IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION AUTHORIZING EXECUTION OF AN AMENDED AND RESTATED DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT ("DDLA") WITH EDEN HOUSING, INC. FOR DEVELOPMENT OF THE DOWNTOWN MULTI-FAMILY HOUSING SITE

(APN 098-0289-022-00)

On February 9, 2004, the City Council certified the General Plan and Downtown Specific Plan Environmental Impact Report ("Specific Plan EIR") (SCH No.: 2003032038).

On March 30, 2009, the City Council certified the Downtown Specific Plan Amendments and Regional Performing Arts Theater Subsequent Environmental Impact Report ("Specific Plan Subsequent EIR") (SCH No.: 2008092085).

On September 10, 2018, May 13, 2019, and October 26, 2020, the City Council adopted addenda to the Downtown Specific Plan Subsequent Environmental Impact Report by Resolution Nos: 2018-153, 2019-064, and 2020-178.

On November 27, 2018, the City of Livermore ("City") and Eden Housing, Inc. ("Eden") entered into a Disposition, Development and Loan Agreement ("DDLA") with respect to the approximately 2.0-acre City owned site for the 130-unit, affordable, multi-family, "workforce" housing component of the Downtown Plan.

On May 26, 2021, the City and Eden entered into a First Amendment to the DDLA to define the development and financial obligations for Veteran's Park, allow for reimbursement by City to Developer for certain emergency vehicle access road improvements adjacent to the Project, and to update the entitlement, financing, and development timeline in the Schedule of Development.

On June 24, 2021, a Petition for Writ of Mandate was filed by Save Livermore Downtown, challenging the City's CEQA determination (the "Litigation"). On February 14, 2022, the Court entered judgment denying the Petition for Writ of Mandate with prejudice. On April 13, 2022, a further appeal was filed by Save Livermore Downtown. The case is currently still pending.

Now, the City and Eden desire to enter into an Amended and Restated DDLA and make several modifications and additions that will facilitate the development process, enumerate specific financial contributions and agreements that would be under the authority of the City Manager to execute, and modify the Schedule of Performance to extend the time period for Eden to complete development of the project in light of the pending Litigation.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore finds that the Amended and Restated Disposition, Development and Loan Agreement with Eden Housing, Inc. is within the scope of the Specific Plan EIR, dated February 9, 2004 (SCH No.: 2003032038), the Specific Plan Subsequent EIR, dated March 30, 2009 (SCH No.: 2008092085), and the Specific Plan Subsequent EIR Addenda adopted by City Council on September 10, 2018 by Resolution 2018-153, May 13, 2019 by Resolution 2019-064, and October 26, 2020 by Resolution 2020-178.

No new or more severe significant impacts were identified for the Project that were not identified in the 2004 Final EIR and 2009 Subsequent EIR, and no new mitigation measures would be required for the downtown plan. For all environmental topics addressed in the addendums, there were no substantial changes in environmental circumstances that would result in new or more severe significant environmental effects than were identified and evaluated in the 2004 Final EIR and 2009 Subsequent EIR.

The DDLA is also exempt from the provisions of CEQA pursuant to CEQA Guidelines Sections 15182 (c), 15332, 15304 (a)(b) and 15308 and none of the exceptions to the categorical exemptions in CEQA Guidelines Section 15300.2 apply, as described in the Eden Housing Project resolution, dated May 26, 2021 (Resolution 2021-071).

BE IT FURTHER RESOLVED by the City Council of the City of Livermore that the City Manager is authorized to execute the Amended and Restated Disposition, Development and Loan Agreement, attached hereto as Exhibit A, and is granted the authority to execute the final documents and agreements referenced in the Agreement and other related documents to implement the intent and terms of the Agreement, as well as the specific delegations of authority set forth in the Agreement.

On motion of Council Member Kiick, seconded by Council Member Munro, the foregoing resolution was passed and adopted on May 24, 2022, by the following vote:

AYES: Council Members Carling, Kiick, Munro, Vice Mayor Bonanno, and Mayor Woerner
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:

DocuSigned by:
Marie Weber
803794826BC44BB...

Marie Weber
City Clerk
5/27/2022 | 10:16 AM PDT

APPROVED AS TO FORM:

DocuSigned by:
Kelly Trujillo
00C7E9AD0C44488...

Kelly Trujillo
Assistant City Attorney

Exhibit A – Amended and Restated Disposition, Development, and Loan Agreement

EXHIBIT A

AMENDED AND RESTATED
DISPOSITION AND DEVELOPMENT AND LOAN AGREEMENT

by and between

CITY OF LIVERMORE

and

EDEN HOUSING, INC.
May 24, 2022

Prior Agreements:

1. Disposition and Development Agreement, dated November 27, 2018, approved by City Council Resolution No. 2018-197.

2. First Amendment to the DDLA, dated May 26, 2021 approved by City Council Resolution No. 2021-073.

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EXHIBIT A

AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AND LOAN AGREEMENT

THIS AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AND LOAN AGREEMENT (this "Agreement") is made as of May 24, 2022, by and between the City of Livermore, a municipal corporation (the "City"), and Eden Housing, Inc. a California public benefit corporation (the "Developer"), with reference to the following facts, purposes, and understandings.

RECITALS

A. These Recitals refer to and utilize certain capitalized terms that are defined in Article 2 and various other areas of this Agreement. The Parties intend to refer to those definitions in connection with their use in these Recitals.

B. City is the owner of a certain property that is approximately 5.5 acres, bound by Railroad Avenue, Livermore Avenue, First Street, and L Street. This property is commonly referred to as the "Livermore Village Site".

C. In 2008, the former Redevelopment Agency acquired the Livermore Village Site from Livermore Village I, LLC for approximately $10,100,000 from City inclusionary housing funds (Fund 611). A portion of this amount was refinanced using a loan from the State Residential Development Loan Program, which required a deed restriction on the property to require low-income and moderate-income housing units be developed on the property. Both of these sources restrict the use of the site to a residential development with an affordable component. In 2010 the Livermore Village Site was subdivided into three parcels for the purpose of separate public community uses, private community uses, and housing. Upon dissolution of the Livermore Redevelopment Agency, the Undivided Parcel was identified as a housing asset in the Long Range Property Management Plan, which was approved by the Livermore Successor Agency Oversight Board and California Department of Finance, and was transferred to the City as the Housing Successor to the Livermore Redevelopment Agency.

D. On January 29, 2018, the City Council approved the development of the Livermore Village Site to include a public park, up to 130 units of workforce housing, a science center, a black box theater, and retail space.

E. The City selected Eden Housing, Inc. as the Developer of the Undivided Parcel through a Request for Qualifications to develop the Undivided Parcel, more particularly described in Exhibit A, attached hereto. Through a competitive process in response to the City's goals and objectives for the Undivided Parcel, the Developer proposed to develop low-income and workforce housing on the Property.

F. The Developer obtained Entitlements from the City to construct the Project consistent of workforce housing, which will be comprised of up to 130 units of non-age restricted, multi-family rental housing over two phases of development, which will be affordable

for households with a range of incomes no greater than 110% of Area Median Income for Alameda County, on the Property.

G. On May 24, 2021, Developer obtained approval from the City for Vesting Tentative Parcel Map No. 11186 on behalf of the City for recordation of the Parcel Map in the Official Records of Alameda County (the "Tentative Map"), subdividing the Undivided Parcel into the following three parcels: (i) Parcel 1, as shown on the Tentative Map (the "Housing Parcel North"); (ii) Parcel 2, as shown on the Tentative Map (the "Veterans Park Parcel"); and (iii) Parcel 3, as shown on the Tentative Map (the "Housing Parcel South"). Parcels 1 and 3 are also referred to collectively as the Property and more fully depicted in Exhibit M, attached hereto and Parcel 2 is more fully depicted in Exhibit N, attached hereto.

H. The City has concluded that the Developer has the necessary expertise, skill, and ability to carry out the commitments contained in this Agreement.

I. Upon satisfaction of the conditions precedent set forth in this Agreement, City will convey the Undivided Parcel to Developer upon the terms and conditions set forth herein, and City will provide a loan to assist in financing Developer's acquisition of the Property. City has additionally provided a predevelopment loan to the Developer in an amount up to Five Hundred Thousand Dollars ($500,000) (the "Predevelopment Loan") that helped finance the initial predevelopment and expenses necessary to assess and determine the final scope of development and obtain entitlements to develop the Project. City and Developer agree that City may, but is not obligated to, provide a future development loan and/or other financial contribution to fund development and/or operations of the Project in an amount that will be determined through the activities provided for herein. Approval of any future development loan amounts shall be subject to approval of a final financing plan by the City and the timely submittal of items described in this Agreement.

J. Developer intends to assign this Agreement and the obligations contained herein to its Affiliate DTLM, L.P. ("Housing North Developer") to develop the Housing Parcel North with 79 affordable units (the "Housing North Phase") and to thereafter assign a portion of this Agreement its Affiliate DTLM South, L.P. (the "Housing South Developer"), which will develop the Housing Parcel South with 51 affordable units (the "Housing South Phase"), as more particularly described herein.

K. The City and Developer intend to continue in good faith discussions and negotiations of the Project Objectives attached hereto as Exhibit B. To facilitate development of a public park on the Veterans Park Parcel, the Developer will dedicate that Parcel back to the City upon the closing of construction financing for the first phase of the Project and in accordance with the Schedule of Performance.

L. Pursuant to CEQA, the City (in its capacity as "lead agency") approved on September 10, 2018 an Addendum to the Downtown Specific Plan 2009 Subsequent Environmental Impact Report.

M. On November 27, 2018, the City and Developer entered into a Disposition and Development and Loan Agreement, which was subsequently amended by a First Amendment to the DDLA dated May 26, 2021, which updated certain definitions, exhibits and provisions (as amended, the "Original Agreement"). This Agreement is intended to amend and restate and supersede the Original Agreement and will capture all necessary changes to the Original Agreement.

N. The Developer has subsequently formed the Housing North Developer entity to serve as the developer of the Project. All of Eden Housing Inc., rights and obligations under the Agreement shall be assigned to the Housing North Developer through execution of an assignment upon approval of this Agreement.

O. On June 24, 2021, Save Livermore Downtown filed a Petition for Writ of Mandate in Alameda County Superior Court, challenging the City's approval of the Project. Litigation ensued and on February 14, 2022, Alameda County Superior Court Judge Roesch denied the petition and entered judgment in favor of the City of Livermore. SLD filed an appeal on April 13, 2022 and the appeal is still pending (the "Litigation").

P. On April 4, 2022, a Request for Stay of Expiration Date for the Project Entitlements and Approvals during the pendency of the above-referenced litigation, including any appeals, was submitted to the City by the Developer. On May 9, 2022, the City granted the request. Those documents are attached hereto as Exhibit P.

Q. Now, to ensure the Project continues to move forward in a timely manner, the parties desire to update this Agreement to allow for transfer of the Undivided Parcel upon completion of federal environmental review and clearance, to make arrangements for an interim use of public parking prior to construction of the housing and cooperation between the parties regarding the environmental condition of the Undivided Parcel, and update the entitlement, financing, and development timeline in the Schedule of Performance.

NOW, THEREFORE, in consideration of the mutual covenants herein, the City and the Developer agree that the recitals are true and correct and further agree as follows:

ARTICLE 1. SUBJECT OF THE AGREEMENT

Section 1.1 Purpose of this Agreement. The purpose of this Agreement is to provide the terms and conditions under which the Developer shall: prepare or cause to be prepared all required documents necessary to receive development approvals for the Project, to obtain title to the Property, and develop the Project. This Agreement shall also provide terms and conditions under which the City shall convey the Undivided Parcel to the Developer for the purpose of developing, building, and operating affordable Workforce Housing at rents that are for households earning up to 110% of Area Median Income, in accordance with the Project Objectives, attached hereto as Exhibit B, and the City to contribute certain funds for the acquisition and predevelopment of the Property.

Section 1.2 Parties to the Agreement.

(a) The City. The City is a municipal corporation, organized and existing under the laws of the State of California. The office of the City is located at 1052 S. Livermore Avenue, Livermore, California 94550.

(b) The Developer. The Developer is Eden Housing, Inc., a California nonprofit public benefit corporation. For purposes of this Agreement, the principal address of Developer is 22645 Grand Street, Hayward, California 94541.

The qualifications and identity of Developer are of particular concern to the City, and it is because of such qualifications and identity that the City has entered into this Agreement with Developer. No voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein.

Notwithstanding anything to the contrary contained herein, this Agreement is assignable and transferable to Housing North Developer and/or Housing South Developer, so long as any such assignment or other document evidencing such assignment is acceptable to the City. Following any such assignment, the Housing North Developer and/or Housing South Developer may transfer limited partner interests to a tax credit investor ("Investor"), and such Investor may further transfer its limited partner interests, and the Investor may remove a general partner of the Housing North Developer and/or Housing South Developer (as applicable) pursuant to the terms of its limited partnership agreement, without the consent of the City.

ARTICLE 2. DEFINITIONS

Section 2.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following capitalized words shall have the following meanings:

(a) "Affiliate" means any Person which (1) directly or indirectly through one or more intermediaries, (i) Controls, or (ii) is Controlled by, or (iii) is under common Control with, Developer.

(b) "Agreement" shall mean this Amended and Restated Disposition and Development and Loan Agreement.

(c) "Area Median Income" shall have the meaning set forth in the form of the Regulatory Agreement attached to this Agreement as Exhibit H.

(d) "Building Permit" shall mean an excavation, foundation or other building permit issued by the City ministerially in connection with the construction of the Improvements.

(e) "CEQA" shall mean the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.), and its implementing guidelines.

(f) "Certificate of Occupancy" shall mean that certificate issued by the City to the Developer to allow occupancy of the Project.

(g) "Close of Escrow" shall have the meaning set forth in Section 5.6.

(h) "Control" shall mean (i) direct or indirect management or control of the managing member or members in the case of a limited liability company; (ii) direct or indirect management or control of the managing general partner or general partners in the case of a partnership and (iii) (a) boards of directors that overlap by fifty percent (50%) or more of their directors, or (b) direct or indirect control of a majority of the directors in the case of a corporation.

(i) "City" shall mean the City of Livermore.

(j) "City Documents" shall mean collectively, this Agreement, the Seller Take-Back Property Acquisition Note (Exhibit F), the Seller Take-Back Property Acquisition Deed of Trust (Exhibit G), the Predevelopment Loan Promissory Note (Exhibit E), the Predevelopment Loan Note Assignment and Amendment, the Predevelopment Loan Deed of Trust (Exhibit G), and the Regulatory Agreement (Exhibit H).

(k) "City Event of Default" shall mean any event of default by the City as set forth in Section 12.2, subject to any applicable notice and cure rights set forth therein.

(l) "City Impact Fees" shall mean all fees set forth in the schedule of fees adopted by the City on July 1, 2018, with the exception of those fees that are paid to the City on behalf of and passed through to a third party agency.

(m) "Deed of Trust" shall mean the deed of trust to be recorded against the Undivided Parcel and subsequently the Property to secure repayment of the Pre-Development and Site Acquisition Loans. A form of Deed of Trust is attached to this Agreement as Exhibit G.

(n) "Developer" shall mean Eden Housing, Inc., or any permitted transferee of the Developer in accordance with Article 10.

(o) "Developer Event of Default" shall mean any event of default by the Developer as set forth in Section 12.3 or 12.4, subject to any applicable notice and cure rights set forth therein.

(p) "Effective Date" shall mean the date which is the later of (i) the date this Agreement is executed by the Developer and (ii) the date this Agreement is approved and executed by the City.

(q) "Eligible Household" shall have the meaning set forth in the Regulatory Agreement, attached to this Agreement as Exhibit H.

(r) "Entitlements" shall mean, collectively, zoning approvals, conditional use permit and any other discretionary approvals required for construction of the Project. For definitional purposes in this Agreement, "Entitlements" do not include the Building Permit, the Final Map, or any other ministerial approvals.

(s) "Escrow" shall mean the escrow opened with the Escrow Holder to close the transactions described in Article 5.

(t) "Escrow Holder" shall mean Old Republic Title Company.

(u) "Final Construction Drawings" shall mean final drawings for the construction of the Improvements used to obtain a Building Permit from the City.

(v) "Final Map" shall mean Final Parcel Map 11186.

(w) "Force Majeure" shall have the meaning set forth in Section 13.4.

(x) "Grant Deed" shall mean the grant deed by which the City conveys its fee estate in the Undivided Parcel to the Developer. A form of the Grant Deed is attached to this Agreement as Exhibit L.

(y) "Hazardous Materials" shall mean:

(1) Those substances included within the definitions of "hazardous substances", "Hazardous Materials", "toxic substances", or "solid waste" in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.) ("CERCLA"), as amended by Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499 100 Stat. 1613) ("SARA"), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§6901 et seq.) ("RCRA"), and the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 et seq., and in the regulations promulgated pursuant to said laws, all as amended;

(2) Those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto);

(3) Any material, waste or substance which is (A) petroleum, (B) asbestos, (C) polychlorinated biphenyls, (D) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. §§ 1251 et seq. (33 U.S.C. §§1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. §§ 1317); (E) flammable explosives; or (F) radioactive materials;

(4) Any toxic or hazardous waste, material or substance or any oil or pesticide listed in, covered by, or regulated pursuant to, any state or local law, ordinance, rule or regulation applicable to the Property, as heretofore or hereafter amended; and

(5) Such other substances, materials and wastes which are or become regulated as hazardous or toxic under applicable local, state or federal law, or the United States

government, or which are classified as hazardous or toxic under federal, state, or local laws or regulations.

The term "Hazardous Materials" shall not include: construction materials, gardening materials, household products, office supply products, medical supplies and equipment or janitorial supply products customarily used in the construction, maintenance, rehabilitation, use, occupancy or management of a medical office building and its supporting parking structure, and which are used and stored in accordance with all applicable environmental ordinances and regulations.

(z) "Hazardous Materials Laws" shall mean environmental and health and safety laws, regulations, ordinances, administrative decisions, common law decisions (whether federal, state, or local) with respect to Hazardous Materials, including those relating to soil and groundwater conditions.

(aa) "Housing North Developer" has the meaning set forth in Recital J

(bb) "Housing North Phase" has the meaning set forth in Recital J.

(cc) "Housing South Developer" has the meaning set forth in Recital J.

(dd) "Housing South Phase" has the meaning set forth in Recital J.

(ee) "Improvements" shall mean up to 130 units of multi-family rental housing to be constructed in accordance with the Project Documents. As the context requires, the term "Improvements" shall refer to the 79 units of housing to be constructed on the Housing North Phase and the 51 units of housing to be constructed on the Housing South Phase individually.

(ff) "Indemnitees" shall have the meaning set forth in Section 9.4.

(gg) [Intentionally deleted].

(hh) "Official Records" means the Official Records of Alameda County.

(ii) [Intentionally deleted].

(jj) [Intentionally deleted].

(kk) "Parties" shall mean the City and the Developer.

(ll) "Party" shall mean either the City or the Developer depending on the context.

(mm) "Permitted Exceptions" shall mean the following exceptions to title with respect to the Property:

(1) the lien of any non-delinquent property taxes and assessments;

(2) all existing easements over, under and across the Property for ingress and egress and public utilities, which do not preclude Developer's intended use of the Property;

(3) any incidental easements or other matters affecting title which do not preclude or materially impair Developer's intended use of the Property;

(4) applicable building and zoning laws and regulations;

(5) the provisions of this Agreement;

(6) other matters created by, through or under Developer; and

(7) such other exceptions to title as may hereafter be mutually approved by the City and the Developer.

(nn) "Person" or "Persons" shall mean any individual, partnership, joint venture, corporation, limited liability company, limited liability partnership, trust or other entity, private or public with the power and authority to act and conduct business on its own behalf.

(oo) Intentionally Omitted.

(pp) "Pro Forma" shall mean the preliminary sources and uses of funds for the development of the Project on the Housing Parcel North and Housing Parcel South , which will be submitted to the City in accordance with the Schedule of Performance and subject to approval by the City.

(qq) "Project" shall mean (i) the Property and (ii) the Improvements, as more fully set forth in the Project Objectives. As the context requires, the term "Project" shall refer to the Housing North Phase and Housing South Phase individually.

(rr) "Project Documents" shall mean the site plan, elevations and landscaping plans submitted by the Developer to enable the Developer to obtain the Entitlements or other City permits, approvals, or authorizations for development of the Project.

(ss) "Project Objectives" shall mean the description of preliminary characteristics of the Project, desired items the Parties will strive to achieve, and shall serve as the basis to inform application documents for the Entitlements, attached hereto as Exhibit B.

(tt) "Property" shall collectively mean the City-owned parcels defined as Parcel 1 ("Housing Parcel North") and 3 ("Housing Parcel South") on Vesting Tentative Parcel Map 11186, as more particularly described in Exhibit M, attached to this Agreement.

(uu) "Purchase Price" shall have the meaning set forth in Section 5.2.

(vv) "Regulatory Agreement" shall have the meaning set forth in Section 9.1, and a form of which is attached as Exhibit H.

(ww) "Schedule of Performance" shall mean the summary schedule of actions to be taken by the Parties pursuant to this Agreement to achieve the disposition of the Undivided Parcel to the Developer and the construction of the Improvements. The Schedule of Performance is attached to this Agreement as Exhibit C.

(xx) "Security Financing Interests" has the meaning set forth in Section 11.1.

(yy) "Seller Take-Back Property Acquisition Note" has the meaning set forth in Section 3.2(a), a form of which is attached as Exhibit F.

(zz) "Site Acquisition Loan" has the meaning set forth in Section 3.2(a).

(aaa) "TCAC" shall mean the California Tax Credit Allocation Committee, which administers the low income tax credit financing program.

(bbb) "Title Company" shall mean Old Republic Title Company.

(ccc) "Title Policy" has the meaning set forth in Section 5.3.

(ddd) "Transfer" shall mean a transfer of this Agreement or an interest in the Developer, as more particularly described in Article 10.

(eee) "Workforce Housing" shall mean non age-restricted housing that is targeted to a broad range of working incomes, up to 110% Area Median Income. To the extent permitted by law and consistent with the program regulations for funding sources used for development of the Project, selection priority will be provided first to Livermore Valley Joint Unified School District school teachers, employees working for businesses in the Livermore Downtown, first responders employed in Livermore (including emergency medical personnel), professional artists working in Livermore, and then to all other persons who live or work in Livermore. Notwithstanding the foregoing, in the event of a conflict between this provision and the provisions of Section 42 or Section 142 of the Internal Revenue Code of 1986, as amended, the provisions of such Section 42 or Section 142, as applicable, shall control.

(fff) "EVA Improvements" is defined as the Emergency Vehicle Access Improvements which are identified on Vesting Tentative Parcel Map 11186 and in the associated Engineering Conditions (Sections 7.c & d) for the Project approval.

(ggg) "Veterans Park Parcel" is defined as Parcel 2 on Vesting Tentative Parcel Map 11186, as more particularly described in Exhibit N, attached to this Agreement. This parcel will be dedicated back to the City upon construction financing closing for the first phase of the Project and in accordance with the Schedule of Performance.

(hhh) "Veterans Park Improvements" is defined as the constructed improvements within the Veterans Park Parcel which shall be entitled and designed at the sole discretion of the City.

(iii) "Undivided Parcel" is defined as that real property in the City of Livermore known as Lot 1 of Tract Map No. 8574, recorded December 23, 2020, in Book 365 of Maps at pages 15-19, in Alameda County Records, as more particularly described in Exhibit A.

Section 2.2 Exhibits. The following exhibits are attached to and incorporated into this Agreement:

Exhibit A: Description of the Undivided Parcel

Exhibit B: Project Objectives

Exhibit C: Schedule of Performance

Exhibit D: Intentionally Omitted

Exhibit E: Predevelopment Loan Promissory Note dated November 27, 2018

Exhibit F: Form of Seller Take-Back Property Acquisition Loan Promissory Note

Exhibit G: Form of City Deed of Trust for both Predevelopment Loan and Seller Take-Back Property Acquisition Deed of Trust

Exhibit H: Form of Regulatory Agreement

Exhibit I: Insurance Requirements

Exhibit J: City Impact Fee Schedule dated July 1, 2018

Exhibit K: Form of Memo of DDLA

Exhibit L: Form of Grant Deed

Exhibit M: Description of the Property – Housing Parcel North and Housing Parcel South

Exhibit N: Description of the Veterans Park Parcel

Exhibit O: Form of Temporary Parking Lease Agreement

Exhibit P: Request for Stay of Expiration Date for the Project Entitlements and Approvals and Approval by City of Livermore

Exhibit Q: Form of Irrevocable Parking Spaces Lease

ARTICLE 3. CITY FINANCIAL ASSISTANCE

Section 3.1 Predevelopment Loan.

(a) Loan amount. The City provided a predevelopment loan of Five Hundred Thousand Dollars ($500,000) for predevelopment costs including architecture and design costs, legal and specialty consultant fees, site feasibility analysis, title review, due diligence, and preconstruction costs. The Predevelopment Loan is evidenced by the Predevelopment Note between Developer and City dated November 27, 2018, attached as Exhibit E. Prior to transfer of the Undivided Parcel, the City, Developer and Housing North Developer shall enter into an assignment and amendment of the Predevelopment Note to: (i) assign the Note from Developer to Housing North Developer as contemplated in Recital J; and (ii) to amend the Predevelopment Loan Term set forth in the Note attached as Exhibit E to 65 years.

(b) Interest. The City Predevelopment Loan shall bear three percent (3%) annual interest.

(c) Loan repayment. The City Predevelopment Loan shall have a term that expires on the sooner of the date fifty-five (55) years from either the conversion of the permanent financing (the "Predevelopment Loan Term") or 65 years from the date of this Agreement, unless otherwise terminated for infeasibility as described herein. The City Predevelopment Loan repayment shall be deferred during development of the Project. Upon issuance of a certificate of occupancy, payment on the City Predevelopment Loan shall be made from a pro rata share of residual receipts, the terms of which are described in the Predevelopment Loan Note.

Developer shall have the right to prepay the City Predevelopment Loan at any time, with no prepayment penalty. However, this DDLA shall remain in effect for the duration of the Predevelopment Loan Term, regardless of any prepayment or timely payment of the City Predevelopment Loan.

All principal and interest on the City Predevelopment Loan shall, at the option of the City, be due and payable upon the earliest of: (i) the occurrence of an Event of Default, as described in Section 3.2(e), for which the City exercises its right to cause the indebtedness to become immediately due and payable; or (ii) subject to the terms of Section 3.1(e) below.

Developer shall be responsible for payment of the principal of, or interest on, the City Predevelopment Loan as described in the Predevelopment Loan Promissory Note, attached hereto as Exhibit E. The sole recourse of the City with respect to principal of, or interest on, the Predevelopment Loan shall be as described in the Predevelopment Loan Promissory Note.

Upon the transfer of the Undivided Parcel to Developer, the Predevelopment Loan shall be secured by a deed of trust recorded against the Undivided Parcel (the "Predevelopment Loan

Deed of Trust", form of which is attached to this Agreement as Exhibit G). Once the Final Map is recorded and in accordance with the Schedule of Performance, and upon the close of construction financing for the first phase of the Project, the Veterans Park Parcel shall be dedicated back to the City, free and clear of any encumbrances (except as otherwise provided herein). The parties shall execute necessary documents to remove any encumbrances from the Veterans Park Parcel, including but not limited to a partial reconveyance of the Predevelopment Loan Deed of Trust and partial termination of the Regulatory Agreement.

(d) In the event that this Agreement is partially assigned to the Housing South Developer as contemplated in Section 1.2, at Developer's option in its sole discretion, the Predevelopment Loan shall be partially assigned to Housing South Developer and the Predevelopment Loan documents will be modified accordingly. In such an event, the City hereby acknowledges and agrees that there shall be no cross defaults between the Predevelopment Loan and applicable loan documents for the Housing North Developer and the Predevelopment Loan and applicable loan documents for the Housing South Developer.

(e) Termination for Infeasibility. Predevelopment Loan shall terminate if during the predevelopment analysis the Project is determined to be infeasible. City shall have no obligations to disburse additional funds. In the event that, prior to Developer's construction finance closing, the Project is determined by Developer or City to be infeasible through no fault of Developer, or if Developer terminates pursuant to Section 5.10, the Predevelopment Loan shall terminate and Developer's obligation to repay such Predevelopment Loan shall be forgiven.

Section 3.2 Site Acquisition Loan.

(a) Loan amount. City shall make an acquisition loan to the Developer in the amount of the Purchase Price of the Property ("Site Acquisition Loan"). The purchase price of the property shall be Seven Million Eight Hundred Thousand Dollars ($7.8M). The Site Acquisition Loan shall be evidenced and secured by the Seller Take-Back Note and Seller-Take Back Site Acquisition Deed of Trust recorded against the Undivided Parcel, the forms of which are attached as Exhibit F and Exhibit G.

(b) Interest. The Site Acquisition Loan shall bear interest at 3% annual simple interest.

(c) Loan conditions to disbursement. Disbursement of Site Acquisition Loan shall be contingent on the Developer entering into a Regulatory Agreement to provide for affordable rents in no more than forty-nine percent (49%) of units in the Project in the form attached hereto as Exhibit H.

(d) Loan repayment. Annual payments on the Seller Take-Back Note shall be due and payable on a pro-rata residual receipts basis in accordance with the formula set forth in the Seller Take-Back Note. The annual loan payments shall commence upon conversion of the project to permanent financing and continue for fifty-five years. The entire outstanding principal balance of the Site Acquisition Loan, together with interest accrued thereon and all other sums accrued, shall be payable in full on the date Maturity Date, as defined in the Seller Take-Back

Note. City shall have the right to accelerate the Maturity Date and declare all sums payable under the Seller Take-Back Note immediately due and payable upon the expiration of all applicable cure periods following the occurrence of an event of borrower default, as described in Section 3.2(e).

Upon the transfer of the Undivided Parcel to Developer, the Site Acquisition Loan shall be secured by a deed of trust recorded against the Undivided Parcel, a form of which is attached to this Agreement as Exhibit G. The Veterans Park Parcel shall be dedicated back to the City, free and clear of any encumbrances (except as otherwise provided herein), upon close of construction financing for the first phase of the Project on the timeframe specified by the Schedule of Performance. The parties shall execute necessary documents to remove any unauthorized encumbrances from the Veterans Park Parcel including but not limited to a partial reconveyance of the Seller-Take Back Site Acquisition Deed of Trust and partial termination of the Regulatory Agreement.

(e) Event of Site Acquisition Loan Default. The following events shall constitute an event of default under the Site Acquisition Loan:

(1) Developer fails to pay when due the principal and interest payable under the Note, and such failure continues for thirty (30) days after City notifies Borrower thereof in writing;

(2) A transfer occurs in violation of Article 10;

(3) Developer fails to maintain insurance, as required in Section 4.6 and fails to cure such default within five days;

(4) Developer fails to pay prior to delinquency taxes or assessments due on the Property Improvements or fails to pay when due any other charge that may result in a lien on the Property or the Improvements, and Developer fails to cure such default within twenty (20) days of the date of delinquency, but in all events prior to the date upon which the holder of any such lien has the right to foreclose thereon;

(5) A default arises under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Property and remains uncured beyond any applicable cure period such that the holder of such security instrument has the right to accelerate repayment of such loan;

(6) Any representation or warranty contained in this Agreement or in any application, financial statement, certificate or report submitted to the City in connection with this Agreement proves to have been incorrect in any material and adverse respect when made and continues to be materially adverse to the City;

(7) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("Bankruptcy Law"), Developer or any general partner thereof (i) commences a voluntary case

or proceeding; (ii) consents to the entry of an order for relief against Borrower or any general partner thereof in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Developer or any general partner thereof; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due;

(8) A court of competent jurisdiction shall have made or entered any decree or order (i) adjudging the Developer to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of the Developer or seeking any arrangement for Developer under bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of the Developer in bankruptcy or insolvency or for any of its properties, or (iv) directing the winding up or liquidation of the Developer, in each case if such decree, order, petition, or appointment is not removed or rescinded within ninety (90) days;

(9) Developer shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event (unless a lesser time period is permitted for cure pursuant to paragraphs (7) or (8) above or pursuant to any other mortgage on the Property, in which event such lesser time period shall apply under this subsection as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution;

(10) Developer shall have voluntarily suspended its business or Developer shall have been dissolved or terminated;

(11) A material breach of this Agreement or any City Document and remains uncured beyond any applicable cure period.

(f) If, in the City's sole discretion, the Developer fails to observe or perform any condition contained in Section 3.2(d) or (e), or take diligent action towards the cure or remedy of such event, for a period of sixty (60) days after written notice from the City specifying such failure and requesting that it be cured, such event shall be deemed a default under the Site Acquisition Loan and the City shall be entitled, and in addition to all other remedies provided by law or in equity, to compel specific performance by the Developer of its obligations under the Site Acquisition Loan. Any investor or limited partner of Developer or Developer's assignee shall have the same notice and cure rights granted to Developer, and any cure tendered by such investor shall be accepted or rejected on the same basis as if tendered by Developer.

(g) City and Developer acknowledge and agree that the City is conveying the Undivided Parcel prior to recordation of the Final Map. In the event that the Property Undivided Parcel and Project are subdivided into more than one parcel and/or ownership structure, the Site Acquisition Loan may be divided into multiple loans, to be allocated proportionally amongst some or all of the subdivided Property and Project as mutually determined by the City and Developer, each with terms in accordance with this Section 3.2. If requested by either City or

Developer, this Agreement, the Site Acquisition Loan documents, and the Regulatory Agreement may be amended to reflect any such changes.

The City hereby acknowledges and agrees that there shall be no cross defaults between the Site Acquisition Loan and applicable loan documents (including the Regulatory Agreement) once those are divided and assigned to the Affiliated limited partnership.

Section 3.3 Development Loan/Contribution. Subject to approval of a final finance plan, the City may, but is not obligated to, make a future development loan and/or other financial contribution ("Development Loan/Contribution") to be disbursed to pay for development and/or operations costs in connection with the Project. The Development Loan/Contribution shall be contingent upon the City and Developer agreeing to terms for each phase of development. Development Loan/Contribution will only be disbursed following approval of the finance plan, and the necessary land use, environmental, and permit approvals. A Development Loan/Contribution agreement, the form of which shall be mutually agreed upon by City and Developer and be consistent with this Agreement, will control the specific terms of the Development Loan/Contribution. The amount of the Predevelopment Loan allocated to each phase may be included in the Development Loan/Contribution for such phase and be deemed to have been previously disbursed.

