and expense, interest and principal due City under the Note.

702.2 Borrower. Upon default by City, Borrower's sole remedy for such breach shall be to institute an action at law or equity to seek specific performance of the terms of this Agreement. Borrower shall not be entitled to recover damages for any default by City hereunder. Such legal actions must be instituted in the Superior Court of the County of San Mateo, State of California, or in the United States District Court for the District of California in which San Mateo County is located.

703. Rights and Remedies Cumulative. The rights and remedies of City hereunder are cumulative, and the exercise by City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default caused by Borrower.

800. GENERAL PROVISIONS

801. Notices. Any notice required or authorized under this Agreement, or service of process, shall be effective if, and only if, in writing and if, and only if, personally served or mailed, postage prepaid, by registered or certified mail, to the party in question at the address shown below:

Borrower:

And a copy to:

City : City of Redwood City
1017 Middlefield Road
Redwood City, CA 94063
Attn: City Manager

With a copy to: City of Redwood City
1017 Middlefield Road
Redwood City, CA 94063
Attn: City Attorney

An address set forth in this Section may be changed by the respective party providing the other party with written notice indicating the new address for purposes of this Section.

802. Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement. Any legal action brought in connection with this Agreement shall be instituted in the Superior Court of San Mateo County, State of California, or in the Federal District Court for the Northern District of California.

803. Enforced Delay; Extension of Times for Performance. In addition to specific provisions of this Agreement, performance by a party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; inability to secure necessary labor, materials or tools; acts or omissions of the other party; acts or failures to act of City or any other public or governmental agency or entity (other than the acts or failures to act of City which shall not excuse performance by City); or any other cause beyond the control or without the fault of the party claiming an extension of time to perform. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period

of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of City and Borrower.

804. Transfers of Interest in Property or Agreement.

804.1 Prohibition. The qualifications and identity of Borrower are of particular concern to City. It is because of those unique qualifications and identity that City has entered into this Agreement with Borrower. Borrower shall not transfer, assign, sell or grant any interest in this Agreement or any portion of the Property except as expressly set forth herein.

804.2 Permitted Transfers. City approval of a transfer of this Agreement or an interest in the Property, or any part thereof, shall not be required in connection with any of the following transfers:

Any requested assignment for purposes of financing the construction of improvements upon the Property;

Any mortgage, deed of trust, or other form of conveyance for all or any portion of the Additional Borrower Financing, as provided in Section 401, but Borrower shall notify City in advance of any such mortgage, deed of trust or other form of conveyance for financing pertaining to the Property;

Any mortgage, deed of trust or other form of conveyance for restructuring or refinancing of any amount of indebtedness described in subsection (c) above;

A sale or transfer resulting from or in connection with a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation;

The lease of residential units at the Development to qualified tenants;

In the event of a transfer by Borrower under subparagraphs (a) through (d) not requiring City's prior approval, Borrower nevertheless agrees that at least ten (10) days prior to such assignment it shall give written notice to City of such transfer and satisfactory evidence that the transferee has assumed the obligations of this Agreement, if applicable. Such notice is not required for transfers under subparagraph (e).

805. Relationship Between City and Borrower. It is hereby acknowledged that the relationship between City and Borrower is not that of a partnership or joint venture and that City and Borrower shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein, City shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Property. Borrower agrees to indemnify, hold harmless and defend City from any claim made

against City arising from a claimed relationship of partnership or joint venture between City and Borrower with respect to the development, operation, maintenance or management of the Property.

806. City Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by City, the City Manager or their designee is authorized to act on behalf of City unless specifically provided otherwise or the context should require otherwise.

807. Counterparts. This Agreement may be executed in any number of counterparts and by different signatories hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same instrument, for the same effect as if all signatories hereto had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

808. Integration. This Agreement and the Loan Documents contain the entire understanding between the parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into the Loan Documents and shall be of no further force or effect. Each party is entering into the Loan Documents upon the representations set forth in the Loan Documents and upon each party's own independent investigation of any and all facts such party deems material.

809. Attorneys' Fees. In any action between the parties to interpret, enforce, reform, modify, rescind, or otherwise in connection with any of the terms or provisions of the Loan Documents, the prevailing party in the action shall be entitled, in addition to damages, injunctive relief, or any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs and reasonable attorneys' fees.

810. Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. Reference to section numbers are to sections in this Agreement, unless expressly stated otherwise.

811. 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 word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both parties.

812. No Waiver. City may at any time and from time to time waive any one or more of the terms or conditions contained in this Agreement, but any such waiver shall be deemed to be made pursuant to this Agreement and not in modification thereof, and any such waiver in any instance or under any particular circumstances shall not be construed a waiver of such term or condition or of any subsequent default. In order to be effective, all such waivers must be in writing. The failure of City to promptly exercise its rights or remedies shall not be deemed to be a waiver or grounds for the claim of estoppel.

813. Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

814. Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

815. Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth in full.

816. Incorporation of Attachments. All attachments referenced in this Agreement are hereby incorporated into this Agreement by this reference.

817. Legal Advice. Each party represents and warrants to the other the following: they have carefully read the Loan Documents, and in signing the Loan Documents, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in the Loan Documents, or have knowingly chosen not to consult legal counsel as to the matters set forth in the Loan Documents; and, they have freely signed the Loan Documents without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in the Loan Documents, and without duress or coercion, whether economic or otherwise.

818. Time of Essence. Time is expressly made of the essence with respect to the performance by City and Borrower of each and every obligation and condition of the Loan Documents.

819. Cooperation. Each party agrees to cooperate with the other in this transaction 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 including, but not limited to, releases or additional agreements.

820. Conflicts of Interest. No member, official or employee of City shall have any personal interest, direct or indirect, in the Loan Documents, nor shall any such member, official or employee participate in any decision relating to the Loan Documents which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

821. Time for Acceptance of Agreement. This Agreement, when executed by Borrower and delivered to City, must be executed and delivered by City on or before fifteen (15) days after signing and delivery of this Agreement by Borrower or this Agreement shall be void, except to the extent that Borrower shall consent in writing to a further extension of time for the execution and delivery of this Agreement.

822. Agreement Binding. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

823. Non-Liability of Officials and Employees of City. No member, official or employee of City shall be personally liable to Borrower, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Borrower or its successors, or on any obligations under the terms of the Loan Documents. Borrower hereby waives and releases any claim it may have against the members, officials or employees of City with respect to any default or breach by City or for any amount which may become due to Borrower or its successors, or on any obligations under the terms of the Loan Documents. Borrower makes such release with full knowledge of Civil Code Section 1542 and hereby waives any and all rights thereunder to the extent of this release, if such Section 1542 is applicable. Section 1542 of the Civil Code provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

[Signatures to appear on the following page.]

IN WITNESS WHEREOF, City and Borrower have executed this Agreement on the respective dates set forth below.

CITY:

Date: _____

CITY OF REDWOOD CITY, a municipal corporation

By: _____

City Manager

ATTEST:

City Clerk

BORROWER:

Date: _____

_____, a _____

By: _____

By: _____

Name: _____

Title: _____

ATTACHMENT NO. 1

LEGAL DESCRIPTION

TO BE INSERTED

ATTACHMENT NO. 2

PROPERTY MAP

TO BE INSERTED

ATTACHMENT NO. 3

SCOPE OF REHABILITATION [*FOR EXPIRING COVENANTS LOANS REPLACE WITH
RESERVED*]

[TO BE INSERTED]

ATTACHMENT NO. 4

PROJECT BUDGET

[TO BE INSERTED]

ATTACHMENT NO. 5

FORM OF NOTE**PROMISSORY NOTE****(Insert Name/Address of Project)****Principal Sum Not to Exceed**

\$ [REDACTED]

[REDACTED], 2023
Redwood City, California

FOR VALUE RECEIVED, [INSERT NAME OF DEVELOPER], a [Insert State and type of business entity] (the “Maker” or “Borrower”), having an address at [Insert Borrower Address], promises to pay the CITY OF REDWOOD CITY, a California municipal corporation (“Payee” or “City”), the principal sum not to exceed [REDACTED] DOLLARS (\$ [REDACTED]), or so much of such principal as may be advanced, together with interest thereon accruing from the date of this Note at a rate of 3% simple interest.

1. **Purpose.** This Note is made and delivered pursuant to and in implementation of the Loan Agreement entered into by and between City and Borrower, of even date herewith, which provides for the acquisition by the Maker of the Development described in Section 3 below. The term “Property” means that real property described in the Deed of Trust securing this Note. Capitalized terms used in this Note that are not defined herein have the meaning set forth in the Loan Agreement.
2. **Security.** Payment of this Note is secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing of even date herewith (the “Deed of Trust”) from Maker to Payee recorded upon the Property in the official records of San Mateo County.
3. **Project.** Maker will operate an affordable housing development on the Property located at [Insert address of Loan Agreement] in the City of Redwood City, all as more fully described in the Loan Agreement (collectively, the “Development”). The Development includes [insert total number of units] apartments units that have been constructed and are in operation on the Property. The Development includes (i) [REDACTED] units that will be available and rented to households whose income does not exceed thirty percent (30%) of the Area Median Income (collectively, the “Extremely Low Income Units”), (ii) [REDACTED] units that will be available and rented to households whose income does not exceed fifty percent (50%) of Area Median Income (the “Very Low Income Units”), and (iii) [REDACTED] units that will be available and rented to households whose income does not exceed eighty percent (80%) of Area Median Income (the “Low Income Units”) as a condition of the making of this Loan by City. Additionally, one (1) unit will be an unrestricted managers’ unit. .
4. **Maturity Date.** This Note shall be due and payable in full at the earlier of (i) sale of the Development by Borrower to a Person other than an Affiliate; (ii) an uncured Default under the Loan Agreement or (iii) fifty-five (55) years after the date hereof (the “Maturity Date”).

5. Payment. Principal and interest under this Note are due and payable as set forth in Section 202.3 of the Loan Agreement.

6. Payment Location. Payment shall be made in lawful money of the United States to the City of Redwood City, 1017 Middlefield Road, Redwood City, CA 94063. The place of payment may be changed from time to time as the Payee may from time to time designate in writing.

7. Default. The occurrence of any of the following shall constitute an event of default under this Note:

A. Maker fails to pay any amount due hereunder within thirty (30) days of its due date;
or

B. Any default by Maker under this Note, the Deed of Trust, the Loan Agreement or the Regulatory Agreements recorded against the Property after the expiration of all applicable cure periods; or

C. Any default by Maker under any other obligation of Maker recorded against the Property after the expiration of all applicable cure periods; or

Maker shall not be considered in default under this Note until the expiration of all notice and cure periods provided to Maker. Upon the occurrence of any uncured event of default, or at any time thereafter, at the option of the Payee hereof, the entire unpaid principal and interest owing on this Note shall become immediately due and payable. This option may be exercised at any time following any such event, and the acceptance of one or more installments thereafter shall not constitute a waiver of Payee's option. Payee's failure to exercise such option shall not constitute a waiver of such option with respect to any subsequent event. Payee's failure in the exercise of any other right or remedy hereunder or under any agreement which secures the indebtedness or is related thereto shall not affect any right or remedy and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof.

8. Default Interest Rate. At all times when Maker is in default hereunder by reason of Maker's failure to pay any amounts due under this Note within applicable cure periods, the interest rate on the sums as to which Maker is in default (including principal, if Payee has elected to declare it immediately due and payable), shall be the highest rate then allowed by law as of the date of the default or 8% per annum, whichever is lower.

9. Waivers. Maker and any endorsers hereof and all others who may become liable for all or any part of this obligation, severally waive presentment for payment, demand and protest and notice of protest, and of dishonor and nonpayment of this Note, and expressly consent to any extension of the time of payment hereof or of any installment hereof, to the release of any party liable for this obligation, and any such extension or release may be made without notice to any of said parties and without any way affecting or discharging this liability.

10. Costs. Maker agrees to pay immediately upon demand all reasonable costs and expenses of Payee actually incurred including reasonable attorneys' fees:

A. If after default and the expiration of all notice and cure periods this Note is placed in the hands of an attorney or attorneys for collection;

B. If after a default hereunder or under the Deed of Trust or Loan Agreement and after the expiration of all notice and cure periods Payee finds it necessary or desirable to secure the services or advice of one or more attorneys with regard to collection of this Note against Maker, any guarantor or any other party liable therefor or to the protection of its rights under this Note, the Deed of Trust, the Loan Agreement or other loan documents executed in connection with the Development; or

C. If Payee seeks to have the Property abandoned by or reclaimed from any estate in bankruptcy, or attempts to have any stay or injunction prohibiting the enforcement or collection of this Note or prohibiting the enforcement of the Deed of Trust or any other agreement evidencing or securing this Note lifted by any bankruptcy or other court.