Section 3.4 Financing for EVA Improvements. As set forth in this subsection and subject to the conditions set forth herein, the City will reimburse Developer for the approved costs associated with constructing EVA Improvements solely consisting of the installation of retractable bollards described in 7c of the City's Engineering Conditions ("EVA Improvement Reimbursables") that are approved by the City. Developer shall first provide the City with a cost proposal for the EVA Improvement Reimbursables, including design and construction, and City shall maintain the right to approve or disapprove costs. Reimbursement of City-approved costs will not be included as part of City's loan assistance to develop the Project. Improvements shall be constructed in compliance with all applicable laws as described in Sections 8.5 and in Exhibit B. Developer will submit actual invoices to City only for that portion of work which is approved for reimbursement by City.

Section 3.5 Construction and Financing for Veterans Park Improvements. The Parties agree that the Developer will manage the construction of the Veterans Park Improvements but that the City will pay for the costs of the Veterans Park Improvements at its sole expense. City and Developer will negotiate a future construction management and reimbursement agreement to coordinate the construction of the Veterans Park Improvements. The Agreement shall authorize reimbursement for the construction of the park, per the designs and specifications issued by the City, and shall not exceed Five Million Five Hundred Thousand Dollars ($5,500,000) (not including any grants obtained by Developer to help fund the construction costs), without additional approval of the City Council. The Agreement and the procurement of the contractor

who will build the park shall comply with all applicable local, state, and federal procurement laws to the extent such laws apply.

These improvements would be exclusive of any development loan provided by the City for development of the Project.

ARTICLE 4. PREDISPOSITION REQUIREMENTS

Section 4.1 City's Conditions Precedent to Close of Escrow. As conditions precedent to the Close of Escrow for the Undivided Parcel, the conditions set forth in this Article 4 and Section 6.2 must first be met by the times specified for such conditions in the Schedule of Performance (as such times may be extended pursuant to Section 4.7) or, if no time is so specified, on or before the Close of Escrow. Satisfaction of these conditions depends on performance by the Developer. Only the City can waive satisfaction of the conditions in this Article 4 and Section 6.2.

Section 4.2 Financing Commitment. The Developer shall provide the City with a preliminary development Pro Forma, setting forth the Developer's estimate of sources and uses of funds for development of the Project. No later than the time specified in the Schedule of Performance, but not as a condition to Close of Escrow, the Developer will submit a true copy of each letter of interest from lenders, TCAC, and/or equity partners to provide funds in the amounts necessary to fully finance the projected costs of development of the Improvements, each of which shall be approved by the City. Prior to conveyance of the Housing South Parcel as contemplated in Recital J and section 1.2(b), but not as a condition to Close of Escrow on the Undivided Parcel, Developer shall have either (i) obtained all financing necessary to build the Improvements, or (ii) will close on the financing necessary to build the Improvements.

Section 4.3 City Approvals. The Developer shall obtain all Entitlements necessary for the Improvements. Developer and City acknowledge that the Litigation is pending, and therefore the Parties agree that Entitlements issued by the City during the pendency of the Litigation shall be deemed to have been obtained.

Section 4.4 Organizational Documents. The City shall approve the Developer's organizational documents in the time specified in the Schedule of Performance.

Section 4.5 Federal Environmental Review and Clearance. Notwithstanding any other provision in this Agreement, the City shall have no obligation to sell the Undivided Parcel, the Developer shall have no obligation to purchase the Undivided Parcel, and no transfer of title to the Developer may occur, unless and until the City has provided the Developer with written notification that: (1) the City has completed a federally required environmental review pursuant to the National Environmental Policy Act ("NEPA") and the City's request for release of funds has been approved and, subject to any other conditions in this Article 4, (a) the purchase may proceed, or (b) the purchase may proceed only if certain conditions to address issues in the environmental review are satisfied before or after the purchase of the Undivided Parcel; or (2) it has determined the purchase is exempt from federal environmental review pursuant to NEPA and

a request for release of funds is not required. The City shall use its best efforts to conclude the environmental review pursuant to NEPA of the Undivided Parcel expeditiously.

Section 4.6 Insurance. Within the time specified in the Schedule of Performance, the Developer shall furnish to the City the type and amounts of insurance specified in Exhibit I, which may be modified from time to time by the City's Risk Manager upon written notice, provided that such modifications are commercially reasonable and reasonably financially feasible.

Section 4.7 Time Extensions. The City Manager shall have the authority to approve two extensions of the Schedule of Performance, as mutually agreed upon in writing between the Parties and which the City Manager deems reasonable and appropriate.

Section 4.8 Lease Back of the Undivided Parcel. Prior to the Close of Escrow on the Undivided Parcel, the parties shall enter into a Temporary Parking Lease for the Undivided Parcel in substantial conformance with Exhibit O wherein parking will be available for public parking until construction of the first phase of the Project commences and shall deposit an executed counterpart of the Temporary Parking Lease Agreement for the Undivided Parcel with the Escrow Holder. As further set forth in the Temporary Parking Lease Agreement, the lease shall be a triple net lease, with City responsible for payment of all costs it incurs during its lease of the Undivided Parcel. In addition, in consideration for the use of the Undivided Parcel during the lease period, City shall either pay directly or reimburse Developer for all third party costs incurred as a result of Developer's ownership of the property, including insurance, property taxes and assessments and any other expenses which are required to be paid directly by the Developer as part of the operation of the Undivided Parcel as temporary public parking. Any other expenses that the City shall be responsible for under the Temporary Parking Lease Agreement other than insurance, property taxes and assessments shall be subject to review and approval by the City prior to commitment or obligation by the Developer. City's obligations to reimburse Developer for insurance, property taxes and assessments under the Lease shall not exceed One Hundred Twenty Thousand ($120,000) per year, for the term of the lease, increasing 3% annually, or further Council approval shall be required.

Section 4.9 Air Rights to Housing Parcels. Prior to the Close of Escrow on the disposition of the Undivided Parcel the parties shall have taken the necessary steps to ensure that the City will receive the air rights to Parcels 1 and 3 at and above the elevation of 534 feet by modifying the Veterans Park Parcel accordingly. The intent of this paragraph is to ensure that the Project shall not exceed the entitled height elevation of 534, or 52 feet above the surface elevation (the benchmark elevation is 482 feet, measured from a monument at the corner of Railroad Avenue and L Street), provided, however, that the City shall provide Developer with a temporary access easement to access the air rights above Parcels 1 and 3 during construction of the Project. Veterans Park Parcel shall be dedicated back to the City as described in Section 8.10.

ARTICLE 5. DISPOSITION OF THE UNDIVIDED PARCEL

Section 5.1 Purchase and Sale. Provided the predisposition requirements set forth in Article 4 and the additional closing conditions set forth in Section 5.4 have been satisfied, the City shall sell to the Developer, and the Developer shall purchase from the City, the Undivided Parcel pursuant to the terms, covenants, and conditions of this Agreement.

Section 5.2 Purchase Price. The Purchase Price for the Property shall be $7,800,000 (Seven Million Eight Hundred Thousand Dollars).

Section 5.3 Opening Escrow. To accomplish the conveyance of the Undivided Parcel from the City to the Developer, in accordance with the Schedule of Performance, the Parties shall establish an escrow and execute and deliver to the Escrow Holder written instructions that are consistent with this Agreement. At Close of Escrow, Title Company shall provide Developer (at Developer's sole cost and expense) an ALTA owner's policy of title insurance issued by the Title Company insuring fee title to the Property vested in Developer subject only to the Permitted Exceptions (the "Title Policy").

Section 5.4 Additional Closing Conditions. Subject to the satisfaction of all predisposition conditions to the Close of Escrow set forth in this section, the Close of Escrow shall occur and the City shall convey, and the Developer shall accept conveyance of, a fee interest in the Property pursuant to the Grant Deed, a form of which is attached to this Agreement as Exhibit L.

The following shall constitute conditions to the completion of the Close of Escrow:

(a) The conditions precedent set forth in Article 4 above shall have been satisfied.

(b) The Developer shall have deposited the following with the Escrow Holder: (i) City Documents, executed and acknowledged as applicable, (ii) Developer's share of closing costs, and (iii) any other documents required by Article 4 and Section 6.2 and that may be reasonably requested by the Escrow Holder and the Title Company and that are customarily delivered in connection with the closing of real estate transactions in Alameda County.

(c) There shall exist no condition, event or act which would constitute a Developer Event of Default or which, upon the giving of notice or the passage of time, or both, would constitute a Developer Event of Default.

(d) The representations and warranties of Developer as set forth in Section 13.1 remain true and correct in all material respects. There has been no material adverse change in the financial condition of the Developer as of the date of the Close of Escrow.

(e) Title Company shall be prepared to issue the Title Policy without any exceptions other than the Permitted Exceptions.

(f) Reserved.

(g) The City shall have deposited the following with the Escrow Holder (i) the Grant Deed, in recordable form, (ii) an owner's affidavit as reasonably and customarily required by the Title Company, and (iii) any other documents required by Article 4 and Section 6.2 and that may be reasonably requested by the Escrow Holder and the Title Company and that are customarily delivered in connection with the closing of real estate transactions in Alameda County.

Section 5.5 Deposit of Documents. Within ten (10) business days after the satisfaction or waiver of all of the conditions set forth in Article 4, the Parties shall deposit into Escrow any and all documents and funds necessary to effectuate the Close of Escrow. Each such agreement, instrument and document shall be duly executed, and in recordable form if it is to be recorded.

Section 5.6 Close of Escrow. Provided that all of the conditions set forth in Article 4 have been satisfied or waived and all of the documents set forth in Section 5.5 have been deposited into Escrow, Escrow Holder shall do all of the following:

(a) Complete all blank spaces, if any, in the Grant Deed, including the effective dates thereof;

(b) Attach thereto final and accurate legal descriptions consistent with the title policies required under this Agreement;

(c) Deliver copies of fully executed originals of Grant Deed to the appropriate parties; and

(d) Cause to be recorded or distributed (as set forth below) the following documents:

(1) Record in the Official Records the Grant Deed conveying the Property to the Developer;

(2) Record in the Official Records the Seller Take-Back Site Acquisition Deed of Trust and Predevelopment Loan Deed of Trust;

(3) Record in the Official Records the Regulatory Agreement;

(4) File any informational reports required by Internal Revenue Code Section 6045(e), as amended, and any other applicable requirements;

(5) Forward to both the Developer and the City a separate accounting of all funds received and disbursed for each party and copies of all executed and recorded or filed documents deposited into Escrow, with such recording and filing date and information endorsed thereon;

(6) Provide the Title Policy to Developer; and

(7) Distribute or record such other documents as may be specified in the Parties' escrow instructions, if any.

The date on which the Escrow Holder records the last of the above items shall be the "Close of Escrow."

Section 5.7 Additional Escrow Instructions. The Parties shall execute such further escrow instructions as Escrow Holder may require; provided that Escrow Holder shall not require the imposition of any additional obligations or liabilities on the Parties. Such further escrow instructions shall not modify the provisions of this Agreement unless the Parties otherwise expressly provide for such modification in such additional instructions.

Section 5.8 Condition of Title to the Property. The City shall convey the fee interest in the Undivided Parcel to the Developer free of all liens, encumbrances, clouds, conditions, and rights of occupancy and possession, except the (a) the Permitted Exceptions, (b) reservations, licenses, easements and rights of way in, to, over or affecting the Property for any purpose whatsoever that are existing as of the date of this Agreement and have been disclosed to Developer in writing or are otherwise known to Developer or would be apparent or discoverable by an ALTA survey of the Property. Notwithstanding the foregoing, City acknowledges and hereby agrees to remove that certain easement dated November 7, 1978 and recorded May 18, 1979, as Instrument No 79-095080 prior to conveyance of the Undivided Parcel.

Section 5.9 Condition of the Undivided Parcel.

(a) "As Is" Conveyance.

(1) THE DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE CITY IS CONVEYING THE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT THE DEVELOPER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS (EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT) OR IMPLIED, FROM CITY AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION: (A) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, TOPOGRAPHY, CLIMATE, AIR, WATER RIGHTS, WATER, GAS, ELECTRICITY, UTILITY SERVICES, GRADING, DRAINAGE, SEWERS, ACCESS TO PUBLIC ROADS AND RELATED CONDITIONS); (B) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY AND GROUNDWATER, (C) THE EXISTENCE, QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF UTILITIES SERVING THE PROPERTY, (D) THE DEVELOPMENT POTENTIAL OF THE PROPERTY, AND THE PROPERTY'S USE, HABITABILITY, MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE PROPERTY OR ANY PARTICULAR PURPOSE, (E) THE ZONING OR OTHER LEGAL STATUS OF THE PROPERTY OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON THE USE OF THE PROPERTY, (F) THE COMPLIANCE OF THE PROPERTY OR THEIR OPERATION WITH ANY

APPLICABLE CODES, LAWS, REGULATIONS, STATUTES, ORDINANCES, COVENANTS, CONDITIONS AND RESTRICTIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY OR OF ANY OTHER PERSON OR ENTITY, (G) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT THE PROPERTY OR THE ADJOINING OR NEIGHBORING PROPERTY, EXCEPT AS PROVIDED IN ARTICLE 6, AND (H) THE CONDITION OF TITLE TO THE PROPERTY. THE DEVELOPER AFFIRMS THAT THE DEVELOPER HAS NOT RELIED ON THE SKILL OR JUDGMENT OF THE CITY OR ANY OF ITS RESPECTIVE AGENTS, EMPLOYEES OR CONTRACTORS TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT THE CITY MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE. THE DEVELOPER ACKNOWLEDGES THAT IT SHALL USE ITS INDEPENDENT JUDGMENT AND MAKE ITS OWN DETERMINATION AS TO THE SCOPE AND BREADTH OF ITS DUE DILIGENCE INVESTIGATION WHICH IT SHALL MAKE RELATIVE TO THE PROPERTY AND SHALL RELY UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, WHETHER THE PROPERTY IS LOCATED IN ANY AREA WHICH IS DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY). THE DEVELOPER UNDERTAKES AND ASSUMES ALL RISKS ASSOCIATED WITH ALL MATTERS PERTAINING TO THE PROPERTY'S LOCATION IN ANY AREA DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY.

(2) Developer's Release of City. Except as provided in Section 6.2, the Developer, on behalf of itself and anyone claiming by, through or under the Developer hereby waives its right to recover from and fully and irrevocably releases the City, employees, officers, directors, representatives, and agents (the "Released Parties") from any and all claims, responsibility and/or liability that the Developer may have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to (i) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Property, or their suitability for any purpose whatsoever, (ii) any presence of Hazardous Materials, and (iii) any information furnished by the Released Parties under or in connection with this Agreement.

(3) Scope of Release. The release set forth in Section 5.9(a)(2) hereof includes claims of which the Developer is presently unaware or which the Developer does not presently suspect to exist which, if known by the Developer, would materially affect the Developer's release of the Released Parties. The Developer specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, the Developer agrees, represents and warrants that the Developer realizes and acknowledges that factual matters now unknown to the Developer may have given or may

hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and the Developer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Developer nevertheless hereby intends to release, discharge and acquit the City from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. Accordingly, the Developer, on behalf of itself and anyone claiming by, through or under the Developer, hereby assumes the above-mentioned risks and hereby expressly waives any right the Developer and anyone claiming by, through or under the Developer, may have under Section 1542 of the California Civil Code, which reads 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."

Developer's Initials: _____

(b) The provisions of this section shall survive the termination of this Agreement.

Section 5.10 Inspections; Condition of Site. Developer shall conduct its own investigation of the Property, its physical condition, the soils and environmental conditions of the Property and all other matters which, in Developer's sole and absolute judgment, affect or influence Developer's willingness to develop the Property pursuant to this Agreement. Within the time set forth in the Schedule of Performance, Developer shall provide written notice to City of Developer's determinations concerning the suitability of the physical condition of the Property and its economic feasibility for development and intended use. If, in the Developer's sole and absolute discretion, the physical condition of the Property is unsuitable for the use or uses to which the Property will be put, or that it is not economically feasible for Developer to develop the Project pursuant to this Agreement, then Developer shall have the option to (a) take any action necessary to place the Property in a condition suitable for development, at no cost to City; or (b) terminate this Agreement pursuant to the provisions in Section 3.1(e). If Developer has not given written notice to City of its determination concerning the suitability of Property within the time set forth in the Schedule of Performance, Developer shall be deemed to have waived its right to terminate this Agreement pursuant to this Section.

Section 5.11 Right of Entry. Prior to the Close of Escrow, City will grant to the Developer and the Developer's agents the right to enter upon the Property for the exclusive purpose of conducting studies and investigations that will assist the Developer in performing its due diligence investigation. Such entry shall be made only during regular business hours and upon not less than five (5) business days' advance telephonic, email, or written facsimile notice to the City's Housing Programs Manager.

Prior to exercise of the right of entry, the Developer shall provide the City with satisfactory evidence, in the form of a certificate of insurance, that the Developer's agents who obtain access to the Property are insured to the levels required by the City's Risk Manager.

The Developer shall indemnify, defend and hold the City of Livermore, Indemnitees, as defined in Section 9.4 and the Property harmless from and against, any and all costs, expenses (including, without limitation, attorneys' fees), damages, claims, liabilities, liens (including, without limitation, mechanics liens) encumbrances and charges to the extent such arise out of or are in any way directly related to any entry by the Developer or the Developer's agents upon the Property, but only to the extent such matters do not arise from the gross negligence or willful misconduct of the City or other Indemnitee, from pre-existing conditions of the Property, or from Developer's discovery of any information potentially having a negative impact on the Property. The foregoing obligation of the Developer shall survive the expiration or termination of this Agreement.

Section 5.12 Real Estate Commissions. The City shall not be liable for any real estate commissions or brokerage fees that may arise from this Agreement. The Developer represents that it has not obtained or engaged the services of a real estate broker in this transaction. If a real estate commission is claimed through either Party in connection with the transaction contemplated by this Agreement, then the Party through whom the commission is claimed shall indemnify, defend and hold the other Party harmless from any liability related to such commission. The provisions of this Section shall survive termination of this Agreement.

ARTICLE 6. HAZARDOUS MATERIALS REPRESENTATIONS

Section 6.1 Existing Hazardous Materials. Environmental investigations conducted at the Undivided Parcel found limited areas of metals (lead, arsenic) in shallow soil, total petroleum hydrocarbons (TPH) in soil and groundwater, and volatile organic compounds (VOCs) in groundwater and soil gas (air in between soil particles). Environmental investigations conducted to support development off-property, at adjacent properties, found VOCs associated with former dry-cleaning operations to the south of the Undivided Parcel.
Data from the recent investigation and prior sampling events indicate the following:

- Soil: Metals were confirmed in shallow soil within the areas proposed for excavation during the proposed development of the Undivided Parcel. The detected metals concentrations are generally within the range of naturally occurring (background) levels or, when evaluated as a whole, less than Water Board Tier 1 environmental screening levels.
- Groundwater: Chemicals detected in groundwater include tetrachloroethene (PCE), total petroleum hydrocarbons (TPH) as diesel, and chloroform. Based on historical site use and known use of neighboring properties, these chemicals are a result of releases from upgradient sources and concentrations have been decreasing over time.
- Soil Vapor: Chemicals detected in soil vapor include PCE and benzene. VOCs detected in soil vapor at the Property are likely the result of one or more VOCs release(s) from historical dry-cleaning operations at the, adjacent, former Quality Cleaners located south of the Property at 2048 First Street, rather than the result of past use of the Property.

Data was used to evaluate potential health risks to future occupants of the planned residential buildings. Based on this assessment, using conservative (health protective) assumptions, the estimated risks are well within levels considered by the California and United States Environmental Protection Agencies to be protective of human health and do not warrant further remediation or mitigation as part of the proposed development of the Property.

The San Francisco Bay Regional Water Quality Control Board ("Water Board") has required submittal of a Site Management Plan ("SMP") prior to the start of construction on the Property. The SMP is intended to ensure protection of human health at the property by establishing procedures and protocols to be followed during construction and post-construction. The SMP includes procedures to help ensure that chemicals (e.g., petroleum and metals) in soil and groundwater from historical site uses and uses at other nearby sites are safely managed and disposed of should they be encountered during site development. The SMP will also include protocols for confirmation testing to demonstrate that volatile organic compounds in soil gas do not pose a risk to future occupants.

Once completed and approved by the Water Board, the SMP will be provided to the Developer in accordance with the Schedule of Performance.

Section 6.2 Indemnification and Cooperation. After Developer completes analysis of the SMP and the environmental condition of the Property, and prior to the close of escrow for the Undivided Parcel, the Developer and City shall enter into an indemnity and cooperation agreement to apportion costs and any potential liability related to Hazardous Materials at, on, in, beneath, or from the Property from and after the date of the close of escrow between the Parties.

The Parties acknowledge that no remediation or mitigation is required for the Undivided Parcel in order to develop the Project as more particularly described in section 6.1, above. The indemnity and cooperation agreement between the parties will delineate each party's responsibilities regarding the following:

- Soil Handling Protocols for the development of the Project;
- Post Construction Confirmation Testing to Confirm Results of the City's Human Health Assessment; and
- Operation and Maintenance of the HVAC system in the Project's garage.

The indemnity and cooperation agreement shall also address any action items resulting from the City's remedial work plan to be submitted for Water Board review and approval; and access issues related to neighboring sites, including any need for access to install groundwater monitoring or soil vapor wells to the south of the Housing Parcel South, should the City be unable to place the wells in the Public Right of Way.

The City Manager is authorized to negotiate and execute the indemnity and cooperation agreement in an amount not to exceed $4,300,000, subject to the City Attorney's approval of the agreement as to form. The obligations of the City under the indemnity and cooperation agreement shall not exceed $4,300,000, without further council approval.

Furthermore, Developer shall have no responsibility for any environmental compliance costs resulting from the City's other open Water Board cases applicable to other city-owned properties near the Project site.

ARTICLE 7. DESIGN REQUIREMENTS

Section 7.1 Project Design. The Parties acknowledge that the Developer worked with City in designing the Project to standards that are acceptable to City and that met the objectives identified in the Project Objective, attached as Exhibit B. To the extent any further Entitlements are required for the Project, Developer acknowledges and agrees that the City has full authority and discretion to grant or deny applications for Entitlements.

Section 7.2 Additional Permits and Approvals. Within the time specified in the Schedule of Performance (as such times may be extended pursuant to Section 4.7 or by mutual agreement of the Parties), Developer shall obtain all ministerial permits and approvals necessary to construct the Improvements. All applications for such ministerial permits and approvals shall be consistent with the approved Project Documents. The Developer acknowledges that execution of this Agreement by the City does not constitute approval by the City of any required ministerial permits or approvals, and in no way limits the City's approval process for any such permit and approval. The City shall provide reasonable assistance to the Developer in securing such ministerial permits and approvals.

Section 7.3 City Review. Except for the activities to be performed by or on behalf of the City as otherwise contemplated herein, the Developer shall be solely responsible for all aspects of the Developer's conduct in connection with the Project, including, but not limited to, the quality and suitability of the Project Documents, the supervision of construction work for the Project and the Veterans Park Improvements, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Except for the activities to be performed by or on behalf of the City as otherwise contemplated herein, any review or inspection undertaken by the City with reference to the Project is solely for the purpose of determining whether the Developer is properly discharging its obligations to the City under this Agreement, and should not be relied upon by the Developer or by any third parties as a warranty or representation by the City as to the quality of the design or construction of the Improvements.

ARTICLE 8. PRE-CONSTRUCTION AND CONSTRUCTION OF THE IMPROVEMENTS

Section 8.1 Commencement of Construction. The Developer shall commence pre-construction activities and the construction of the Improvements within the times set forth in the Schedule of Performance. Construction shall be deemed to commence on the date the Developer issues a notice to proceed pursuant to a valid Building Permit from the City.

Section 8.2 Completion of Construction. The Developer shall diligently prosecute to completion the construction of the Improvements, and shall complete construction of the Improvements within the time set forth in the Schedule of Performance, subject to Force Majeure

requirements in Section 13.4 of this Agreement. As between the City and the Developer, except for, Veterans Park Improvements, and work contemplated by the Cooperation and Indemnity Agreement referenced in section 6.2, above, the Developer shall be solely responsible for the construction of the Improvements, including all costs of construction (except for the EVA Improvement Reimbursables referenced in Section 3.4).

Section 8.3 Construction Pursuant to Scope and Plans.

(a) The Developer shall construct the Improvements in accordance with the approved Final Construction Drawings, and the terms and conditions of all City and other governmental approvals.

(b) The Developer shall submit or cause to be submitted for the City approval any proposed change in the Final Construction Drawings which materially changes the size, location, or elevations of the Improvements, including the landscape and/or hardscape, or signage of the Improvements, or which materially changes the quality or appearance of the exterior materials of the Improvements, or which would require an amendment to any City Approval prior to making such change. The City, through the City Manager or his/her designee, shall reasonably approve or disapprove a proposed material change within fifteen (15) days after receipt by the City. If City does not approve or disapprove within fifteen (15) days after receipt by the City, such non-response shall be deemed approval. If the City rejects the proposed material change, then, upon request of Developer, the City shall provide the Developer with the specific reasons therefor, and the approved Final Construction Drawings shall continue to control.

The obligations of the City pursuant to this section are separate from the rights the City may have in exercising its municipal regulatory authority and nothing contained herein shall limit the City's rights under its regulatory authority.

(c) No change which is required for compliance with building codes, government health and safety regulations or other applicable laws or regulations, or to comply with changes or corrections required of the Developer in the plan check process shall be deemed material. However, the Developer must submit to the City any change that is required for such compliance within ten (10) days after making such change, and such change shall become a part of the approved Final Construction Drawings, binding on the Developer.

Section 8.4 Mechanics' Liens. The Developer shall indemnify the City and hold the City harmless against and defend the City in any proceeding related to any mechanic's lien, stop notice or other claim brought by a subcontractor, laborer or material supplier who alleges having supplied labor or materials in the course of the construction of the Improvements by the Developer. This indemnity obligation shall survive the issuance of a Certificate of Occupancy by the City and the termination of this Agreement.

Section 8.5 Compliance with Applicable Law; Prevailing Wage Requirement.

a) The Developer shall cause all construction to be performed in compliance with: 1) All applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter. (2) All directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after the payment of all applicable fees, procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and the Developer shall be responsible to the City for the procurement and maintenance thereof, as may be required of the Developer and all entities engaged in work on the Property.

b) The Developer shall pay and shall cause the contractor and subcontractors to pay prevailing wages in the construction of the Development as those wages are determined pursuant to California Labor Code Section 1720 et seq., to employ apprentices as required by California Labor Code Sections 1777.5 et seq., and the implementing regulations of the Department of Industrial Relations (the "DIR"). In addition, as applicable, the Developer shall cause its respective contractors and subcontractors in the construction of the Project to do all the following: 1) all calls for bids, bidding materials and the construction contract documents for the Project must specify that (A) no contractor or subcontractor may be listed on a bid proposal nor be awarded a contract for the Project unless registered with the DIR pursuant to Labor Code Section 1725.5, and (B) the Project is subject to compliance monitoring and enforcement by the DIR; 2) the Developer is required to provide the City all information required by Labor Code Section 1773.3 as set forth in the DIR's online form PWC-100 within 2 days of the award of the contract (https://www.dir.ca.gov/pwc100ext/); 3) the Developer shall cause its respective contractors to post job site notices, as prescribed by regulation by the DIR; or 3) the Developer shall cause its respective contractors to furnish payroll records required by Labor Code Section 1776 directly to the Labor Commissioner, at least monthly in the electronic format prescribed by the Labor Commissioner. Developer shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Developer, its contractor and subcontractors) to pay prevailing wages in accordance with the terms of this Agreement as determined pursuant to California Labor Code Section 1720 et seq., to employ apprentices pursuant to California Labor Code Section 1777.5 et seq., and implementing regulations of the DIR or to comply with the other applicable provisions of California Labor Code Sections 1720 et seq., 1777.5 et seq., and the implementing regulations of the DIR in connection with the construction of the Development. The requirements in this Subsection survive the repayment of the City Loans, the reconveyance of the Deed of Trust, and the expiration of the Regulatory Agreement.

c) The Developer shall defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including the Developer, its contractor and subcontractors) to pay prevailing wages in accordance with this Agreement as determined pursuant to Labor Code Sections 1720 et seq., and implementing regulations of the Department of Industrial Relations or comply with the other applicable provisions of Labor Code Sections 1720 et seq., to employ apprentices pursuant to Labor Code Sections 1777.5 et seq., and implementing regulations of the Department of Industrial Relations in connection with the construction, pursuant to this Agreement, of the Project and shall indemnify and hold the City harmless against any damages, compensation, fines, penalties or other amounts resulting from the successful prosecution of such claim.

d) The Developer shall construct the Project to comply with all applicable federal and state disabled persons accessibility requirements including but not limited to the Federal Fair Housing Act, Section 504 of the Construction Act of 1973, Title II and/or Title III of the Americans with Disabilities Act of 1990, Title 24 of the California Code of Regulations and the Uniform Federal Accessibility Standards, and in compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794, et seq.).

Section 8.6 Progress Reports. Until a Certificate of Occupancy has been issued by the City, the Developer shall provide the City with periodic progress reports, as reasonably requested by the City (but not more than once every calendar month), regarding the status of the construction of the Improvements. Such report shall consist of an executive summary of the work to date, including, but not limited to, the causes for any delays and the work that is anticipated for the following month, a reasonable number of construction photographs taken since the last report submitted to the City, and shall be in form reasonably acceptable to the City.

Section 8.7 Entry by City. After the expiration of the Temporary Parking Lease Agreement and the City's issuance of a Building Permit for the Project, but prior to the City's issuance of a Certificate of Occupancy has been issued by the City, the Developer shall permit the City, upon reasonable prior notice (which shall in no event be less than 48 hours), through its officers, agents, or employees, to enter the Property during normal business hours to inspect the work of construction to determine that such work is in substantial conformity with the Scope of Development and the approved Final Construction Drawings or to inspect the Property for compliance with this Agreement. The City is under no obligation to (a) supervise construction, (b) inspect the Property, or (c) inform the Developer of information obtained by the City during any inspection. The Developer shall not rely upon the City for any supervision or inspection. The rights granted to the City pursuant to this section are in addition to any rights of entry and inspection the City may have in exercising its municipal regulatory authority.

Section 8.8 Non-Discrimination During Construction; Equal Opportunity. The Developer (for purposes of this Section 8.8, the term "Developer" shall include Developer's

contractors), for itself, its successors and assigns, and transferees agrees that in the construction of the Project provided for in this Agreement:

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

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

Section 8.9 Insurance Requirements. Developer, its contractors, subcontractors and/or agents shall furnish or cause to be furnished to the City duplicate originals of insurance policies, complete with additional insured and loss payee endorsement, as applicable pursuant to this Agreement. Developer shall, until Developer's obligations under this Agreement are paid and discharged in full, maintain and keep in full force and effect any insurance required by City, issued by companies approved and regulated by the State Department of Insurance in the amounts and terms set forth in Exhibit I. Upon reasonable written notice, Developer shall comply with any changes to the amounts and terms of insurance as may be required from time to time by the City's Risk Manager, provided that such changes are commercially reasonable and reasonably financially feasible.

Section 8.10 Dedication of Veterans Park Parcel. Developer shall dedicate the Veterans Park Parcel (Parcel 2) back to the City upon recordation of the Final Map and upon construction finance closing for the first phase of the Project, at the time specified in the Schedule of Performance. Parcel 2 shall have air rights over Parcels 1 and 3, as described in Section 4.10 above. Parcel 2 shall also be dedicated to the City free and clear of any encumbrances created by the Developer that have not been authorized by the City. Notwithstanding the foregoing, City hereby acknowledges and agrees that City will grant certain temporary construction easements to Housing North Developer and Housing South Developer necessary for the construction of the Project, in form and substance as mutually agreed upon by the Parties.

The parties hereto agree that irreparable damage would occur in the event Section 8.10 of this Agreement was not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy at law or in equity.

Section 8.11 Reserved Parking for the Project's Residents. The City agrees to enter into an irrevocable parking space lease, in a form substantially compliant with Exhibit Q, with the Developer for 16 reserved parking spaces for Project residents in the L Street Garage, which will be constructed and owned by the City to serve the Project. The spaces will be leased at $300 per space per year, for an annual cost of $4,800, for a 55-year term with a 2.5% escalator. The term will commence from lease-up of the first phase of the Project. The lease can be assumed by a future owner of the Project subject to any existing encumbrances, so long as the Project remains in compliance with its permanent affordable housing covenants.

ARTICLE 9. OBLIGATIONS WHICH CONTINUE THROUGH AND BEYOND THE COMPLETION OF CONSTRUCTION

Section 9.1 Affordable Housing Use. The Developer covenants to use the Property for affordable housing for a period of not less than 55 years, in conformance with the regulatory agreement ("Regulatory Agreement"), the form of which is attached hereto as Exhibit H. As further set forth herein, upon conveyance of the Housing South Parcel, the Regulatory Agreement shall be modified to reflect the correct unit count and mix for the Housing North Parcel, and a new regulatory agreement shall be executed by the Housing South Developer that will be specific to the Housing South Project.

Section 9.2 Downtown Landscape Maintenance District. The Parties acknowledge that the City's Downtown Landscape Maintenance District LL-859 applies to the Property upon completion of the construction of the Project. The parties agree that no other existing Community Facility District applies to the Project.

Section 9.3 Maintenance. The Developer hereby agrees that, after the Close of Escrow and prior to completion of construction of the Improvements, the Property shall be maintained in a neat and orderly condition and in accordance with industry health and safety standards, and that, once the Project is completed, the Project shall be well maintained as to both external and internal appearance of the buildings, the common areas, and the parking areas. The Developer shall maintain or cause to be maintained the Improvements in good repair and working order, and in a neat, clean and orderly condition, including the walkways, driveways, parking areas and landscaping, and from time to time make all necessary and proper repairs, renewals, and replacements. In the event that there arises a condition in contravention of the above maintenance standard, then the City shall notify the Developer in writing of such condition, giving the Developer thirty (30) days from receipt of such notice to commence and thereafter diligently to proceed to cure said condition. In the event the Developer fails to cure or commence to cure the condition within the time allowed, the City shall have the right to perform all acts necessary to cure such a condition. The City shall receive from the Developer the City's reasonable cost in taking such action and shall provide reasonable evidence of such costs to the Developer.

Section 9.4 Developer To Indemnify City.

(a) The Developer shall indemnify, defend (with counsel approved by the City) and hold harmless the City and its elected officials, officers, employees, agents,

consultants, designated volunteers, and contractors (collectively, the "Indemnitees") from and against any and all liabilities, losses, costs, expenses (including without limitation attorneys' fees and costs of litigation), claims, demands, actions, suits, causes of action, writs, judicial or administrative proceedings, penalties, deficiencies, fines, orders, judgments and damages (all of the foregoing collectively "Claims") which in any manner, directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, result from, or relate to: (i) approval of this Agreement and/or the Improvements; (ii) performance of this Agreement on the part of the Developer or any contractor or subcontractor of Developer; and/or (iii) the development, operation, maintenance or management of the Improvements, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that the City does not and shall not waive any rights against Developer which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by the City, or Developer's deposit with the City of any of the insurance policies described in this Agreement.

(b) The Developer shall pay immediately upon the Indemnitees' demand any amounts owing under this indemnity. The duty of Developer to indemnify includes the duty to defend the Indemnitees or, at the Indemnitees' choosing, to pay the Indemnitees' costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the Improvements or the Property. The Indemnitees shall have reasonable approval rights regarding decisions with respect to their representation in any legal proceeding, including, but not limited to, the selection of attorney(s). Developer's obligations set forth in this Section shall survive the issuance of the Certificate of Occupancy by the City, and termination of this Agreement. Developer's indemnification obligations set forth in this Section 9.4 shall not apply to Claims to the extent arising from the gross negligence or willful misconduct of the Indemnitees.

Section 9.5 Hazardous Materials.

(a) Certain Covenants and Agreements. Following possession of the Property, the Developer hereby covenants and agrees that:

(1) The Developer shall not knowingly permit the Property or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence of Hazardous Materials in, on or under the Property in violation of any applicable law, except to the extent of any Existing Contamination (defined in Article 9.5(b)) and as further acknowledged in Article 7 herein;

(2) The Developer shall keep and maintain the Project and each portion thereof in material compliance with, and shall not cause or permit the Project or any portion thereof to be in violation of, any Hazardous Materials Laws;

(3) Upon receiving actual knowledge of any material lack of compliance in relation Hazardous Materials Laws, the Developer shall within ten (10) days advise the City in writing of: (A) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Developer or the Project pursuant to any applicable Hazardous Materials Laws; (B) any and all claims made or threatened by any third party, including without limitation the Water Board and any adjacent landowners, against the Developer or the Project relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in the foregoing clause (A) and this clause (B) are hereinafter referred to as "Hazardous Materials Claims"); (C) the presence of any Hazardous Materials in, on or under the Property in such quantities which require reporting to a government agency; or (D) the Developer's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Project or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Project under any Hazardous Materials Laws.

(b) Indemnity. Without limiting the generality of the indemnification set forth in Section 9.4, and subject to Section 6.2, and excepting any liability or Hazardous Materials Claims relating to the presence of any Hazardous Materials in environmental media at the Property as of Closing (collectively, "Existing Contamination"), , the Developer hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the City) the City, its elected officials, officers, employees, and designated volunteers from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, reasonable attorney's fees and expenses), arising directly or indirectly, in whole or in part, out of: (1) the failure of the Developer, its agents, employees, or contractors to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Project; (2) the presence in, on or under the Project of any Hazardous Materials or any releases or discharges of any Hazardous Materials into, on, under or from the Property; or (3) any activity carried on or undertaken on or off the Project, subsequent to the conveyance of the Property to the Developer, and whether by the Developer or any employees, agents, contractors or subcontractors of the Developer at any time occupying or present on the Property, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials at any time located or present on or under the Property (collectively "Indemnification Claims"). The foregoing indemnity shall not apply to Existing Contamination on or under the Property, or affecting any natural resources, unless and to the extent Developer materially exacerbates such Existing Contamination, but shall apply to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials by Developer or any employees, agents, contractors or subcontractors of the Developer, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws. Notwithstanding the foregoing, Developer's indemnity under this Section 9.5(b) shall not apply to any Indemnification Claims to the extent arising from the gross negligence or willful misconduct of the City, it's elected officials, officers, employees, and designated volunteers.. Solely in relation to the Existing

Contamination, the City hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the Developer) the Developer and its officers, contractors, employees, agents, tenants, and invitees and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, reasonable attorney's fees and expenses), arising directly or indirectly, in whole or in part, out of: (1) the failure of the City, its agents, employees, or contractors to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Project,; and (2) the presence in, on or under the Project of any Hazardous Materials or any releases or discharges of any Hazardous Materials into, on, under or from the Property (collectively "City Indemnification Claims"). For avoidance of doubt nothing herein shall abrogate any of the Developer's responsibilities under the SMP, except as provided by the cooperation and indemnity agreement contemplated in section 6.2.

(c) No Limitation. The Developer hereby acknowledges and agrees that the Developer's duties, obligations and liabilities under this Agreement, including, without limitation, under Section 9.5(b) above, are in no way limited or otherwise affected by any information the City may have concerning the Project and/or the presence within the Project of any Hazardous Materials, whether the City obtained such information from the Developer or from its own investigations.

Section 9.6 Non-Discrimination.

(a) The Developer covenants and agrees for itself, its successors and its assigns in interest to the Site or any part thereof, that there shall be no discrimination against or segregation of any person or persons on 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. All deeds, leases, or contracts for the sale, lease, sublease, or other transfer of the Site shall contain or be subject to the nondiscrimination or non-segregation clauses hereafter prescribed.

(b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a) 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 subdivision (a) 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 and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (a).

ARTICLE 10. ASSIGNMENT AND TRANSFERS

Section 10.1 Definitions. As used in this Article 10, the term "Transfer" means:

(a) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode of form, of or with respect to this Agreement, or of the Property, or any part thereof or any interest therein or of the Project constructed thereon, or any contract or agreement to do any of the same; or

(b) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to more than fifty percent (50%) ownership interest in the Developer, or any contract or agreement to do any of the same.

Section 10.2 Purpose of Restrictions on Transfer. This Agreement is entered into solely for the purpose of development and operation of the Improvements on the Property and its subsequent use in accordance with the terms of this Agreement and the Regulatory Agreement. The qualifications and identity of the Developer are of particular concern to the City, in view of:

(a) The importance of the redevelopment of the Property to the general welfare of the community; and

(b) The fact that a Transfer as defined in Section 10.1 above is for practical purposes a transfer or disposition of the Property.

It is because of the qualifications and identity of the Developer that the City is entering into this Agreement with the Developer and that Transfers are permitted only as provided in this Agreement.

Section 10.3 Prohibited Transfers. The limitations on Transfers set forth in this Article 11 shall apply from the Effective Date of this Agreement until the issuance of a Certificate of Occupancy by the City. Except as expressly permitted in this Agreement, the Developer represents and agrees that the Developer has not made or created, and will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law, without the prior approval of the City, which shall not be unreasonably withheld, conditioned, or delayed. Any Transfer made in contravention of this Section 10.3. shall be void and shall be deemed to be a default under this Agreement, whether or not the Developer knew of or participated in such Transfer.

Section 10.4 Permitted Transfers. Notwithstanding the provisions of Section 10.3, the following Transfers shall be permitted (subject to satisfaction of the conditions of Section 10.5), so long as such Transfer is permitted under, and accomplished in accordance with this Agreement:

(a) Any Transfer creating a Security Financing Interest (defined in Section 11.1).

(b) Any Transfer directly resulting from the foreclosure of a Security Financing Interest or the granting of a deed in lieu of foreclosure of a Security Financing Interest.

(c) Any Transfer resulting directly from the death or mental incapacity of an individual.

(d) The conveyance or dedication of a portion of the Property to any public entity, including a public utility, required to allow for the development of the Improvements.

(e) The granting of temporary or permanent easements or permits to facilitate development of the Project.

(f) A Transfer to an Affiliate of Developer, provided that such Transfer does not result in a change of Control.

(g) A Transfer otherwise approved by the City.

(h) A Transfer permitted under Article 1 of this Agreement.

As a condition of the City approval of a Transfer described in Section 10.4(f),10.4(g), and 10.4(h) above, the transferee must concurrently assume the obligations of the Developer under this Agreement. As a condition of the City's approval of a Transfer described in Section 10.4(f), the City must review and approve the transferee's organizational documents for the purposes of determining that such transferee is controlled by the Developer.

Section 10.5 Effectuation of Permitted Transfers.

(a) Other than as permitted in Section 10.4, no Transfer of a direct interest in this Agreement shall be permitted unless, at the time of the Transfer, the person or entity to which such Transfer is made, by an agreement reasonably satisfactory to the City and in form recordable among the land records, expressly agrees to perform and observe, from and after the date of the Transfer, the obligations, terms and conditions of this Agreement; provided, however, that no such transferee shall be liable for the failure of its predecessor to perform any such obligation. The City shall grant or deny approval of a proposed Transfer within sixty (60) days of receipt by the City of the Developer's request for approval of a Transfer, which request shall include evidence of the proposed transferee's business expertise and financial capacity. Subject to the provisions of Section 10.5 of this Agreement, failure by the City to approve or disapprove the proposed Transfer within sixty (60) days after receipt of the Developer's written request shall be deemed to be approval of the proposed Transfer by the City.

(b) Any assignment of rights and/or delegation of obligations under this Agreement in connection with a Transfer of a direct interest in this Agreement (whether or not the City approval is required) shall be in writing executed by Developer and the assignee or transferee, which written agreement shall name the City as an express third party beneficiary with respect to such agreement (the "Assumption Agreement") with a copy thereof delivered to the City within thirty (30) days after the effective date thereof. Upon Transfer of a direct interest in this Agreement pursuant to an Assumption Agreement, the assignor shall be relieved of liability with respect to any such obligations relating to the Project accruing from and after the date of such assignment or transfer. Notwithstanding the foregoing, unless such assignee

specifically assumes pursuant to the Assumption Agreement the obligations under this Agreement to indemnify the City with respect to the Project, the assignor will retain such obligations and remain jointly and severally liable for such indemnity obligations with such assignee; however, in the event of such an assumption of the indemnification obligation, Developer shall be released from all liability under such indemnity obligations.

(c) Notwithstanding the foregoing, the City and Developer acknowledge agree that, in accordance with Section 1.2 above, this Agreement and the rights and obligations hereunder shall be partially assigned to Housing South Developer upon the conveyance of the Housing Parcel South. The partial assignment shall be in writing, executed by the City, Developer and Housing South Developer, and shall include a partial assignment of all rights and obligations applicable to the Housing South Parcel hereunder (and under any other documents contemplated by this Agreement, including but not limited to the indemnity and cooperation agreement contemplated in Section 6.2) as well as language whereby City shall acknowledge and agree that there shall be no cross defaults under this Agreement between the Housing South Project and the Housing North Project.

ARTICLE 11. SECURITY FINANCING AND RIGHTS OF HOLDERS

Section 11.1 No Encumbrances Except for Development Purposes. Prior to the City's issuance of a Certificate of Occupancy, mortgages, deeds of trust, assignment of rents and security agreements, and other real property security instruments to secure the funds necessary for the construction and permanent financing of the Improvements as shown in the Financing Plan are permitted to be placed upon the Property only as permitted pursuant to this Section 12.1. Such permitted security instruments and related interests shall be referred to as "Security Financing Interests". The Developer shall promptly notify the City of any Security Financing Interest that has been or will be created or attached to Developer's fee interest in the Property.

Until the Developer is entitled to issuance of a Certificate of Occupancy, the Developer may place mortgages, deeds of trust, or other reasonable methods of security on Developer's fee interest in the Property only for the purpose of securing acquisition of the fee interest and for predevelopment, construction and permanent financing approved by the City as part of the approved Financing Plan. City hereby acknowledges and agrees that Developer intends to obtain a predevelopment loan from the County of Alameda and that in the event such loan is obtained, the County may secure such loan with a deed of trust and regulatory agreement recorded against the Property, and which time such instruments will be deemed "Security Financing Interests" hereunder.

Section 11.2 Holder Not Obligated to Construct. The holder of any Security Financing Interest authorized by this Agreement is not obligated to construct or complete any improvements or to guarantee such construction or completion. However, nothing in this Agreement shall be deemed to permit or authorize any such holder to devote the Property or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

Section 11.3 Notice of Default and Right to Cure. Whenever the City pursuant to its rights set forth in Article 12 delivers any notice to the Developer of the occurrence of a

Developer Event of Default (a "Cure Notice"), the City shall not exercise any remedy available to it unless and until each of the following have occurred: (a) written notice of the Developer Event of Default is provided to each and every then-existing holder of record of any Security Financing Interest (each an "Encumbrance Holder") that has notified the City in writing of (i) its interest in receiving such a notice, and (ii) its address for the receipt of such notice; and (b) such Developer Event of Default remains uncured after the expiration of the applicable cure period set forth in Section 12.3. The Cure Notice shall be sent simultaneously with any similar notice or notices of a Developer Event of Default that the City may be required to provide to Developer pursuant to Article 12. An Encumbrance Holder shall have the right and the power to cure any Developer Event of Default specified in a Cure Notice within the cure periods set forth in Section 12.3 below, and, if such Developer Event of Default is so cured, this Agreement shall remain in full force and effect. Nothing contained in this Agreement shall be deemed to permit or authorize such Encumbrance Holder to undertake or continue the construction or completion of the Improvements (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed in writing the Developer's obligations to the City under this Agreement. The Encumbrance Holder in that event must agree to complete, in the manner provided in this Agreement, the construction of the Improvements. Any such Encumbrance Holder properly completing construction of the Improvements pursuant to this section shall assume all rights and obligations of Developer under this Agreement and shall be entitled, upon written request made to the City, to a Certificate of Occupancy from the City.

Section 11.4 Cure of Developer Defaults. Developer Events of Default may be cured by any Encumbrance Holder in the following manner within the following time frames:

(a) For all Developer Events of Default, an Encumbrance Holder shall have (a) thirty (30) days after the later of (i) its receipt of the earliest Cure Notice issued by the City to such Encumbrance Holder setting forth such Developer Event of Default, or (ii) expiration of the applicable Cure Period set forth in Article 12 to cure such Developer Event of Default if such Developer Event of Default can reasonably be cured by an Encumbrance Holder within such thirty (30)-day period; or (b) if an Encumbrance Holder has promptly commenced to cure such Developer Event of Default within such applicable period and has been diligently prosecuting the same, but such Developer Event of Default cannot reasonably be cured by such Encumbrance Holder within such applicable period, then such Encumbrance Holder shall be provided with such additional time as is necessary to complete the cure, provided such Encumbrance Holder continues to diligently pursue such cure to completion.

(b) If a Developer Event of Default cannot practicably be cured by an Encumbrance Holder without the need for such Encumbrance Holder to obtain possession of the Property (for example, by foreclosure of a Security Financing Interest), or if a Developer Event of Default cannot be cured by an Encumbrance Holder (for example, the insolvency of Developer), then, in each case, if at least one Encumbrance Holder has delivered to the City within thirty (30) days after its receipt of an Cure Notice a written undertaking wherein such Encumbrance Holder agrees (1) that it will commence foreclosure proceedings forthwith, and (2) will cure or obtain an agreement from the Foreclosure Transferee that such Foreclosure Transferee will cure such Developer Event of Default (to the extent that it can be cured), upon

completion of the foreclosure and the resultant Foreclosure Transfer, and if thereafter any such Encumbrance Holder actually commences foreclosure proceedings and prosecutes the same thereafter with due diligence, then the cure period shall not commence until completion of such foreclosure proceedings and the resultant Foreclosure Transfer; provided, that if said Encumbrance Holder is prevented from commencing or continuing foreclosure proceedings by any bankruptcy stay, or any order, judgment or decree of any court or regulatory body of competent jurisdiction, and said Encumbrance Holder diligently seeks release from or reversal of such stay, order, judgment or decree, then the cure period shall not commence until such stay, order, judgment or decree is released or reversed, and such foreclosure proceedings and the resultant Foreclosure Transfer are thereafter actually commenced and prosecuted thereafter with due diligence to completion. Upon completion of any such Foreclosure Transfer, the Foreclosure Transferee (whether such Foreclosure Transferee is the Encumbrance Holder or another party) shall have until the expiration of the applicable cure periods set forth in this Section 11.4 to cure the Developer Event of Default giving rise to such Foreclosure Transfer, to the extent curable by such Foreclosure Transferee (unless such Developer Event of Default has already been cured), and any other Developer Events of Default that may then exist and be curable by such Foreclosure Transferee. The Encumbrance Holder shall have the right to terminate its foreclosure proceedings hereunder in the event of a cure of a Developer Event of Default giving rise to such foreclosure proceedings.

As used herein, a "Foreclosure Transfer" shall mean any transfer of the entire fee interest of Developer in the Property pursuant to any judicial or non-judicial foreclosure or other enforcement of remedies under or with respect to a Security Financing Interest, or by voluntary deed or other transfer in lieu thereof. A "Foreclosure Transferee" shall mean any transferee (including without limitation an Encumbrance Holder) which acquires title to the fee interest of Developer in the Property pursuant to a Foreclosure Transfer.

Section 11.5 Failure of Holder to Complete Development. Subject to Section 11.4(b), in any case where six (6) months after default by the Developer in completion of construction of the Improvements under this Agreement, the holder of record of any Security Financing Interest, having first exercised its option to construct, has not proceeded diligently with construction, the City shall be afforded those rights against such holder it would otherwise have against the Developer under this Agreement.

Section 11.6 Right of City to Cure. In the event of a default or breach by the Developer of a Security Financing Interest prior to the completion of construction of the Improvements, and if the holder has not exercised its option to complete the construction of the Improvements, the City may, upon prior written notice to the Developer, cure the default, prior to the completion of any foreclosure. In such event the City shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the City in curing the default. The City shall also be entitled to a lien upon the Developer's fee interest in the Property to the extent of such costs and disbursements. The City agrees that such lien shall be subordinate to any Security Financing Interest, and the City shall execute from time to time any and all documentation reasonably requested by the Developer to effect such subordination.

Section 11.7 Right of City to Satisfy Other Liens. After the Close of Escrow and after the Developer has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on the Property, or any portion thereof, which is not permitted under this Agreement, and has failed to do so, in whole or in part, the City shall, upon at least ten (10) days' prior written notice to the Developer, have the right to satisfy any such lien or encumbrances; provided, however that nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount thereof and so long as such delay in payment shall not subject the Property or any portion thereof to forfeiture or sale.

Section 11.8 Holder to be Notified. To the extent deemed necessary by the City, the Developer shall insert each term contained in this Article 11 into each Security Financing Interest or shall procure acknowledgement of such terms by each prospective holder of a Security Financing Interest prior to its coming into any security right or interest in the Property or portion thereof.

Section 11.9 Modifications. If a holder of a Security Financing Interest should, as a condition of providing financing or funding for development of all or a portion of the Improvements, request any modification of this Agreement in order to protect its interests in the Project or this Agreement, the City shall consider such request in good faith consistent with the purpose and intent of this Agreement and the rights and obligations of the parties under this Agreement.

ARTICLE 12. DEFAULT AND REMEDIES

Section 12.1 Application of Remedies. The provisions of this Article shall govern the Parties' remedies for breach of this Agreement.

Section 12.2 Fault of City.

(a) Event of Default. Following notice and cure as set forth in subsection (b) below, each of the following events constitutes a "City Event of Default" and a basis for the Developer to take action against City:

(1) The City fails to convey a fee interest in the Property as provided in this Agreement and the Developer is otherwise entitled by this Agreement to such conveyance.

(2) The City breaches any other material provision of this Agreement.

(b) Notice and Cure Procedure; Remedies. Upon the occurrence of any of the above-described events, the Developer shall first notify the City in writing of its purported breach or failure, giving the City thirty (30) days from receipt of such notice to cure such breach

or failure. In the event the City does not then cure the default within such thirty (30)-day period (or, if the default is not reasonably susceptible of cure within such thirty (30)-day period, the City fails to commence the cure within such period and thereafter to prosecute the cure diligently to completion), then the Developer shall be entitled to any rights afforded it in law or in equity by pursuing any or all of the following remedies: (1) terminating this Agreement by written notice to the City; (2) prosecuting an action for damages (excluding punitive damages and consequential damages); or (3) seeking specific performance or any other remedy available at law or in equity (excluding punitive damages and consequential damages).

Section 12.3 Fault of Developer.

(a) Event of Default. Following notice and cure as set forth in subsection (b) below, each of the following events constitutes a "Developer Event of Default" and a basis for the City to take action against the Developer:

(1) The Developer does not attempt diligently and in good faith to cause satisfaction of all conditions in Article 4 within the reasonable control of the Developer by the time set forth in the Schedule of Performance.

(2) The Developer fails to construct the Improvements in the manner and by the deadline set forth in Article 8 and the Schedule of Performance.

(3) The Developer breaches any provision of Article 7.

(4) The Developer attempts or completes a Transfer except as permitted under Article 10.

(5) The Developer's: (1) filing for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or ninety (90) days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or ninety (90) days after the filing; (4) insolvency; or (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

(6) The Developer defaults under any Security Financing Interest and has not cured such default within the applicable cure period contained in such agreement.

(7) The Developer breaches any other material provision of this Agreement.

(b) Notice and Cure Procedure. Upon the happening of any of the above-described events the City shall first notify the Developer in writing of its purported breach or failure, giving the Developer thirty (30) days from receipt of such notice to cure such breach or failure. If the Developer does not cure the default within such thirty (30)-day period (or if the

default is not reasonably susceptible of being cured within such thirty (30)-day period, the Developer fails to commence the cure within such period and thereafter to prosecute the cure diligently to completion), then the City shall be afforded all of its rights at law or in equity by taking any or all of the following remedies: (1) terminating this Agreement by written notice to the Developer; (2) prosecuting an action for damages (excluding, punitive damages and consequential damages); or (3) seeking specific performance or any other remedy available at law or in equity (excluding punitive damages and consequential damages). If the City elects to terminate this Agreement, the provisions of this Agreement that are specified to survive such termination shall remain in full force and effect. Any investor limited partner of Developer's assignee shall have the same notice and cure rights granted to Developer, and any cure tendered by such investor shall be accepted or rejected on the same basis as if tendered by Developer.

Section 12.4 Right of Reverter. Following the Close of Escrow of the Undivided Parcel, (1) if the Developer fails to commence the pre-construction activities or construction of the Improvements by the dates listed in the Schedule of Performance (as such dates may be extended), or (2) if the City does not prevail in the Litigation; then the City may, in addition to other rights granted in this Agreement, re-enter and take possession of the Undivided Parcel or Property as the case may be with all improvements thereon, and revest in the City the estate previously conveyed to the Developer by the City with respect to the Undivided Parcel subject to the provisions set forth below.

The City's rights under this Section 12.4 shall terminate and be of no further force and effect once the Developer closes on construction financing for the first phase of the Project.

The interest created pursuant to this Section 12.4 shall be a "Power of Termination" as defined in California Civil Code Section 885.010. The City's Power of Termination shall be subordinate and subject to and be limited by and shall not defeat, render invalid, or limit:

(a) Any Security Financing Instrument with respect to the Undivided Parcel or Property; or

(b) Any rights or interests provided in this Agreement for the protection of the holder of a Security Financing Interest with respect to the Undivided Parcel or Property.

(c) Any leases affecting the Undivided Parcel or Property as of the date of such termination.

Upon revesting in the City of title to the Undivided Parcel as provided in this Section 12.4, the City shall, pursuant to its responsibilities under state law, use its best efforts to resell the Undivided Parcel as soon as possible, in a commercially reasonable manner and consistent with the objectives of such law, to a qualified and responsible party or parties (as reasonably determined by the City) who will assume the obligation of making or completing such improvements as are acceptable to the City in accordance with the uses specified for the Property and in a manner satisfactory to the City. In addition, upon revesting in the City of title to the Undivided Parcel as provided in this Section 12.4, the Predevelopment Loan and Site Acquisition Loan shall be deemed paid in full and cancelled. It is anticipated that the sale of the

Undivided Parcel to a new buyer would be on substantially the same terms and that the payment price would be paid in in the form of an Acquisition Loan from the City evidence by a Seller Take Back Note and Deed of Trust.

If this clause is triggered because the City did not prevail in Litigation, the City shall reimburse Developer for actual costs incurred and paid as a result of its ownership of the Undivided Parcel, and not already reimbursed through the Lease Back provisions.

The rights established in this Section 12.4 are to be interpreted in light of the fact that the City will convey the Undivided Parcel to the Developer for development of the Project and not for speculation.

Section 12.5 Damages. This Agreement does not and shall not be interpreted in any manner to restrict, limit, or otherwise impair the City's governmental power. Developer acknowledges that the City's execution of this Agreement in no way limits the City's discretion in the permit and approval process in connection with development of the Project. Likewise, Developer acknowledges that the City's execution of this Agreement cannot and does not limit the City's ability to exercise its legislative authority.

City acknowledges the exercise of its legislative authority for a land use action, such as but not limited to a General Plan Amendment, Specific Plan Amendment, or zoning action (collectively, a "Land Use Action") that prevents the Project from being developed does not constitute a compensable taking absent extraordinary circumstances. Examples of extraordinary circumstances that could subject the City to a taking without payment of compensation include, but are not limited to, eliminating all value from the property, the denial of due process, and reclassifying the property in a manner to prevent its improvement so that it might be acquired at a lesser price.

The City acknowledges that Developer has expended significant resources to develop the Project that could have been used to develop affordable housing elsewhere and that could be lost, and obtained grant and/or loan funding that would need to be repaid, if the City subsequently exercises its legislative authority for a Land Use Action that prevents the Project from being developed. The City and Developer agree that they would be able to quantify the losses equal to the grant and/or loan funding that would need to be repaid should a Land Use Action by the City prevent the Project from being developed. The City and Developer also agree that quantifying the scope of the economic and noneconomic losses arising from a Land Use Action that prevents the Project from being developed is inherently difficult insofar as the action results in the loss of affordable housing opportunities, negatively impacts Developer's reputation, and cannot adequately capture the soft costs expended on the Project.

The City and Developer agree and stipulate that the repayment of Project grant and/or loan funds already expended for the Project that are not available for repayment and the agreed upon sum of $2,300,000 is a reasonable measure of the damages based upon their experience in the affordable housing industry and given the nature of the losses that may result from a Land Use Action that prevents the Project from being developed.

Therefore, in the event the City exercises is legislative authority for a Land Use Action that prevents the Project from being developed, then the City shall pay damages to Developer as follows:

(1) An amount equal to the grant and/or loan funds that were expended by Developer prior to the date of that Land Use Action that is not available for repayment in the event the awarding/loaning agency demands Developer repay the expended funds; and

(2) The stipulated amount of $2,300,000 for the losses that cannot be quantified.

The City and Developer further agree that these agreed upon sums are not penalties, and further agree that they are a reasonable measure of Developer's damages given the nature of the losses that may result from a Land Use Action by the City that prevents the Project from being developed.

This provision shall not apply in the event Developer or its successor applies to the City for a new Land Use Action for the Project site or for a different Project. The parties further agree that this provision shall not apply in the event an action by Developer, its successor, a court of competent jurisdiction, or the State of California prevents the Project from being developed.

Section 12.6 Rights and Remedies Cumulative. Except as otherwise provided, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise any right or remedy shall not preclude the exercise, at the same time or different times, of any right or remedy for the same default or any other default.

Section 12.7 Survival. Upon termination of this Agreement under this Article 12, the following provisions of this Agreement shall survive: 5.9, 5.12, 8.4, 8.5, and 9.4, 9.5, 11.1, 13.3. This Section 12.7 exists for reference purposes only, and does not alter the scope or nature of the surviving provisions.

ARTICLE 13. GENERAL PROVISIONS

Section 13.1 Identity of Developer. The Developer represents and warrants to the City as of the Effective Date and as of the Close of Escrow, as follows:

(a) Organization. The Developer is a California limited partnership duly organized, validly existing and in good standing under the laws of the State of California with full power and authority to conduct its business as presently conducted and to execute, deliver and perform its obligations under this Agreement.

(b) Authorization. The Developer has taken all necessary action to authorize its execution, delivery and, subject to any conditions set forth in this Agreement performance of

the Agreement. Upon the Effective Date of this Agreement, this Agreement shall constitute a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms.

(c) No Conflict. The execution, delivery and performance of this Agreement by the Developer does not and will not conflict with, or constitute a violation or breach of, or constitute a default under (i) the charter or incorporation documents of the Developer, (ii) any applicable law, rule or regulation binding upon or applicable to the Developer, or (iii) any material agreements to which the Developer is a party.

(d) No Litigation. Aside from the Litigation and unless otherwise disclosed in writing to the City prior to the date of this Agreement, there is no existing or, to the Developer's actual knowledge, pending or threatened litigation, suit, action or proceeding before any court or administrative agency affecting the Developer or the Undivided Parcel that would, if adversely determined, materially and adversely affect the Developer or the Undivided Parcel or the Developer's ability to perform its obligations under this Agreement or to develop and operate the Project.

(e) No Material Adverse Change. There has been no material adverse change in the financial condition of the Developer since the Effective Date.

(f) Default Under Other Agreements. There is no event, act or omission which constitute, or but for the passage of time or the giving of notice, or both, would constitute a breach, violation or default under any agreement materially related to the development or operation of the Project, including but not limited any other partnership agreement, joint venture agreement, or loan agreement.

Until the Close of Escrow, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in Section 13.1 not to be true, immediately give written notice of such fact or condition to the City. Upon the Developer's Transfer prior to the Close of Escrow, the Developer shall cause the Developer's assignee to update the representations and warranties set forth above.

Section 13.2 Notices, Demands and Communications. Formal notices, demands, submittals and communications between the City and the Developer shall be sufficiently given if, and shall not be deemed given unless, delivered personally, or dispatched by certified mail, return receipt requested, or by reputable overnight delivery service with a receipt showing date of delivery, to the principal offices of the City and the Developer as follows:

City:	City of Livermore Attn: City Manager 1052 S. Livermore Avenue Livermore CA 94550
Developer	DTLM, L.P.

C/o Eden Housing, Inc.
22645 Grand Avenue
Hayward, CA 94541
Attn: Sr. VP of Development
KLeichner@edenhousing.org
Jeremy.Hoffman@edenhousing.org
Matt.Graves@edenhousing.org

with copies to:

Gubb & Barshay LLP
505 14th Street, Suite 450
Oakland, CA 94612
Attn: Evan Gross

Notices to Developer shall be sent by electronic mail in addition to other means of communication described above. Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section 13.2. Delivery shall be deemed to have occurred at the time indicated on the receipt for delivery or refusal of delivery.

Section 13.3 Non-Liability of Officials, Employees and Agents. No member, official, employee, consultant, counsel, or agent of a Party shall be personally liable to the other Party, or any successor in interest to the other Party, in the event of any default or breach or for any amount or on any obligation under the terms of this Agreement.

Section 13.4 Enforced Delay. In addition to specific provisions of this Agreement, performance by any Party hereunder shall not be deemed to be in default where delays or defaults are due any of the following items that constitute Force Majeure for purposes of this Agreement: war; insurrection; strikes; lock-outs; 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 (except for restrictions or priorities established by the Party required to perform the action required under this Agreement); unusually severe weather; inability to secure necessary labor, materials or tools; acts or the failure to act of any public or governmental agency or entity (except that acts or the failure to act of a Party shall not excuse performance by such Party, including without limitation the Developer's inability to obtain financing for the Project or the economic infeasibility of the Project).An extension of time for Force Majeure shall only be for the period of the enforced delay, which period shall commence to run from the time of the notification of the delay by the Party requesting the extension to the other Party. The Party requesting an extension of time under this Section 13.4 shall give notice promptly following knowledge of the delay to the other Party. If, however, notice by the Party claiming such extension is sent to the other Party more than thirty (30) days after knowledge of the commencement of the delay, the period shall commence to run upon the earlier of (i) thirty (30) days prior to the giving of such notice or (ii) the date that the other Party received knowledge of the events giving rise to the delay.

Section 13.5 Intentionally Omitted.

Section 13.6 Inspection of Books and Records. The City has the right at all reasonable times and upon five (5) business days prior written notice to inspect the books, records and all other documentation of the Developer pertaining to its obligations under this Agreement.

Section 13.7 Title of Parts and Sections. Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of its provision. References to "Articles" and "Sections" are to sections of this Agreement, unless otherwise specifically provided.

Section 13.8 Applicable Law. This Agreement shall be interpreted under and pursuant to the laws of the State of California.

Section 13.9 Severability. If any term, provision, covenant or condition of this Agreement is held in a final disposition by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 13.10 Legal Actions. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, each Party shall bear their own attorneys' fees and no attorneys' fees may be awarded to the Party prevailing in the action.

Section 13.11 Binding Upon Successors; Covenants to Run With Land. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, and assigns of each of the Parties; provided, however, that there shall be no Transfer except as permitted in Section 10.4. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor, successor, or assign of such Party who has acquired an interest in compliance with the terms of this Agreement or under law.

The terms of this Agreement shall run with the land, and shall bind all successors in title to the Property until the termination of this Agreement, except that the provisions of this Agreement that are specified to survive termination of this Agreement shall run with the land in perpetuity and remain in full force and effect following such termination. Every contract, deed, or other instrument hereafter executed covering or conveying the Undivided Parcel, or any portion thereof, shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the City expressly releases the Undivided Parcel, or the applicable portion of the Undivided Parcel, from the requirements of this Agreement.

Section 13.12 Parties Not Co-Venturers. Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.

Section 13.13 Entire Understanding of the Parties. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the conveyance of the Undivided

Parcel and the development of the Project. This Agreement supersedes the Disposition, Development and Loan Agreement dated November 11, 2018, as it was amended on May 16, 2021, but this agreement is also intended to fulfill and complete those agreements. In the event a court of competent jurisdiction determines that Government Code section 54234 prevents the sale and disposition of the Undivided Parcel or that a decision by the California Department of Housing and Community Development should prevent the sale and disposition of the Undivided Parcel, the Parties hereby express their intent that either of those situations will work to automatically revive the Development and Loan Agreement dated November 11, 2018, as it was amended on May 16, 2018, which may then be reinstated by the Parties in their collective discretion.