D. If Payee shall be made a party to or shall reasonably intervene in any action or proceeding, whether in court or before any governmental entity, affecting the Property or the title thereto or the interest of the Payee under the Deed of Trust, including, without limitation, any form of condemnation or eminent domain proceeding, Payee shall be reimbursed by Maker immediately upon demand for all costs, charges and reasonable attorneys' fees incurred by Payee in any such case, and the same shall be secured by the Deed of Trust as a further charge and lien upon the Property.

11. Notices. Any notices provided for in this Note shall be given by mailing such notice by certified mail, return receipt requested at the address stated in this Note or at such address as either party may designate by written notice.

12. Successors. This Note shall be binding upon Maker, its successors and assigns.

13. California Law. This Note shall be construed in accordance with and be governed by the laws of the State of California.

14. 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.

15. Nonrecourse. This Note is a nonrecourse obligation of Maker. Neither Maker nor any of its officers, directors or agents shall have any personal liability for repaying the principal or interest of the Note. In any action brought to enforce the obligations of Maker under this Note, the Deed of Trust or any other instrument or agreement evidencing, securing or relating to the indebtedness evidenced by this Note, the judgment or decree shall be enforceable against Maker solely and only to the extent of its interest in the property described in the Deed of Trust or its interest in any other security loaned by Maker as security for this Note, and Payee shall not seek any deficiency judgment against the Maker. The foregoing provisions shall not prevent recourse to the collateral security for the loan or constitute a waiver, release or discharge of or otherwise affect the obligation to pay, any indebtedness evidenced by the loan documents executed in connection with the Development or limit the right of any person to name the Maker or any other person claiming an interest in or right to such collateral as party defendant in any action or suit for judicial foreclosure

or in the exercise of any other remedy, including injunctive or other equitable relief, under any of the loan documents executed in connection with this Development so long as no deficiency judgment shall be sought against the Maker.

The foregoing limitation shall not apply to any and all loss, damage, liability, action, cause of action, cost or expense (including without limitation, reasonable attorneys' fees and expenses) to the extent incurred by Payee as a result of any:

- A. Fraud or material misrepresentation under or in connection with the loan or any loan document executed in connection with the Development;
- B. Intentional bad faith waste of the Property by the Maker;
- C. Losses resulting from Maker's failure to maintain insurance as required under the Deed of Trust; or
- D. Misappropriation of any rents, security deposits, insurance proceeds, condemnation awards or any other proceeds derived from the collateral security by the Maker.

If any of the events listed in the foregoing (A) through (D) occurs, Payee shall have the right to proceed directly against Maker at the time the event giving rise to the recourse liability occurred to recover any and all loss, damage, liability, action, cause of action, cost or expense (including without limitation, reasonable attorneys' fees and expenses) incurred by Payee.

16. Nonliability of Maker and Payee Officials and Employees.

A. No partner, official or employee of the Payee shall be personally liable to the Maker in the event of any default or breach by the Agency or on any obligations under the terms of this Note.

B. No member, official or employee of the Maker shall be personally liable to the Payee in the event of any default or breach by the Maker or for any amount which may become due to the Payee or on any obligations under the terms of this Note.

MAKER / BORROWER:

[INSERT BORROWER NAME, Insert State business entity type]

By:

By: _____
Name:
Title:

ATTACHMENT NO. 6

FORM OF DEED OF TRUST

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Redwood City
1017 Middlefield Road
Redwood City, CA
Attn: City Clerk

Space above line for Recorder's use only
Exempt from Recording Fees pursuant to Govt. Code § 27383

CITY OF REDWOOD CITY

**DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND
FIXTURE FILING
(Insert Development Name/Address)**

This Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (“Deed of Trust”) is made as of _____, 20____, among [INSERT BORROWER NAME] (“TRUSTOR”), whose address is [Insert Borrower Address]; [Insert Title Company Name], whose address is [Insert Title Company Address] (“TRUSTEE”); and the CITY OF REDWOOD CITY (“BENEFICIARY”), whose address is _____, Redwood City, California 9____.

Trustor irrevocably grants, conveys, transfers, and assigns to Trustee in trust, with power of sale and right of entry and possession, all of Trustor's estate, right, title, and interest in, to and under the following property (collectively, the “**Property**”): (a) the real property in San Mateo County, California, described on Exhibit A attached hereto and incorporated herein by this reference, together with all existing and future easements and rights affording access to it (the “**Land**”), (b) together with all buildings, structures, and improvements now existing or hereafter constructed thereon (the “**Improvements**”), (c) together with all articles of personal property now or hereafter attached to, placed upon for an indefinite term, or used in connection with the Land and/or Improvements, together with all goods and other property that are, or at any time become, so related to the Property that an interest in them arises under real estate law, or they are otherwise adjudged to be a “**fixture**” under applicable law (each a “**Fixture**,” collectively “**Fixtures**”), (d) together with all other property and interests of any kind or character which may be reasonably necessary or desirable to promote the present and future beneficial use and enjoyment of such real property and improvements.

1. Secured Obligations. Trustor makes the grant, conveyance, transfer, and assignment herein for the purpose of securing the following obligations (the “**Secured Obligations**”): (a) payment of the sum of _____ Dollars (\$_____) with interest thereon according to the terms of a promissory note (the “**Note**”) of even date herewith, executed by Trustor in favor of Beneficiary or order and any extension or renewals thereof;

(b) payment of such further sums as the then record owner of the Property may borrow from Beneficiary, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust; and (c) performance of each agreement and obligation of Trustor under that certain Loan Agreement executed by Trustor and Beneficiary dated _____, 20____ (the “**Loan Agreement**”), providing for [the acquisition and rehabilitation of improvements on the Property and operation of the Property and *[for Expiring Covenant Loans, delete highlighted phrase]* improvements thereon as affordable housing (the “**Project**”); and (e) obligations under the Regulatory Agreement and Declaration of Restrictive Covenants, Conditions and Restrictions Restricting Use of Property for Affordable Housing, dated of even date herewith (the “**Regulatory Agreement**”) recorded against respective portions of the Property on even date with this Deed of Trust. The payment of the amount owing pursuant to the terms of the Note by Trustor does not extinguish the rights of the Beneficiary under the Regulatory Agreement. This Deed of Trust shall secure the Beneficiary against any default under the Regulatory Agreement for the term of the Regulatory Agreement.

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

3. Insurance. Trustor shall maintain hazard insurance against loss by fire, hazards included with the term “**extended coverage**,” and any other hazards for which Beneficiary requires insurance, and liability insurance as set forth in the Loan Agreement and Regulatory Agreement. The insurance carrier and the insurance policies and amounts of coverage shall comply with the terms of the Loan Agreement and Regulatory Agreement or shall otherwise be acceptable to Beneficiary, the policies shall name Beneficiary as a loss payee or an additional insured, as applicable, the policies shall include Beneficiary as an additional insured, as applicable.

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

5. Payment of Taxes and Liens. Trustor shall pay (a) at least 10 days before delinquency, all non-abated taxes and assessments affecting the Property, including water stock assessments; (b) when due, all encumbrances, charges, and liens, with interest, on the Property, which are or appear to be prior or superior to this Deed of Trust; and (c) upon demand all reasonable and documented costs, fees, and expenses of this Deed of Trust. If Trustor fails to make any payment or to do any act provided for in this Deed of Trust after written notice of such failure by Beneficiary and a reasonable opportunity to cure, then Beneficiary or Trustee may, without obligation to do so, and with or without notice to or demand upon Trustor, and without releasing Trustor from any obligation under this Deed of Trust: (a) make or do the same in such manner and to such extent as either may deem necessary to protect the security, Beneficiary or

Trustee being authorized to enter upon the Property for such purposes; (b) appear in or commence any action or proceeding purporting to affect the security, or the rights or powers of Beneficiary or Trustee; (c) pay, purchase, contest or settle any encumbrance, charge or lien which in the judgment of either appears to be senior to this Deed of Trust; and (d) in exercising any such powers, pay allowable expenses, including attorneys' fees.

6. **Reimbursement of Costs.** Trustor shall pay upon demand all reasonable and documented sums expended by Beneficiary or Trustee provided for in this Deed of Trust or allowed by law, with interest from date of expenditure at the maximum rate provided in the Note.

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

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

9. **Assignment of Rents.** Subject to the rights of senior lenders, Trustor hereby absolutely and unconditionally assigns to Beneficiary all of the rents, issues, profits, royalties, revenues, income, and other benefits (collectively, the **“Rents”**) derived from the Property, whether now due, past due or to become due, and hereby gives to and confers upon Beneficiary, either directly or through a receiver, the right, power, and authority, but not the obligation, to collect the Rents, and to sue, either in the name of Trustor or Beneficiary, for all such Rents and to apply the same to the indebtedness secured hereby in such order as Beneficiary may determine in its sole discretion. This assignment of Rents is intended to create and shall be construed to create an absolute assignment to Beneficiary of all of Trustor's right, title, and interest in the Rents. So long as no default exists by Trustor in the payment of any indebtedness secured hereby, or in any other covenant contained herein, or in said note or notes or in any other document evidencing or securing such indebtedness, Trustor shall have the right to collect all Rents from the Property and to retain, use, and enjoy the same. Upon the occurrence of such a default beyond any applicable notice and cure periods, without the necessity of demand or other notice to Trustor or any other act to enforce Beneficiary's interest pursuant to this assignment, Trustor shall have no interest whatsoever in the Rents that are received by Trustor after a default, and all such Rents shall be received and held by Trustor in constructive trust for Beneficiary and delivered promptly to Beneficiary, or to a court-appointed receiver for the Property, without the necessity for further notice to, or demand upon, Trustor. Upon the occurrence of such a default, beyond any applicable notice and cure periods, and at any time thereafter during the continuance thereof, Beneficiary may, at its option, send any tenant of the Property a notice to the effect that: (a) a default has occurred; (b) Beneficiary has elected to exercise its rights under this assignment; and (c) such tenant is thereby directed to thereafter make all payments of Rents to or for the benefit of Beneficiary or as Beneficiary shall direct. Any such tenant shall be entitled to rely upon any notice from Beneficiary and shall be protected with respect to any payment of Rents made pursuant to

such notice, irrespective of whether a dispute exists between Trustor and Beneficiary with respect to the existence of a default or the rights of Beneficiary hereunder. Any such tenant shall not be required to investigate or determine the validity or accuracy of such notice or the validity or enforceability of this assignment. Trustor hereby agrees to indemnify, defend, and hold any such tenant harmless from and against any and all losses, claims, damages or liabilities arising from or related to any payment of Rents by such tenant made in reliance on and pursuant to such notice.

10. Default and Foreclosure. Upon default by Trustor in payment or performance of any Secured Obligation, subject to any applicable notice and cure period, Beneficiary may declare all sums secured immediately due and payable by delivery to Trustee of a declaration of default and demand for sale and of a notice of default and of a notice of sale, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, said note or notes, and all documents evidencing expenditures secured by this Deed of Trust. Upon default of any obligation secured by this Deed of Trust and acceleration of all sums due, Beneficiary may instruct Trustee to proceed with a sale of the Property under the power of sale granted in this Deed of Trust, noticed and held in accordance with California Civil Code Sections 2924, et seq., as such statutes may be amended from time to time. Trustor waives all rights it may have to require marshaling of assets or to require sales of assets in any particular order, including any rights under California Civil Code Sections 2899 and 3455.

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

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

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

14. Further Assurances. Trustor shall, at its own cost and expense, do, execute, acknowledge, and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers, and assurances as Trustee or Beneficiary shall from time to time reasonably require, for better assuring, conveying, assigning, transferring, and confirming unto Trustee the Property and rights hereby conveyed or assigned or intended now or hereafter so to be, or which Trustor may be or may hereafter become bound to convey or assign to Trustee, or for carrying out the intention or facilitating the performance of the terms of this Deed

of Trust, or for filing, registering, or recording this Deed of Trust. Trustor shall, on demand, execute and deliver, and hereby authorizes Trustee and Beneficiary, or either of them, to execute in the name of Trustor, to the extent it may lawfully do so, one or more financing statements, chattel mortgages, or comparable security instruments, to evidence more effectively the lien hereof. Immediately upon the execution and delivery of this Deed of Trust, and thereafter from time to time, Trustor shall cause this Deed of Trust, and any security instruments creating a lien or evidencing the lien hereof upon any personal property and each instrument of further assurance, to be filed, registered, or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the title of Trustee to, the Property encumbered hereby.