Section 13.14 Counterparts. This Agreement may be executed in counterparts and multiple originals.

Section 13.15 Amendments. The Parties can amend this Agreement only by means of a writing signed by both Parties.

Section 13.16 Recordation of Memo of DDLA. The Parties consents to the recordation of the memorandum of this Agreement, in the form attached as Exhibit K in the Official Records against Developer's interest in the Property.

Section 13.17 Standard of Approval. Any consents or approvals required or permitted under this Agreement shall not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies.

Section 13.18 Effectiveness of Agreement. This Agreement is dated for convenience only and shall only become effective on the Effective Date.

Section 13.19 Delegation of Authority to City Manager. This Agreement may be amended from time to time as the Parties find is necessary. The City Manager shall have the authority to make minor amendments to effectuate the intent of this Agreement. Upon approval of this Agreement by the City Council, the City Manager shall also have the authority to execute the final documents and agreements referenced in this Agreement and other related documents to implement the intent and terms of this Agreement, as well as the specific delegations of authority set forth herein as approved by the City Council's resolution approving this Agreement.

EXHIBIT A

WHEREFORE, the Parties have executed this Agreement as of the date first above written.

City:
City of Livermore, a municipal corporation

By: _____
Marc Roberts
Its: City Manager

Date: _____

APPROVED AS TO FORM

By: _____
Assistant City Attorney

DEVELOPER:

By: Eden Housing, Inc.,
a California nonprofit public benefit corporation,
its manager

By: _____
Name: Andrea Osgood
Title: Senior Vice President of Real Estate Development

EXHIBIT A

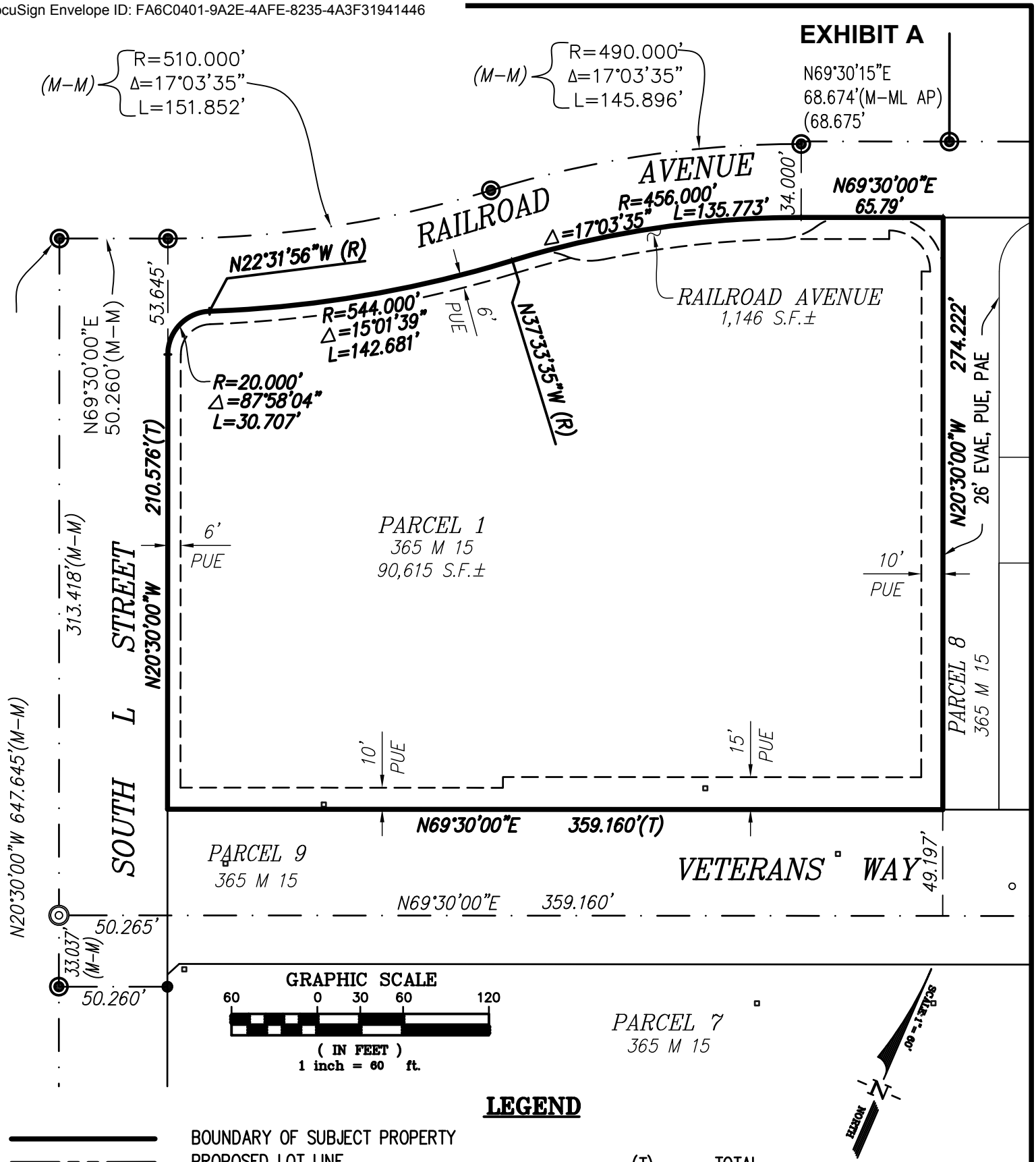
LEGAL DESCRIPTION UNDIVIDED PARCEL

REAL PROPERTY SITUATED IN THE CITY OF LIVERMORE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL 1 OF TRACT MAP NO. 8574, RECORDED DECEMBER 23, 2020, IN BOOK 365 OF MAPS AT PAGES 15-19, ALAMEDA COUNTY RECORDS.

CONTAINING 90,615 SQUARE FEET OF LAND MORE OR LESS

APN: 098-0289-22



LEGEND

	BOUNDARY OF SUBJECT PROPERTY
	PROPOSED LOT LINE
	RIGHT OF WAY LINE
	MONUMENT LINE
	EXISTING PUBLIC UTILITY EASEMENT (PUE)
	ADJOINER LOT LINE
◉	1/4" PIN WITH CUT CROSS IN CONC. MONUMENT WELL

(T)	TOTAL
(M-CL)	MONUMENT TO CENTERLINE
(CL-CL)	CENTERLINE TO CENTERLINE
(ML-ML)	MONUMENT LINE TO MONUMENT LINE
S.F.	SQUARE FEET
±	MORE OR LESS

EXHIBIT A

PLAT TO ACCOMPANY LEGAL DESCRIPTION

Exhibit B

Project Objectives

The Property shall be developed as multi-family affordable rental housing with up to 130 units. The Project was approved by City Council for entitlement May 24, 2021 and as part of the design and development of the Improvements, the Project shall make way for and accommodate the development of an open green/publicly accessible City-owned park space and pedestrian access path (Veterans Park) as generally depicted in the approved Downtown Concept Plan and described in the Downtown Core Landscape Design Guidelines.

Parties have satisfied through the Project entitlements, completion of environmental studies and as described herein the DDLA, the following elements:

- Configuration of the Property and potential Property subdivision
- Environmental Condition of the Property at Transfer
- Developer's contribution to the Downtown Landscape Maintenance District LL-859
- Design elements, which shall be consistent with zoning and downtown specific plan requirements.
- Integration with adjacent planned uses including, Stockman's Park, a Science and Society Center, Black Box Theater, and Veterans Park.
- Parking accommodations on the site
- A housing selection process to give application preferences for renting to local workers, including teachers, emergency responders (including emergency medical response), employees of businesses downtown, and professional artists as permitted by federal law.
- Unit sizes and mix of unit types
- Affordability levels, which shall, at a minimum, satisfy the restrictions in the First Amendment to a Notice of Affordability Restrictions on Transfer of Property and Declaration of Restrictive Covenants, recorded in the Official Records of Alameda County, document number 2018227103

Parties shall negotiate in good faith to finalize the following additional Project elements:

- A plan for ongoing operations and maintenance of the Improvements
- Financing of the Improvements

EXHIBIT C **EXHIBIT A**

Schedule of Performance

#	Milestone	Due Date/Completion Date
Pre-Development		
1	Insurance Requirements Fulfilled	Completed
2	Organization Documents	Completed
3	Complete Site Due Diligence	Completed
4	Obtain Planning Approval/Development Entitlements	Completed
5	Preliminary Pro Forma	Completed
6	Appraisal	Completed
7	Predevelopment Loan	Completed
Prior to Close of Escrow on Undivided Parcel		
8	Final approved Regulatory Agreement and Prommissory Note For A&R DDLA	23-May-22
9	CC Approval of Amended and Restated DDLA	23-May-22
10	Federal Environmental Review and Clearance	22-Jul-22
11	Submit Application for Minor Amendment to Tentative Map	1-Jun-22
Close of Escrow on Undivided Parcel		30-Sep-22
Pre-Construction		
12	Financing Commitments	2 years post-litigation
13	Final Pro Forma	2 years post-litigation
14	Developer Submit Draft Final Map and Public Improvement Plans for review	2 years, 3 months post-litigation
15	Developer Submit draft Building Permit Plans for review	2 years, 3 months post-litigation
16	City Council Approval of Final Parcel Map, including acceptance of Veterans Park Parcel, Subdivision Improvement Agreement, & Public Improvement Plans	5 months post submittal (line 14)
17	Developer Dedicates Veterans Park Parcel to City via Final Map	On or before first phase construction financing closing
18	Close of Escrow on all Construction Financing	2 years + 194 days post-litigation
Commence Construction Phases 1 & 2		Within 60 days of City Issuance of Final Building Permit Plans for each phase
Complete Constructions Phases 1 & 2		3 years post commencement of each phase

EXHIBIT D

(INTENTIONALLY OMITTED)

EXHIBIT E **EXHIBIT A**

NOTICE TO BORROWER:

THIS DOCUMENT CONTAINS PROVISIONS
RESTRICTING RESALE AND ASSUMPTIONS

PROMISSORY NOTE

Downtown Housing Predevelopment Loan

Principal Amount: $500,000

November
~~September~~ 27, 2018
Portion of APN 098-0289-021-00

FOR VALUE RECEIVED, the undersigned Eden Housing, Inc. a California nonprofit public benefit corporation ("Borrower") whose address is 22645 Grand Street, Hayward California 94541, hereby promise(s) to pay to the order of the City of Livermore, a municipal corporation ("City"), at 1052 South Livermore Avenue, Livermore, California 94550, the principal amount of [FIVE HUNDRED THOUSAND Dollars ($500,000)], together with interest accrued thereon, as set forth in this Promissory Note ("Note").

Pursuant to that certain Disposition, Development and Loan Agreement ("DDLA") dated November ~~September~~ 27, 2018 by and between City and Borrower (the "Developer"), the Developer agreed to prepare a development plan for 130 units of affordable workforce housing (the "Project") on the Property (defined below).

In accordance with the DDLA, the property is a portion of APN 098-0289-021-00 located approximately at Railroad Avenue and L Street in the City of Livermore, Alameda County, California as depicted in Exhibit A attached hereto (the "Property").

In accordance with the DDLA, the Borrower intends to purchase, develop, own and operate the Project on the Property. Pursuant to the DDLA, the City has made an predevelopment loan to Borrower in the original principal amount of [FIVE HUNDRED THOUSAND] Dollars ($500,000) (the "Predevelopment Loan") to fund certain predevelopment costs associated with the proposed Project.

This Note is made and delivered pursuant to and in conjunction with the DDLA entered into by and between the City and Borrower dated as of even date herewith. All capitalized terms not otherwise defined in this Note shall have the meanings set forth in the DDLA.

1. Borrower's Obligation. This Note evidences the Borrower's obligation to pay the City the Principal Amount, as that term is subsequently defined, loaned to the Borrower by the City to finance Project predevelopment costs, as set forth in the DDLA. As a condition of receiving the Principal Amount, the Borrower promises and agrees to comply will all terms and conditions of this Note.

2. Principal. The principal amount of this Note, $500,000 ("Principal Amount"), loaned to the Borrower by the City to finance Project predevelopment costs, as set forth in the DDLA.

3. Interest. The Note shall bear simple interest at three percent (3%) annual interest as of the date of this Note.

4. Term. The entire indebtedness evidenced by this Note shall be repaid to the City by no later than the date that is the earlier of: (i) fifty-five (55) years from the date the Project's financing converts to permanent financing, or (ii) the sixtieth (60th) anniversary of the date hereof (the "Maturity Date"); unless otherwise terminated for infeasibility in accordance with Section 3.1(e) of the DDLA.

5. Repayment. The Borrower shall make payments towards principal and accrued interest due on the Predevelopment Loan from residual receipts pari passu with other City financing as described in the DDLA during the Term of this Note. This Note becomes due and payable in full on (a) the date the Property is sold or transferred in a manner which is ineligible under the terms of the DDLA, or (b) an Event of Default by Borrower which has not been cured as provided for in this Agreement, but in any event (c) no later than the Maturity Date. Any payments made by Borrower pursuant to this section shall be applied first to current annual interest due, and then to reduce the principal amount of the Predevelopment Loan. All payments by the Borrower shall be paid to the City in currency of the United States of America, which at the time of the payment is lawful for the payment of public and private debts.

All payments on this Note shall be made payable to the City of Livermore, and shall be delivered to the City at 1052 South Livermore Avenue, Livermore, California, 94550, or to such other place as the City may from time-to-time designate.

All payments on this Note shall be without expense to the City, and the Borrower agrees to pay all costs and expenses incurred in connection with the payment.

5.1 Annual Payments from Surplus Cash. By not later than July 1 of each year, Borrower shall pay to City fifty percent (50%) of Surplus Cash split pro rata with all other soft lenders approved by the City, generated by the Property during the previous calendar year to reduce the indebtedness owed under this Note.

By not later than June 1 of each year, Borrower shall provide to City Borrower's calculation of Surplus Cash for the previous calendar year, accompanied by such supporting documentation as City may reasonably request to substantiate Borrower's calculation of Surplus Cash. City shall have the right to inspect and audit Borrower's books and records concerning the calculation of Surplus Cash, and to object within ninety (90) days from receipt of Borrower's statement. Failure to timely object shall be deemed acceptance. If City does object, City shall specify the reasons for disapproval. Borrower shall have thirty (30) days to reconcile any disapproved item.

No later than November 1 of each year, Borrower shall provide to City a projected budget for the following calendar year which shall include an estimate of Surplus Cash. City will review the proposed budget and, if acceptable, approve it, which approval shall not be unreasonably withheld, provided, however, if the proposed budget has not been rejected by City within 30 days of receipt, City shall be deemed to have accepted the budget. If the budget is not acceptable, City shall specify the reasons for disapproval. Once approved, any changes to the budget that exceed ten percent (10%) of the total budget shall require City's prior written consent, which consent shall not be unreasonably withheld.

5.1.1 "Surplus Cash" shall mean for each calendar year during the term hereof, the amount by which Gross Revenue (defined below) exceeds Annual Operating Expenses

(defined below) for the Property. Surplus Cash shall also include net cash proceeds realized from any refinancing of the Property, less fees and closing costs reasonably incurred in connection with such refinancing, and any City-approved uses of the net cash proceeds of the refinancing.

5.1.2 "Gross Revenue" shall mean for each calendar year during the term hereof, all revenue, income, receipts and other consideration actually received from the operation and leasing of the Property. Gross Revenue shall include, but not be limited to: all rents, fees and charges paid by tenants; Section 8 payments or other rental subsidy payments received for the dwelling units; deposits forfeited by tenants; all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; and the proceeds of casualty insurance not required to be paid to the holders of Approved Senior Loans (provided however, expenditure of such proceeds for repair or restoration of the Property shall be included within Annual Operating Expenses in the year of the expenditure). Gross Revenue shall not include tenant security deposits, loan proceeds, capital contributions or similar advances, or interest earned on restricted reserve accounts.

5.1.3 "Annual Operating Expenses" shall mean for each calendar year during the term hereof, the following costs reasonably and actually incurred for the operation and maintenance of the Property to the extent that they are substantiated by such documentation as City may reasonably require: property taxes and assessments; debt service currently due and payable on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Property) on loans which have been approved in writing by the City and which are secured by deeds of trust senior in priority to the Deed of Trust ("Approved Senior Loans"); property management fees and reimbursements in amounts in accordance with industry standards for similar residential projects and paid pursuant to a property management agreement approved by City; premiums for property damage and liability insurance; utility service costs not paid for directly or indirectly by tenants; maintenance and repair costs; fees for licenses and permits required for the operation of the Property; expenses for security services; advertising and marketing costs; accounting costs; payment of deductibles in connection with casualty insurance claims not paid from reserves; tenant services; the amount of uninsured losses actually replaced, repaired or restored and not paid from reserves; cash deposits into reserves for capital replacements and operating expenses in the amount specified in the Regulatory Agreement or reasonably approved by the City; annual monitoring fees, if any, payable to the City or other public agencies in connection with loans provided for the Property; and other ordinary and reasonable operating expenses approved by City.

5.1.4 Exclusions from Annual Operating Expenses. Annual Operating Expenses shall exclude the following: contributions to Property operating or replacement reserves, except as provided in Section 5.1.3; debt service payments on any loan which is not an Approved Senior Loan, including without limitation, unsecured loans or loans secured by deeds of trust which are subordinate to the Deed of Trust; depreciation, amortization, depletion and other non-cash expenses; expenses paid for with disbursements from any reserve account; any amount paid to Borrower, or any entity controlled by the persons or entities in control of Borrower. Notwithstanding the foregoing limitation regarding payments to Borrower and related parties, the following fees shall be included in Annual Operating Expenses, subject to applicable limitations set forth in Section 5.1.3 above, even if paid to Borrower or an affiliate of Borrower: fees paid to a property management agent, resident

services agent, or social services agent; deferred developer fees; annual asset management fees paid to Borrower's limited partner; an annual partnership management fee paid to Borrower's general partner in an annual amount of up to $25,000 increasing no more than 3% annually; and subject to Section 5.1.5, repayment of cash advances by Borrower to cover Property operating expense deficits or emergency cash needs of the Property. Payments to Borrower or affiliates in excess of the limitations set forth in Section 5.1.3 shall not be counted toward Annual Operating Expenses for the purpose of calculating Surplus Cash.

5.1.5 Adjustments to Annual Operating Expenses. Notwithstanding anything to the contrary set forth herein, for the purpose of calculating Surplus Cash, Annual Operating Expenses shall include the repayment of operating deficit loans provided by Borrower provided however, interest payable on such loans may be included in Annual Operating Expenses only in an amount equivalent to the lesser of (i) interest accrued at the actual interest rate charged for the loan, or (ii) interest accrued at a rate equal to the Applicable Federal Rate.

6. Prepayment. At its option and without any premium or penalty, Borrower may pay all or a portion of the outstanding Principal Amount prior to the amount becoming due. The Borrower may make such prepayments at any time, or from time-to-time, before the prepaid amount is due. All prepayments shall be applied by the City to reduce the amount of the outstanding Principal Amount owed under this Note.

7. Encumbrances. The Borrower shall not encumber the Property, permit the covenancy, transfer, or encumbrance of the Property, allow the placement of any liens, notes or deeds on the Property, or use the Property as security for any note or loan, without the City's prior written approval; provided, however, that the approval of encumbrances consistent with the approved Financing Plan included in the DDLA shall not be unreasonably withheld. Any written approval by the City shall be consistent with the requirements of Section 12 below.

8. Payment Acceleration. The Principal Amount of this Note, together with all accrued interest and other outstanding payments and penalties, shall become immediately due and payable upon the occurrence of any of the following events, each subject to any applicable notice and cure periods:

A. The Borrower fails to use the Property in accordance with the DDLA, Loan Agreement or Regulatory Agreement;

B. The Borrower fails to cure a default consistent with the requirements of Section 9 below;

C. The transfer of the Property or this Note in violation of Section 11, and without the City's written approval consistent with the requirements of Sections 12 and 13 below;

D. The encumbrance of the Property in violation of Section 7, without the City's written approval consistent with the requirements of Sections 7 and 13;

E. Borrower is found to be in Default of the DDLA

9. Default – Notice & Opportunity to Cure. If, in the City's sole discretion, the Borrower fails to observe or perform any condition contained herein, or take diligent action towards the cure or remedy of such event, for a period of sixty (60) days after written notice from the City specifying such failure and requesting that it be cured, such event shall be deemed a default and the City shall be entitled, and in addition to all other remedies provided by law or in equity,

to compel specific performance by the Borrower of its obligations under this Note. Any investor limited partner of Borrower or Borrower's assignee shall have the same notice and cure rights granted to Borrower, and any cure tendered by such investor shall be accepted or rejected on the same basis as if tendered by Borrower.

10. Default Rate. Upon the occurrence of an Event of Default, interest shall automatically be increased without notice to the rate of the lesser of ten percent (10%) per annum or the maximum rate permitted by law (the "Default Rate"); provided however, if any payment due hereunder is not paid when due, the Default Rate shall apply commencing upon the due date for such payment. When Borrower is no longer in default, the Default Rate shall no longer apply, and the interest rate shall once again be the rate specified in the first paragraph of this Note. Notwithstanding the foregoing provisions, if the interest rate charged exceeds the maximum legal rate of interest, the rate shall be the maximum rate permitted by law. The imposition or acceptance of the Default Rate shall in no event constitute a waiver of a default under this Note or prevent City from exercising any of its other rights or remedies.

11. Prohibited Transfers. Except as otherwise permitted by the terms of this Note or the DDLA, the Borrower is prohibited from transferring by sale, lease, trade, exchange, rental, gift, assignment, conveyance, the Property or any part thereof, or any trust or power, or any transfer in any other mode or form, of the Property or any part thereof or any interest therein; provided, however, that the Borrower may transfer any or all of its interest in the Property to a subsidiary or affiliate controlled by Borrower. Notwithstanding anything to the contrary contained herein, this Note shall be assignable and transferable in whole or in part to one or more limited partnerships affiliated with Borrower, so long as any such assignment or other document evidencing such assignment is acceptable to the City. Borrower may transfer limited partner interests to a tax credit investor (the "Investor"), and such Investor may further transfer its limited partner interests, and the Investor may remove Borrower's general partner pursuant to the terms of the Borrower's limited partnership agreement, with the City's consent, which consent will not be unreasonably withheld.

12. Permitted Transfers. Under the following limited circumstances, the City may give its prior written approval for the transfer of the Property: The Property is to be transferred to another qualified developer, as pre-determined by the City, which is a non-profit serving the same mission to provide housing under the DDLA, Loan Agreement and Regulatory Agreement and will assume the Borrower's rights and obligations under the Deed of Trust, this Note, and the DDLA, Loan Agreement and Regulatory Agreement.

13. Prior Written Approval. The City shall not unreasonably withhold its written approval of permitted transfers, encumbrances and refinancing by the Borrower. However, the City may only give written approval of those transfers, encumbrances, and refinancing authorized by this Note. The Borrower must request the City's written approval prior to pursuing any transfer, encumbrance, or refinancing. If not approved, or in violation of this Note, any unapproved transfer, encumbrance, or refinancing shall be null and void and the Borrower must deliver to the City any profits or benefit received from the transaction consistent with the requirements of Section 22.

14. Audit and Inspection. To the extent permissible under laws and regulations protecting individual confidentiality, the City shall have access to, and is hereby authorized by the Borrower to inspect, make copies or photographs of, the Property, books, utility accounts, and records of the Borrower pertaining to this Note and the Borrower's use of the Property.

15. Notices. Any demand or notice which either party desires to deliver to the other, shall be in writing and shall be delivered by hand, sent by a recognized overnight courier, deposited in the United States mail with a first-class prepaid postage and a return receipt requested, to ensure timely and complete delivery to the other party at the addresses noted above.

16. Attorney Fees and Costs. Borrower agrees that if any amounts due under this Note are not paid when due, to pay all costs and expenses of collection and reasonable attorney fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed.

17. Severability. Every provision of this Note is intended to be severable. If any provision is held by a court of competent jurisdiction to be invalid, illegal, and unenforceable, the validity, legality, and enforceability, of the remaining provisions shall not in any way be affected or impaired.

18. Interpretation. The provisions of this Note have been arrived at through negotiation and each party had a full and fair opportunity to revise the provisions and have them reviewed by legal counsel. The parties agree that any ambiguities in construing or interpreting this Note shall not be resolved against either party as the drafting party. In the event of an inconsistency or conflict between the language of this Note and the DDLA, the language of the DDLA shall control.

19. Joint and Several Obligations. This Note is the joint and several obligations of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their successors and assigns.

20. Negotiability. Except as otherwise provided herein, this Note is non-negotiable and not transferable by the Borrower. The City, in its sole discretion, may, in the event of an Event of Default by the Borrower that is not cured as provided for in the DDLA, negotiate a transfer, assignment, or assumption of this Note to any person and upon a minimum ninety (90) day written notice to the Borrower by the City.

21. Binding Upon Successors. All provisions of this Note shall be binding upon and inure to the benefit of the successors-in-interest, transferees, and assigns of the Borrower and the City, respectively.

22. Nonrecourse. Except as expressly provided in this Section 22, Borrower shall have no personal liability for payment of the principal of, or interest on, this Note, and the sole recourse of City with respect to the payment of the principal of, and interest on, this Note shall be to the Property and any other collateral held by City as security for this Note; provided however, nothing contained in the foregoing limitation of liability shall: (A) impair the enforcement against all such security for the Loan of all the rights and remedies of the City under the Deed of Trust as such may be amended, modified, or restated from time to time; (B) impair the right of City to bring a foreclosure action, action for specific performance or other appropriate action or proceeding to enable City to enforce and realize upon the Deed of Trust, the interest in the Property created thereby and any other collateral given to City in connection with the indebtedness evidenced hereby and to name the Borrower as party defendant in any such action; (C) be deemed in any way to impair the right of the City to assert the unpaid principal amount of the Loan as a demand for money within the meaning of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto; (D) constitute a waiver of any right which City may have under any bankruptcy law to file a claim for the full amount of the indebtedness owed to City hereunder or to require that the Property shall continue to secure all of the indebtedness owed to City hereunder in

accordance with this Note and the Deed of Trust; or (E) limit or restrict the ability of City to seek or obtain a judgment against Borrower to (1) recover under any provision of the City Documents that obligates Borrower to indemnify City, or (2) recover from Borrower compensatory damages as well as other costs and expenses incurred by City (including without limitation reasonable attorneys' fees and expenses) arising as a result of the occurrence of any of the following: (a) any fraud or intentional misrepresentation on the part of the Borrower or any officer, director or authorized representative of Borrower in connection with the request for or creation of the Loan, or in any City Document, or in connection with any request for any action or consent by City in connection with the Loan; (b) any failure to maintain insurance as required pursuant to the City Documents; (c) failure to pay taxes, assessments or other charges which may become liens on the Property (subject to the right to contest as set forth in the DDLA); (d) the violation of the Borrower's obligations under Article I of the DDLA, except as limited by the provisions of such agreement; (e) the occurrence of any act or omission of Borrower that results in waste to or of the Property and which has a material adverse effect on the value of the Property; (f) the removal or disposal of any personal property or fixtures or the retention of rents, insurance proceeds, or condemnation awards in violation of the Deed of Trust; (g) the material misapplication of the proceeds of any insurance policy or award resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property; and (h) the failure of Borrower to pay all amounts payable under this Note in full if Borrower Transfers the Property in violation of the DDLA or the Regulatory Agreement.

[Signature Page to Follow]

EXHIBIT A

DATE:

BORROWER

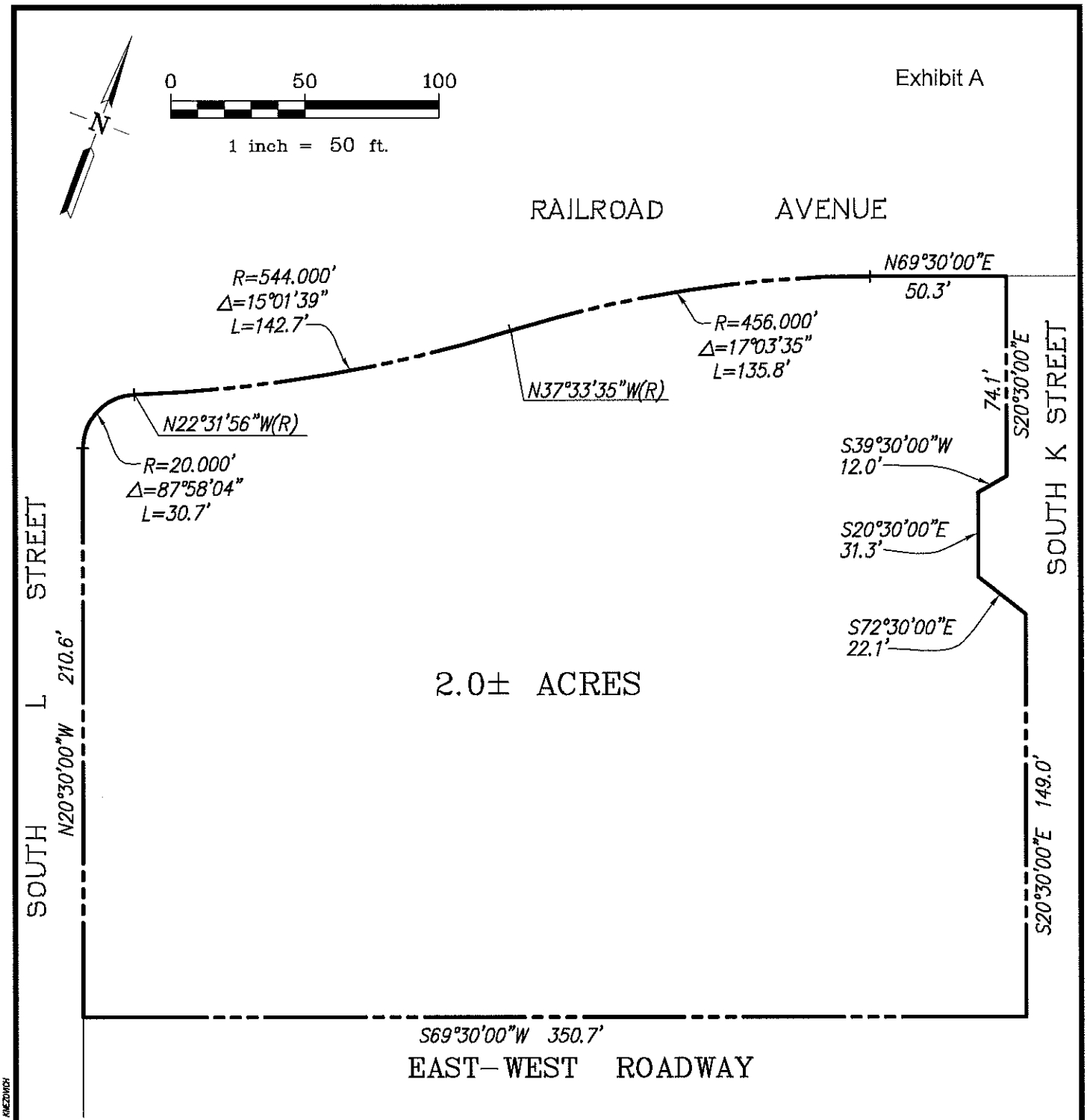
By: Andre H. Madeira
Its: Senior Vice President

EXHIBIT A

Property Description

See attached

EXHIBIT A



DOWNTOWN HOUSING AND PUBLIC PARK PROPERTY

CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:	DATE:	JOB NO.:
1" = 50'	9-11-2018	151084-45

G:\JOBS\151084 TMS\SURVEY\DGN EXHIBIT.DWG 9/11/2018 2:42:07 PM JOHN KNEZOVICH

NOTICE TO BORROWER:

THIS DOCUMENT CONTAINS PROVISIONS
RESTRICTING RESALE AND ASSUMPTIONS

PROMISSORY NOTE

Downtown Housing Project Site Acquisition
Secured by a Deed of Trust

Principal Amount: $7,800,000 [DATE]
[ADDRESS/APN: 098-0289-22]

FOR VALUE RECEIVED, the undersigned [NAME OF OWNER L.P.], [ENTITY TYPE] ("Borrower") whose address is [ ], hereby promise(s) to pay to the order of the City of Livermore, a municipal corporation ("City"), at 1052 South Livermore Avenue, Livermore, California 94550, the principal amount of Seven Million Eight Hundred Thousand Dollars ($7,800,000), together with interest accrued thereon, as set forth in this Promissory Note (the "Seller Take Back Note" or "Note").

Pursuant to that certain Amended and Restated Disposition, Development and Loan Agreement ("DDLA") dated May __ , 2022 by and between City and Borrower (the "Developer"), the Developer agreed to develop the "Undivided Parcel" as described in Exhibit A, attached hereto, into three parcels, and more particularly to develop 130 units of affordable workforce housing (the "Project") on the property as described in Exhibit B, attached hereto (the "Property").

In accordance with the DDLA, the Borrower intends to purchase, develop, own and operate the Project on the Property. Pursuant to the DDLA, the City has made an acquisition loan to Borrower in the original principal amount of Seven Million Eight Hundred Thousand Dollars ($7,800,000)(the "Site Acquisition Loan") to purchase the Property.

This Note is made and delivered pursuant to and in conjunction with the DDLA and that certain Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants entered into by and between the City and Borrower dated as of even date herewith (the "Regulatory Agreement"). All capitalized terms not otherwise defined in this Note shall have the meanings set forth in the DDLA. The Borrower's obligations with respect to this Note are secured by that certain Deed of Trust and Assignment of Rents (Short Form) entered into by Borrower for the benefit of the City as of even date herewith (the "Seller Take Back Site Acquisition Deed of Trust" or "Deed of Trust") executed by the Borrower concurrently herewith.

1. Borrower's Obligation. This Note evidences the Borrower's obligation to pay the City the Principal Amount, as that term is subsequently defined, loaned to the Borrower by the City to finance the Property's purchase, as set forth in the DDLA. As a condition of receiving the Principal Amount, the Borrower promises and agrees to comply will all terms and conditions of this Note.

2. Principal. The principal amount of this Note, $7,800,000("Principal Amount"), is loaned to the Borrower by the City to finance acquisition of the Property, as set forth in the DDLA.