15. Condemnation and Insurance Proceeds. Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation or other taking of all or any portion of the Property, or knowledge of any casualty damage to the Property, or damage in any other manner, Trustor shall immediately notify Beneficiary thereof. Trustor hereby authorizes and empowers Beneficiary as attorney-in-fact for Trustor to make proof of loss, to adjust and compromise any claim under the insurance policies covering the Property, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Beneficiary's expenses incurred in the collection of such proceeds; provided, however, that nothing contained in this Section shall require Beneficiary to incur any expense or take any action hereunder. Trustor hereby authorizes and empowers Beneficiary, at Beneficiary's option, as attorney-in-fact for Trustor, to commence, appear in, and prosecute, in Beneficiary's or Trustor's name, any action or proceeding relating to any condemnation or other taking of all or any part of the Property, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Property, or any part thereof, or for conveyances in lieu of the Property, or any part thereof, shall be paid to Beneficiary. The foregoing powers of attorney are coupled with an interest and are irrevocable. Trustor hereby authorizes Beneficiary to apply such awards, payments, proceeds or damages relating to condemnation of the Property and insurance covering the Property, after the deduction of Beneficiary's expenses incurred in the collection of such amounts, subject to the requirements of applicable law and the provisions hereof, to restoration or repair of the Property or to payment of the sums secured by this Deed of Trust. Beneficiary shall be under no obligation to question the amount of any compensation, awards, proceeds, damages, claims, rights of action, and payments relating to condemnation or other taking of the Property or insured casualty affecting the Property, and may accept the same in the amount in which the same shall be paid. Trustor shall execute such further evidence of assignment of any awards, proceeds, damages or claims arising in connection with such condemnation or taking or such insurance as Beneficiary may require. Notwithstanding the above, the Beneficiary shall release all insurance and condemnation proceeds to Trustor to be used to reconstruct the improvements on the Property provided that Beneficiary reasonably determines that such restoration, repair or rebuilding is economically feasible. If such insurance proceeds shall be insufficient for such purposes, Trustor shall make up the deficiency. If the Project is subject to a partial condemnation or taking, then the proceeds received therefrom shall be applied to restore the Project taken, provided the Beneficiary determines that such restoration is economically feasible and no default exists under the Loan Documents following the expiration of all applicable cure periods. If the Project is subject to a total condemnation, or if

Beneficiary determines that restoration of the Project is not feasible following a partial condemnation, or if a default exists then the proceeds from any condemnation award or claim for damages shall be used first to repay all sums under the Note, with the excess, if any, paid to Trustor, subject to the rights of the senior lender.

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

17. Estoppel Certificate. Trustor shall, within thirty (30) days of a written request from Beneficiary, furnish Beneficiary with a written statement, duly acknowledged, setting forth the sums secured by this Deed of Trust and any right of set-off, counterclaim or other defense which exists against such sums and the obligations of this Deed of Trust.

18. California Uniform Commercial Code Security Agreement; Fixture Filing. Trustor hereby grants Beneficiary a security interest in all personal property of Trustor located on the Property and wherever located and used in any way in connection with or in any way relating to the Property, and whether now owned or hereafter in existence, acquired or created (including equipment, inventory, goods, documents, instruments, general intangibles, chattel paper, accounts, accounts receivable, deposit accounts, and contract rights), and all fixtures of Trustor now owned or hereafter in existence, acquired or created on, of or relating to the Property, and all substitutions, replacements, additions, accessions, and proceeds (including insurance proceeds) of all of the foregoing (collectively, the “**Personal Property**”). Beneficiary may file this Deed of Trust, or a reproduction hereof, in the real estate records or other appropriate index, as a financing statement for the Personal Property. Any reproduction of this Deed of Trust or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Trustor shall execute and deliver to Beneficiary, upon Beneficiary’s request, any financing statements, as well as extensions, renewals, and amendments thereof, and reproductions of this Deed of Trust in such form as Beneficiary may require to perfect a security interest with respect to the Personal Property. Trustor shall pay all costs of filing such financing statements and any extensions, renewals, amendments, and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Beneficiary may reasonably require. Upon Trustor’s breach of any covenant or agreement of Trustor contained in this Deed of Trust, including the covenants to pay when due all sums secured by this Deed of Trust, Beneficiary shall have the remedies of a secured party under the California Uniform Commercial Code and, at Beneficiary’s option, may also invoke any remedies provided in this Deed of Trust as to the Personal Property. In exercising any of such remedies, Beneficiary may proceed against the Property and any of the Personal Property separately or together and in any order whatsoever, without in any way affecting the availability of Beneficiary’s remedies under the California Uniform Commercial Code or the remedies provided in the Deed of Trust. This Deed of Trust also covers goods which are or which are to become fixtures on the Property and constitutes and is filed as a fixture filing under the California Uniform Commercial Code.

19. Due-On-Sale or Encumbrance. Except as set forth in Section 3.4 of the Regulatory Agreements, and Section 804.2 of the Loan Agreement, if all or any part of the

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

[CONTINUED ON NEXT PAGE]

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

TRUSTOR:

[INSERT NAME OF BORROWER Insert State and business entity type]

By:

By: _____
Name:
Title:

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

[To Be Inserted.]

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.

ACKNOWLEDGEMENTS

State of California
County of _____

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)
* * * * *

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.

ACKNOWLEDGEMENTS

State of California
County of _____

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

ATTACHMENT NO. 7

FORM OF REGULATORY AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Redwood City
1017 Middlefield Road
Redwood City, CA 94063
Attn: City Clerk

Space above line for Recorder’s use only
Exempt from Recording Fees pursuant to Govt. Code § 27383

CITY OF REDWOOD CITY

**REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE
COVENANTS, CONDITIONS AND RESTRICTIONS
RESTRICTING USE OF PROPERTY FOR AFFORDABLE HOUSING
(Insert Name of Development/Address)**

THIS REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, CONDITIONS AND RESTRICTIONS RESTRICTING USE OF PROPERTY FOR AFFORDABLE HOUSING (this “Regulatory Agreement”) is dated as of _____, 20__ (the “Effective Date”), and is made by and between the CITY OF REDWOOD CITY, a municipal corporation (the “City”), and [INSERT BORROWER NAME,] a [Insert State and business entity type] (the “Owner”), with reference to the following recited facts (each, a “Recital”).

RECITALS

A. The Owner owns or will own and operates that certain real property specifically defined as the “Property” in this Regulatory Agreement, which is improved with a multifamily rental housing development comprising a total of _____ () residential units;

B. Owner owns or is acquiring the Property to be operated as affordable housing. The City has agreed to make a loan to Owner in an amount not to exceed _____ Dollars (\$ _____) pursuant to the Affordable Housing Preservation Program, as enacted pursuant to Council Resolution No. _____ (the “Loan”) [for Acquisition/Rehabilitation Loan] [for a portion of the costs of the acquisition and rehabilitation of the Property] [for Expiring Covenant Loans] [as consideration for Owner’s agreement to restrict the use of the Property for the operation of the Property as an affordable housing development in accordance with the terms of this Regulatory Agreement], as more particularly described in that Loan Agreement entered into by and between City and Owner (the “Loan Agreement”);

C. This Regulatory Agreement shall, subject to the terms and conditions set forth herein, restrict the use of the Property for a term of not less than fifty-five (55) years commencing on the date of recordation of this Regulatory Agreement as more specifically set forth herein, to ensure that each Affordable Unit included within the Development shall, at all times until expiration of such period, be occupied or reserved for occupancy by a Qualifying Household (as defined in Section 1.1.50 of this Regulatory Agreement) at an Affordable Rent (as defined in Section 1.1.1 of this Regulatory Agreement);

D. The purpose of this Regulatory Agreement is to create such conditions, covenants, restrictions, reservations, agreements, liens, servitudes and charges upon the Property and subject to which each and every part of the Property shall be developed, occupied, owned, maintained, held, leased, rented, sold and conveyed;

NOW, THEREFORE, IN CONSIDERATION OF THE PROMISES, COVENANTS AND UNDERTAKINGS SET FORTH IN THIS REGULATORY AGREEMENT AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, THE OWNER AND THE CITY COVENANT, DECLARE AND AGREE FOR THEMSELVES, THEIR SUCCESSORS AND ASSIGNS, AS FOLLOWS:

1. DEFINITIONS

1.1 Definitions. As used in this Regulatory Agreement, the following words, phrases and terms shall have the meaning as provided in the initial paragraph of this Regulatory Agreement, the Recitals, the Loan Agreement, or in this Section 1, unless the specific context of usage of a particular word, phrase or term may otherwise require:

1.1.1 **Affordable Rent.** Affordable Rent shall have the meaning as defined in Health and Safety Code Section 50053(b), applicable to the income level of the household residing each Qualifying Unit.

1.1.2 **Affordable Units.** _____ () of the _____ () residential units included in the Project will be restricted by Owner in the manner set forth in this Regulatory Agreement for rental to and occupancy by Qualifying Households in accordance with the terms and conditions of this Agreement as follows: _____ () units shall be available and rented to Extremely Low Income Households (collectively, the “**Extremely Low Income Units**”); (ii) _____ () units shall be available and rented to Very Low Income Households (collectively, the “**Very Low Income Units**”); and _____ () units shall be available and rented to Low Income Households (collectively, the “**Low Income Units**”).

1.1.3 **Annual Report.** A report in substantially the form of Exhibit “C” attached to this Regulatory Agreement or in such other form as subsequently reasonably required by the City.

1.1.4 **Approval.** Any license, permit, approval, consent, certificate, ruling, variance, authorization, conditional use permit, or amendment to any of the foregoing, as shall be necessary or appropriate under any Law to commence, perform, or complete the Construction of the Development.

1.1.5 **Area Median Income.** The then current area median income for San Mateo County, as determined by and published by the United States Department of Housing and Urban Development (“**HUD**”) as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937. In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen months, then the City shall provide Owner with other income determinations which are reasonably similar with respect to method of calculation to those previously published by HCD or HUD.

1.1.6 **Available.** When an Affordable Unit is held available for occupancy by a Qualifying Household. An Affordable Unit shall be considered to be held available for occupancy by a Qualifying Household, until occupied or reoccupied by a Qualifying Household, provided that the Owner is exercising bona fide good faith efforts to let or relet the Affordable Unit to a Qualifying Household.

1.1.7 **Bankruptcy Law.** Title 11, United States Code, and any other or successor State or Federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

1.1.8 **Bankruptcy Proceeding.** Any proceeding, whether voluntary or involuntary, under any Bankruptcy Law.

1.1.9 **City.** The City of Redwood City, California, a municipal corporation.

1.1.10 **City Manager.** The appointed City Manager of the City, or their designee.

1.1.11 **City Parties.** Collectively, City, its governing body, elected officials, employees, agents and attorneys.

1.1.12 **City Party.** Individually, City, its governing body, elected officials, employees, agents or attorneys.

1.1.13 **Claim.** Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature, and if an Indemnitor improperly fails to provide a defense for an Indemnitee, then Legal Costs of counsel retained by the Indemnitee) and any judgment.

1.1.14 **Condemnation.** Any of the following: (a) Any temporary or permanent taking of (or of the right to use or occupy) all or any part of the Property by condemnation, eminent domain, or any similar proceeding; or (b) any action by any Government not resulting in an actual transfer of an interest in (or of the right to use or occupy) all or any part of the Property, but creating a right to compensation, such as a change in grade of any street upon which the Property abuts.

1.1.15 **Control.** Possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person and contractually bind such Person,

whether by ownership of Equity Interests, by contract, or otherwise.

1.1.16 **County.** The County of San Mateo, California.

1.1.17 **Deed of Trust.** The Deed of Trust, executed by Owner as Trustor, in favor of the City as Beneficiary, of even date with this Regulatory Agreement.

1.1.18 **Default Interest.** Interest at an annual rate equal to the lesser of: (a) eight percent (8%) per annum; or (b) the Usury Limit.

1.1.19 **Development.** The improvements that have been constructed on the Property, which include a () unit multifamily residential housing development and associated amenities.

1.1.20 **Environmental Claim.** Any and all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements and expenses, including Legal Costs and fees and costs of environmental consultants and other experts, and all foreseeable and unforeseeable damages or costs of any kind or of any nature whatsoever, directly or indirectly, relating to or arising from any actual or alleged violation of any Environmental Law or Hazardous Substance Discharge.

1.1.21 **Environmental Law.** Any Law regarding any of the following at, in, under, above, or upon the Property: (a) air, environmental, ground water, or soil conditions; or (b) clean-up, remediation, control, disposal, generation, storage, release, discharge, transportation, use of, or liability or standards of conduct concerning, Hazardous Substances.

1.1.22 **Equity Interest.** All or any part of any direct or indirect equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest in a limited liability company, or other interest of an ownership or equity nature) in any entity, at any tier of ownership, that directly or indirectly owns or holds any ownership or equity interest in a Person.

1.1.23 **Event of Default.** The occurrence of any one or more of the following:

(a) *Reporting Default.* If the Owner fails to deliver any Annual Report as and when required in Section 2.8.6 or fails or refuses to allow and cooperate with any City audit of Property Records in accordance with Section 8, each after fifteen (15) calendar days' Notice of such failure;

(b) *Bankruptcy or Insolvency.* Owner admits in writing that it is unable to pay its debts as they become due or becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within one hundred twenty (120) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Owner's assets or Owner's interest in this Regulatory Agreement (unless such appointment, attachment, execution, or other seizure was involuntary, and is contested with diligence and continuity and vacated and discharged within one hundred twenty (120) days);

(c) *Transfer*. The occurrence of a Transfer, whether voluntarily or involuntarily or by operation of Law, in violation of the terms and conditions of this Regulatory Agreement or the Loan Agreement;

(d) *Other Default*. Any default, other than those specifically addressed in Section 1.1.1(a), Section 1.1.23(b) or Section 1.1.23(c), that is not cured within thirty (30) days after Notice to the Owner describing the default in reasonable detail, or, in the case of a default that cannot with reasonable diligence be cured within thirty (30) days after the effective date of such Notice, if the Owner does not do all of the following: (a) within thirty (30) days after Notice of such default, advise the City of the intention of the Owner to take all reasonable steps to cure such default; (b) duly commence such cure within such period, and then diligently prosecute such cure to completion; and (c) complete such cure within a reasonable time under the circumstances; or

1.1.24 **Existing Tenants**. Defined in Section 2.3.

1.1.25 **Extremely Low Income Households**. Extremely Low Income Households shall have the same meaning as that term is defined in Section 50106 of the Health and Safety Code

1.1.26 **Government**. Each and every governmental agency, City, bureau, department, quasi-governmental body, or other entity or instrumentality having or claiming jurisdiction over the Property or the Development (or any activity this Regulatory Agreement requires or allows), including the government of the United States of America, the State and the County governments and their subdivisions and municipalities, including the City, the City, and all other applicable governmental agencies, authorities, and subdivisions thereof. “Government” shall also include any planning commission, board of standards and appeals, department of buildings, city council, zoning board of appeals, design review board or committee or similar body having or claiming jurisdiction over the Property or any activities on or at the Property.

1.1.27 **Hazardous Substance**. Any flammable substances, explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, explosives, petroleum, petroleum products, and any “hazardous” or “toxic” material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, including any material, substance or waste that is: (a) defined as a “hazardous substance” under Section 311 of the Water Pollution Control Act (33 U.S.C. § 1317), as amended; (b) substances designated as “hazardous substances” pursuant to 33 U.S.C. § 1321; (c) defined as a “hazardous waste” under Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, *et seq.*, as amended; (d) defined as a “hazardous substance” or “hazardous waste” under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. § 9601, *et seq.*, or any so-called “superfund” or “superlien” law; (e) defined as a “pollutant” or “contaminant” under 42 U.S.C. § 9601(33); (f) defined as “hazardous waste” under 40 C.F.R. Part 260; (g) defined as a “hazardous chemical” under 29 C.F.R. Part 1910; (h) any matter within the definition of “hazardous substance” set forth in 15 U.S.C. § 1262; (i) any matter, waste or substance regulated under the Toxic Substances Control

Act (“TSCA”) [15 U.S.C. Sections 2601, *et seq.*]; (j) any matter, waste or substance regulated under the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, *et seq.*; (k) those substances listed in the United States Department of Transportation (DOT) Table [49 C.F.R. 172.101]; (l) any matter, waste or substances designated by the EPA, or any successor City, as a hazardous substance [40 C.F.R. Part 302]; (m) any matter, waste or substances defined as “hazardous waste” in Section 25117 of the California Health and Safety Code; (n) any substance defined as a “hazardous substance” in Section 25316 of the California Health and Safety Code; (o) any matter, waste, or substance that is subject to any other Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source; or (p) other substances, materials, and wastes that are, or become, regulated or classified as hazardous or toxic under Law or in the regulations adopted pursuant to said Law, including manure, asbestos, polychlorinated biphenyl, flammable explosives and radioactive material. Hazardous Substances do not include substances of a type and quantity typically used in the construction and operation of developments similar to the Development and used in compliance with Environmental Laws

1.1.28 **Hazardous Substance Discharge.** Any deposit, discharge, generation, release, or spill of a Hazardous Substance that occurs at, on, under, into or from the Property, or during the transportation of any Hazardous Substance to or from the Property, or that arises at any time from the Construction, installation use or operation of the Development or any activities conducted at, on, under or from the Property, whether or not caused by a Party.

1.1.29 **HUD.** The Secretary of the United States Department of Housing and Urban Development.

1.1.30 **Income Certification Form.** A certification in substantially the form of Exhibit “B” attached to this Regulatory Agreement or in such other form subsequently reasonably required by City.

1.1.31 **Indemnify.** Where this Regulatory Agreement states that any Indemnitor shall “indemnify” any Indemnitee from, against, or for a particular Claim, that the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against such Claim (alleged or otherwise). “**Indemnified**” shall have the correlative meaning.

1.1.32 **Indemnified Party.** Any Person entitled to be Indemnified under the terms of this Regulatory Agreement.

1.1.33 **Indemnifying Party.** A Party that agrees to Indemnify any other Person under the terms of this Regulatory Agreement.

1.1.34 **Insurance Requirements.** Those certain insurance requirements that are required by the City as a condition of making the Loan to the Owner attached to the Loan Agreement as Attachment No. 8. The Insurance Requirements are incorporated herein by this reference.

1.1.35 **Legal Costs.** In reference to any Person, all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is

entitled to be reimbursed for its Legal Costs), including reasonable attorneys' fees, court costs and expenses, and consultant and expert witness fees and expenses.

1.1.36 **Low Income Households.** Low Income Households shall have the same meaning as the term "Lower Income Households" is defined in Section 50079.5 of the Health and Safety Code.

1.1.37 **Maintenance Deficiency.** Defined in Section 3.5.2.

1.1.38 **Maintenance Standard.** Defined in Section 3.5.1.

1.1.39 **Noncompliant Existing Tenants.** Defined in Section 2.3.

1.1.40 **Notice.** Any consent, demand, designation, election, notice, or request relating to this Regulatory Agreement, including any Notice of Default. All Notices must be in writing.

1.1.41 **Notice of Default.** Any Notice claiming or giving Notice of a Default or alleged Default.

1.1.42 **Notify.** To give a Notice.

1.1.43 **Owner Parties.** Collectively, the Owner, members, directors, officers, employees, agents, partners, managers and holders of Equity Interests in the Owner.

1.1.44 **Owner Party.** Individually, the Owner, each of its members, directors, officers, employees, agents, partners, managers, and each holder of Equity Interests in the Owner.

1.1.45 **Parties.** Collectively, the City and the Owner.

1.1.46 **Party.** Individually, either the City or the Owner, as applicable.

1.1.47 **Person.** Any association, corporation, governmental entity or agency, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization or other entity of any kind.

1.1.48 **Property Records.** All books, records, statements, contracts and other records of the Owner or any Affiliate relating in any way to the use, occupancy or operation of the Property or the Development, including Income Certification Forms completed by applicants or tenants of the Development, Annual Reports, accounting of Development revenues, and accounting of Development expenses. All Property Records shall be prepared in accordance with industry standards and generally accepted accounting principles.

1.1.49 **Property.** That certain real property located within the City of Redwood City, County of San Mateo, State of California, specifically described in the legal description attached as Exhibit "A" to this Regulatory Agreement, which is incorporated into this Regulatory Agreement by this reference.

1.1.50 **Qualifying Household.** A household that: (1) intends to reside in an Affordable Unit; and (2) upon initial income certification, and each year thereafter (subject to the terms of this Regulatory Agreement) meets the income restrictions as set forth in Section 2.3 of this Regulatory Agreement for the applicable Affordable Unit, based on a household size appropriate for the Affordable Unit.

1.1.51 **Security Instrument.** Any security instrument, deed of trust, security deed, contract for deed, deed to secure debt, or other voluntary real property (including leasehold) security instrument(s) or agreement(s) intended to grant real property (including leasehold) security for any obligation (including a purchase-money or other promissory note) encumbering the Property, as entered into, renewed, modified, consolidated, increased, decreased, amended, extended, restated, assigned (wholly or partially), collaterally assigned, or supplemented from time to time, unless and until paid, satisfied, and discharged of record. If two or more such security instruments are consolidated or restated as a single lien or held by the same Lender (as applicable), then all such security instruments so consolidated or restated shall constitute a single Security Instrument. A participation interest in a security instrument (or partial assignment of the secured loan) does not itself constitute a Security Instrument.

1.1.52 **Term.** The period of time beginning on the date of recordation of this Regulatory Agreement and ending on the fifty-fifty (55th) anniversary of the date when at least eighty percent (80%) of the number of Affordable Units required pursuant to the terms of this Regulatory Agreement are leased to Qualifying Households as more specifically set forth in Section 2.4 of this Regulatory Agreement.

1.1.53 **Transfer.** Regarding any property, right or obligation means any of the following, whether by operation of law or otherwise, whether voluntary or involuntary, and whether direct or indirect: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, or other transfer, whether direct or indirect, of all or any part of such property, right or obligation, or of any legal, beneficial, or equitable interest or estate in such property, right or obligation or any part of it (including the grant of any easement, lien, or other encumbrance); (b) any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any direct or indirect Equity Interest(s) in the owner of such property, right or obligation by the holders of such Equity Interest(s); (c) any transaction described in “b” affecting any Equity Interest(s) or any other interest in such property, right or obligation or in any such owner (or in any other direct or indirect owner at any higher tier of ownership) through any manner or means whatsoever, except, as applicable, for a transfer by the investor member/limited partner of its Equity Interests in Owner or the removal of a managing member/general partner of Owner by an investor member/limited partner of Owner for a default under Owner’s operating/limited partnership agreement; or (d) any transaction that is in substance equivalent to any of the foregoing. A transaction affecting Equity Interests, as referred to in clauses “b” through “d,” shall be deemed a Transfer by the Owner even though the Owner is not technically the transferor. A “Transfer” shall not, however, include any of the following (provided that the other Party has received Notice of such occurrence) relating to the Property and/or any Equity Interest: (i) a mere change in form of ownership with no material change in beneficial ownership and constitutes a tax-free transaction under federal income tax law and the State real estate transfer tax; (ii) a conveyance only to member(s) of the immediate family(ies) of the transferor(s) or trusts for their benefit; (iii) a conveyance only to any Person that, as of the date this Regulatory agreement is recorded, holds an Equity Interest in the entity whose

Equity Interest is being transferred; (iv) the original sale of Equity Interests in Owner; or (v) a conveyance only to an Affiliate of Owner.

1.1.54 **Unavoidable Delay.** A delay in either Party performing any obligation under this Regulatory Agreement, except payment or deposit of money, arising from or on account of any cause whatsoever beyond the Party's reasonable control, including strikes, labor troubles or other union activities, casualty, war, acts of terrorism, riots, litigation, governmental action or inaction, regional natural disasters or inability to obtain required materials. Unavoidable Delay shall not include delay caused by a Party's financial condition, illiquidity, or insolvency.

1.1.55 **Very Low Income Households.** Very Low Income Households shall have the same meaning as defined in Section 50105 of the Health and Safety Code

1.1.56 **Waiver of Subrogation.** A provision in, or endorsement to, any insurance policy, by which the carrier agrees to waive rights of recovery by way of subrogation against either Party to this Regulatory Agreement for any loss such policy covers.