3. Interest. The Note shall bear simple interest at three percent (3%)] annual interest as of the date of this Note.

4. Term. The entire indebtedness evidenced by this Note shall be repaid to the City by no later than the date that is the earlier of: (i) fifty-five (55) years from the date the Project's financing converts to permanent financing; or (ii) the sixty fifth (65th) anniversary of the date hereof (the "Maturity Date").

5. Repayment. The Borrower shall make payments towards principal and accrued interest due on the Property Acquisition Loan from residual receipts pari passu with other City and other soft lender financing from a pro rata share of Surplus Cash as described in 5.1 during the Term of this Note. This Note becomes due and payable in full on (a) the date the Property is sold or transferred in a manner which is ineligible under the terms of the DDLA, Loan Agreement, or Regulatory Agreement, or (b) an Event of Default by Borrower which has not been cured as provided for in this Agreement, but in any event (c) no later than the Maturity Date. Any payments made by Borrower pursuant to this section shall be applied first to pay current annual interest due, and then to reduce the principal amount of the Property Acquisition Loan. All payments by the Borrower shall be paid to the City in currency of the United States of America, which at the time of the payment is lawful for the payment of public and private debts.

All payments on this Note shall be made payable to the City of Livermore, and shall be delivered to the City at 1052 South Livermore Avenue, Livermore, California, 94550, or to such other place as the City may from time-to-time designate.

All payments on this Note shall be without expense to the City, and the Borrower agrees to pay all costs and expenses incurred in connection with the payment.

5.1 Annual Payments from Surplus Cash. By not later than July 1 of each year, Borrower shall pay to City fifty percent (50%) of Surplus Cash split pro rata with all other soft lenders approved by the City, generated by the Property during the previous calendar year to reduce the indebtedness owed under this Note.

By not later than June 1 of each year, Borrower shall provide to City Borrower's calculation of Surplus Cash for the previous calendar year, accompanied by such supporting documentation as City may reasonably request to substantiate Borrower's calculation of Surplus Cash. City shall have the right to inspect and audit Borrower's books and records concerning the calculation of Surplus Cash, and to object within ninety (90) days from receipt of Borrower's statement. Failure to timely object shall be deemed acceptance. If City does object, City shall specify the reasons for disapproval. Borrower shall have thirty (30) days to reconcile any disapproved item.

No later than November 1 of each year, Borrower shall provide to City a projected budget for the following calendar year which shall include an estimate of Surplus Cash. City will review the proposed budget and, if acceptable, approve it, which approval shall not be unreasonably withheld, provided, however, if the proposed budget has not been rejected by City within 30 days of receipt, City shall be deemed to have accepted the budget. If the budget is not acceptable, City shall specify the reasons for disapproval. Once approved, any

changes to the budget that exceed ten percent (10%) of the total budget shall require City's prior written consent, which consent shall not be unreasonably withheld.

5.1.1 "Surplus Cash" shall mean for each calendar year during the term hereof, the amount by which Gross Revenue (defined below) exceeds Annual Operating Expenses (defined below) for the Property. Surplus Cash shall also include net cash proceeds realized from any refinancing of the Property, less fees and closing costs reasonably incurred in connection with such refinancing, and any City-approved uses of the net cash proceeds of the refinancing.

5.1.2 "Gross Revenue" shall mean for each calendar year during the term hereof, all revenue, income, receipts and other consideration actually received from the operation and leasing of the Property. Gross Revenue shall include, but not be limited to: all rents, fees and charges paid by tenants; Section 8 payments or other rental subsidy payments received for the dwelling units; deposits forfeited by tenants; all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; and the proceeds of casualty insurance not required to be paid to the holders of Approved Senior Loans (provided however, expenditure of such proceeds for repair or restoration of the Property shall be included within Annual Operating Expenses in the year of the expenditure). Gross Revenue shall not include tenant security deposits, loan proceeds, capital contributions or similar advances, or interest earned on restricted reserve accounts.

5.1.3 "Annual Operating Expenses" shall mean for each calendar year during the term hereof, the following costs reasonably and actually incurred for the operation and maintenance of the Property to the extent that they are substantiated by such documentation as City may reasonably require: property taxes and assessments; debt service currently due and payable on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Property) on loans which have been approved in writing by the City and which are secured by deeds of trust senior in priority to the Deed of Trust ("Approved Senior Loans"); property management fees and reimbursements in amounts in accordance with industry standards for similar residential projects and paid pursuant to a property management agreement approved by City; premiums for property damage and liability insurance; utility service costs not paid for directly or indirectly by tenants; maintenance and repair costs; fees for licenses and permits required for the operation of the Property; expenses for security services; advertising and marketing costs; accounting costs; payment of deductibles in connection with casualty insurance claims not paid from reserves; tenant services; the amount of uninsured losses actually replaced, repaired or restored and not paid from reserves; cash deposits into reserves for capital replacements and operating expenses in the amount specified in the Regulatory Agreement or reasonably approved by the City; annual monitoring fees, if any, payable to the City or other public agencies in connection with loans provided for the Property; and other ordinary and reasonable operating expenses approved by City.

5.1.4 Exclusions from Annual Operating Expenses. Annual Operating Expenses shall exclude the following: contributions to Property operating or replacement reserves, except as provided in Section 5.1.3; debt service payments on any loan which is not an Approved Senior Loan, including without limitation, unsecured loans or loans secured by deeds of trust which are subordinate to the Deed of Trust; depreciation, amortization, depletion and other non-cash expenses; expenses paid for with disbursements from any reserve account; any amount paid to Borrower, or any entity controlled by the persons or

entities in control of Borrower. Notwithstanding the foregoing limitation regarding payments to Borrower and related parties, the following fees shall be included in Annual Operating Expenses, subject to applicable limitations set forth in Section 5.1.3 above, even if paid to Borrower or an affiliate of Borrower: fees paid to a property management agent, resident services agent, or social services agent; deferred developer fees; annual asset management fees paid to Borrower's limited partner; an annual partnership management fee paid to Borrower's general partner in an annual amount of up to $25,000 increasing no more than 3% annually; and subject to Section 5.1.5, repayment of cash advances by Borrower to cover Property operating expense deficits or emergency cash needs of the Property. Payments to Borrower or affiliates in excess of the limitations set forth in Section 5.1.3 shall not be counted toward Annual Operating Expenses for the purpose of calculating Surplus Cash.

5.1.5 Adjustments to Annual Operating Expenses. Notwithstanding anything to the contrary set forth herein, for the purpose of calculating Surplus Cash, Annual Operating Expenses shall include the repayment of operating deficit loans provided by Borrower provided however, interest payable on such loans may be included in Annual Operating Expenses only in an amount equivalent to the lesser of (i) interest accrued at the actual interest rate charged for the loan, or (ii) interest accrued at a rate equal to the Applicable Federal Rate.

6. Prepayment. At its option and without any premium or penalty, Borrower may pay all or a portion of the outstanding Principal Amount prior to the amount becoming due. The Borrower may make such prepayments at any time, or from time-to-time, before the prepaid amount is due. All prepayments shall be applied by the City to reduce the amount of the outstanding Principal Amount owed under this Note.

7. Encumbrances. The Borrower shall not encumber the Property, permit the covenancy, transfer, or encumbrance of the Property, allow the placement of any liens, notes or deeds on the Property, or use the Property as security for any note or loan, without the City's prior written approval; provided, however, that the approval of encumbrances consistent with the approved Financing Plan included in the DDLA shall not be unreasonably withheld. Any written approval by the City shall be consistent with the requirements of Section 12 below.

8. Payment Acceleration. The Principal Amount of this Note, together with all accrued interest and other outstanding payments and penalties, shall become immediately due and payable upon the occurrence of any of the following events, each subject to any applicable notice and cure periods:

A. The Borrower fails to use the Property in accordance with the DDLA, Loan Agreement or Regulatory Agreement;

B. The Borrower fails to cure a default consistent with the requirements of Section 9 below;

C. The transfer of the Property or this Note in violation of Section 11, and without the City's written approval consistent with the requirements of Sections 12 and 13 below;

D. The encumbrance of the Property in violation of Section 7, without the City's written approval consistent with the requirements of Sections 7 and 13;

E. Borrower is found to be in Default of the DDLA

9. Default – Notice & Opportunity to Cure. If, in the City's sole discretion, the Borrower fails to observe or perform any condition contained herein, or take diligent action towards the cure or remedy of such event, for a period of sixty (60) days after written notice from the City specifying such failure and requesting that it be cured, such event shall be deemed a default and the City shall be entitled, and in addition to all other remedies provided by law or in equity, to compel specific performance by the Borrower of its obligations under this Note. Any investor limited partner of Borrower or Borrower's assignee shall have the same notice and cure rights granted to Borrower, and any cure tendered by such investor shall be accepted or rejected on the same basis as if tendered by Borrower.

10. Default Rate. Upon the occurrence of an Event of Default, interest shall automatically be increased without notice to the rate of the lesser of ten percent (10%) per annum or the maximum rate permitted by law (the "Default Rate"); provided however, if any payment due hereunder is not paid when due, the Default Rate shall apply commencing upon the due date for such payment. When Borrower is no longer in default, the Default Rate shall no longer apply, and the interest rate shall once again be the rate specified in the first paragraph of this Note. Notwithstanding the foregoing provisions, if the interest rate charged exceeds the maximum legal rate of interest, the rate shall be the maximum rate permitted by law. The imposition or acceptance of the Default Rate shall in no event constitute a waiver of a default under this Note or prevent City from exercising any of its other rights or remedies.

11. Prohibited Transfers. Except as otherwise permitted by the terms of this Note or the DDLA, the Borrower is prohibited from transferring by sale, lease, trade, exchange, rental, gift, assignment, conveyance, the Property or any part thereof, or any trust or power, or any transfer in any other mode or form, of the Property or any part thereof or any interest therein; provided, however, that the Borrower may transfer any or all of its interest in the Property to a subsidiary or affiliate controlled by Borrower. Notwithstanding anything to the contrary contained herein, this Note shall be assignable and transferable in whole or in part to one or more limited partnerships affiliated with Borrower, so long as any such assignment or other document evidencing such assignment is acceptable to the City. Borrower may transfer limited partner interests to a tax credit investor (the "Investor"), and such Investor may further transfer its limited partner interests, and the Investor may remove Borrower's general partner pursuant to the terms of the Borrower's limited partnership agreement, with the City's consent, which consent will not be unreasonably withheld.

12. Permitted Transfers. Under the following limited circumstances, the City may give its prior written approval for the transfer of the Property: The Property is to be transferred to another qualified developer, as pre-determined by the City, which is a non-profit serving the same mission to provide housing under the DDLA, Loan Agreement and Regulatory Agreement and will assume the Borrower's rights and obligations under the Deed of Trust, this Note, and the DDLA, Loan Agreement and Regulatory Agreement.

13. Prior Written Approval. The City shall not unreasonably withhold its written approval of permitted transfers, encumbrances and refinancing by the Borrower. However, the City may only give written approval of those transfers, encumbrances, and refinancing authorized by this Note. The Borrower must request the City's written approval prior to pursuing any transfer, encumbrance, or refinancing. If not approved, or in violation of this Note, any unapproved transfer, encumbrance, or refinancing shall be null and void and the Borrower must deliver to the City any profits or benefit received from the transaction consistent with the requirements of Section 22.

14. Audit and Inspection. To the extent permissible under laws and regulations protecting individual confidentiality, the City shall have access to, and is hereby authorized by the Borrower to inspect, make copies or photographs of, the Property, books, utility accounts, and records of the Borrower pertaining to this Note and the Borrower's use of the Property.

15. Notices. Any demand or notice which either party desires to deliver to the other, shall be in writing and shall be delivered by hand, sent by a recognized overnight courier, deposited in the United States mail with a first-class prepaid postage and a return receipt requested, to ensure timely and complete delivery to the other party at the addresses noted above.

16. Attorney Fees and Costs. Borrower agrees that if any amounts due under this Note are not paid when due, to pay all costs and expenses of collection and reasonable attorney fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed.

17. Severability. Every provision of this Note is intended to be severable. If any provision is held by a court of competent jurisdiction to be invalid, illegal, and unenforceable, the validity, legality, and enforceability, of the remaining provisions shall not in any way be affected or impaired.

18. Interpretation. The provisions of this Note have been arrived at through negotiation and each party had a full and fair opportunity to revise the provisions and have them reviewed by legal counsel. The parties agree that any ambiguities in construing or interpreting this Note shall not be resolved against either party as the drafting party. In the event of an inconsistency or conflict between the language of this Note and the DDLA, the language of the DDLA shall control.

19. Joint and Several Obligations. This Note is the joint and several obligations of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their successors and assigns.

20.. Negotiability. Except as otherwise provided herein, this Note is non-negotiable and not transferable by the Borrower. The City, in its sole discretion, may, in the event of an Event of Default by the Borrower that is not cured as provided for in the DDLA, negotiate a transfer, assignment, or assumption of this Note to any person and upon a minimum ninety (90) day written notice to the Borrower by the City.

21. Binding Upon Successors. All provisions of this Note shall be binding upon and inure to the benefit of the successors-in-interest, transferees, and assigns of the Borrower and the City, respectively.

22. Nonrecourse. Except as expressly provided in this Section 22, Borrower shall have no personal liability for payment of the principal of, or interest on, this Note, and the sole recourse of City with respect to the payment of the principal of, and interest on, this Note shall be to the Property and any other collateral held by City as security for this Note; provided however, nothing contained in the foregoing limitation of liability shall: (A) impair the enforcement against all such security for the Loan of all the rights and remedies of the City under the Deed of Trust as such may be amended, modified, or restated from time to time; (B) impair the right of City to bring a foreclosure action, action for specific performance or other appropriate action or proceeding to enable City to enforce and realize upon the Deed of Trust, the interest in the Property created thereby and any other collateral given to City in connection with the indebtedness evidenced hereby and to name the Borrower as party defendant in any such action; (C) be deemed in any way to impair the right of the City to assert the unpaid principal

amount of the Loan as a demand for money within the meaning of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto; (D) constitute a waiver of any right which City may have under any bankruptcy law to file a claim for the full amount of the indebtedness owed to City hereunder or to require that the Property shall continue to secure all of the indebtedness owed to City hereunder in accordance with this Note and the Deed of Trust; or (E) limit or restrict the ability of City to seek or obtain a judgment against Borrower to (1) recover under any provision of the City Documents that obligates Borrower to indemnify City, or (2) recover from Borrower compensatory damages as well as other costs and expenses incurred by City (including without limitation reasonable attorneys' fees and expenses) arising as a result of the occurrence of any of the following: (a) any fraud or intentional misrepresentation on the part of the Borrower or any officer, director or authorized representative of Borrower in connection with the request for or creation of the Loan, or in any City Document, or in connection with any request for any action or consent by City in connection with the Loan; (b) any failure to maintain insurance as required pursuant to the City Documents; (c) failure to pay taxes, assessments or other charges which may become liens on the Property (subject to the right to contest as set forth in the DDLA); (d) the violation of the Borrower's obligations under Article I of the DDLA, except as limited by the provisions of such agreement; (e) the occurrence of any act or omission of Borrower that results in waste to or of the Property and which has a material adverse effect on the value of the Property; (f) the removal or disposal of any personal property or fixtures or the retention of rents, insurance proceeds, or condemnation awards in violation of the Deed of Trust; (g) the material misapplication of the proceeds of any insurance policy or award resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property; and (h) the failure of Borrower to pay all amounts payable under this Note in full if Borrower Transfers the Property in violation of the DDLA or the Regulatory Agreement.

23. Amendment Contemplated by DDLA. Notwithstanding anything to the contrary contained herein, upon the conveyance as contemplated in Section 3.2 of the DDLA, this Note shall be modified as further set forth therein.

[Signature Page to Follow]

EXHIBIT A

DATE:

BORROWER

By: [NAME]
[ENTITY TYPE]

By: _____
[NAME]
[TITLE]

Attachments

EXHIBIT A - Legal Description of Undivided Parcel

EXHIBIT B - Description of Property

EXHIBIT G

EXHIBIT A

RECORDING REQUESTED BY
Old Republic Title Company

AND WHEN RECORDED MAIL TO

City of Livermore
1052 S. Livermore Avenue
Livermore, Ca. 94550-4899

Loan No.:

A.P.N.: [098-0289-22]

Space Above This Line for Recorder's Use Only

File No.:

DEED OF TRUST AND ASSIGNMENT OF RENTS

(Short Form)

THIS DEED OF TRUST, made this _____ , 2022 between

TRUSTOR: [NAME OF OWNER L.P.], [ENTITY TYPE]whose address [ ]

TRUSTEE: Old Republic Title Company

and BENEFICIARY: City of Livermore, a Municipal Corporation

Witnesseth: That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to TRUSTEE IN TRUST, WITH POWER OF SALE, that property in the City of Livermore, Alameda County, State of California, described as:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

If the Trustor/Grantor shall sell, convey or alienate said property, or any part thereof, or any interest therein, or shall be divested of his title or any interest therein in any manner or way, whether voluntarily or involuntarily, without the written consent of the Beneficiary being first had and obtained, Beneficiary shall have the right, at its option, except as prohibited by law, to declare any indebtedness or obligations secured hereby, irrespective of the maturity date specified in any Note evidencing the same, immediately due and payable.

TOGETHER WITH the rents, issues, and profits thereof, SUBJECT, HOWEVER, to the right, power and authority given to and conferred upon Beneficiary by paragraph 10 of the provisions, incorporated by reference, to collect and apply such rents, issues and profits.
FOR THE PURPOSE OF SECURING: 1. Performance of each agreement of Trustor, incorporated by reference or contained herein. 2. Payment of the indebtedness evidenced by one Promissory Note of even date herewith, and any extension or renewal thereof, in the principal sum of **$_____**, executed by Trustor in favor of Beneficiary or order. 3. Payment of such further sums as the then record Owner of said property hereafter may borrow from Beneficiary, when evidenced by another Note (or Notes) reciting it is so secured
TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES: By the execution and delivery of this Deed of Trust and the Note secured hereby, that provisions (1) to (14), inclusive, of the fictitious deed of trust recorded in Santa Barbara County and Sonoma County on October 18, 1961, and in all other counties on October 23, 1961, in the book and page of the Official Records in the office of the county recorder of the county where said property is located, noted below and opposite the name of such county, viz:

EXHIBIT A

A.P.N. - Deed of Trust File No.:

and Assignment of Rents (Short Form) - continued

County	Book	Page	County	Book	Page	County	Book	Page	County	Book	Page	County	Book	Page
Alameda	435	684	Imperial	1091	501	Merced	1547	538	San Benito	271	383	Siskiyou	468	181
Alpine	1	250	Inyo	147	598	Modoc	184	851	San Bernadino	5567	61	Solano	1105	182
Amador	104	348	Kern	3427	60	Mono	52	429	San Francisco	A332	905	Sonoma	1851	689
Butte	1145	1	Kings	792	833	Monterey	2194	538	San Joaquin	2470	311	Stanislaus	1715	456
Calaveras	145	152	Lake	362	39	Napa	639	86	San Luis Obispo	1151	12	Sutter	572	297
Colusa	296	617	Lassen	171	471	Nevada	305	320	San Mateo	4078	420	Tehama	401	289
Contra Costa	3978	47	Los Angeles	T2055	899	Orange	5889	611	Santa Barbara	1878	860	Trinity	93	366
Del Norte	78	414	Madera	810	170	Placer	895	301	Santa Clara	5336	01	Tulare	2294	275
El Dorado	568	456	Marin	1508	339	Plumas	151	5	Santa Cruz	1431	494	Tuolumne	135	47
Fresno	4626	572	Mariposa	77	292	Riverside	3005	523	Shasta	684	528	Ventura	2062	386
Glenn	422	184	Mendocino	579	530	Sacramento	4331	62	Sierra	29	335	Yolo	653	245
Humboldt	657	527				San Diego Series 2 Book 1961, Page 183887						Yuba	334	486

2.

which provisions, identical in all counties, are printed below) hereby are adopted and incorporated herein and made a part hereof as fully as though set forth herein at length; that he will observe and perform said provisions; and that the references to property, obligations, and parties in said provisions shall be construed to refer to the property, obligations, and parties set forth in this Deed of Trust.

In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale be mailed to Trustor at Trustor's address hereinbefore set forth, or if none shown, to Trustor at property address.

FURTHERMORE, in the event of foreclosure or deed in lieu of foreclosure, any provisions herein or any provisions in any other collateral agreement restricting the use of the Property to low or moderate-income households or otherwise restricting the Trustor's ability to sell the Property shall have no further force or effect. Any person (including successors or assigns thereto) receiving title to the Property through a foreclosure or deed in lieu of foreclosure shall receive title to the Property free and clear from such restrictions.

NOTICE: A COPY OF ANY NOTICE OF DEFAULT AND OF ANY NOTICE OF SALE WILL BE SENT TO THE ADDRESS CONTAINED IN THIS RECORDED REQUEST. IF YOUR ADDRESS CHANGES, A NEW REQUEST MUST BE RECORDED.

Signature of Trustor(s)

_____

Dated: _____ , _____

_____

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

STATE OF California }

}ss.

COUNTY OF _____ }

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

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

WITNESS my hand and official seal.

_____ (Seal)

Signature of Notary Public

EXHIBIT A

DO NOT RECORD

The following is a copy of provisions (1) to (14), inclusive, of the fictitious Deed of Trust, recorded in each county In California, as stated in the foregoing Deed of Trust and incorporated by reference In said Deed of Trust as being a part thereof as if set forth at length therein.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

(1) To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefore; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide, maintain and deliver to Beneficiary fire Insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

(4) To pay: at least ten days before delinquency, all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust. Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

(5) To pay Immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the rate called for in the note secured hereby, or at the amount allowed by law at date of expenditure, whichever is greater, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

(6) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in this same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(7) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(8) That at any time or from time to time, without liability therefore and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(9) 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 to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee is such reconveyance may be described as "the person or persons legally entitled thereto. Five years after issuance of such full reconveyance, Trustee may destroy said Note and this Deed of Trust (unless directed in such request to retain them.)

(10) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, Issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act pursuant to such notice.

(11) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, said Note(s) and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and In such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the persons or persons legally entitled thereto.

(12) 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 said 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 titJe, estate, rights, powers and duties, 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.

(13) That this Deed of Trust applies to, insures 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 Note secured hereby, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so required, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(14) That 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 party unless brought by Trustee.

APN: File No.

EXHIBIT A

----------DO NOT RECORD----------

REQUEST FOR FULL RECONVEYANCE

To be used only when note has been paid.

To: _____, a California Corporation, **Trustee** Dated: _____

The undersigned is the legal owner and holder of all indebtedness secured by the within Deed of Trust. All sums secured by said Deed of Trust have been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel all evidences of indebtedness, secured by said Deed of Trust, delivered to you herewith together with said Deed of Trust, to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, the estate now held by you under the same.

Mail Reconveyance to: _____

_____

_____

_____

_____ By _____

_____ By _____

Do not lose or destroy this Deed of Trust OR THE NOTE which it secures.
Both must be delivered to the Trustee for cancellation before reconveyance will be made.

Short Form
DEED OF TRUST
WITH POWER OF SALE
INDIVIDUAL

_____ TITLE COMPANY, A CALIFORNIA CORPORATION

APN: File No.

EXHIBIT A

EXHIBIT A

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

[TITLE COMPANY TO ATTACH]

APN: File No.

EXHIBIT A

EXHIBIT H

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO: City of Livermore 1052 S Livermore Avenue Livermore, CA 94550 Attention: City Clerk EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE §§6103, 27383	

Space above this line for Recorder's use.

AFFORDABLE HOUSING REGULATORY AGREEMENT

AND

DECLARATION OF RESTRICTIVE COVENANTS

by and between

THE CITY OF LIVERMORE

and

[NAME OF PROJECT OWNER L.P. TO BE INSERTED]

_____, 2022

This Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this "**Agreement**") is entered into effective as of _____, 2022 ("**Effective Date**") by and between the City of Livermore, a municipal corporation ("**City**") and [NAME OF PROJECT OWNER L.P. TO BE INSERTED], a California [ENTITY TYPE] ("**Owner**"). The City and the Owner are collectively referred to herein as the "**Parties**."

RECITALS

A. Owner owns the real property located in the City of Livermore, Alameda County, California, at _____, known as Alameda County Assessor Parcel Nos. _____, and more particularly described in **Exhibit A** attached hereto (the "**Property**").

B. On ____, the City entered into an Amended and Restated Disposition, Development and Loan ("**DDLA**"), whereby City describes the terms for development and conveyance of the Property and provides for a predevelopment loan in the amount of $500,000 (the "**Predevelopment Loan"**) which is secured by a Predevelopment Promissory Note and Deed of Trust. Pursuant to the DDLA, Owner will develop, own, and operate an affordable housing development consisting of one hundred thirty (130) units of affordable workforce housing for families (the "**Project**").

C. Pursuant to the DDLA, the City has also agreed to provide a loan to Owner in the amount of $7,800,000 (the "**Site Acquisition Loan**") to assist in financing acquisition of the Property which is secured by a Seller Take Back Acquisition Promissory Note to evidence Owner's obligation to repay the Loan, and a Seller Take Back Acquisition Deed of Trust to be executed by Owner for the benefit of City and recorded substantially concurrently herewith. As a condition precedent to the funding of the Site Acquisition Loan, City requires the Project to be subject to the terms, conditions and restrictions set forth herein.

Capitalized terms used without definition herein shall have the meaning ascribed to such terms in the DDLA.

D. The DDLA provides that the Restricted Units to be developed on the Property will be required to be available to Eligible Households at Affordable Rents in accordance with this Agreement for a period of not less than the term of fifty-five (55) years.

E. The City recognizes there is a shortage of affordable housing and, in particular, and, in particular, lower and middle-income households face barriers which inhibit equal access to housing. Therefore, reserving affordable units for persons working in the community which allow them to live locally is needed to offer equal access to housing.

G. The purpose of this Agreement is to satisfy the affordability requirements of the City's affordable housing program and to regulate and restrict the occupancy and rents of the Project's Restricted Units for the benefit of the Project occupants and set forth the use and maintenance of the community buildings. The Parties intend the covenants set forth in this Agreement to run with the land and to be binding upon Owner and Owner's successors and assigns for the full term of this Agreement.

NOW THEREFORE, in consideration of the foregoing, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

1.1 Definitions; Exhibits. The following terms have the meanings set forth in this Section wherever used in this Agreement or the attached exhibits.

"**Actual Household Size**" means the actual number of persons in the applicable household.

"**Adjusted for Family Size Appropriate for the Unit**" shall be determined consistent with Section 50052.5(h) of the California Health and Safety Code, subject to the application of federal rules and regulations applicable to Project financing sources, including Section 42(g)(2) of the Internal Revenue Code of 1986 as amended (or successor provision).

"**Affordable Rent**" means for units that are restricted for rental to households with incomes of not more than one hundred ten percent (110%) of AMI, a monthly rent that does not exceed one-twelfth of thirty percent (30%) of one hundred ten percent (110%) of Area Median Income, Adjusted for Family Size Appropriate for the Unit, less a utility allowance and other fees and charges required to be paid by tenants of the Project on a non-optional basis which have been approved by the City.

"**Area Median Income" or "AMI**" means the median income for Alameda County, California, adjusted for Actual Household Size, as determined pursuant to California Tax Credit Allocation (**"TCAC"**) regulations.

"City's Authorized Representative" means the City Manager of the City of Livermore or his/her designee.

"City Documents" means collectively, this Agreement, the DDLA, the City Notes, the City Deeds of Trust.

"**Claims**" is defined in Section 2.10.

"City Amended and Restated **Disposition, Development and Loan Agreement**" is defined in recital B-D.

"City **Pre-Development Deed of Trust"** is defined in Recital B.

"City **Pre-Development Note**" is defined in Recital B.

"Seller Take Back **Acquisition Deed of Trust**" is defined in Recital C.

"Site Acquisition Loan" is defined in Recital C.

"Seller Take Back Acquisition Note" is defined in Recital C.

"**City Deeds of Trust**" is defined as that City Predevelopment Deed of Trust and City Acquisition Deed of Trust.

"City Notes" is defined as the City Predevelopment Note and Seller Take Back Acquisition Note.

"**Eligible Household**" means a household for which gross household income upon initial occupancy does not exceed the maximum income level for a Restricted Unit as specified in Section 2.3.

"**Indemnitees"** is defined in Section 2.10.

"**Marketing and Tenant Selection Plan"** is defined in Section 6.5.

"**Rent**" means the total of monthly payments by the Tenant of a Unit for the following: use and occupancy of the Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed by Owner that are customarily charged in rental housing and required of all Tenants, other than security deposits; an allowance for the cost of an adequate level of service for utilities paid by the Tenant, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service or cable TV; and any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than Owner, and paid by the Tenant.

"**Rent Restricted"** means limited to an Affordable Rent.

"Residential Project" means an affordable housing development on the Property consisting of 130 apartments (including up to 2 unrestricted manager's units) as described in Recital B.

"**Restricted Unit**" means a dwelling unit that is restricted by the City pursuant to this Agreement pursuant to 2.3.

"**Project**" is defined in Recital B.

"**Tenant**" means a household legally occupying a Unit pursuant to a valid lease with Owner.

"**Unit**" means one of the one hundred thirty (130) units in the Project, including the manager's unit(s).

1.2 Exhibits. The following Exhibits are attached hereto and incorporated into this Agreement by this reference:

A Legal Description of Property

B Insurance Requirements

C Form of Annual Report

2. Use and Affordability Restrictions. Owner hereby covenants and agrees, for itself and its successors and assigns, that pursuant to this Agreement the Residential Project shall be used solely

for the operation of a multifamily rental housing development of which sixty-three (63), which is no more than 49% of the total units, shall be Restricted Units. The Restricted Units shall consist of ___ studios, ___ 1-bedroom units, and ___ 2-bedroom units. Owner represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the occupancy and affordability restrictions set forth in this Agreement, and Owner covenants that it shall not enter into any agreement that is inconsistent with such restrictions without the express written consent of City.

2.1 Intentionally Omitted.

2.2 Intentionally Omitted.

2.3 Affordability and Occupancy Requirements. Throughout the term of this Agreement (as defined in Section 4.1 below) Owner agrees that: (i) not less than Sixty Three (63) of the residential units shall be both Rent Restricted and occupied (or if vacant, available for occupancy) by Eligible Households whose gross household income is no greater than one hundred ten percent (110%) of AMI; and, (ii) all other units, except for two (2) of the residential units in the Project which shall be manager's units for which rent will not be restricted, will be restricted by the TCAC restrictive covenant to be recorded when the units are placed-in-service by TCAC's definition ("TCAC Units"). For the purpose of determining whether a household is an Eligible Household, gross household income shall be determined in accordance with TCAC regulations and federal regulations applicable to low-income housing tax credits. The Restricted Units shall generally reflect the unit bedroom mix of all of the units in the Project. Maximum unit occupancy standards shall be established according to TCAC regulations or in the absence of such regulations shall be two persons per bedroom plus one additional person. To the extent permitted by law and consistent with the program regulations for funding sources used for development of the Project, Owner shall give a preference in the rental of the residential units in the Project to Eligible Households who are Livermore Valley Joint Unified School District school teachers, employees working for businesses in the Livermore Downtown, first responders employed in Livermore (including emergency medical personnel), professional artists working in Livermore, and then to all other persons who live or work in Livermore. Notwithstanding the foregoing, in the event of a conflict between this provision and the provisions of Section 42 or Section 142 of the Internal Revenue Code of 1986, as amended, the provisions of such Section 42 or Section 142, as applicable, shall control. Owner shall develop marketing policies or other rental policies and procedures approved by the City, as may be amended from time to time, to ensure that residents and people who live or work in Livermore who qualify for the Project are provided adequate notice and opportunity to rent units in the Project.

(a) In the event that recertification of tenant incomes indicates that the number of Restricted Units actually occupied by Eligible Households falls below the number reserved for each income group as specified in this Section 2.3, Owner shall rectify the condition by renting the next available dwelling unit(s) in the Project to Eligible Household(s) until the required income mix is achieved. A dwelling unit shall qualify as "Rent Restricted" if the gross rent charged for such unit does not exceed the Affordable Rent for the applicable household income category as set forth in Section 2.3.

(b) Notwithstanding anything to the contrary contained in this Agreement, if other Project lenders, Project investors, or regulatory agencies restrict a greater number of units than restricted by this Agreement or require stricter household income eligibility or affordability requirements than those imposed hereby, the requirements of such other lenders, investors or regulatory agencies shall prevail, including without limitation, the rent and occupancy requirements imposed in connection with the use of project based vouchers or other rent subsidies.

2.4 Rents for Restricted Units. For all Restricted Units rents shall be limited to Affordable Rents for households of the applicable income limit and presumed household size in accordance with Section 2.3. A household which at initial occupancy qualifies in a particular income category shall be treated as continuing to be of such income category so long as the household's gross income does not exceed one hundred forty percent (140%) of the applicable income limit.

(a) For the purpose of determining whether a household is an Eligible Household , gross household income shall be determined in accordance with TCAC regulations and federal regulations applicable to low-income housing tax credits. In the event that TCAC no longer publishes the income and rent information that this Agreement contemplates that TCAC will publish, respectively, the City shall provide Owner with other income and rent determinations which are reasonably similar with respect to methods of calculation to those previously published by TCAC, as applicable.

(b) Subject to Section 2.3, if, upon recertification of the income of a tenant of a Restricted Unit, Owner determines that a Tenant of a Restricted Unit has an income exceeding the maximum qualifying income, such Tenant shall be permitted to continue occupying the Restricted Unit and upon sixty (60) days written notice, the Rent may be increased to one-twelfth (1/12th) of thirty percent (30%) of the actual adjusted income of the Tenant or the current fair market rent for that unit, whichever is less, and Owner shall rent the next available Unit of the appropriate size to an Eligible Household at a Rent not exceeding the maximum Rent specified in this Section, or designate another Unit in the Residential Project with a as a Restricted Unit, at a Rent not exceeding the maximum Rent specified in this Section.

(c) Initial Rents are subject to City approval. Rents may not be increased more often than once every twelve (12) months and by no more than five percent (5%) per year, except as otherwise provided in Sections 2.4(a), 2.5(b) or 2.6(c). Owner shall provide each Tenant with at least sixty (60) days written notice of any increase in Rent applicable to such Tenant. Owner shall comply with California rent control laws and tenant notification to the extent applicable. If there are any overlaps between this Agreement and the law, the more restrictive limits and noticing requirements shall govern.