2. **AFFORDABLE RENTAL HOUSING COVENANTS AND RESTRICTIONS**

2.1 Reservation of Property for Affordable Housing. The Owner covenants and agrees to reserve and restrict the Property and, thereafter, use and make Available the Affordable Units within the Property for residential occupancy by individuals and families who, at the time of initial occupancy of an Affordable Unit and continuously thereafter (subject to the other provisions of this Regulatory Agreement), until the end of the Term, are members of a Qualifying Household.

2.2 Initial Determination Regarding Affordable Units. Within six (6) months of the Effective Date of this Regulatory Agreement, the Owner shall survey the all tenants residing in the Development to determine the number of Affordable Units that are currently rented to Qualifying Households, and shall submit to the City an initial Annual Report indicating the number of Affordable Units that are leased to Qualifying Households.

2.3 Vacated Units Shall be Made Available as Affordable Units. In the event that the number of Affordable Units rented to Qualifying Households does not meet the requirements set forth in Section 2.5 of this Regulatory Agreement at the time the initial Annual Report is filed, then as units are vacated by Existing Tenants, as defined below, those units shall be made Available and rented as Affordable Units to Qualifying Households until such time that the full required number of Affordable Units are rented to Qualifying Households. Owner shall prioritize making Affordable Units available to the lowest income category of households if there is a shortfall in both categories of units.

Notwithstanding anything contained herein or in the Loan Agreement to the contrary, the following shall apply with respect to all tenants occupying an Affordable Unit as of the Effective Date (the "**Existing Tenants**"):

(i) An Existing Tenant which does not qualify as a Qualifying Household (a "**Non-Qualifying Existing Tenant**") may continue to occupy an Affordable Unit until such Non-Qualifying Existing Tenant vacates such Affordable Unit; the Owner may continue to charge such Non-Qualifying Existing Tenant rent in the amount set forth in such Non-Qualifying Existing

Tenant's lease; and if such lease is renewed, Owner may increase such rent by an amount comparable to the rent increases then-applicable to market rate rental units in the Redwood City, California area; (ii)

(ii) An Existing Tenant which does not cooperate with the Owner's good faith efforts to determine whether such Existing Tenant is a Qualifying Household (a "**Noncompliant Existing Tenant**") shall be treated as a Non-Qualifying Existing Tenant and the provisions of subsection (i) above shall apply to such Noncompliant Existing Tenant; and

(iii) If a Non-Qualifying Existing Tenant or a Noncompliant Existing Tenant shall subsequently become certified as a Qualifying Tenant, then, effective as the date of such certification, the Affordable Unit rented to such Non-Qualifying Existing Tenant or Noncompliant Existing Tenant shall be treated as having been rented to a Qualifying Household.

Further, and notwithstanding anything contained herein or in the Loan Agreement to the contrary, neither the Owner nor any of its affiliates shall be deemed in breach of this Regulatory Agreement, or otherwise penalized by the City, by reason of any Non-Qualifying Existing Tenants or Noncompliant Existing Tenants occupying Affordable Units, provided that Owner makes a good faith effort to certify such Existing Tenants as Qualifying Households within six (6) months of the Effective Date and upon any renewal of such Existing Tenants' leases.

2.4 Term of Affordability for Affordable Units. The Affordable Units that are confirmed to be rented to Qualifying Households in the initial Annual Report shall be rented or Available to Qualifying Households as an Affordable Rent from the date of recordation of this Regulatory Agreement through the end of the term as set forth herein. Thereafter, Affordable Units that are vacated by Non-Qualifying Tenants shall be rented at an Affordable Rent to Qualifying Households for the remainder of the term as set forth herein. The term of this Regulatory Agreement shall commence with the recordation of the Regulatory Agreement and shall continue thereafter until fifty-five (55) years after the date upon which the Owner verifies to the City through submission of an Annual Report to City that at least eighty percent (80%) of the total number of Affordable Units required by this Regulatory Agreement are rented to Qualifying Households. At the time Owner submits such Annual Report to the City, Owner will request that City verify the date for expiration of the term of this Regulatory Agreement. Provided that City confirms that Owner is renting at least eighty percent (80%) of the Affordable Units to Qualifying Households, City will confirm in writing the expiration date as fifty-five (55) years after submission of such Annual Report.

2.5 Restrictive Covenant for Affordable Units on the Property. The Owner shall make available and rent the Affordable Units as follows: _____ () units shall be available and rented to households whose income does not exceed thirty percent (30%) of the Area Median Income (collectively, the "**Extremely Low Income Units**"); (ii) _____ () units shall be available and rented to households whose income does not exceed fifty percent (50%) of Area Median Income (collectively, the "**Very Low Income Units**"); and _____ () units shall be available and rented to households whose income does not exceed eighty percent (80%) of Area Median Income (collectively, the "**Low Income Units**").

2.6 Continuous Operation Covenant. The Owner covenants to and for the benefit of

the City to cause the Development to be continuously operated, in accordance with the other provisions of this Section 2, throughout the Term.

2.7 Abandonment. The Owner shall not abandon or surrender the operation of all or any part of the Development during the Term, except due to material casualty or condemnation.

2.8 Affordable Rent. The monthly rent charged to a Qualifying Household for the occupancy of an Affordable Unit may never exceed an Affordable Rent for such Affordable Unit.

2.8.1 **Rent Increases**. Rent for Affordable Units may be increased only once per calendar year, based on changes in Area Median Income; provided that the City may, in its reasonable discretion, waive the restriction on number of rent increases in a calendar year. Notwithstanding the foregoing, annual rent increases shall not be more than five percent (5%) per year, and the rent for each Affordable Unit must never exceed an Affordable Rent for the Affordable Unit.

2.8.2 **Determination of Household Income**. Determination of Qualifying Household income shall be made by the Owner within six (6) months after recordation of this Agreement for those Affordable Units that are rented to Qualifying Households at the time of recordation, and subsequently at the time of initial application by an individual or family for occupancy of an Affordable Unit. At the time of initial application, the Owner shall require an applicant to complete the Income Certification Form and certify the accuracy of the information provided on such form. Annually thereafter, the Owner shall require each Qualifying Household occupying an Affordable Unit to recertify the Qualifying Household's income on the Income Certification Form. The Owner shall make a good faith effort to verify the accuracy of income information provided in any Income Certification Form by an applicant for occupancy of an Affordable Unit or by a Qualifying Household occupying an Affordable Unit, by taking one or more of the following steps, as reasonably required or indicated: (1) obtain an income tax return and copy of each W2 Wage and Earnings Statement for the most recently concluded income tax year; (2) conduct a credit reporting agency or similar search; (3) obtain an income verification form from the applicant's or the Qualifying Household's current employer(s); (4) obtain an income verification form from the United States Social Security Administration and/or the California Department of Social Services, if the applicant or the Qualifying Household receives assistance from either of such agencies; or (5) if the applicant or an adult member of a Qualifying Household is unemployed and has no such income tax return, obtain another form of independent verification. For purposes of this Section 2.8.2, the Owner may conclusively rely upon the evidence of the age of the occupant(s) of an Affordable Unit as presented in a valid California Driver's License, other form of identification issued by the State of California or the United States Government, which includes a date of birth. All such verification information shall only be obtained by the Owner after obtaining the applicant's or the Qualifying Household's written consent for the release of such information to the Owner. Failure to consent in writing to the release of such income verification information to the Owner may disqualify an applicant for occupancy of an Affordable Unit or be grounds for termination of Qualifying Household's occupancy of an Affordable Unit.

2.8.3 If, upon any recertification, the income of a previously Qualifying Household is less than one hundred forty percent (140%) of the appropriate income level for the applicable Affordable Unit as adjusted for household size, then such household shall continue to

be deemed a Qualifying Household under this Regulatory Agreement. If, upon any recertification, the income of a previously Qualifying Household exceeds one hundred forty percent (140%) of Lower Income as adjusted for household size, then, to the extent allowed by Law, the Owner shall notify such household that its lease for its Affordable Unit will not be renewed upon the expiration of its lease, unless the household again becomes a Qualifying Household upon recertification prior to the expiration of its lease.

2.8.4 The Owner shall maintain on file all Income Certification Forms completed by applicants for occupancy of Affordable Units and by Qualifying Households that occupied or are occupying Affordable Units in accordance with this Regulatory Agreement and shall provide copies of the rent roll and Income Certification Forms to the City for its review and approval within fifteen (15) days following Notice to the Owner.

2.8.5 The Owner shall, and the Owner shall make best efforts to cause each Qualifying Household occupying an Affordable Unit to, permit the City to conduct inspections of the Property, the Development and each Affordable Unit, from time-to-time, for purposes of verifying compliance with this Regulatory Agreement, upon fifteen (15) days prior written notice to the Owner.

2.8.6 Within thirty (30) days of recordation of this Regulatory Agreement, and thereafter on each April 30 during the Term and within sixty (60) days following the expiration of the Term, the Owner shall submit an Annual Report to the City. The City shall maintain the confidentiality of the information contained in any Annual Report specifically relating to any particular Qualifying Household occupying an Affordable Unit, to the extent reasonably allowed by law, as determined by the City's general or special counsel.

2.9 Owner Covenant Regarding Lease of Affordable Units. The Owner, for itself, its successors and assigns, covenants and agrees that, if any Affordable Unit is rented or leased during the Term, the rental or lease of the Affordable Unit shall be accomplished through a written lease agreement and all of the following restrictions shall apply:

2.9.1 A Qualifying Household shall be the record tenant and only occupant of the Affordable Unit.

2.9.2 The Owner shall provide a legible copy of this Regulatory Agreement to each prospective tenant of any Affordable Unit, upon request by such tenant.

2.9.3 The lease for each Affordable Unit shall expressly state that it is subject and subordinate to this Regulatory Agreement and shall incorporate each and every provision of this Regulatory Agreement, either expressly or by reference.

2.9.4 The lease for each Affordable Unit shall be for a period of not less than twelve (12) months.

2.9.5 The lease for each Affordable Unit shall not contain any of the following provisions:

(a) An agreement by the Qualifying Household to be sued, to admit

guilt or to the entry of a judgment in favor of the Owner in a lawsuit brought in connection with the lease;

(b) An agreement by the Qualifying Household that the Owner may take, hold or sell personal property of any member(s) of the Qualifying Household, without notice to the Qualifying Household and a court decision on the respective rights of the Owner and the member(s) of the Qualifying Household, other than an agreement by the Qualifying Household concerning disposition of personal property remaining in the Affordable Unit after the Qualifying Household has moved out of the Affordable Unit;

(c) An agreement by the Qualifying Household not to hold the Owner or its agents legally responsible for any willful misconduct or negligence attributable to the Owner or its agents;

(d) An agreement by the Qualifying Household that the Owner may institute a lawsuit, involving or affecting the Qualifying Household or any of its members, without notice to the Qualifying Household;

(e) An agreement by the Qualifying Household that the Owner may evict the Qualifying Household without instituting a civil court proceeding in which the Qualifying Household has an opportunity to present a defense or before a court decision on the respective rights of the Owner and the Qualifying Household;

(f) An agreement by the Qualifying Household to waive any right to a trial by jury;

(g) An agreement by the Qualifying Household to waive the Qualifying Household's right to appeal or to otherwise challenge a court decision in connection with the lease;

(h) An agreement by the Qualifying Household to pay attorney's fees or other legal costs, even if the Qualifying Household wins in a court proceeding by the Owner against the Qualifying Household; provided, however, the Qualifying Household may be obligated to pay costs if the Qualifying Household loses such a legal action;

(i) An agreement by the Qualifying Household to pay one (1) or more security deposits (or the equivalent) totaling in excess of the amount of one month's rent for such Affordable Unit. Failure to pay any security deposit installment may constitute a breach of the lease.

2.9.6 Each lease for an Affordable Unit shall contain all of the following provisions:

(a) An agreement authorizing the Owner to immediately terminate the tenancy of a Qualifying Household occupying an Affordable Unit, where one or more members of that Qualifying Household misrepresented any fact material to the qualification of such household as a Qualifying Household;

(b) An agreement providing that each Qualifying Household occupying an Affordable Unit shall be subject to annual certification or recertification of income as a condition to continued occupancy of the Affordable Unit;

(c) An agreement providing that each Qualifying Household occupying an Affordable Unit may be subject to rental increases in accordance with this Regulatory Agreement;

(d) Providing that the Owner will not discriminate on the basis of race, creed, color, gender, sexual orientation, national origin, ancestry, religion, marital status, age, disability or receipt of public assistance or housing assistance in connection with rental of an Affordable Unit, or in connection with the employment or application for employment of persons for operation and management of the Development, and all contracts, applications and leases entered into for such purposes shall contain similar non-discrimination clauses to such effect; and

(e) Providing that the Qualifying Household shall occupy the Affordable Unit as its principal residence and shall not sublease all or part of the Affordable Unit for any purpose.

2.9.7 The Owner shall not terminate the tenancy or refuse to renew the lease or rental agreement of a Qualifying Household except for: (i) serious or repeated violations of the terms and conditions of the lease; (ii) because the previously Qualifying Household is no longer a Qualifying Household; (iii) for violation of applicable Federal, State, or local law; or (iv) for other good cause. The Owner shall, in connection with termination of the tenancy of a Qualifying Household or a refusal to renew the lease or rental agreement of a Qualifying Household, serve written notice upon the Qualifying Household specifying the grounds for the action in accordance with all applicable Laws and at least thirty (30) days before the effective date of the termination of the tenancy, unless the termination is pursuant to a legal action in unlawful detainer.

2.10 Tenant Selection Policies and Criteria. The Owner shall adopt written tenant selection policies and criteria that:

2.10.1 are consistent with the purpose of providing affordable rental housing for Qualifying Households at an Affordable Rent;

2.10.2 are reasonably related to tenant eligibility and ability to perform the obligations of the lease for an Affordable Unit;

2.10.3 subject to applicable fair housing laws, give reasonable preference to households that live or work in the City of Redwood City, provided that such preferences may be waived for Affordable Units receiving Project-Based Section 8 assistance, or Affordable Units that are being provided for rent through a coordinated entry system as approved by the City;

2.10.4 provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable;

2.10.5 give prompt written notice to any rejected applicant of the grounds for rejection;

2.10.6 provide for all of the Affordable Units to be Available for occupancy on a continuous basis to Qualifying Households at an Affordable Rent;

2.10.7 do not give preference to any particular class or group of Persons in leasing or renting the Affordable Units, except as provided in 2.10.3 and to the extent that a tenant must be a Qualifying Household;

2.10.8 provide 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 leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Property, nor shall Owner 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, sublessees, subtenants, or vendees in the Property. Notwithstanding the immediately preceding sentence, with respect to familial status, this Section 2.10.8 shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in this Section 2.10.8 shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code. All deeds, leases or contracts made or entered into by the Owner as to Affordable Units or the Property shall contain covenants prohibiting discrimination, as set forth in Health and Safety Code Section 33436(b).

2.11 Property Records Retention; Audit and Examination Rights.

2.11.1 **Retention of Property Records.** The Owner shall prepare and maintain and shall cause its Affiliates to prepare and maintain complete and accurate Property Records for all periods during the Term. The Owner shall, at all times during the Term and for a period of six (6) years following the end of the Term, maintain and cause to be maintained by its Affiliates, safe and intact, all of the Property Records for a period of not less than six (6) years from the generation of such Property Records. From time to time, upon request from the City, the Owner shall make all Property Records, whether in the custody or control of the Owner or its Affiliates, available to the City, the City's auditor, representative or agent for examination and copying at any reasonable time, on fifteen (15) calendar days advance Notice. The Owner shall also provide the City any additional information concerning the Affordable Units, the Development or the Property reasonably requested by the City.

2.11.2 **Audit Procedures.**

(a) The City may cause an audit of any and all Property Records by an independent auditor of the City's selection. The City shall preserve the confidentiality of information contained in the Property Records, to the extent permitted by Law, as determined by the City's general counsel.

(b) If the Owner fails to provide any Annual Report to the City, as and when required under Section 2.8.6, and such failure is not cured within the time periods

described in Section 1.1.23(d) of this Regulatory Agreement, the Owner shall be in Default under this Regulatory Agreement. Notwithstanding any other provision of this Regulatory Agreement, if the Owner fails to deliver any Annual Report to the City, within thirty (30) calendar days after Notice specifying such Default, the City shall have the right, in addition to any other rights or remedies the City may have under this Regulatory Agreement regarding such Default, to conduct an audit of any and all applicable Property Records to attempt to identify the information that should have been provided by the Owner in such Annual Report. The Owner shall reimburse the City for the reasonable cost of any audit conducted pursuant to this Section 2.11.2(b), on Notice of such cost from the City. The Owner shall pay Default Interest to the City on the amount of any audit cost becoming due to the City from the Owner pursuant to this Section 2.11.2(b), that is not paid within fifteen (15) calendar days following Notice requesting such payment, from the date of such Notice until paid in full.

2.12 Compliance. The Owner shall, during the Term and at the Owner's sole cost and expense, in all material respects: (a) comply with all Laws; and (b) procure and comply with all Approvals required by Law.

3. **PROPERTY MANAGEMENT**

3.1 Management. The Owner shall operate the Development in a manner that will provide decent, safe and sanitary residential facilities to the occupants of the Development, will comply with all the provisions of this Regulatory Agreement, any other applicable contract or agreement between the City and the Owner, and all applicable Law. The Owner shall be responsible for management of the Development, including, without limitation, the selection of Qualifying Households for Affordable Units, certification and recertification of household size and income for Qualifying Households occupying all Affordable Units, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The City shall have no responsibility for the management or operation of the Development or the Property. For the purposes of this Regulatory Agreement, the Owner may directly perform the management functions associated with the Development through its employees or by means of a service contract with an Affiliate, without seeking approval from the City. If the Owner desires to retain a Person other than the Owner or an Affiliate, to manage the Development on the Owner's behalf, the Owner shall submit for City's approval the identity of any proposed management agent, together with additional information relevant to the background and experience of any proposed management agent, as reasonably requested by the City. The City may approve the proposed management agent by Notice to the Owner within thirty (30) days following the City's receipt of all requested information regarding such agent, as provided for in the immediately preceding sentence. Unless the proposed management agent is reasonably disapproved by the City within such thirty (30) day period, the management agent shall be deemed approved by the City. The City hereby approves the [*Insert Name of Approved Property Manager*] as the management agent for the Development.

3.1.1 **Performance Review**. Upon Notice from the City, the Owner shall, with the participation of the City, periodically review the management practices and financial status of the Development and the Owner or management agent. The City shall not request such periodic review more frequently than twice each calendar year. The purpose of each periodic review will be to enable the City to determine whether or not the Development is being operated,

maintained, and managed in accordance with the requirements and standards of this Regulatory Agreement and all applicable Law relevant to the Regulatory Agreement.

3.1.2 **Replacement of Management Agent.** Any contract for the operation or management of the Development entered into by the Owner with a Person shall provide that the contract shall have a term of no more than one (1) calendar year and that the contract is subject to the provisions of this Regulatory Agreement. If the Affordable Units are not being operated and managed materially in accordance with the requirements and standards of this Regulatory Agreement and all applicable Law, the City shall provide written notice to the Owner of such deficiency and shall within 30 days following the receipt of such notice the Owner shall remove the management agent and replace the management agent with a different Person approved by the City, pursuant to Section 3.1. The Owner's failure to remove and replace the Management Agent in any such circumstance shall constitute a Default by the Owner under this Regulatory Agreement.

3.2 Insurance.

3.2.1 **Owner to Insure.** To protect the City Parties against all insurable Claims resulting from the actions of Owner or the Management Agent in connection with this Regulatory Agreement, the Property or the Development, Owner shall maintain, at the sole cost and expense of Owner, insurance that complies with the Insurance Requirements, as applicable to the activities of the Owner and Management Agency as set forth herein.

3.2.2 **Insurance Independent of Indemnification.** The Insurance Requirements of this Regulatory Agreement are independent of the Owner's indemnification and other obligations under this Regulatory Agreement and shall not be construed or interpreted in any way to satisfy, restrict, limit, or modify the Owner's indemnification or other obligations under this Regulatory Agreement or to limit the Owner's liability under this Regulatory Agreement, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage. Further, the Owner's provision of the insurance required by this Regulatory Agreement shall not preclude the City from taking such other actions as are available to the City under any other provision of this Regulatory Agreement or otherwise at law or in equity.

3.2.3 **Deductibles and Self-Insured Retentions.** All deductibles and self-insured retentions under the Owner's insurance policies are subject to the City's prior written approval, which shall not be unreasonably withheld. The Owner shall pay or get the insurance company to waive any and all deductibles and self-insured retentions under all insurance policies issued in satisfaction of the terms of this Regulatory Agreement regarding any Claims relating to the City Parties, except to the extent that any such Claims arise from the negligence or willful misconduct of an City Party.

3.2.4 **No Separate Insurance.** The Owner shall not carry separate or additional insurance relating to the Development that is concurrent in form or contributing in the event of loss with the insurance required under this Regulatory Agreement, unless such insurance is endorsed in favor of the City Parties as required by this Regulatory Agreement.

3.2.5 **No Representation.** Neither Party makes any representation that the

limits, scope, or forms of insurance coverage this Regulatory Agreement requires are adequate or sufficient.

3.3 Casualty. If any casualty occurs to the Development during the Term, Owner shall, except as otherwise provided in this Section 3.3, Restore the Development with reasonable promptness. If the cost of Restoration of the Development following a casualty exceeds the insurance proceeds available to Owner for such Restoration (if Owner maintains all insurance required by this Regulatory Agreement and inclusive of any deductible or self-insured retention amounts), then Owner shall not be required to Restore the Development, but this Regulatory Agreement shall not be affected.

3.4 Condemnation. If any portion of the Development is taken by exercise of the power of eminent domain by a Government during the Term, then Owner shall Restore the remaining portions of the Development with reasonable promptness, to the extent practicable.

3.5 Maintenance. The Owner, for itself, its successors and assigns, covenants and agrees that:

3.5.1 **Maintenance Standard**. The entirety of the Property and the Development shall be maintained by the Owner in good condition and repair, normal wear and tear excepted, and a neat, clean and orderly condition, including, without limitation, maintenance, repair, reconstruction and replacement of any and all asphalt, concrete, landscaping, utility systems, irrigation systems, drainage facilities or systems, grading, subsidence, retaining walls or similar support structures, foundations, signage, ornamentation, and all other improvements on or to the Property, now existing or made in the future by or with the consent of the Owner, as necessary to maintain the appearance and character of the Property, as improved with the Development. The Owner's obligation to maintain the Property and the Development described in the immediately preceding sentence shall include, without limitation, all of the following, at the Owner's sole cost and expense: (i) maintaining the surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability; (ii) removing all papers, mud, sand, debris, filth and refuse and thoroughly sweeping areas to the extent reasonably necessary to keep areas in a clean and orderly condition; (iii) removing or covering graffiti with the type of surface covering originally used on the affected area, (iv) placing, keeping in repair and replacing any necessary and appropriate directional signs, markers and lines; (v) installing, operating, keeping in repair and replacing where necessary, such artificial lighting facilities as shall be reasonably required; (vi) providing security services as reasonably indicated; (vii) maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of plants and other landscaping material as necessary to maintain the appearance and character of the landscaping; (viii) properly maintaining the windows, structural elements, and painted exterior surface areas of the Development in a clean and presentable manner; (ix) keeping the common areas of the Development and the Property free of accumulated debris, appliances, inoperable motor vehicles or motor vehicle parts, or free of storage of lumber, building materials or equipment not regularly in use on the Property; (x) parking of any commercial motor vehicle in excess of 7,000 pounds gross weight anywhere on the Property on other than on a temporary basis; and (xi) the use of garage areas on the Property for purposes other than the parking of motor vehicles and the storage of personal possessions and mechanical equipment of the Owner or persons residing at the

Property. The Owner’s obligation to maintain the Development and the Property described in the two immediately preceding sentences is, collectively, referred to in this Regulatory Agreement as the “**Maintenance Standard.**” The Owner may contract with a maintenance contractor to provide for performance of all or part of the duties and obligations of the Owner with respect to the maintenance of the Property or the Development; provided, however, that the Owner shall remain responsible and liable for the maintenance of the Property and the Development, at all times.

3.5.2 **Maintenance Deficiency.** If, at any time during the Term, there is an occurrence of a material adverse condition on any area of the Property or the Development in contravention of the Maintenance Standard (each such occurrence being a “**Maintenance Deficiency**”), then the City may notify the Owner in writing of the Maintenance Deficiency. If the Owner fails to cure or commence and diligently pursue to cure the Maintenance Deficiency within thirty (30) calendar days following its receipt of notice of the Maintenance Deficiency, the City shall have the right to enter the Property and/or the Development and perform all acts necessary to cure the Maintenance Deficiency, or to take any other action at law or in equity that may then be available to the City to accomplish the abatement of the Maintenance Deficiency. Any sum expended by the City for the abatement of a Maintenance Deficiency pursuant to this Section 3.5.2 shall be reimbursed to the City by the Owner within thirty (30) calendar days after written demand to the Owner for payment. If any amount becoming due to the City under this Section 3.5.2 is not paid within thirty (30) calendar days after written demand to the Owner for payment, the Owner shall also pay Default Interest on such amount until paid in full.