2.5 Loss of Subsidy. It is anticipated that certain Units in the Development (the "Subsidy Units") will receive Project-Based Section 8 or other rental subsidies (the "Rental Subsidy") throughout the Term, as reflected in the Financing Plan for the Project. If any change in federal law occurs, or any action (or inaction) by Congress or any federal or state agency occurs, which results in a material reduction, termination or nonrenewal of the Rental Subsidy through no fault

of the Owner, such that the Rental Subsidy shown on the Finance Plan for the Development approved by the City is no longer available, Owner shall, in anticipation of such loss in Rental Subsidy, use good faith efforts for a period of ninety (90) days, to identify and obtain alternative sources of rental subsidies and shall provide the City progress reports on Owner's efforts to identify and obtain alternative sources of rental subsidies. If at the end of such ninety (90) day period Owner is unable to secure an alternate source of rental subsidy, notwithstanding Section 2.4, Owner may increase the rent on one or more of the City Restricted Units that overlap with a Subsidy Unit, up to sixty percent (60%) of AMI ("TCAC Maximum Rent Limit"), subject to the following requirements:

(a) Any such rent increase must be pursuant to a transition plan approved by the City showing how the rent increase will be implemented, and which Restricted Units will be subject to the increase, and, if applicable, be consistent with remedial measures set forth in California Code of Regulations Title 4, Division 17, Chapter 1, Section 10337(a)(3) or successor regulation applicable to California's Federal and State Low Income Housing Tax Credit Program;

(b) At the time Owner requests an increase in the Restricted Unit rent, Owner shall provide the City with a copy of the proposed Annual Operating Budget showing the impact of the loss or reduction of the Rental Subsidy;

(c) Any subsequent rent increases remain subject to Section 2.4 above; and,

(d) The number of Restricted Units subject to the rent increase and the level of rent increase may not be greater than the amount required to ensure that the Residential Project generates sufficient income to cover its operating costs and debt service as shown on the Annual Operating Budget, and as is necessary to maintain the financial stability of the Development.

(e) Upon receipt of any alternative rental subsidies, Owner shall reduce the rents on the Restricted Units back to the Affordable Rent, to the extent that the alternative rental subsidies provide sufficient income to cover the operating costs and debt service of the Development as shown on the Annual Operating Budget.

2.6 Rent Increases on Foreclosure.

Notwithstanding this Section 2.6, in the event that a senior lender foreclosures on the Project (or receives a deed in lieu of foreclosure), the Rents on one or more of the Restricted Units may be increased up to the TCAC Maximum Rent Limit to maintain the financial feasibility of the Project, subject to the following requirements:

(a) Any such rent increase must be pursuant to a transition plan approved by the City showing: (i) how the rent increase will be phased-in; (ii) which Restricted Units will be subject to the increase; and (iii) the operating income and expenses for the Residential Project comparing the current rent structure to the proposed rent structure;

(b) The number of Restricted Units subject to the rent increase and the level of rent increase may not be greater than the amount required to ensure that the Residential Project generates sufficient income to cover its operating costs and debt service, and as is necessary to maintain the financial stability of the Development; and

(c) The rent increase may occur only at the time of renewal of the term of the lease of an existing Tenant or the time of leasing a Restricted Unit to a new tenant. Any subsequent rent increases remain subject to Section 2.4 above.

2.7 Manager's Unit. Two (2) dwelling units in the Residential Project may be used as resident manager's units, and shall be exempt from the occupancy and rent restrictions set forth in this Agreement.

2.8 No Condominium Conversion. Owner shall not convert the Residential Project to condominium or cooperative ownership or sell condominium or cooperative rights to the Residential Project or any part thereof during the term of this Agreement.

2.9 Nondiscrimination; Compliance with Fair Housing Laws.

2.9.1 Fair Housing. Owner shall comply with state and federal fair housing laws in the marketing and rental of the units in the Project. Owner shall accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing Section 8 program or any successor thereto.

2.9.2 Non-Discrimination. Owner shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Owner covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Owner or any person claiming under or through Owner 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, of, or for the Property or part thereof. Owner shall include such provision in all deeds, leases, contracts and other instruments executed by Owner, and shall enforce the same diligently and in good faith.

All deeds, leases, and contracts pertaining to management of the Residential Project, made or entered into by Owner, its successors or assigns, as to any portion of the Property or the Improvements shall contain the following language:

(a) (1) In Deeds, the following language shall appear:

"Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee 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 property herein conveyed. The foregoing covenant shall run with the land."

(b) (1) In Leases, the following language shall appear:

"The lessee herein covenants by and for the lessee and lessee's heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination of segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased."

(c) In Contracts pertaining to management of the Residential Project, the following language, or substantially similar language prohibiting discrimination and segregation shall appear:

"There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to selection, location, number, use or occupancy of tenants, lessee, subtenants, sublessees or vendees of the land."

2.10 Relocation. Notwithstanding eviction, persons residing on the Property shall not be displaced before suitable replacement housing is available. Owner shall ensure that all occupants of the Property receive all notices, benefits and assistance to which they are entitled. All costs incurred in connection with the temporary and/or permanent displacement and/or

relocation of occupants of the Property, including without limitation payments to a relocation consultant, moving expenses, and payments for temporary and permanent relocation benefits pursuant to any applicable relocation laws shall be paid by Owner, and City shall have no responsibility for payment therefor. Owner shall be liable for any and all claims for applicable relocation benefits sought by any current, former or future tenant of the Residential Project.

To the greatest extent permitted by law, Owner shall indemnify, defend (with counsel approved by City) and hold the City and its elected and appointed officers, officials, employees, agents, consultants, contractors and representatives (collectively, the "**Indemnitees**") harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively "**Claims**") arising from the breach of Owner's obligations set forth in this Section whether or not any insurance policies shall have been determined to be applicable to any such Claims. Owner's indemnification obligations set forth in this Section (i) shall survive the expiration or earlier termination of this Agreement, and (ii) shall not extend to Claims to the extent arising from the gross negligence or willful misconduct of the Indemnitees. City does not and shall not waive any rights against Owner that it may have by reason of any indemnity and hold harmless provision set forth in this Agreement because of the acceptance by City, or the deposit with City by Owner, of any of the insurance policies described in this Agreement.

2.11 Disabled Persons Occupancy.

(a) Owner shall cause the Residential Project to be operated at all times in compliance with all applicable federal, state, and local disabled persons accessibility requirements including, but not limited to the applicable provisions of: (i) the Unruh Act, (ii) the California Fair Employment and Housing Act, (iii) Section 504 of the Rehabilitation Act of 1973, (iv) the United States Fair Housing Act, as amended, (v) the Americans With Disabilities Act of 1990, and (vi) Chapters 11A and 11B of Title 24 of the California Code of Regulations, which relate to disabled persons access (collectively, the "Accessibility Requirements").

(b) Owner shall indemnify, protect, hold harmless and defend (with counsel reasonably satisfactory to the City) the City, and its board members, officers and employees, from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of Owner's failure to comply with the Accessibility Requirements. This obligation to indemnify survives termination of this Agreement, repayment of the City Loans and the reconveyance of the Deeds of Trust.

3. Tenant Income Certifications; Reporting Requirements; Access to Information; Inspections.

3.1 Tenant Income Certification. Owner or Owner's authorized agent shall obtain from each household prior to initial occupancy of each Restricted Unit, and on every anniversary thereafter, a written certificate containing all of the following in such format and with such supporting documentation as City may reasonably require:

(a) The identity of each household member;

(b) The total gross household income (as determined pursuant to Section 2.3); and

Owner shall retain such certificates for not less than five (5) years, and upon City's request, shall provide copies of such certificates to City and make the originals available for City inspection.

3.2 Annual Report; Inspections. Following completion of construction of the Project, by not later than March 1 of each year during the term of this Agreement, Owner shall submit an annual report ("**Annual Report**") to the City in form satisfactory to City, together with a certification that the Residential Project is in compliance with the requirements of this Agreement. Notwithstanding the Annual report requirements, Owner shall submit to the City an initial lease up report containing the tenant certification and occupancy information described in this section. The Annual Report shall, at a minimum, include the following information for each dwelling unit in the Residential Project: (i) unit number; (ii) number of bedrooms; (iii) current rent and other charges; (iv) dates of any vacancies during the previous year; (v) number of people residing in the unit; (vi) total gross household income of residents; (vii) documentation of source of household income; and (viii) the information required by Section 3.1.

Owner shall include with the Annual Report, an income recertification for each household, documentation verifying tenant eligibility, and such additional information as City may reasonably request from time to time in order to demonstrate compliance with this Agreement. The Annual Report shall conform to the format requested by City; provided however, during such time that the Residential Project is subject to a regulatory agreement restricting occupancy and/or rents pursuant to requirements imposed in connection with the use of state or federal low-income housing tax credits, Owner may satisfy the requirements of this Section that pertain to tenant income certification and rents by providing City with a copy of compliance reports required in connection with such financing.

In addition to the information described above, the Annual Report shall include the following:

(a) A Residential Project income and expense statement for the reporting period;

(b) Proposed annual budget for the next fiscal year which sets forth Owner's estimate of operating income, operating expenses and debt service for the year, amounts payable to reserves and proposed rent adjustments;

(c) A report on maintenance and other issues anticipated to affect the current budget needs of the Residential Project as well as the amount in the Residential Project's reserve accounts and the amount expected to be needed for major repairs or other needs during the new fiscal year;

(d) Information on the status of the waiting list for units, including the number of households on the list and the number of persons qualifying for each of the City's selection preference categories on the list; and

(e) A financial audit of the books and records of the Residential Project prepared in accordance with generally accepted auditing standards by an independent certified public accountant. City may require the audit to be accompanied by a supplemental report prepared in accordance with City's requirements.

(f) City may, from time to time request additional or different information, and Owner shall promptly supply such information in the reports required hereunder.

3.3. Maintenance of Records.

3.3.1 Owner shall maintain all records regarding the construction of the Project for five (5) years after final payment and all other pending matters are closed. Owner shall also maintain tenant leases, income certifications and other matters related to the leasing of the affordable units for a period of five (5) years after the final date of occupancy by the tenant.

3.3.2 Records must be kept accurate and up-to-date. City shall notify Owner of any records it deems insufficient. Owner shall have fifteen (15) calendar days from such notice to correct any specified deficiency in the records, or, if more than fifteen (15) days shall be reasonably necessary to correct the deficiency, Owner shall begin to correct the deficiency within fifteen (15) days and diligently pursue the correction of the deficiency as soon as reasonably possible.

3.4 Access to Records; Inspections.

3.4.1 Owner shall provide City and its authorized agents and representatives access to any books, documents, papers and records of the Residential Project for the purpose of making audits, examinations, excerpts and transcriptions.

3.4.2 With 48-hours' notice, during normal business hours and as often as may be deemed necessary, City and its authorized agents and representatives shall be permitted access to and the right to examine the Residential Project and the Property and to interview tenants and employees of the Project, for the purpose of verifying compliance with applicable regulations and compliance with the conditions of this Agreement and the other City Documents.

4. Term of Agreement.

4.1 Term of Restrictions. This Agreement shall remain in effect until the fifty-fifth (55^{th}) anniversary of the City's issuance of a final certificate of occupancy for the Project.

4.2 Effectiveness Succeeds Conveyance of Property and Repayment of Loan. This Agreement shall remain effective and fully binding for the full term hereof regardless of (i) any sale, assignment, transfer, or conveyance of the Project or Owner's fee interest in the Property, or any part thereof or interest therein, (ii) any payment, prepayment or extinguishment of the Loan, the Note (iii) any reconveyance of the Deed of Trust.

4.3 Reconveyance. Upon the termination of this Agreement, the Parties agree to execute and record appropriate instruments to release and discharge this Agreement; provided, however, the execution and recordation of such instruments shall not be necessary or a prerequisite to the termination of this Agreement upon the expiration of the term.

5. Binding Upon Successors; Covenants to Run with the Land. Owner hereby subjects its interest in the Property and the Project to the covenants and restrictions set forth in this Agreement. The City and Owner hereby declare their express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of Owner and City, regardless of any sale, assignment, conveyance or transfer of the Property, the Project or any part thereof or interest therein. Any successor-in-interest to Owner, including without limitation any purchaser, transferee or lessee of the Property or the Project (other than the tenants of the individual dwelling units within the Project) shall be subject to all of the duties and obligations imposed hereby for the full term of this Agreement. Each and every contract, deed, ground lease or other instrument affecting or conveying the Property or the Project or any part thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, ground lease or other instrument. If any such contract, deed, ground lease or other instrument has been executed prior to the date hereof, Owner hereby covenants to obtain and deliver to City an instrument in recordable form signed by the parties to such contract, deed, ground lease or other instrument pursuant to which such parties acknowledge and accept this Agreement and agree to be bound hereby. Owner agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Property and the Project in favor of City.

6. Property Management; Repair and Maintenance; Marketing.

6.1 Management Responsibilities. Owner shall be responsible for all management functions with respect to the Property and the Residential Project, including without limitation the selection of tenants, certification and recertification of household income and eligibility, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. City shall have no responsibility for management or maintenance of the Property or the Residential Project. Owner shall submit its written management policies with respect to the Residential Project (the "Management Plan") to the City for its review and shall amend such policies in any way reasonably necessary to ensure that such policies comply with the provisions of this Agreement. The Management Plan shall minimally include the following:

(a) A parking management plan which details, among other things, how parking spaces will be allocated, assigned and how parking will be managed to encourage tenants, services providers and guests to use parking in accordance with the plan;

(b) Procedures for maintenance and management of the Residential Project;

(c) Procedures for dealing with tenant or neighborhood issues or concerns;

(d) Procedures for maintaining a reserve account, budgeting for maintenance and repair needed as well as long term rehabilitation needs, and handling net cash flow; and

(e) Such other requirements and criteria/procedures as City may determine

reasonably appropriate to comply with the terms of this Agreement.

6.2 Management Entity and Replacement of Management Agent. City shall have the right to review and approve the qualifications of the management entity proposed by Owner for the Residential Project, and shall have the right to review and approve any agreement executed between Owner and the management entity, which approval shall not be unreasonably withheld. The contracting of management services to a management entity shall not relieve Owner of its primary responsibility for proper performance of management duties. City hereby approves Eden Housing Management, Inc., a California nonprofit public benefit corporation, as the initial management entity for the Residential Project. Any subsequent management entity shall be subject to City review and approval, which shall not be unreasonably withheld or delayed. Upon City determination and delivery of written notice to Owner that Owner has failed to operate the Residential Project in accordance with this Agreement, subject to any applicable cure period and the approval of the Project lenders and equity investors, City may require Owner to contract with a qualified management agent selected by City and approved by the Project lender and equity investor, to operate the Residential Project, or to make such other arrangements as City deems necessary to ensure performance of the required functions. An on-site property management representative is required to reside on the property. If the on-site property management representative is not also the assigned property management staff for the Residential Project, then the representative shall still be available to address resident issues and to serve as the point of contact for City business and the public after regular business hours at the Property.

6.3 Repair, Maintenance and Security. Throughout the term of this Agreement, Owner shall at its own expense, maintain the Property and the Residential Project in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Owner agrees to maintain the Residential Project and the Property (including without limitation, the residential units, common areas, meeting rooms, landscaping, driveways, parking areas and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property or at the Residential Project. Owner shall prevent and/or rectify any physical deterioration of the Property and the Residential Project and shall make all repairs, renewals and replacements necessary to keep the Property and the improvements located thereon in good condition and repair. Owner shall provide adequate security measures for the Residential Project, including without limitation, the installation of adequate lighting and deadbolt locks.

6.3.1 Additional Requirements. All construction work and professional services for the Residential Project shall be performed by persons or entities licensed or otherwise authorized to perform the applicable work or service in the State of California and shall have a current City of Livermore business license if required under local law. To the extent allowed by state and federal laws, Owner shall limit the installation of satellite dish, antenna and other such equipment to screened locations on the Property as approved by the City. Owner shall diligently work to resolve complaints related to noise, parking, litter or other neighborhood concerns.

6.4 City's Right to Perform Maintenance. In the event that Owner breaches any of the covenants contained in Section 6.3, and such default continues for a period of ten (10) days after

written notice from City (with respect to graffiti, debris, and waste material) or thirty (30) days after written notice from City (with respect to landscaping, building improvements and general maintenance), then City, in addition to any other remedy it may have under this Agreement or at law or in equity, shall have the right, but not the obligation, to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and the landscaped areas on the Property. All costs expended by City in connection with the foregoing, shall constitute an indebtedness secured by the Deed of Trust, and shall be paid by Owner to City upon demand. All such sums remaining unpaid thirty (30) days following delivery of City's invoice therefor shall bear interest at the lesser of 10% per annum or the highest rate permitted by applicable law.

6.5 Marketing and Tenant Selection Plan. Not later than ninety (90) days following commencement of construction work on the Project, Owner shall submit for City review and approval, a plan for marketing and tenant selection for the Property ("**Marketing and Tenant Selection Plan**" or "**Plan**"). The Plan shall address in detail how Owner plans to market the Restricted Units to prospective Eligible Households, in accordance with fair housing laws and this Agreement, Owner's tenant selection criteria, City preferences, and how Owner plans to certify the eligibility of Eligible Households. The Plan shall include the proposed form of application, marketing materials and the form of rental agreement that Owner proposes to enter into with Residential Project tenants. Owner shall abide by the terms of the Marketing and Tenant Selection Plan in marketing and selecting tenants for the Property and the Residential Project, including implementation of the City's workforce selection preferences, and throughout the term of this Agreement, shall submit proposed modifications to City for review and approval.

In addition to the foregoing, the Marketing and Management Plan shall address the following:

(a) The actions to be taken by Owner to affirmatively market units in compliance with fair housing laws and in compliance with City's policies and procedures, including the policies described in Section 2.9 above;

(b) Criteria for determining tenant eligibility, including certification of household income and size, disability status of household members or other qualifying criteria, and establishing reasonable occupancy standards (which shall not exceed standards established by state and federal fair housing laws and state housing and building codes), and procedures for screening prospective tenants, including obtaining credit reports, unlawful detainer reports, landlord references and criminal background investigations;

(c) A requirement that eligible tenants be selected based on order of application, selection preference, lottery or other reasonable method approved by City and incorporates a method of prioritizing and establishing a screening order for applications. The preference system shall assign a priority order to Eligible Households for Restricted Units as described in section 2.3.

(d) A requirement that eligible applicants be notified of eligibility and, when possible, be provided an estimate regarding when a unit may be available;

(e) A requirement that ineligible applicants be notified of the reason for their ineligibility;

(f) Specific procedures through which applicants deemed to be ineligible may appeal this determination;

(g) Maintenance of a waiting list of eligible applicants, including specific procedures for screening Project Based Section 8 eligible applicants in coordination with the Housing Authority of the City of Livermore;

(h) Specific procedures for obtaining documentation regarding prospective tenants' incomes, as necessary, to certify that such income does not exceed income limits;

(i) Specific procedures for certification and recertification of household incomes and procedures for handling over-income tenants;

(j) A requirement that a written rental agreement (subject to City approval) be executed with each eligible household selected to occupy a unit;

(k) Such other requirements and criteria/procedures as City may determine reasonably appropriate to comply with the terms of this Agreement.

6.6 Residential Lease Provisions. No later than four (4) months prior to the date construction of the Project is projected to be complete, Owner shall submit to the City Owner's proposed form of residential lease agreement for the City's review and approval, which approval shall not be unreasonably withheld or delayed. The form of lease must comply with all requirements of this Agreement, the other Loan Documents and must, among other matters:

(a) Provide for termination of the lease for failure: (i) to provide any information required under this Agreement or reasonably requested by Owner to establish or recertify the Tenant's qualification, or the qualification of the Tenant's household, for occupancy in the Residential Project in accordance with the standards set forth in this Agreement, or (ii) to qualify as a an Eligible household, as applicable, as a result of any material misrepresentation made by such Tenant with respect to the income computation.

(b) Be for an initial term of not less than one (1) year, unless by mutual agreement between the Tenant and Owner, and provide for no increase in Rent during such year. Notwithstanding the above, any Rent increases shall be subject to the requirements of Section 2.4.

(c) Include any provisions necessary to comply with the requirements of the Violence Against Women Reauthorization Act of 2013 (Pub. L. 113–4, 127 Stat. 54) applicable to HUD-funded programs. 5) Any termination of a lease or refusal to renew a lease for a Restricted Unit within the Development must be preceded by not less than sixty (60) days written notice to the Tenant by Owner specifying the grounds for the action. 6) Include a detailed listing of reasonable rules of conduct and occupancy which shall be in writing, shall be consistent with federal and state law, and shall be provided to each tenant

upon occupancy;

(d) Include a requirement that there be no storage on balconies and patios and that tenants must keep all balconies, patios and other exterior areas neat, clean and clutter free, including no clotheslines or laundry.

6.7 Approval of Amendments. If City has not responded to any submission of the Marketing and Tenant Selection Plan, the proposed management entity, the proposed management agreement, or a proposed amendment the Management Plan, the Resident Services Plan or Resident Service Budget or change to any of the foregoing within sixty (60) days following City's receipt of such plan, proposal, agreement or amendment, the plan, proposal, agreement, or amendment shall be deemed approved by City.

6.8 Resident Services Plan and Budget.

(a) No later than six (6) months prior to the projected date of the completion of the Project, Owner shall submit to the City a plan for providing supportive services to the Tenants (the "Resident Services Plan") and a budget for providing those services (the "Resident Services Budget") for the initial year of operation of the Residential Project. The Resident Services Plan must identify service provider(s) and staffing levels, and describe the services provided. The Resident Services Plan must include copies of contracts and/or memoranda of understanding for the provision of services by service providers, along with any annual compliance certifications. The Resident Services Budget must state the dollar value of the services, and the funding source(s) for the services (cash or in-kind).

(b) Upon receipt by the City of the proposed Resident Services Plan and Resident Services Budget, the City shall promptly review the same and approve or disapprove it within fifteen (15) days, provided that such approval shall not be unreasonably denied. If the Resident Services Plan and/or Resident Services Budget are not approved by the City, the City shall set forth in writing and notify Owner of the City's reasons for withholding such approval, which may include a request by the City for a change in the nature or scope of resident services or a change in service provider. Owner shall, within fifteen (15) days thereafter, submit a revised Resident Services Plan and/or Resident Services Budget for City approval in accordance with this subsection. If the City does not approve the revised Resident Service Plan, Owner shall be in Default hereunder.

(c) Owner shall thereafter submit to the City annual updates to the Resident Services Plan and Resident Services Budget by October 1st of each year of operation of the Development, identifying any changes made to the previously approved Resident Services Plan and Resident Services Budget. Any revisions to the Resident Services Plan and Resident Services Budget shall be subject to the City's review and approval and the process for timing and review of such revisions shall be subject to the process identified in Section 6.7.

6.9 Fees, Taxes, and Other Levies. Owner shall be responsible for payment of all fees, assessments, taxes, charges, liens and levies applicable to the Property or the Project, including

without limitation possessory interest taxes, if applicable, imposed by any public entity, and shall pay such charges prior to delinquency. However, Owner shall not be required to pay any such charge so long as (a) Owner is contesting such charge in good faith and by appropriate proceedings, (b) Owner maintains reserves adequate to pay any contested liabilities, and (c) on final determination of the proceeding or contest, Owner immediately pays or discharges any decision or judgment rendered against it, together with all costs, charges and interest. The foregoing is not intended to impair Owner's ability to apply for any applicable exemption from property taxes or other assessments and fees.

6.10 Insurance Coverage. Throughout the term of this Agreement Owner shall comply with the insurance requirements set forth in Exhibit B, and shall, at Owner's expense, maintain in full force and effect insurance coverage as specified in Exhibit B.

6.11 Property Damage or Destruction. If any part of the Residential Project is damaged or destroyed, Owner shall repair or restore the same, consistent with the occupancy and rent restriction requirements set forth in this Agreement. Such work shall be commenced as soon as reasonably practicable after the damage or loss occurs and shall be completed within one year thereafter or as soon as reasonably practicable, provided that insurance proceeds are available to be applied to such repairs or restoration within such period and the repair or restoration is financially feasible. During such time that lenders or low-income housing tax credit investors providing financing for the Project impose requirements that differ from the requirements of this Section the requirements of such lenders and investors shall prevail.

7. Recordation; Subordination. This Agreement shall be recorded in the Official Records of Alameda County. The City agrees that the City will not withhold consent to reasonable requests for subordination of this Agreement to deeds of trust provided for the benefit of lenders identified in the financing plan submitted to City for the Project, as such plan may be updated with City approval, provided that the instruments effecting such subordination include reasonable protections to the City in the event of default, including without limitation, extended notice and cure rights.

8. Transfer and Encumbrance.

8.1 Restrictions on Transfer and Encumbrance. During the term of this Agreement, except as permitted pursuant to the DDLA or this Agreement, Owner shall not directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, "**Transfer**") of the whole or any part of the Property, the Project, or the improvements located on the Property, without the prior written consent of the City, which approval shall not be unreasonably withheld. In addition, prior to the expiration of the term of this Agreement, except as expressly permitted by this Agreement or the Loan Agreement, Owner shall not undergo any significant change of ownership without the prior written approval of City. For purposes of this Agreement, a "significant change of ownership" shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Owner, taking all transfers into account on a cumulative basis; provided however, neither the admission of an investor limited partner, nor the transfer by the investor limited partner to subsequent limited partners shall be restricted by this provision.

8.2 Permitted Transfers. Notwithstanding any contrary provision of the City Documents, the prohibitions on Transfer set forth herein shall not be deemed to prevent: (i) the granting of easements or permits to facilitate development of the Property; (ii) the dedication of any property required pursuant to the Loan Agreement; (iii) the lease of individual dwelling units to tenants for occupancy as their principal residence in accordance with this Agreement; (iv) assignments creating security interests for the purpose of financing the acquisition, construction, or permanent financing of the Project or the Property in accordance with the Loan Agreement, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; (v) the admission of limited partners and any transfer of limited partnership interests in accordance with Owner's, or the Approved Partnership's, as applicable, agreement of limited partnership (the "Partnership Agreement"); (vi) the removal of the general partner by the investor limited partner for cause in accordance with the terms of the Partnership Agreement, provided that the replacement general partner is an entity reasonably satisfactory to City or is an affiliate of the investor limited partner that will serve as general partner for an interim period of no more than 180 days; or (vii) the transfer of the managing partner's interest in a limited partnership to a nonprofit entity that is tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986 as amended (or to an entity wholly-owned thereby), provided such replacement general partner is reasonably satisfactory to City.

8.3 Requirements for Proposed Transfers. The City may, in the exercise of its sole discretion, consent to a proposed Transfer of this Agreement, the Property, the Improvements or part thereof if all of the following requirements are met (provided however, the requirements of this Section 8.3 shall not apply to Transfers described in clauses (i), (ii), (iii), (iv)(v) and (vii) of Section 8.2, and solely with respect to the removal of the general partner by the investor limited partner for a default under the Partnership Agreement, clause (vi) of Section 8.2, provided that the provisions of this Section 8.3 shall apply to the selection of a replacement general partner in the event of a removal of the general partner in accordance with clause (vi) of Section 8.2.

(a) The proposed transferee demonstrates to the City's satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the City to competently complete and manage the Residential Project and to otherwise fulfill the obligations undertaken by the Owner under this Agreement.

(b) The Owner and the proposed transferee shall submit for City review and approval all instruments and other legal documents proposed to affect any Transfer of all or any part of or interest in the Property, the Improvements or this Agreement together with such documentation of the proposed transferee's qualifications and development capacity as the City may reasonably request.

(c) The proposed transferee shall expressly assume all of the rights and obligations of the Owner under this Agreement and the other City Documents arising after the effective date of the Transfer and all obligations of Owner arising prior to the effective date of the Transfer (unless Owner expressly remains responsible for such obligations) and shall agree to be subject to and assume all of Owner's obligations pursuant to the Conditions of Approval and all other conditions, and restrictions set forth in this Agreement.

(d) Except in the case of partnership interest Transfers, the Transfer shall be

effectuated pursuant to a written instrument satisfactory to the City in form recordable in the Official Records.

(e) Consent to any proposed Transfer may be given by the City's Authorized Representative unless the City's Authorized Representative, in his or her discretion, refers the matter of approval to the City Council. If the City has not rejected a proposed Transfer or requested additional information regarding a proposed Transfer in writing within forty-five (45) days following City's receipt of written request by Owner, the proposed Transfer shall be deemed approved.

8.4 Effect of Transfer without City Consent. In the absence of specific written agreement by the City, no Transfer of the Property or the Project shall be deemed to relieve the Owner or any other party from any obligation under this Agreement. It shall be an Event of Default hereunder entitling City to pursue remedies including without limitation, acceleration of the Loan and/or foreclosure under the Deed of Trust if without the prior written approval of the City, Owner assigns or Transfers this Agreement, the Improvements, or the Property in violation of Section 8. This Section 8.4 shall not apply to Transfers described in clauses (i), (ii), (iii), (iv), (v) and (vii) of Section 8.2., and solely with respect to the removal of the general partner by the investor limited partner for a default under the Partnership Agreement, provided that the provisions of this Section 8.4 shall apply to the selection of a replacement general partner in the event of a removal of the general partner in accordance with clause (v) of Section 8.2.

8.5 Recovery of City Costs. Owner shall reimburse City for all City costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to affect a Transfer under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee within ten (10) days following City's delivery to Owner of an invoice detailing such costs.

8.6 Encumbrances. Owner agrees to use good faith commercially reasonable efforts to ensure that all deeds of trust or other security instruments and any applicable subordination agreement recorded against the Property, the Project or part thereof in accordance with the DDLA for the benefit of a lender other than City ("**Third-Party Lender**") shall contain each of the following provisions: (i) Third-Party Lender shall use its best efforts to provide to City a copy of any notice of default issued to Owner concurrently with provision of such notice to Owner; (ii) City shall have the reasonable right, but not the obligation, to cure any default by Owner within the same period of time provided to Owner for such cure extended by an additional ninety (90) days; (iii) provided that City has cured any default under Third-Party Lender's deed of trust and other loan documents, City shall have the right to foreclose the Deed of Trust, and take title to the Project without acceleration of Third-Party Lender's debt; and (iv) City shall have the right to transfer the Project without acceleration of Third-Party Lender's debt to a nonprofit corporation or other entity which shall own and operate the Project as an affordable rental housing Project, subject to the prior written consent of the Third-Party Lender. Owner agrees to provide to City a copy of any notice of default Owner receives from any Third-Party Lender within five (5) business days following Owner's receipt thereof.

8.7 Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon

all or any portion of the Project or the Property, and the purchaser at any trustee's sale or foreclosure sale shall not be liable for any violation of any provision hereof occurring prior to the acquisition of title by such purchaser. Such purchaser shall be bound by and subject to this Agreement from and after such trustee's sale or foreclosure sale. Promptly upon determining that a violation of this Agreement has occurred, City shall give written notice to the holders of record of any mortgages or deeds of trust encumbering the Project or the Property that such violation has occurred.

9. Default and Remedies.

9.1 Events of Default. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

(a) The occurrence of a Transfer in violation of Section 8 hereof;

(b) Owner's failure to maintain insurance on the Property and the Project as required hereunder, and the failure of Owner to cure such default within five (5) days;

(c) Subject to Owner's right to contest the following charges, Owner's failure to pay taxes or assessments due on the Property or the Project or failure to pay any other charge that may result in a lien on the Property or the Project, and Owner's failure to cure such default within twenty (20) days of delinquency, but in all events prior to the date upon which the holder of any such lien has the right to foreclose thereon;

(d) A default arises under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Property and remains uncured beyond any applicable cure period such that the holder of such security instrument has the right to accelerate repayment of such loan;

(e) A default arises under the Loan Agreement, the Note, or the Deed of Trust, and remains uncured beyond the expiration of any applicable cure period;

(f) Owner's default in the performance of any term, provision or covenant under this Agreement (other than an obligation enumerated in this Section 9.1), and unless such provision specifies a shorter cure period for such default, the continuation of such default for ten (10) days in the event of a monetary default or thirty (30) days in the event of a non-monetary default following the date upon which City shall have given written notice of the default to Owner, or if the nature of any such non-monetary default is such that it cannot be cured within thirty (30) days, Owner's failure to commence to cure the default within thirty (30) days and thereafter prosecute the curing of such default with due diligence and in good faith to completion, provided that Owner's due diligence and good faith shall be determined in the City's reasonable discretion and shall be demonstrated through efforts reported to the City no less frequently than monthly following the notice of default, but in no event longer than 180 days from receipt of the notice of default.

The limited partners of Owner shall have the right to cure any default of Owner hereunder upon the same terms and conditions afforded to Owner; provided however, if the default is of such nature that the limited partners reasonably determine that it is necessary to replace the general

partner of Developer in order to cure such default, then the cure period shall be extended by an additional sixty (60) days after the removal and replacement of such general partner, provided that the limited partners have promptly commenced and diligently proceeded with all requisite actions to effect such removal and replacement. City shall provide a copy of any notice of default hereunder to the limited partners at the address set forth in Section 11.3 hereof, or to such other address provided to the City in writing, concurrently with the provision of such notice to Owner.

9.2 Remedies. Upon the occurrence of an Event of Default and its continuation beyond any applicable cure period, City may proceed with any of the following remedies:

(a) Bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking declaratory relief;

(b) Accelerate and declare the balance of the Note and interest accrued thereon immediately due and payable and proceed with foreclosure under the Deed of Trust;

(c) For violations of obligations with respect to rents for Restricted Units, impose as liquidated damages a charge in an amount equal to the actual amount collected in excess of the Affordable Rent;

(d) Pursue any other remedy allowed under the City Documents or at law or in equity.

Each of the remedies provided herein is cumulative and not exclusive. The City may exercise from time to time any rights and remedies available to it under applicable law or in equity, in addition to, and not in lieu of, any rights and remedies expressly provided in this Agreement.

10. Indemnity. To the greatest extent permitted by law, Owner shall indemnify, defend (with counsel approved by City) and hold the Indemnitees harmless from and against all Claims arising directly or indirectly, in whole or in part, as a result of or in connection with Owner's construction, management, or operation of the Property and the Project or any failure to perform any obligation as and when required by this Agreement. Owner's indemnification obligations under this Section 10 shall not extend to Claims to the extent resulting from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 10 shall survive the expiration or earlier termination of this Agreement. City does not and shall not waive any rights against Owner that it may have by reason of any indemnity and hold harmless provision set forth in this Agreement because of the acceptance by City, or the deposit with City by Owner, of any of the insurance policies described in this Agreement.

10.1 Terms Applicable to Indemnity Provisions. The terms set forth in this Section 10.1 shall apply to all provisions of this Agreement that pertain to Owner's obligations to indemnify

City and the other Indemnitees, including without limitation, Sections 2.10 and 10. In connection with each such provision, all of the following shall apply:

(a) City does not and shall not waive any rights against Owner that it may have by reason of any indemnity and hold harmless provision set forth in this Agreement because of the acceptance by City, or the deposit with City by Owner, of any of the insurance policies described in this Agreement.

(b) Owner's obligation to indemnify the Indemnitees shall not be limited or impaired by any of the following: (i) any amendment or modification of any City Document; (ii) any extensions of time for performance required by any City Document; (iii) any provision in any of the City Documents limiting City's recourse to property securing the Secured Obligations (as defined in the Deed of Trust, or limiting the personal liability of Owner, or any other party for payment of all or any part of the indebtedness evidenced by the Note; (iv) the accuracy or inaccuracy of any representation and warranty made by Owner under this Agreement or by Owner or any other party under any City Document, (v) the release of Owner or any other person, by City or by operation of law, from performance of any obligation under any City Document; (vi) the release or substitution in whole or in part of any security for repayment of the indebtedness evidenced by the Note; and (vii) City's failure to properly perfect any lien or security interest given as security for repayment of the indebtedness evidenced by the Note.

(c) The obligations of Owner to indemnify the Indemnitees shall survive any repayment or discharge of the indebtedness evidenced by the Note, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of the Deed of Trust.

11. Miscellaneous.

11.1 Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties.

11.2 No Waiver. Any waiver by City of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by City to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by City at any time to require strict performance by Owner of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

11.3 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by: (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt

requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt; or (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

City: City of Livermore
1052 S. Livermore Avenue
Livermore, CA 94550
Attention: City Manager

Owner: Eden Housing, Inc.
22645 Grand Street
Hayward, CA 94541
Attention: VP of Real Estate Development

11.4 Notice of Expiration of Term.

(a) At least six (6) months prior to the expiration of the Term, Owner shall provide by first-class mail, postage prepaid, a notice to all Tenants containing (i) the anticipated date of the expiration of the Term, (ii) any anticipated increase in Rent upon the expiration of the Term, (iii) a statement that a copy of such notice will be sent to the City, and (iv) a statement that a public hearing may be held by the City on the issue and that the Tenant will receive notice of the hearing at least fifteen (15) days in advance of any such hearing. Owner shall also file a copy of the above-described notice with the City Manager.

(b) In addition to the notice required above, Owner shall comply with the requirements set forth in California Government Code Sections 65863.10 and 65863.11. Such notice requirements include: (i) a twelve (12) month notice to existing tenants, prospective tenants and Affected Public Agencies (as defined in California Government Code Section 65863.10(a), which would include the City Manager) prior to the expiration of the Term, (ii) a six (6) month notice requirement to existing tenants, prospective tenants and Affected Public Agencies prior to the expiration of the Term; (iii) a notice of an offer to purchase the Development to "qualified entities" (as defined in California Government Code Section 65863.11(d)), if the Development is to be sold within five (5) years of the end of the Term; (iv) a notice of right of first refusal within the one hundred eighty (180) day period that qualified entities may purchase the Development.

11.5 Further Assurances. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

11.6 Parties Not Co-Venturers; Independent Contractor; No Agency Relationship. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another. The relationship of Owner and City shall not be construed as a joint venture, equity venture, partnership or any other relationship. City neither undertakes nor assumes any responsibility or duty to Owner (except as expressly provided in this Agreement)

or to any third party with respect to the Project. Owner and its employees are not employees of City but rather are, and shall always be considered independent contractors. Furthermore, Owner and its employees shall at no time pretend to be or hold themselves out as employees or agents of City. Except as City may specify in writing, Owner shall not have any authority to act as an agent of City or to bind City to any obligation.

11.7 Action by the City. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City's Authorized Representative or by any person who shall have been designated by the City's Authorized Representative, without further approval by the City Council.

11.8 Non-Liability of City and City Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to Owner or any successor in interest, in the event of any default or breach by the City, or for any amount of money which may become due to Owner or its successor or for any obligation of City under this Agreement.

11.9 Headings; Construction; Statutory References. The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party. All references in this Agreement to particular statutes, regulations, ordinances or resolutions of the United States, the State of California, or the City of Livermore shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

11.10 Time is of the Essence. Time is of the essence in the performance of this Agreement.

11.11 Governing Law; Venue. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of Alameda County, California or in the Federal District Court for the Northern District of California.

11.12 Attorneys' Fees and Costs. If any legal or administrative action is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

11.13 Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

11.14 Entire Agreement; Exhibits. This Agreement, together with the Loan Agreement, the Note, and the Deed of Trust, contains the entire agreement of Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto. Exhibits A through C, attached hereto are incorporated herein by this reference.

11.15 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

11.16 Amendment Contemplated by DDLA. Notwithstanding anything to the contrary contained herein, upon the conveyance as contemplated in Section 3.2 of the DDLA, this Agreement shall be modified as further set forth therein.

SIGNATURES ON FOLLOWING PAGE(S).

IN WITNESS WHEREOF, the Parties have executed this Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants as of the date first written above.

CITY:

CITY OF LIVERMORE, a California municipal corporation

By:_____

Print Name: _____

Title: City Manager

ATTEST:

By:_____

APPROVED AS TO FORM:

_____
Assistant City Attorney

OWNER:

By: _____

Print Name: _____
Title: _____

SIGNATURES MUST BE NOTARIZED.

ACKNOWLEDGMENT

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

State of California)
) ss
County of _____)

On _____, before me, _____, Notary Public_____,
(Name of Notary)

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

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

WITNESS my hand and official seal.

_____
(Notary Signature)

ACKNOWLEDGMENT

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

State of California)
) ss
County of _____)

On _____, before me,_____,
(Name of Notary)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

_____
(Notary Signature)

Exhibit A

LEGAL DESCRIPTION OF THE PROPERTY

(Legal Description Attached)

Exhibit B

Insurance Requirements

(Insurance Requirements to be attached.)

Minimum Scope and Limits of Insurance
Owner/Borrower shall maintain limits no less than:

1. **Commercial General Liability:**
   $1,000,000/$2,000,000 aggregate per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability or other form of insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. **Property Insurance:**
   Borrower is required to obtain and maintain property insurance coverage to cover full replacement value, to include improvements, and shall be written on an All Risk basis with a maximum deductible of $1,000 per property. The Property Insurance Policy shall also include a provision that protects the location and the City's interest if the Property is vacant and/or unoccupied for more than thirty (30) days. Borrower's policy must also include a business interruption provision to cover loan payments for twelve (12) to twenty-four (24) months if the property is damaged and cannot be sold or occupied. Additionally, the City must also be named as a Loss Payee by endorsement such as 438 BFU NS or similar.

Deductibles and Self-Insured Retention
All self-insured retentions (SIR) must be disclosed to Risk Management for approval and shall not reduce the limits of liability. Policies containing any SIR provision shall provide, or be endorsed to provide, that the SIR may be satisfied by either the named insured or the City of Livermore. The City of Livermore reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Acceptability of Insurers
Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII and accepted to do business in the State of California, unless otherwise acceptable to the City of Livermore.

Other Insurance Provisions
The general liability policy is to contain, or be endorsed to contain, the following provisions:

1. The City of Livermore, its officers, officials, employees, and designated volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Owner/Borrower. The coverage shall contain no special limitations on the scope of protection afforded to the City of Livermore, its officers, officials, employees, or volunteers.

2. The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. The additional insured coverage under the Owner/Borrower policy shall be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as ISO Form CG 20 10 04 13. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City of Livermore before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.
3. Any failure to comply with reporting or other provisions of the policy, including breaches of warranties, shall not affect coverage provided to the City of Livermore, its officers, officials, employees, or volunteers.
4. The Owner/Borrower insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party before expiration of the policy unless notice is delivered in accordance with policy provisions.
6. It shall be a requirement under this agreement that any available insurance proceeds broader than, or in excess of, the specified minimum insurance coverage requirements and/or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured; whichever is greater.
7. Certificate Holder section of the insurance certificate should read: City of Livermore, 1052 S. Livermore Avenue, Livermore, CA 94550

Verification of Coverage

Owner/Borrower shall furnish certificates of insurance and endorsement(s) effecting coverage to the City of Livermore for approval. The endorsements shall be on forms acceptable to the City of Livermore. All certificates and endorsements are to be received and approved by the City of Livermore before the agreement is executed. The City of Livermore reserves the right to require complete and certified copies of all insurance policies required by this Agreement.

Exhibit C

Form of Annual Report

(Form of Annual Report Attached)

Exhibit C to Regulatory Agreement

LIVERMORE CALIFORNIA

MULTI-FAMILY RENTAL PROJECT ANNUAL REPORT

PROJECT CONTACT INFORMATION

Property Information

Property Name	
Address	
Community Manager	
Phone	
Email	
Website (if applicable)	

Owner Information

Owner Name	
Company Name	
Owner Address	
City, State, Zip	
Phone	
Email	
Primary Contact	
Secondary Contact	

Management Agent Information

Company Name	
Address	
City, State, Zip	
Phone	
Email	
Primary Contact Name	
Secondary Contact Name	

Name of first point of contact for and on-site monitoring of the property:

EXHIBIT A

MULTI-FAMILY RENTAL PROJECT ANNUAL REPORT

Property Name & Address	
Person Completing Report	
Date	
Report Period	

Compliance with Required Number of Low Income Units

Total number of income restricted units which are currently occupied (or reserved and available for occupancy):	
Number of vacant income restricted units at the time of this report:	
I hereby certify that these units in the quantity listed above have been continuously designated as units for occupancy by low-income households during the reporting period:	
Name of Project Owner or Authorized Agent	Title

Compliance with Rent Limits

List below the current monthly rents of the units restricted for occupancy by low-income households as well as the prior rents (if increases were made during the report period):

Plan	Number of Bedrooms	Current Rent	Prior Rent	% Increase	Additional Fees Charged	Utility Allowance (if applicable) or Amount of Tenant Paid Utilities

I hereby certify that the rents in all units designated for low-income households did not exceed the levels authorized under the regulatory agreement/restrictive covenants with the City of Livermore during the reporting period:

Name of Project Owner or Authorized Agent Title

EXHIBIT A

Restricted Unit Occupant Information

Unit #	Bdrms	Unit Income Level	Tenant Last Name	Move-In Date	# in Household	Reported Annual Income	Effective Date of Current Rent	Tenant Paid Rent	Section 8? (Y/N)

EXHIBIT A

LIVERMORE
CALIFORNIA

MULTI-FAMILY RENTAL PROJECT ANNUAL REPORT

PROPERTY CONDITION REPORT

Property Name	
Address	
Name of Person Completing Report	
Reporting Period	

List any physical defects or major repair work undertaken within the reporting period:

Comments on any general management/performance issues within the reporting period:

INSURANCE REQUIREMENTS
REGULATORY / LOAN AGREEMENTS

Minimum Scope and Limits of Insurance

Owner/Borrower shall maintain limits no less than:

1. **Commercial General Liability:**
   $1,000,000/$2,000,000 aggregate per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability or other form of insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. **Property Insurance:**
   Borrower is required to obtain and maintain property insurance coverage to cover full replacement value, to include improvements, and shall be written on an All Risk basis with a maximum deductible of $1,000 per property. The Property Insurance Policy shall also include a provision that protects the location and the City's interest if the Property is vacant and/or unoccupied for more than thirty (30) days. Borrower's policy must also include a business interruption provision to cover loan payments for twelve (12) to twenty-four (24) months if the property is damaged and cannot be sold or occupied. Additionally, the City must also be named as a Loss Payee by endorsement such as 438 BFU NS or similar.

Deductibles and Self-Insured Retention

All self-insured retentions (SIR) must be disclosed to Risk Management for approval and shall not reduce the limits of liability. Policies containing any SIR provision shall provide, or be endorsed to provide, that the SIR may be satisfied by either the named insured or the City of Livermore. The City of Livermore reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII and accepted to do business in the State of California, unless otherwise acceptable to the City of Livermore.

Other Insurance Provisions

The general liability policy is to contain, or be endorsed to contain, the following provisions:

1. The City of Livermore, its officers, officials, employees, and designated volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Owner/Borrower. The coverage shall contain no special limitations on the scope of protection afforded to the City of Livermore, its officers, officials, employees, or volunteers.

2. The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. The additional insured coverage under the Owner/Borrower policy shall be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as ISO Form CG 20 10 04 13. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City of Livermore before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.
3. Any failure to comply with reporting or other provisions of the policy, including breaches of warranties, shall not affect coverage provided to the City of Livermore, its officers, officials, employees, or volunteers.
4. The Owner/Borrower insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party before expiration of the policy unless notice is delivered in accordance with policy provisions.
6. It shall be a requirement under this agreement that any available insurance proceeds broader than, or in excess of, the specified minimum insurance coverage requirements and/or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured; whichever is greater.
7. Certificate Holder section of the insurance certificate should read: City of Livermore, 1052 S. Livermore Avenue, Livermore, CA 94550

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Owner/Borrower shall furnish certificates of insurance and endorsement(s) effecting coverage to the City of Livermore for approval. The endorsements shall be on forms acceptable to the City of Livermore. All certificates and endorsements are to be received and approved by the City of Livermore before the agreement is executed. The City of Livermore reserves the right to require complete and certified copies of all insurance policies required by this Agreement.

CITY OF LIVERMORE COMMUNITY DEVELOPMENT DEPARTMENT

EXHIBIT J

EXHIBIT A

PLANNING APPLICATION FEES

Effective July 1, 2018

A. CEQA	
County Clerk Filing Fee – NOE, NOD, Other	$50.00
Notice of Exemption (NOE) – City Fee	$173.00
Negative Declaration (NOD) – City Fee	$5,796.00
Negative Declaration – Fish & Game §711.4 Fee (if applicable)	$2,280.75
Environmental Impact Report – City Fee *(Required deposit of 20 percent of contract amount)*	T&M
Environmental Impact Report – Setup, RFP, etc. "to establish base fee"	$8,424.00
Environmental Impact Report – Fish & Game §711.4 Fee (if applicable)	$3,168.00
B. Downtown Design Review	
Downtown Minor Design Review – Staff Level *(Fencing, painting, permanent and temporary signs, lighting, landscaping, hardscape, streetscape, etc. Applies to commercial, historic, and residential [duplex & multi-family.])*	No Fee
Downtown Administrative Design Review – Staff Level *(Exterior building modifications, including awnings, windows, doors, trim, and Master Sign Programs. Applies to commercial, historic, and residential.)*	$1,382.00
Downtown Design Review Amendment – Planning Commission, Project Review	$9,091.00
Downtown Design Review – Small Additions *(Additions or modifications between 0-1,500 square feet or 15 percent of existing building area. Applies to commercial, historic, and residential [duplex & multi-family.])*	$4,318.00
Downtown Design Review – Large Additions, Staff Level *(Additions between 1,501-29,999 square feet or over 15 percent of existing building area; commercial, retail or office structures up to 29,999 square feet; residential projects of 39 or less units, etc. Applies to commercial, historic, and residential [duplex & multi-family.])*	$7,484.00
Downtown Design Review – Planning Commission *(Commercial, retail, office structures, and additions of 30,001 square feet or more, residential projects of 40 or more units, etc. Applies to commercial, historic, and residential [duplex & multi-family])*	$10,440.00
C. Legislative Acts	
Annexation/Pre-Zoning	$26,395.00
Out of Area Service Agreement	$21,067.00
Rezoning *(Development Code Amendment or Zoning Map Amendment)*	$10,008.00
Development Agreement – No Policy Change	$15,688.00
Development Agreement – Policy/Ordinance Change	$21,060.00
Development Agreement – Minor Amendment *(Staff Level)*	$8,918.00
General Plan Amendment/Specific Plan Amendment	$17,348.00
Housing Implementation Program	$13,624.00
Housing Implementation Program Amendment	$9,180.00
Planned Development District	$11,601.00
Planned Unit Development *(SLVSP)*	$11,601.00
Planned Unit Development Amendment	$10,478.00
Planned Development District Amendment (via DCA)	$10,478.00
Policy Proposal	T&M
Policy Proposal Amendment	T&M
Municipal Code Amendment	$25,158.00
D. Miscellaneous	
Appeal	$3,597.00
Temporary Sign Registration Fee – Commercial	$57.00
Williamson Act Contract Creation	$7,772.00
Williamson Act Contract Cancellation	$10,333.00
Consistency Determination	$7,762.00
Staff Research Time, per hour – including Zoning Use Verification (ZUV)	$173.00
E. Permits	
Conditional Use Permit (Public Hearing) [1]	$10,674.00

Conditional Use Permit – Residential and Minor Non-Residential (*Existing building with non-residential General Plan designation of 3,000 square feet or less with no significant traffic, parking, noise, odor, or other environmental considerations).*	$5,181.00
Conditional Use Permit Amendment	$8,304.00
Home Occupation Permit	$90.00
Sign Design Review	$510.00
New or Amended Master Sign Program	$2,055.00
Master Sign Approval	No Fee
Variance – General	$10,819.00
Variance – Developed Residential	$1,573.00
Variance, Minor – General	$4,649.00
Variance, Minor – Developed Residential	$812.00
Reasonable Accommodations (*Livermore Development Code Chapter 9.06)*	$173.00
Temporary Use Permit – Temporary Uses, seasonal *(e.g., Christmas tree lots, rallies, and carnivals)*	$500.00
Temporary Use Permit – Temporary Uses, seasonal (Non-profit organization)	$61.00
Temporary Use Permit – Model Home Complex *(including construction trailer, sales office, and homes)*	$3,150.00
Zoning Use Permit	$432.00
Large Family Day Care	$367.00
Certificate of Appropriateness – Historic Preservation Commission	$500.00
Certificate of Appropriateness – Staff Level	$100.00
Zoning Clearance – Level 1 *(Exterior building modifications, including awnings, windows, doors, and trim)*	$423.00
Zoning Clearance – Level 2 *(New single-family residence or significant remodel [e.g. additions, changes to building form] of existing single-family residence in Transect Zone)*	$658.00
Secondary Dwelling Unit	$600.00
Tree Removal Permit – Commercial *(for Residential Tree Removal see Ordinance)*	$734.00
F. Site Plan Design Review	
Site Plan Design Review – Public Hearing *(Construction of new non-residential development or residential development containing five or more units.)*	$25,727.00
Site Plan Design Review – Staff Level *(Construction of new condominium, duplex, or multi-family residential containing four or less units.)*	$14,514.00
Site Plan Design Review Modification – Major Addition, Planning Commission *(Major additions to non-residential development or additions of five or more units to a residential development.)*	$18,955.00
Site Plan Design Review Modification – Minor Addition, Staff Level *(Minor non-residential additions or additions to a condominium, duplex, or multi-family residence containing four or less units.)*	$9,139.00
Site Plan Design Review Modification – Major Modification, Staff Level *(Major exterior building, landscaping, or parking modifications.)*	$2,446.00
Site Plan Design Review Modification – Minor Modification, Staff Level *(Minor exterior building and landscape modifications such as new awnings, windows, doors, and trim.)*	$903.00
G. Subdivisions	
Open Space Agricultural Easements/Amendments	$7,930.00
Lot Line Adjustment/Certificate of Compliance - Application	$3,215.00
Parcel Map Waiver or Parcel Merger *(Staff Level)*	$5,023.00
Tentative Parcel Map *(Public Hearing)*	$13,935.00
Parcel Map Amendment – Public Hearing	$11,543.00
Parcel Map Amendment – Staff Level Review *(Extension)*	$2,730.00
Tentative Tract Map *(Base fee plus $94 per lot or unit)*	$18,210.00
Tentative Tract Map Amendment – Public Hearing	$12,050.00
Tentative Tract Map Amendment – Staff Level *(Extension)*	$6,636.00
City Wide - Transferrable Development Credits (TDC) Program In-Lieu Fee Ordinance 1979, Development Code Section 4.02.06D	

1.5 Credits per single-family detached dwelling, in excess of baseline density within a density range of 1-7 du/acre, 1.25 credits per single family detached dwelling in excess of baseline density within a density range of 8-14 du/acre and 1/2 credit per multi-family attached dwelling - Current In-Lieu credit is $16,352.31. TDC Ordinance does not apply to residential projects in Downtown Specific Plan, affordable units covered by an agreement and residential projects that have received housing units through the City's Housing Implementation Program (HIP).
Applications involving multiple processes in Sections C, E, F, or G above can be reduced by 10 percent.
Notes: ➢ *T&M – Applicant shall be charged on a time and materials basis.* ➢ *Projects that do not fit any category or are otherwise extraordinary may be charged on a T&M basis at the Director's discretion.* ➢ *Staff time required on a project, post entitlement, and not part of another formal application (e.g., Final Map, plot plan) will be recovered on a T&M basis at the Director's discretion.* ➢ *The fees calculated above reflect standard processing time. Projects requiring excessive review time will be recovered on a T&M basis.*
(1) For new construction or additions, Conditional Use Permit fee must be combined with applicable Site Plan Design Review fee. Applications involving both Conditional Use Permit and Site Plan Design Review fees can be reduced by 10 percent. (2) All projects with in the Downtown Specfic Plan are subject to both City Wide General Plan & Downtown Specific Plan - cost

BUILDING PERMITS

TYPE OF FEE	CITY RESOLUTION	AMOUNT OF FEE
Building Permit	Title 15.04.070	FEE VARIES ACCORDING TO BUILDING TYPE, BUILDING USE, AND BUILDING SIZE
Change of Address	Resolution 2008-123	$490

ENCROACHMENT PERMITS

TYPE OF FEE	CITY CODE, RESOLUTION, AND WHEN PAYABLE		AMOUNT OF FEE		
Encroachment Permit	Title 12.08.090 Ord. 345 Title 3.20.010 Reso. 2017-151	With Encroachment Permit Application, or Building Permit (site plans)	Encroachment Permit Simple Plan Check/Processing Encroachment Inspection	 Simple Major	$156.00 $402.00 $649.00
Telecommunication Encroachment Permit	Reso. 2017-151	With Encroachment Permit Application	Encroachment Permit Processing Fee *(All Telecomm permits)* Encroachment Permit Simple Plan Check Simple Inspection (with up to 2 days inspection)		$492.00 $691.00 $156.00
Telecommunication Plan Check Fee	Reso . 2017-151	When first submitted with adjustment upon plan approval	Telecommunication Plan Check Fee: 8.35% 4.22% 3.34%	 Up to $250,000 Project Valuation $250,001 - $1,000,000 $1,000,001 and over	
Encroachment and Telecommunication Inspection (Project Valuation)	Reso 2017-151	With Encroachment Permit Application	Encroachment Inspection Fee: minimum $402 25.42% 9.11% 5.08%	 Up to $5,000 $5,001 - $25,000 $25,001 +	
Encroachment Permit - Traffic Control (Use for simple, major, and Telecomm permits)	Reso 2017-151	With Encroachment Permit Application	Traffic Control = one hour per day or T&M		$337.00
New Technology Encroachment Permit	Reso. 2008-123	With Encroachment Permit Application	$510		

TRANSPORTATION PERMITS

TYPE OF FEE	CITY RESOLUTION	AMOUNT OF FEE
Transportation Permit - Single Trip	Reso 2017-151	$16
Transportation Permit - Annual	Reso 2017-151	$90
Transportation Permit - Repetitive	Reso 2017-151	$90

CITY OF LIVERMORE COMMUNITY DEVELOPMENT DEPARTMENT

ENGINEERING AND MAP FEES

EXHIBIT A

Effective July 1, 2018

MAP AND PLAN CHECK FEES

TYPE OF FEE	CITY CODE AND RESOLUTION	WHEN PAYABLE	AMOUNT OF FEE		
Tract Map, Parcel Map and Surveys Checking Fees	Title 18.08.050 Title 18.12.020 Reso. 2017-	When map is first submitted	Deposit plus time and materials, (City Staff).	Tract/Parcel Map Parcel Map Waiver Each additional lot over 10	$9,233.00 $5,834.00 $117.00
Improvement Plan Check Fee	Reso . 2017-151	When first submitted with adjustment upon plan approval	Improvement Plan Check Fee: 8.35% 4.22% 3.34%	 Up to $250,000 Project Valuation $250,001 - $1,000,000 $1,000,001 and over	
Inspection for Public Improvements	Title 12.08.090 Ord. 345 Title 3.20.010 Reso. 2017-151	With Final Map approval (Tract Maps)	Public Improvement Inspection Fee: 9.71% 8.95% 6.57%	 Up to $250,000 Project Valuation $250,001 - $1,000,000 $1,000,001 and over	
Certificate of Compliance	Reso. 2008-123	With Application	$760	(Engineering Fee Only, see Planning Application Fee.)	
Abandonment/Vacation	Reso 2017-151	With Application	$12,466.00		
O&M Agreement/ Stormwater Plan check	Reso 2017-151	With Application	*If separate from map plan check*	$9,994.00	
Stormwater Inspection Fee	Reso 2017-151	With Application	*If inspected seperately from tract*	$1,607.00	
Benefit District		With Building Permit or Tract Acceptance	CHECK TO SEE IF AREA IS WITHIN A BENEFIT DISTRICT		
Tax on Construction	Title 3.08.640 Ord. 959 Ord. 1135	With Building Permit	1-3/4% of Estimated Construction Cost or $650 per Residential Unit (Greater Amount)		Ind. Only 1-3/4% of Estimated Construction Cost
Additional Plan Check	Reso. 2017-151	Additional Plan Check after 3 reviews (collected prior to each additional check)	$782.00		
Subdivision Improvement Agreement Amendment/Extension	Reso 2017-151	With Application	$781.00		
Research/Map Creation Fee	Reso. 2008-123	At time of request	Hourly	$140	

FEMA FLOOD PLAIN DETEMINATION / LETTER OF MAP REVISION

TYPE OF FEE	CITY RESOLUTION	AMOUNT OF FEE
Floodplain Determination - Written deterninants on FEMA form	Reso 2017-151	$94.00
FEMA Flood Plain Determination/LOMR	Reso 2017-151	$3,123
FEMA Flood Plain Determination/LOMA	Reso 2017-151	$312

SOUTH LIVERMORE VALLEY SPECIFIC PLAN DEVELOPMENT FEES (1)

TYPE OF FEE	CITY CODE AND RESOLUTION	FEE PER RESIDENTIAL UNIT
Plan preparation fee	Resolution 2003-114	$1,383
Recycled water fee	Resolution 98-175	20% of the current Alameda County Water Connection Fee
Major attraction fee	Resolution 2003-114	$1,267
South Livermore Road Improvement fee	Resolution 2003-114	$11,069

CITY OF LIVERMORE COMMUNITY DEVELOPMENT DEPARTMENT

DEVELOPMENT IMPACT AND CONNECTION FEES

EXHIBIT A

Effective July 1, 2018

TYPE OF FEE	CITY CODE AND RESOLUTION	WHEN PAYABLE	AMOUNT OF FEE
City Storm Drainage (1)	Title 13.44.020,050,100 Ord. 1923 Reso. 2010-177	With Building Permit	$0.45/SF Impervious Surface
County Storm Drainage Building Zone 7	ACFC & WCD Co. Ord. 0-2010-001 Reso. R-2001-4	With Building Permit	$1.00/SF Impervious Surface
County Storm Drainage Public Improvements e.g. streets, sidewalks, trails, etc.	ACFC & WCD Co. Ord. 0-2010-001 Reso. R-2001-4	With filing of Final Map or approval of Improvement Plans	$1.00/SF Impervious Surface
County Storm Drainage - Capital Improvements	ACFC & WCD Co. Ord. 0-2010-001 Reso. R-2001-4	With award of contract	$1.00/SF Impervious Surface
Sanitary Sewer Connection	Title 13.28.050 Ord. 1740 Reso. 2010-177	With Building Permit	**See Attached Exhibit "A"**
Park Land Dedication	Title18.32.020 Ord. 1744 Reso. 2004-259	Concurrently with, or before the filing of the first parcel or final map	The City may approve a credit against the Park Facilities Fee for park land dedication made under LMC 18.32.020. The credit may not exceed the value of the dedication requirement. See LMC 12.60.070 for credit details N/A for Non-Residential
Park Facilities Fee	Title 12.60 Ord. 1743 Reso. 2005-152	With Building Permit	**See Attached Exhibit "B"**
City Water Connection (2)	Title 13.20.020 Ord. 1507 Reso. 2010-177	With Building Permit	5/8" $4,467 3/4" $6,701 1" $11,168 1-1/2" $22,337 2" $35,739 Price per User for Meter Size, FOR LARGER METERS, INQUIRE
Alameda County Water Connection Zone 7	Ord. FC 72-1 as amended by FC-96-1792 and updated 10-20-10	With Building Permit **See Zone 7 Attachment**	5/8" $28,170 3/4" $42,255 1" $70,425 Price per User for Meter Size, FOR LARGER METERS, INQUIRE
In-Lieu Low Income Housing Fee (Residential) For Sale & Neighborhood Plan Areas	Title 3.26 Reso. 2016-142 Ord. 1988 and 1989	With Building Permit **(Effective 1/12/2018)**	$25.37/SF for all residential housing developments 10 units or less. Projects more than 10 units are subject to must-build requirement of ordinance. Rental exempt from In-Lieu with exception of Neighborhood Plan Areas (Pell & Brisa)
Low Income Housing Impact Fee (Commercial and Industrial)	Title 3.26 Reso. 99-18 Ord. 1549	With Building Permit	**Commercial** — **Unit** — **KSF Fee per Unit** Retail Commercial — KSF — $1,384 Discount/Service Retail — KSF — $1,042 Office Commercial — KSF — $889 Hotels/Motels — Room — $679 **Industrial** Manufacturing — KSF — $427 Warehouse/Storage — KSF — $124 Business/Commercial — KSF — $883 Industrial, High Intensity — KSF — $438 Industrial, Low Intensity — KSF — $277
City Wide General Plan - cost recovery (2)	Resolution 2008-123		$0.39/sf

(1) Subject to adjustment each year per Construction Cost Index

(2) Areas within the California Water Service Area do not pay a City water connection fee. Areas within the Greenville/Vasco Assessment District or within Triad Park do not pay a City water connection fee. The fee for a single family residential unit is the 5/8 inch meter fee.

CITY OF LIVERMORE COMMUNITY DEVELOPMENT DEPARTMENT

DEVELOPMENT IMPACT AND CONNECTION FEES

EXHIBIT A

Effective July 1, 2018

TYPE OF FEE	CITY CODE AND RESOLUTION	WHEN PAYABLE	AMOUNT OF FEE
Traffic Impact Fee **NOTE:** If special Assessment District exists, special calculations are required	For info regarding the appropriate development categories see Section 12.30 of the City of Livermore Municipal Code Reso 2005-151 Ord. 1742	With Building Permit	**See Attached Exhibit "C"**
Tri-Valley Transportation Development (TVTD) Fee (1)	Title 12.24.050 Ord. 2012 Reso. 2014-184	With Building Permit	Residential — Fee Per Unit Single family — $4,613.65 Multi-family — $3,178.06 Secondary Dwelling — $1,845.46 Non Residential — Per KSF Retail — $3,410.00 Office — $7,840.00 Industrial — $4,570.00 Other — Average Peak Hour Trip $5,126.36
SCHOOL IMPACT FEES:			
The City of Livermore collects School Mitigation Development Fees (school fees) on behalf of the Livermore Valley Joint Unified School District. The fees must be paid for by cash or a check made out to the City of Livermore. Fees are due upon issuance of a qualifying building permit. ***See Attached Exhibit "D"***			
SOCIAL / HUMAN SERVICES FACILITY			
Social/Human Services Facility Fee	Title 12.70 Ord. 1851	With Building Permit	**See Attached Exhibit "E"**
ART IN PUBLIC PLACES			
Art in Public Places Fee (3)	Ord. 1836 Title 12.51		0.33% of total project valuation

DOWNTOWN SPECIFIC PLAN DEVELOPMENT FEES		
TYPE OF FEE	**CITY RESOLUTION**	**AMOUNT OF FEE**
In-Lieu Payment for Public Open Space	Resolution 2005-041	$50 per square foot of required open space
In-Lieu Parking Fee	Resolution 2017-006	$18,500.00
In-lieu Parking Fee Subsidy - Vacant or underutilized Specific Plan Core Area parcel fronting First Street with a building addition.	Resolution 2017-137 *(Program expires July 24, 2019)*	Reduction in the in-lieu parking fee by 50%, from $18,500 to $9,250 per space, for up to 7 spaces per project.
In-lieu Parking Fee Subsidy - Vacant or underutilized Specific Plan Core Area parcel fronting First Street with a new building.	Resolution 2017-137 *(Program expires July 24, 2019)*	Reduction in the in-lieu parking fee by 50%, from $18,500 to $9,250 per space, for up to 10 parking spaces per project.
Downtown Revitalization Fee	Title 12.32	Residential — Fee Per Unit Dwelling Unit — $5,847 Non Residential (6) — Per SF Retail/Office — $18.02
Downtown Specific Plan - cost recovery	Resolution 2008-123	$0.31/SF

EXHIBIT A
Wastewater Connection Fee Schedule
(fees Calculated from base year)

User Classification	Avg Daily Wastewater Flow Factor Gallons Per Day/Unit	Unit[1]	Cost Per GPD	Cost Per Unit
Residential (BOD & SS = 285 mg/L)				
Single-family residential	180	House	$37.03	$6,665.40
Multi-family residential				
Studio	95	Residential Unit	$37.03	$3,517.85
One Bedroom	107	Residential Unit	$37.03	$3,962.21
Two Bedroom	138	Residential Unit	$37.03	$5,110.14
Three Bedroom	157	Residential Unit	$37.03	$5,813.71
Four Bedroom	180	Residential Unit	$37.03	$6,665.40
Commercial (BOD & SS = 285 mg/L unless otherwise shown)				
Auto repair shops/Auto dealers	0.11	Square Foot of Bldg	$37.03	$4.07
Assembly Facilities[2]	0.15	Square Foot of Bldg	$37.03	$5.55
Eating drinking facilities w/o cooking	0.35	Square Foot of Bldg	$37.03	$12.96
Gas Stations	0.47	Square Foot of Bldg	$37.03	$17.40
General Use	0.04	Square Foot of Bldg	$37.03	$1.48
Gyms, Health Clubs	0.30	Square Foot of Bldg	$37.03	$11.11
Hotels, Motels (excluding dining facilities)	0.15	Square Foot of Bldg	$37.03	$5.55
Markets	0.19	Square Foot of Bldg	$37.03	$7.04
Mixed Use[3]	0.10	Square Foot of Bldg	$37.03	$3.70
Medical/Dental Office/ Clinic	0.22	Square Foot of Bldg	$37.03	$8.15
Restaurants (1,000 mg/L BOD, 600 mg/L SS)	0.55	Square Foot of Bldg	$54.56	$30.01
Warehouse/Distribution	0.01	Square Foot of Bldg	$37.03	$0.37
Industrial/Other (Other Wastewater Customers Not Listed Above)				
Calculate Case-by-Case Based on Actual Flows/Strengths and Following Rates				
Connection Fee = (F x "Flow") + (B x "BOD") + (S x "SS")				
F = Flow cost $/gpd	$27.70			
B = BOD cost $/lb-day	$2,409.69			
S = SS cost $/lb-day	$980.90			
discharge				
flow, in				
"BOD" = The				
"SS" = The				

Governing Municipal Code Section: 13.28.050
Index Used: ENR 20- City Construction Cost Index

Indices:	*Base Year* (A)	*Previous Fee Update* (B)	*Current Fee Update* (C)	*% Change Previous Update to Current Update* (D) =(C/B)-1
Index Date	May-10	May-17	May-18	
Index Value	8,761.47	10,692.17	11,068.57	3.52%

Discussion:

The base year unit fees for Flow, BOD, and SS were determined in theMarch 2010 Wastewater, Water, Storm Drain Connection Fee Study for Expansion of Sanitary Sewer, Water Reclamation Plant, and Wastewater Disposal Facilities prepared for the City of Livermore by Craig R. Lawson Utility Management Consultant.