3.5.3 **Graffiti.** Graffiti, as defined in Government Code Section 38772, that has been applied to any exterior surface of a structure or improvement on the Property that is visible from any public right-of-way adjacent or contiguous to the Property, shall be removed by the Owner by either painting over the evidence of such vandalism with a paint that has been color-matched to the surface on which the paint is applied, or graffiti may be removed with solvents, detergents or water, as appropriate. If any such graffiti is not removed within seventy-two (72) hours following the time of the discovery of the graffiti, or if Owner fails to commence and diligently pursue to remove such graffiti within seventy-two (72) hours following the time of the discovery of the graffiti, the City shall have the right to enter the Property and/or the Development and remove the graffiti, without notice to the Owner. Any sum expended by the City for the removal of graffiti pursuant to this Section 3.5.3, shall be limited to an amount not to exceed Five Hundred Dollars (\$500) per entry by the City and shall be reimbursed to the City by the Owner within thirty (30) calendar days after written demand to the Owner for payment. If any amount becoming due to the City for graffiti removal under this Section 3.5.3 is not paid within thirty (30) calendar days after written demand to the Owner for payment, the Owner shall also pay Default Interest in such amount, until paid in full.

3.6 No City Responsibility for Development. The City shall have no responsibility for any construction, installation, rehabilitation, management, operation or maintenance of the Development or the Property.

3.7 Indemnity.

3.7.1 Owner’s Indemnity Obligation. Owner shall indemnify, defend, and hold the City and its elected officials, officers, employees and agents (collectively “City Parties”)

harmless against any and all claims, suits, actions, losses, and liability of every kind, nature and description made against it and expenses (collectively “Claims”) which arise out of or in connection with this Agreement to the extent such Claims arise from any wrongful intentional act or negligence of Owner. Owner shall also indemnify City Party against any and all of the following: (a) any application made by or at Owner’s request; (b) any agreements that Owner (or anyone claiming by or through Owner) makes with a Third Person regarding the Property or the Rehabilitation Work; (c) any workers compensation claim or determination relating to any employee of Owner or their contractors; (d) any Prevailing Wage Action relating to this Agreement or the Rehabilitation Work; (e) any claim for relocation benefits arising from the Rehabilitation Work conducted at the Development; and (e) any Environmental Claim attributable to any action or failure to act by Owner. Owner assumes the risk of delays and damages that may result to Owner from any Third Person legal actions related to City’s approval of this Agreement or any associated approvals, even in the event that an error, omission or abuse of discretion by City is determined to have occurred. If a Third Person files a legal action regarding City’s approval of this Agreement or any associated approval (exclusive of legal actions alleging violation of Government Code Section 1090 by elected officials of City), Owner shall indemnify City Party against such Third Person legal action, including all legal costs, monetary awards, sanctions, attorney fee awards, expert witness and consulting fees, and the expenses of any and all financial or performance obligations resulting from the disposition of the legal action. City shall reasonably cooperate in its defense in any legal action subject to this Section 3.7 subject to Owner’s indemnity obligations for such legal action. Nothing contained in this Section 3.7 is intended to be nor shall be deemed or construed to be an express or implied admission that City may be liable to Owner or any other party for damages or other relief regarding any alleged or established failure of City to comply with any law. Any legal action that is subject to this Section 3.7 (including any appeal periods and the pendency of any appeals) shall constitute an Enforced Delay and the time periods for performance by any Party under this Agreement may be extended pursuant to the provisions regarding Enforced Delay in the Loan Agreement.

3.7.2 Independence of Insurance Obligations. The indemnification obligations made by Owner under this Agreement shall not be construed or interpreted as in any way restricting, limiting, or modifying Owner insurance or other obligations under the Loan Agreement. Owner’s obligation to indemnify City Party under this Agreement is independent of Owner’s insurance and other obligations under the Loan Agreement. Owner’s compliance with its insurance obligations and other obligations under the Loan Agreement shall not in any way restrict, limit, or modify Owner’s indemnification obligations under this Agreement and are independent of Owner’s indemnification and other obligations under this Agreement.

3.7.3 Survival of Indemnification and Defense Obligations. The indemnity and defense obligations of the Parties under this Agreement shall survive the expiration or earlier termination of this Agreement, until any and all actual or prospective claims regarding any matter subject to an indemnity obligation under this Agreement are fully, finally, absolutely and completely barred by applicable statutes of limitations.

3.7.4 Indemnification Procedures. Wherever this Agreement requires any Party to indemnify the other Party:

- (a) *Prompt Notice.* The Indemnifying Party shall promptly notify

the other Party of any claim.

(b) *Selection of Counsel.* The Indemnifying Party shall select counsel reasonably acceptable to the Indemnified Party. Counsel to Indemnifying Party's insurance carrier that is providing coverage for a claim shall be deemed reasonably satisfactory, except in the event of a potential or actual conflict of interest for such counsel regarding such representation or such counsel proves to be incompetent regarding such representation. Even though the Indemnifying Party shall defend the claim, the Indemnified Party may, at its option and its own expense, engage separate counsel to advise it regarding the claim and its defense. The Indemnified Party's separate counsel may attend all proceedings and meetings. The Indemnifying Party's counsel shall actively consult with the Indemnified Party's separate counsel. The Indemnifying Party's counsel shall, however, control the defense, except to the extent that the Indemnified Party waives its rights to indemnity and defense of such Claim.

(c) *Cooperation.* The Indemnified Party shall reasonably cooperate with the Indemnifying Party's defense of the Indemnified Party.

(d) *Settlement.* The Indemnifying Party may only settle a claim without the consent of Indemnified Party, if the claim is within the policy limits of applicable insurance policies provided in satisfaction of the requirements of this Agreement and such settlement procures a release of the Indemnified Party from the subject claims, does not require the Indemnified Party to make any payment to the claimant and neither the Indemnified Party nor Indemnifying Party on behalf of the Indemnified Party admits any liability.

(e) *Insurance Proceeds.* The Indemnifying Party's obligations shall be reduced by any net insurance proceeds actually received by the Indemnified Party for the matter giving rise to the indemnification obligation.

4. COVENANTS RUN WITH THE LAND

4.1 Covenants to Run With the Land. The Owner and the City hereby declare their mutual specific intent that the covenants, conditions, restrictions, reservations and agreements set forth in this Regulatory Agreement are part of a plan for the promotion and preservation of affordable rental housing within the City and that each shall be deemed covenants running with the land of the Property, binding upon and each successor-in-interest of the Owner in the Development or the Property for the duration of the Term. Regardless of classification or characterization, each of the covenants, conditions, restrictions and agreements contained in this Regulatory Agreement touch and concern the land of the Property and each of them is expressly declared to be for the benefit and in favor of the City for the duration of the Term, regardless of whether the City is or remains an owner of any land or interest in land to which such covenants, conditions, restrictions or agreements relate. The City, in the event of any breach of this Regulatory Agreement, has 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, as provided in this Regulatory Agreement, at law or in equity. The Owner hereby expressly assumes the duty and obligation to perform each of the agreements and covenants and to honor each of the reservations and restrictions set forth in this Regulatory Agreement. Each and every contract, deed or other instrument hereafter executed covering or conveying all or any portion of

the Property or the Development or any interest in the Property or the Development or any Affordable Unit shall incorporate all of the provisions of this Regulatory Agreement, either expressly or by reference, and any contract, deed or other instrument transferring any estate or interest in the Property or the Development shall conclusively be deemed to have been executed, delivered and accepted subject to the agreements, covenants, conditions, reservations, and restrictions of this Regulatory Agreement, regardless of whether such agreements, covenants, conditions, reservations and restrictions are set forth in or referenced such contract, deed or other instrument.

5. REMEDIES

5.1 **Remedies.** If an Event of Default occurs, then the City shall, at the City's option, have any or all of the following described remedies, all cumulative (so exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at law or in equity or under any other terms of this Regulatory Agreement. The City's remedies shall include:

5.1.1 **Suits Before End of Term.** The City may sue the Owner for damages or other relief, from time to time, at the City's election, without terminating this Regulatory Agreement, including by mandamus or other suit, action or proceeding at law or in equity, to require the Owner to perform the covenants or agreements or observe the conditions or restrictions of this Regulatory Agreement, or enjoin any acts or things that may be unlawful or in violation of the rights of the City under this Regulatory Agreement; or by other action at law or in equity, as necessary or convenient to enforce the covenants, agreements, conditions or restrictions of this Regulatory Agreement.

5.1.2 **Receipt of Moneys.** No receipt of money by the City from the Owner after any Notice of Default shall affect any Notice previously given to the Owner, or waive the City's right to enforce payment or deposit of any amount payable or later falling due, or the City's right to enter the Development, it being agreed that after service of Notice of Default or the commencement of suit or proceedings, or after final order or judgment, the City may demand, receive, and collect any moneys due or thereafter falling due, without in any manner affecting such Notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the Owner's liability to the City.

5.1.3 **No Waiver.** No failure by the City to insist upon strict performance of any condition, covenant, agreement, restriction or reservation of this Regulatory Agreement or to exercise any right or remedy upon a Default, and no acceptance of full or partial payment of any amount due or becoming due to the City during the continuance of any such Default, shall waive any such Default or such condition, covenant, agreement, restriction or reservation. No obligation of the Owner under this Regulatory Agreement, and no Default, shall be modified, except by a written instrument executed by the City. No waiver of any Default shall modify this Regulatory Agreement. Each and every covenant, agreement, condition, restriction and reservation of this Regulatory Agreement shall continue in full force and effect with respect to any other then-existing or subsequent Default of such condition, covenant, agreement, restriction or reservation of this Regulatory Agreement.

5.1.4 **Damages.** The City may recover from the Owner all damages the City incurs by reason of the Owner's Default and reimbursement of the City's reasonable out of pocket costs, including Legal Costs and bank fees for dishonored checks. The City may recover such damages at any time after the Owner's Default, including after the expiration of the Term. Notwithstanding any Law to the contrary, the City need not commence separate actions to enforce the Owner's obligations for each amount or payment not paid, or each month's accrual of damages and costs for the Owner's Default, but may bring and prosecute a single combined action for all such damages and costs.

5.1.5 **Injunction of Breaches.** Whether or not an Event of Default has occurred, the City may obtain a court order enjoining the Owner from continuing any Default or from committing any threatened Default. The Owner specifically and expressly acknowledges that damages would not constitute an adequate remedy to the City for any Default.

5.2 Specific Enforcement. The Owner agrees that specific enforcement of the Owner's non-monetary obligations under this Regulatory Agreement is one of the reasons that the City agreed to restructure the Loan and that, if the Owner breaches any such obligation, potential monetary damages to the City, as well as to prospective Qualifying Households, would be difficult, if not impossible, to evaluate and quantify. Therefore, in addition to any other relief to which the City may be entitled as a consequence of the Owner's default under this Regulatory Agreement, the Owner agrees to the imposition of the remedy of specific performance against the Owner under this Regulatory Agreement.

5.3 Enforcement. The City shall have the power to enforce this Regulatory Agreement and no other Person shall have any right or power to enforce any provision of this Regulatory Agreement on behalf of the City or to compel the City to enforce any provision of this Regulatory Agreement against the Owner, the Development, the Property or any Affordable Unit. Further, **[For RDA funds only, add: pursuant to Health and Safety Code Section 33334.3(f)(7),]** this Regulatory Agreement shall be enforceable by the City, any resident of an Affordable Unit, any resident association with members who reside in Affordable Units, former residents of Affordable Units who last resided in any such Affordable Unit, applicants for occupancy of Affordable Units and persons on an affordable housing waiting list, subject to the specific requirements of such law.

5.4 Cure by Limited Partner. Any limited partner or managing member of Owner shall have the opportunity, but not the obligation, to effect a cure on behalf of Owner within the cure periods afforded to Owner as set forth herein, and City shall accept such cure as if it had been made by Owner. Notwithstanding the foregoing sentence, failure to provide such notice to such limited partner or managing member shall not result in any liability to the City nor permit Owner additional time to cure a default hereunder.

5.5 Termination by Agreement. Any provision of this Regulatory Agreement may be terminated upon written agreement between the City and the Owner, if the City in its sole and absolute discretion determines that such a termination will not adversely affect the affordable rental housing goals or requirements of the City.

6. GENERAL PROVISIONS

6.1 Relationship of Parties. Nothing contained in this Regulatory Agreement shall be interpreted or understood by any of the Parties, or by any Third Person, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the City and the Owner or the Owner's agents, employees or contractors. The Owner shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform any services required of them by the terms of this Regulatory Agreement regarding the Development or the Property. Except as otherwise expressly provided in this Regulatory Agreement, the Owner has the right to exercise full control of employment, direction, compensation and discharge of all Persons assisting the Owner in the development, operation or maintenance of the Development or the Property. The Owner shall be solely responsible for all matters relating to payment of its employees, including compliance with tax withholding and all other Laws governing such employees. The Owner shall be solely responsible for its own acts and those of its agents and employees.

6.2 No Claims. Nothing contained in this Regulatory Agreement shall create or justify any claim against the City by any Person that the Owner may have employed or with whom the Owner may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the operation or maintenance of the Development or the Property.

6.3 Approvals.

6.3.1 Any approvals required from the City under this Regulatory Agreement shall not be unreasonably withheld, conditioned or delayed, except where otherwise specifically provided in this Regulatory Agreement. Wherever this Regulatory Agreement states that a Party's approval shall be "reasonable" or not unreasonably withheld: (a) such approval shall not be unreasonably withheld, delayed or conditioned; (b) no withholding of approval shall be deemed reasonable, unless withheld by Notice specifying reasonable grounds, in reasonable detail, for such withholding, and indicating specific reasonable changes in the proposal under consideration that would make it acceptable; and (c) if a Party grants its consent to any matter, this shall not waive its rights to require such consent for any further or similar matter.

6.3.2 Except as otherwise specifically provided in this Regulatory Agreement, whenever this Regulatory Agreement calls for approval by a Party of a proposed document to be submitted by the other Party, the receiving Party shall notify the other Party of its approval or disapproval of such document within thirty (30) calendar days after receipt of the proposed document. Unless otherwise provided in this Regulatory Agreement, a Party's failure to respond within such thirty (30) calendar day period shall be deemed the Party's approval. A Party shall provide specific reasons for any disapproval.

6.4 Warranty Against Payment of Consideration for Regulatory Agreement. Owner represents and warrants to the City that: (a) it has not employed or retained any Person to solicit or secure this Regulatory Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees of Owner and Third Persons to whom fees are paid for professional services related to planning, design or Construction

of the Development or documentation of this Regulatory Agreement; and (b) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by Owner or any of its agents, employees or representatives to any elected or appointed official or employee of either the City or the City in an attempt to secure this Regulatory Agreement or favorable terms or conditions for this Regulatory Agreement. Breach of the representations or warranties of this Section 6.4 shall entitle the City to terminate this Regulatory Agreement upon seven (7) days' Notice to the other Parties and Escrow Agent. Upon any such termination of this Regulatory Agreement, Owner shall immediately refund any payments made to or on behalf of Owner by the City or the City pursuant to this Regulatory Agreement or otherwise related to the Property, any Approval, or the Development, prior to the date of any such termination.

6.5 Non-liability of City Officials or Employees. No City Party shall be personally liable to the Owner, or any successor in interest to the Owner, in the event of any Default by the City under this Regulatory Agreement, except to the extent of the negligence or willful misconduct of an City Party.

6.6 Governing Law. This Regulatory Agreement shall be governed by the laws of the State of California. without application of conflicts of laws principles. Any legal action brought in connection with this Agreement shall be instituted in the Superior Court of San Mateo County, State of California, or in the Federal District Court for the Northern District of California.

6.7 Amendment. This Regulatory Agreement may be amended only by a written instrument executed by both the Owner and the City.

6.8 Attorneys' Fees. In the event that a Party brings an action to enforce in this Regulatory Agreement or otherwise arising out of this Regulatory Agreement, the prevailing Party in such action shall be entitled to recover from the other Party Legal Costs to be fixed by the court in which a judgment is entered, as well as the costs of such suit. For the purposes of this Regulatory Agreement, the words "reasonable attorneys' fees" in the case of the City, include both the costs of outside legal counsel retained by the City and the salaries, costs and overhead of the lawyers employed in the Office of the City Attorney of the City who are legal counsel to the City in such an action, as allocated on an hourly basis.

6.9 Severability. If any term or provision of this Regulatory Agreement or its application to any Person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Regulatory Agreement, or the application of such term or provision to Persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected by such invalidity. All remaining provisions of this Regulatory Agreement shall be valid and be enforced to the fullest extent Law allows.

6.10 Time is of the Essence. Time is of the essence with respect to the performance of each term, provision, covenant, condition, restriction, reservation or agreement contained in this Regulatory Agreement.

6.11 Titles and Headings for Reference Only. The titles and headings of the articles, paragraphs and sections of this Regulatory Agreement are for convenience and reference only and are not to be considered a part of this Regulatory Agreement and shall not in any way interpret,

modify or restrict the meaning of any term, provision, covenant, condition, restriction, reservation or agreement contained in this Regulatory Agreement.

6.12 Notices.

6.12.1 Any and all Notices sent by either Party to the other Party pursuant to or as required by this Regulatory Agreement shall be proper, if in writing and transmitted to the principal office of the City or the Owner, as applicable, as designated in Section 6.12.2, by one or more of the following methods: (i) messenger for immediate personal delivery, (ii) a nationally recognized overnight delivery service (i.e., Federal Express, United Parcel Service, etc.) or (iii) registered or certified United States mail, postage prepaid, return receipt requested. Such Notices may be sent in the same manner to such other addresses as either Party may from time to time designate by Notice, in accordance with this Section 6.12. Any such Notice shall be deemed to be received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that it is delivered by personal delivery, on the date of delivery by a nationally recognized overnight courier service or three (3) calendar days after it is placed in the United States mail, as provided in this Section 6.12. Rejection, other refusal to accept or the inability to deliver a Notice because of a changed address of which no notice was given, shall be deemed receipt of the Notice.

6.12.2 The following are the authorized addresses for the submission of Notices to the Parties:

If to the City:	City of Redwood City 1017 Middlefield Road Redwood City, CA 94063 Attn: City Manager
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With a copy to:	City of Redwood City 1017 Middlefield Road Redwood City, CA Attn: City Attorney
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If to the Owner:

With a copy to:

6.13 Entire Agreement.

6.13.1 This Regulatory Agreement may be executed in counterpart originals,

each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument. This Regulatory Agreement includes _____ () pages and three (3) exhibits.

6.13.2 None of the terms, conditions, covenants, restrictions, reservations, terms, provisions or agreements set forth in this Regulatory Agreement shall be deemed to be merged with any deed conveying title to any estate or interest in the Property or the Development.

6.13.3 This Regulatory Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

6.13.4 Signatures delivered by facsimile shall be binding as originals upon the Parties so signing and delivering; provided, however, that original signature(s) shall be required for documents to be recorded.

[Signature Page Follows]

**SIGNATURE PAGE
TO
REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE
COVENANTS, CONDITIONS AND RESTRICTIONS
RESTRICTING USE OF PROPERTY FOR AFFORDABLE HOUSING
(Insert Name of Development/Address)**

IN WITNESS WHEREOF, the Owner and the City have caused this Regulatory Agreement to be signed, acknowledged and attested on their behalf by their duly authorized representatives, as set forth below:

CITY:

Date: _____

CITY OF REDWOOD CITY, a municipal corporation

By: _____

Title: City Manager

ATTEST:

City Clerk

Date: _____

BORROWER:

[INSERT NAME OF BORROWER, a Insert State and business entity type]

By:

By: _____

Name:

Title:

**[SIGNATURES OF PRINCIPALS MUST BE
NOTARY ACKNOWLEDGED FOR RECORDING]**

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.

ACKNOWLEDGEMENTS

State of California
County of _____

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

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.

ACKNOWLEDGEMENTS

State of California
County of _____

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

**EXHIBIT “A”
TO
REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE
COVENANTS, CONDITIONS AND RESTRICTIONS
RESTRICTING USE OF PROPERTY FOR AFFORDABLE HOUSING
(Insert Name of Development/Address)**

Legal Description

Real property in the City of Redwood City, County of San Mateo, State of California, described as follows:

EXHIBIT “B”

**TO
REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE
COVENANTS, CONDITIONS AND RESTRICTIONS
RESTRICTING USE OF PROPERTY FOR AFFORDABLE HOUSING
(Insert Name of Development/Address)**

Income Certification Form

[Attached behind this cover page]

**EXHIBIT “C”
TO
REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE
COVENANTS, CONDITIONS AND RESTRICTIONS
RESTRICTING USE OF PROPERTY FOR AFFORDABLE HOUSING
(Insert Name of Development/Address)**

Form of Annual Report

[Attached behind this cover page]

ATTACHMENT NO. 8**INSURANCE REQUIREMENTS**

Prior to initiating work on the Development and continuing through throughout the term of this Agreement, Borrower shall obtain and maintain the following policies of insurance:

(a) a commercial general liability policy in the amount of Five Million Dollars each occurrence. If the submitted policies contain aggregate limits, such limits will apply separately to the Services, project, or location that is the subject of this Agreement or the aggregate will be twice the required per occurrence limit. The Commercial General Liability insurance policy will be endorsed to name the City, its officers, agents, employees and volunteers as additional insureds, and to state that the insurance will be primary and not contribute with any insurance or self-insurance maintained by the City.

(b) a comprehensive automobile liability coverage in the amount of Two Million Dollars (\$2,000,000), combined single limit including coverage for owned and non-owned vehicles and shall furnish or cause to be furnished to City evidence satisfactory to City that Owner and any contractor with whom Owner has contracted for the performance of work on the Property or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law.

(c) Borrower and Borrower's general partners/managing members shall furnish or cause to be furnished to City evidence satisfactory to City that Borrower and any contractor with whom Borrower has contracted for the performance of work on the Property or otherwise pursuant to this Agreement carries statutory Workers' Compensation insurance and Employer's Liability insurance in a minimum amount of One Million Dollars (\$1,000,000) per accident. The policies shall contain a waiver of subrogation for the benefit of the City.

(d) Upon commencement of construction and continuing until issuance of a Certificate of Occupancy, Borrower and all contractors working on behalf of Borrower shall maintain a policy of builder's all-risk insurance in an amount not less than the full insurable cost of the Project on a replacement cost basis naming City as loss payee.

(e) Upon completion of Project construction, Borrower shall maintain property insurance covering all risks of loss (other than earthquake), including flood for 100% of the replacement value of the Project with deductible, if any, in an amount acceptable to City, naming City as loss payee.

(f) Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A: VII. The Commercial General Liability and comprehensive automobile policies required hereunder shall name the Indemnitees as additional insureds. Builder's Risk and property insurance shall name City as loss payee as its interests may appear.

(g) Prior to commencement of construction, Borrower shall furnish City with certificates of insurance in form acceptable to City evidencing the required insurance coverage and duly executed endorsements evidencing such additional insured status. The certificates shall

contain a statement of obligation on the part of the carrier to notify City of any material adverse change, cancellation, termination or non-renewal of the coverage at least thirty (30) days in advance of the effective date of any such material adverse change, cancellation, termination or non-renewal.

(h) The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94. Upon request by City's Risk Manager, Borrower shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(i) If any insurance policy or coverage required hereunder is canceled or reduced, Borrower shall, within fifteen (15) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, City may, without further notice and at its option, procure such insurance coverage at Borrower's expense, and Borrower shall promptly reimburse City for such expense upon receipt of billing from City.

(j) Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, City's Risk Manager. At the option of and upon request by City's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects the Indemnitees or Owner shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(k) The limits of the liability coverage and, if necessary, the terms and conditions of insurance, shall be reasonably adjusted from time to time (not less than every five (5) years after the Effective Date nor more than once in every three (3) year period) to address changes in circumstances, including, but not limited to, changes in the purchasing power of the dollar and the litigation climate in California. Within thirty (30) days following City's delivery of written notice of any such adjustments, Borrower shall provide City with amended or new insurance certificates and endorsements evidencing compliance with such adjustments.

ATTACHMENT NO. 9
SUPPLEMENTAL CONDITIONS

[If Supplemental requirements based on funding source, insert here. If no supplemental requirements, delete this Attachment.]