Notes:

1. Building square footage means the square footage sum of the floor area at each floor level included with the surrounding principal outside faces of exterior walls of a building or portions thereof, including mezzanines and lobbies. It does not include floor area devoted to vehicle parking, necessary interior driveways and ramps. The gross floor area of a building or portions thereof that doesn't have surrounding exterior walls shall include the usable area under the horizontal projection of the roof or floor above.

2. Theaters can alternately estimate daily flow based on 2 gallons per seat ($71.54 per seat)

3. Mixed Use applies to parcels with Mixed Use zoning and in the Downtown Core District only.

4. This value is based by formula on BOD

6. Adjustments. The city council may, by resolution, adjust the fee schedule, including the flow factors, from time to time. Once the fee is established, it shall automatically be increased annually based upon the Engineering News Record (ENR) 20- City construction Cost Index. In calculating the adjustment, the rate (in each use category, including the flow, BOD and SS costs) for the base year is multiplied by the index for the then-current year, divided by the base year index.

EXHIBIT B
Park Facilities Fee Schedule

LAND USE	TOTAL FEE
Residential (per dwelling unit)	
Single Family (& 4 bedroom multi-family)	$16,836
Multi-Family 3 bedrooms	$14,649
Multi-Family 2 bedrooms	$12,910
Multi-Family 1 bedroom	$9,990
Multi-Family Studio	$8,925
Senior Housing	$2,864
Non-Residential (per 1,000 sq ft)	
Commercial	$2,134
Office	$3,052
Industrial	$1,419
Warehouse	$1,066

Source - Park Facilities Fee Study (2004) Table 8; MuniFinancial

EXHIBIT C

Traffic Impact Fees Schedule

Land Uses	Units of Use	Fee Rates
Citywide Except Downtown		
Residential		
Single-Family	d.u.	$9,265
Multi-Family		
Studio	d.u.	$4,318
1 Bedroom	d.u.	$4,834
2 Bedroom	d.u.	$6,246
3 or more Bedroom	d.u.	$7,305
Senior Housing	d.u.	$2,843
Commercial	K s.f.	$25,163
Office	K s.f.	$16,108
Industrial	K s.f.	$10,001
Warehouse	K s.f.	$5,053
Hotel/Motel	per/room	$7,264
Downtown Specific Plan		
Multi-Family		
Studio	d.u.	$2,650
1 Bedroom	d.u.	$2,968
2 Bedroom	d.u.	$3,835
3 or more Bedroom	d.u.	$4,485
Commercial	K s.f.	$11,393
Other	Average Peak Hour Trip	$11,579

Exhibit "D"

LIVERMORE VALLEY JOINT UNIFIED SCHOOL DISTRICT
SUMMARY OF SCHOOL MITIGATION PROGRAM

INDUSTRIAL/COMMERCIAL:		$0.61/sq.ft.
RENTAL-SELF STORAGE SPACE:		$0.021/sq.ft.
RESIDENTIAL:		$3.79/sq.ft.
	ADDITIONS-	$3.79/sq.st. (501 sq.ft. or more) Residential additions 500 sq.ft. or less are exempt
HOTEL/MOTEL:		$0.356/sq.ft.

Livermore Valley Joint Unified School District Resolution: 045 - 17/18

* Additions are cumulative over time to a limit of 500 sf before fees are assesed. Once assessed, fees are paid on the entire added square footage.

** The fee owed is based upon the fee amount in effect at the time the fee is paid.

LIVERMORE VALLEY JOINT UNIFIED SCHOOL DISTRICT
685 East Jack London Blvd, Livermore, Ca 94551

FACILITIES PLANNING AND CONSTRUCTION
Jan Shipley, Construction Supervisor (925) 606-3390
Facilities Fax Number (925) 606-3327

EXHIBIT E
Social and Human Service Facility Fee Schedule

Land Uses	Units of Use	Fee Rates
Residential Uses		
Single-Family Detached	d.u.	$1,677
Single-Family Attached	d.u.	$1,415
Multi-Family	d.u.	$1,298
Mobile Home	d.u.	$996
Secondary Unit	d.u.	$996
Non-Residential Uses		
Commercial		
Office	K s.f.	$7
Retail	K s.f.	$5
Service	K s.f.	$5
Industrial		
Manufacturing/R&D	K s.f.	$3
Warehousing	K s.f.	$2
Office	K s.f.	$6
Construction/Repair/Wholesale	K s.f.	$3
Other Non-Residential	K s.f.	$5

EXHIBIT A

Zone 7 M&I Connection Fee Rate Schedule

Effective Janaury 1, 2018

Meter Size		Recommended Maximum Rate for Continuous Use (gpm)	Connection Fee Amount
5/8" & 1" FS*		10	$28,170
3/4"		15	$42,255
1"		25	$70,425
1 1/2"	(DISPLACEMENT TYPE)	50	$140,850
	Omni C2	160	$450,720
	Omni T2	160	$450,720
2"	(DISPLACEMENT TYPE)	80	$225,360
	Mueller MVR **Pleasanton Only**	115	$323,955
	Omni C2	160	$450,720
	Omni T2	200	$563,400
3" to 10"			**

* When the Fire Department requires fire sprinklers, a 1-inch meter may be obtained at the same rate as a 5/8-inch meter.

** Connection fees for meter sizes 3-inches and above will be determined by using the fee factor for maximum continuous flow rate.

Fees for meters other than those listed above will be determined based upon the maximum continuous flow rating for the brand and type of meter.

These fees are based on the Maximum Continuous Flow Rate through a 5/8" meter as defined by AWWA C700 for Cold-Water Meter -- Displacement Type, Bronze Case.
Any changes to meter capacities will affect the above connection fees.

Currently, the 2-inch Mueller MVR is only available in Pleasanton.

EXHIBIT A

ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 7
100 NORTH CANYONS PARKWAY, LIVERMORE, CA 94551-9486 • PHONE (925) 454-5000

WATER CONNECTION FEE INFORMATION SHEET

Effective January 1, 2018

I. GENERAL BACKGROUND

A. The Water Connection Charge Ordinance No. FC 72-1 as amended for Zone 7 was established January 18, 1972. The ordinance is applicable over the Zone 7 area that includes Livermore, Pleasanton, Dublin, Sunol, and surrounding communities. The Ordinance requires a one-time water connection fee for all new water services from a water system that is directly connected to the Zone 7 water supply system. This fee is used for funding the costs of expanding the Zone 7 water treatment and distribution system to serve new development.

B. The amount charged for a water connection is determined by the size of the meter to be installed. The meter sizes and corresponding water connection fees are listed below.

II. PROCEDURES FOR PAYMENT OF WATER CONNECTION FEES IN LIVERMORE, PLEASANTON, & DUBLIN

The water connection fees are collected by the Building Departments of the Cities of Livermore and Pleasanton, and by the Dublin San Ramon Services District, which are agents for Zone 7.

III. WATER CONNECTION FEE SCHEDULE - FEES ARE REVIEWED AND SUBJECT TO PERIODIC MODIFICATION

Meter Size	Fee Factor	Connection Fee
5/8" (DISPLACEMENT TYPE)	1.0	$28,170
3/4" (DISPLACEMENT TYPE)	1.5	$42,255
1" (DISPLACEMENT TYPE)	2.5	$70,425
1½" (DISPLACEMENT TYPE)	5.0	$140,850
1½" (OMNI C2)	16.0	$450,720
1½" (OMNI T2)	16.0	$450,720
2" (DISPLACEMENT TYPE)	8.0	$225,360
2" Mueller MVR	11.5	$323,955
2" (OMNI C2)	16.0	$450,720
2" (OMNI T2)	20.0	$563,400

* Connection fees for meters 3-inch and larger and for meters with fee factors other than those listed above, will be determined by Zone 7, using the fee factor for Maximum Rate for Continuous Operation, as defined by AWWA. These fees are based on the Maximum Continuous Flow Rate through a 5/8" meter and are proportional based on flow ratings for the various sized meters. Flow ratings for displacement type meters are defined by AWWA C700 for Cold-Water Meter -- Displacement Type, Bronze Case. Flow ratings for turbine type meters are defined by AWWA C701 for Cold Water Meters -- Turbine Type, For Customer Service. Any changes to meter capacities will affect the above connection fees.

NOTE: This new fee schedule is effective January 1, 2018

IV. EXEMPTIONS

No fee will be collected for SEPARATE private fire service connections. See Section VI of the Ordinance (copy available upon request).

V. PARTIAL EXEMPTIONS

A partial exemption sometimes applies for domestic fire sprinkling systems up to 1" meter size. See Section VI of the Ordinance (copy available upon request).

VI. FOR FURTHER INFORMATION

Call Steven Ellis at (925) 454-5037 or e-mail at sellis@zone7water.com.

EXHIBIT K

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO: City of Livermore 1052 S Livermore Avenue Livermore, CA 94550 Attention: City Clerk EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE §§6103, 27383	

Space above this line for Recorder's use.

MEMORANDUM OF AMENDED AND RESTATED DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT

THIS MEMORANDUM OF AMENDED AND RESTATED DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT (the "Memo of DDLA") is made as of _____, 2022, by and between the City of Livermore, a municipal corporation (the "City") and Eden Housing Inc., a California non-profit public benefit corporation ("Developer") to confirm that the City and the Developer are parties to that certain Amended and Restated Disposition, Development and Loan Agreement dated as of May _____, 2022, as may be amended from time to time (the "DDLA"). The DDLA concerns the sale of real property in Livermore, California, which real property is described in the attached Exhibit A and the development of an approximately one hundred thirty (130) unit multi-family housing project. The DDLA is a public document and may be reviewed at the in the office of the City Clerk of the City of Livermore. In the event, and to the extent, that any of the terms or provisions of this Memo of DDLA are inconsistent with the terms or provisions of the DDLA, the terms and provisions of the DDLA shall govern and prevail.

IN WITNESS WHEREOF, the City and Developer have executed this Agreement by duly authorized representatives, all on the date first written above.

City:

By: _____

Its: City Manager

Date: _____

APPROVED AS TO FORM

By: _____
Assistant City Attorney

DEVELOPER:

Eden Housing,
a California non profit public benefit corporation

By: _____

Name: _____
Title: _____

EXHIBIT A
Property Description

EXHIBIT L

EXHIBIT A

RECORDING REQUESTED BY:
Order No.
Escrow No.
Loan No.

WHEN RECORDED MAIL TO:

City Clerk
City of Livermore
1052 South Livermore Avenue
Livermore, CA 94550

ABOVE THIS LINE FOR RECORDER'S USE

MAIL TAX STATEMENTS TO:
Eden Housing
22654 Grand Avenue
Hayward, CA 94541

SAME AS ABOVE

The Undersigned grantor(s) declare(s):

CITY TRANSFER TAX $ Government Agency
DOCUMENTARY TRANSFER TAX $ Acquiring Title
SURVEY MONUMENT FEE $ Tax Code §§ 11922
Computed on the consideration or value or property conveyed; OR
Computed on the consideration or value less liens or encumbrances remaining at time of sale.

APN 098-0289-22

Exempt from filing fees per Government Code Section §§ 27383 & 6103

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

The City of Livermore, a Municipal Corporation ("Grantor")

hereby Grant(s) in fee to
[INSERT NAME OF OWNER, L.P.], a [STATUS] ("Grantee")

the real property in the City of Livermore
County of Alameda, State of California, as described in Exhibit A

FOR LEGAL DESCRIPTION
SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

Subject to the Notice of Affordability Restrictions on Transfer of Property and Dedication of Covenants and Restrictions executed by the Cit of Livermore, a municipal corporation and Redevelopment Agency of the City of Livermore, a body politic and corporate Recorded on January 12, 2009 as Instrument No. 2009-028632, and modification ececuted by the City of Livermore, Recorded November 19, 2018 as Instrument No. 2018-227103, which shall be considered to be incorporated herein and be a part hereof.

City of Livermore, a municipal corporation

Signature:

Name: Title:

EXHIBIT L **EXHIBIT A**

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

On_____before me, _____

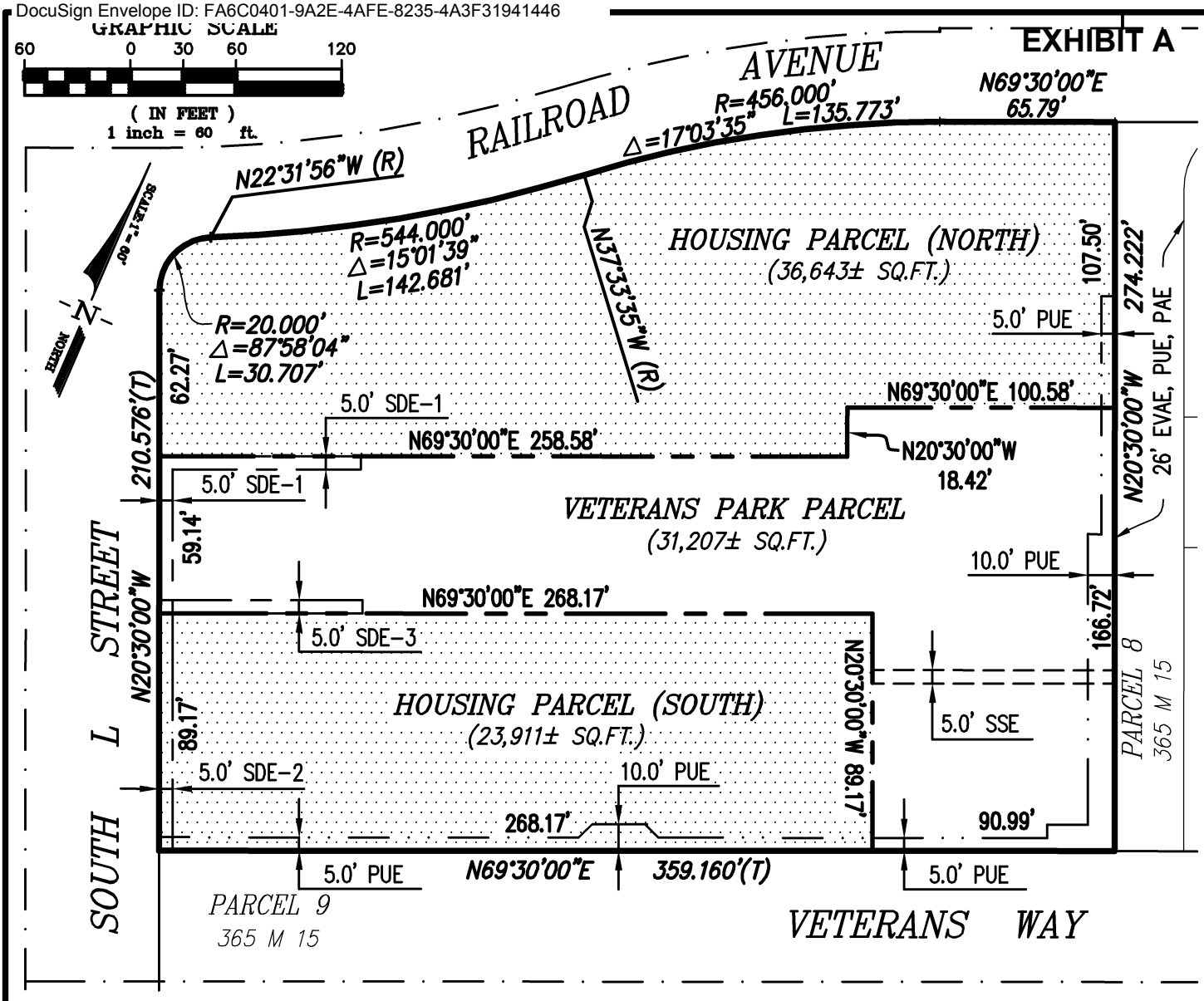
(Insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature_____ **(Seal)**



LEGEND

- BOUNDARY OF SUBJECT PROPERTY
- PROPOSED LOT LINE
- RIGHT OF WAY LINE
- MONUMENT LINE
- PRIVATE SANITARY SEWER EASEMENT LINE (SSE)
- PRIVATE STORM DRAIN EASEMENT (SDE)
- PUBLIC UTILITY EASEMENT (PUE)
- ADJOINER LOT LINE

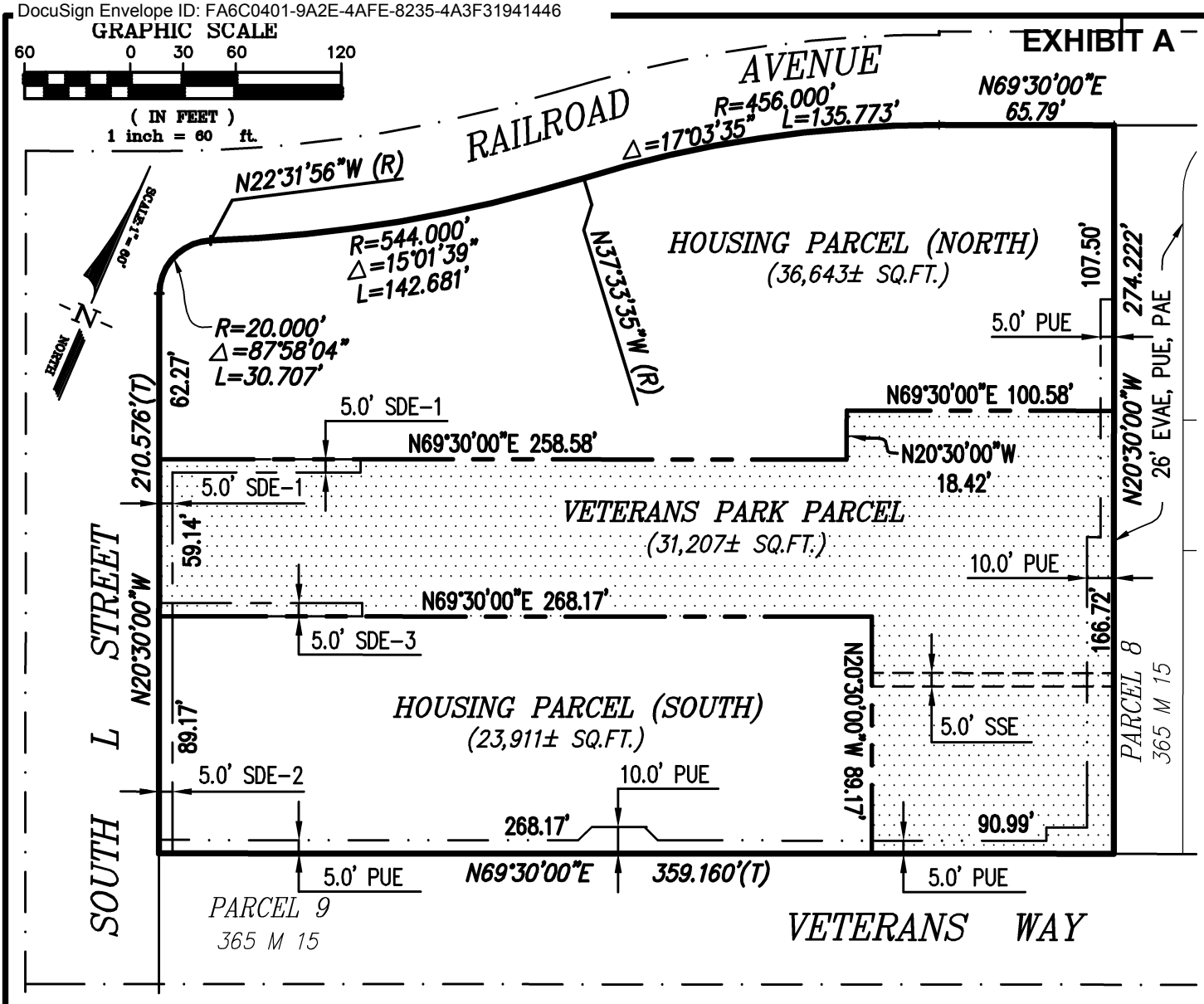
(T) TOTAL
S.F. SQUARE FEET
± MORE OR LESS

PROPOSED EASEMENT NOTES

THE FOLLOWING EASEMENTS ARE PROPOSED ON THE SUBJECT PROPERTY:

1. 5.0' WIDE PRIVATE SANITARY SEWER EASEMENT (SSE) ACROSS VETERANS PARK PARCEL FOR THE BENEFIT OF HOUSING PARCEL (SOUTH).
2. 5.0' WIDE PRIVATE STORM DRAIN EASEMENT (SDE-1) ACROSS VETERANS PARK PARCEL FOR THE BENEFIT OF HOUSING PARCEL (NORTH).
3. 5.0' WIDE PRIVATE STORM DRAIN EASEMENT (SDE-2) ACROSS HOUSING PARCEL (SOUTH) FOR THE BENEFIT OF HOUSING PARCEL (NORTH) & VETERANS PARK PARCEL.
4. 5.0' WIDE PRIVATE STORM DRAIN EASEMENT (SDE-3) ACROSS VETERANS PARK PARCEL FOR THE BENEFIT OF HOUSING PARCEL (SOUTH).
5. PUBLIC UTILITY EASEMENT OF VARYING WIDTH (BETWEEN 5.0' AND 10.0' WIDE) ALONG THE SOUTH AND EAST PROPERTY LINES, FOR PUBLIC PURPOSES.
6. VETERANS PARK PARCEL SHALL BE DESIGNATED AS A PARK AND OPEN SPACE WITH PUBLIC ACCESS THAT SHALL BE MAINTAINED BY THE CITY.

EXHIBIT M
HOUSING PARCELS



LEGEND

———	BOUNDARY OF SUBJECT PROPERTY
— — —	PROPOSED LOT LINE
———	RIGHT OF WAY LINE
— · — · —	MONUMENT LINE
— — — —	PRIVATE SANITARY SEWER EASEMENT LINE (SSE)
— — — —	PRIVATE STORM DRAIN EASEMENT (SDE)
— · · —	PUBLIC UTILITY EASEMENT (PUE)
———	ADJOINER LOT LINE
(T)	TOTAL
S.F.	SQUARE FEET
±	MORE OR LESS

PROPOSED EASEMENT NOTES

THE FOLLOWING EASEMENTS ARE PROPOSED ON THE SUBJECT PROPERTY:

1. 5.0' WIDE PRIVATE SANITARY SEWER EASEMENT (SSE) ACROSS VETERANS PARK PARCEL FOR THE BENEFIT OF HOUSING PARCEL (SOUTH).
2. 5.0' WIDE PRIVATE STORM DRAIN EASEMENT (SDE-1) ACROSS VETERANS PARK PARCEL FOR THE BENEFIT OF HOUSING PARCEL (NORTH).
3. 5.0' WIDE PRIVATE STORM DRAIN EASEMENT (SDE-2) ACROSS HOUSING PARCEL (SOUTH) FOR THE BENEFIT OF HOUSING PARCEL (NORTH) & VETERANS PARK PARCEL.
4. 5.0' WIDE PRIVATE STORM DRAIN EASEMENT (SDE-3) ACROSS VETERANS PARK PARCEL FOR THE BENEFIT OF HOUSING PARCEL (SOUTH).
5. PUBLIC UTILITY EASEMENT OF VARYING WIDTH (BETWEEN 5.0' AND 10.0' WIDE) ALONG THE SOUTH AND EAST PROPERTY LINES, FOR PUBLIC PURPOSES.
6. VETERANS PARK PARCEL SHALL BE DESIGNATED AS A PARK AND OPEN SPACE WITH PUBLIC ACCESS THAT SHALL BE MAINTAINED BY THE CITY.

EXHIBIT N

PARK PARCEL

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO: City of Livermore 1052 S Livermore Avenue Livermore, CA 94550 Attention: City Clerk EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE §§6103, 27383	

Space above this line for Recorder's use.

TEMPORARY PARKING LEASE AGREEMENT
(Undivided Parcel)

THIS LEASE AGREEMENT ("Lease") dated as of this _____ day of _____, 2022, (the "Effective Date") is made and entered into by and between [NAME OF PROJECT OWNER L.P. TO BE INSERTED], a California [ENTITY TYPE] ("Lessor") and the City of Livermore, a municipal corporation ("City" or "Lessee").

RECITALS

A. On_____, the City and Lessor entered into an Amended and Restated Disposition, Development and Loan Agreement (the "DDLA"), wherein the City agreed to set forth the terms and conditions for the City to sell the Undivided Parcel (more particularly described in Exhibit A) for purposes of developing an affordable housing project consisting of two buildings and 130 units on portions of the property, referred to as the Housing Parcels. The Housing Parcels are more particularly described in Exhibit M to the DDLA and included herein by this reference.

B. Currently, the City is using the Undivided Parcel as a temporary paved surface public parking lot. Upon sale of the Undivided Parcel, Lessor has agreed to lease the Undivided Parcel back to City at the cost of actual third-party expenses incurred by Lessor for the City's continued use as a temporary paved surface public parking lot until the commencement of the Project on the Housing Parcels as further described herein.

C. The Lessor desires to lease the Leased Premises to City and City desires to lease from Lessor the Leased Premises on the terms and conditions contained in this Lease Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereby agree as follows:

1. Leased Premises. Lessor leases to City and City leases from Lessor, the entire Undivided Parcel, also known as the Leased Premises, as indicated on Exhibit A.

2. Possession; Delay in Delivery of Possession.

(a) Except as otherwise provided in this Lease Agreement, City agrees to accept possession of the Leased Premises in its existing "as is" condition, including, but not limited to, all patent and latent defects and subject to all applicable laws, ordinances, and regulations governing and regulating the use of the Leased Premises and any recorded covenants, conditions, restrictions, easements, licenses, or right of ways.

(b) If Lessor, for any reason whatsoever, cannot deliver possession of the Leased Premises to City on or before the Effective Date, this Lease Agreement shall not be void or voidable and no obligation of City shall be affected thereby, and neither Lessor nor Lessor's agents shall be liable to City for any loss or damage resulting therefrom.

3. Rent; Triple Net Lease. Lessor agrees to lease the Leased Premises to the City for no rent; provided, however, that this Lease is a triple net lease and the City will be responsible to pay actual costs, charges, taxes, impositions, and other obligations it incurs related to the Leased Premises accruing after the Effective Date for the duration of the Term. If the Lessor pays any such amounts, whether to cure a default or otherwise protect its interests hereunder, the Lessor will be entitled to be reimbursed by City the full amount of such payments as additional rent within thirty (30) days of written demand by the Lessor.

4. Term. This Lease Agreement shall commence on the Effective Date and terminate 30 days following written notice from Lessor to City that construction on the Housing Parcels shall begin within 60 days. Upon termination of the Lease, City agrees to execute a termination notice that shall be recorded against the Leased Premises. This Lease Agreement shall supersede and replace any other lease agreement between said parties, or their predecessors in interest, concerning the use of the Leased Premises, or any other space or area of the Housing Parcels.

5. City's Use of Leased Premises.

(a) Use of Leased Premises. City shall only use the Leased Premises for (i) the purpose of a temporary paved surface public parking lot and (2) for access to the site for the purposes of any environmental testing and monitoring requirements described in the DDLA and the indemnity and cooperation agreement (as described in the DDLA).

(b) Rules Regarding Use. City's use of the Leased Premises shall be subject to the following rules:

(i) City shall not allow, authorize, or permit the Leased Premises, or any part thereof, to be used for any use or any illegal activity or purpose in violation of federal or state laws and/or ordinances, regulations and requirements of County, City, or any other enforcement authority.

(ii) City shall not commit, allow, or permit to be used for any offensive or improper use or nuisance, the Leased Premises which may unreasonably or unlawfully disturb or damage the Hotel Parcel or Leased Premises.

(iii) City shall not leave or store any trash, garbage, or refuse of any kind in, on, or about the Leased Premises and shall cause any refuse, trash, or other waste deposited on the Leased Premises by any of its employees, agents, or representatives to be picked up and disposed of in the appropriate manner so as to keep the Leased Premises in a neat and clean condition.

(iv) City shall not use, commit, allow, or permit to be used or committed, any waste upon the Leased Premises.

(c) Hazardous Materials. City shall not cause or permit any Hazardous Materials to be permanently stored, used or disposed of in the Leased Premises, by City's agents, employees, contractors or invitees, without having obtained Lessor's prior, written consent. For purposes of this Lease Agreement, the following terms shall have the meanings set forth below:

"Hazardous Materials" shall mean any toxic or hazardous wastes, pollutants, materials or substances, including, without limitation, asbestos, PCB's, petroleum products, radioactive substances or their by-products, other substances defined or listed as "hazardous substances," "hazardous materials," "hazardous wastes" or "toxic substances in or pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C §§ 5101 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.; the Toxic Substance Control Act of 1976, 15 U.S.C. §§ 2601 et seq.; any "toxic pollutant" under the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; any hazardous air pollutant under the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the California Hazardous Substance Account Act, California Health & Safety Code ("HSC") §§ 25300 et seq., the Hazardous Waste Disposal Land Use Act, HSC §§ 25100 et seq.; in or pursuant to or identified as causing cancer or reproductive toxicity in the California Safe Drinking Water & Toxic Enforcement Act of 1986, HSC §§ 25249.5 et seq.; and HSC §§ 25117, 25316; all as such laws may be amended; any hazardous or toxic substance, material, chemical, waste, or pollutant now or hereafter regulated under any other applicable Federal, State, or local environmental laws, without limitation; and any other matter in the nature thereof arising pursuant to the jurisdiction of any public agency.

"Hazardous Discharge" and "Contamination" shall mean the happening of any event involving an emission, spill, release, or discharge ("Release") into or upon (i) the air, (ii) soils or any improvements located thereon, (iii) surface or ground water, (iv) the sewer, septic system, or waste treatment, storage, or disposal system servicing the Leased Premises, of any Hazardous Material, or (v) any other matter in the nature thereof arising pursuant to the jurisdiction of any public agency.

"Environmental Laws" shall mean all applicable Federal, State, and local laws, ordinances, regulations, orders, procedures, policies, and directives of every kind and nature whatsoever pertaining to Hazardous Materials in, at, on, under, or from the Leased Premises or any portion thereof.

6. City Obligations.

(a) Services and Utilities. City shall pay directly for basic electricity and power for the Leased Premises to support the public parking use.

(b) Maintenance. Except as otherwise provided herein or in the DDLA, City shall at its own cost and expense, maintain the Leased Premises, and every part thereof, in good and sanitary order, condition, and repair during the term of the Lease. City shall be responsible for the cost of any and all repairs or maintenance to the Leased Premises, caused by negligent, careless, or willful acts of City, its employees, agents, equipment, or invitees.

(c) Reimbursement of Third-Party Expenses: During the term of the Lease, City shall reimburse Lessor for Lessor-paid insurance, property taxes and County and City assessments, and other expenses which are required to be paid directly by Lessor as part of the operation of the Leased Premises as temporary public parking . City's reimbursement obligations under this Section 6(c) shall not exceed $120,000 dollars per year, increasing 3% annually, or further Council approval shall be required.

7. Condition of Leased Premises. City represents and warrants that it has made a thorough and complete inspection of the Leased Premises using qualified consultants and experts of its own choosing, and the Leased Premises is suitable for a temporary, surface public parking lot and in good and sanitary order, repair, and condition. City hereby accepts the Leased Premises in its present condition and, except as otherwise may be set forth herein, without representation or warranty by Lessor as to the condition of such Leased Premises or as to the use of the Leased Premises.

8. Construction and Repair.

(a) Mechanic's Lien. City shall pay, or cause to be paid, all costs and expenses for work done by City, or caused to be done by City, on the Leased Premises of a character which could result in any lien on the Housing Parcel, and City will keep the Leased Premises free and clear of any mechanic's lien and/or other lien on account of work done for City or at its request.

Should any claims of lien be filed and/or recorded against the Leased Premises, or any action affecting the title thereto commenced, City shall give Lessor written notice thereof as soon as it has knowledge of the action.

(b) Construction. City shall not build or construct any improvement, or make any structural change, addition, or remodeling to the Leased Premises without the Lessor's prior written consent. In the event that Lessor provides City with the required written consent, City shall at its own cost comply with any and all Federal, State, or local laws

and/or regulations applicable to any such construction, alteration, or remodeling to or within the Leased Premises to upgrade them to satisfy current standards.

9. Encumbrances. City shall keep the Leased Premises free and clear of all encumbrances except with the prior written approval of Lessor.**Destruction.** If the Leased Premises is totally destroyed during the term of this Lease Agreement by fire, flood,

earthquake, or other casualty, whether or not covered by insurance, this Lease Agreement shall terminate.

10. Condemnation. If all or part of the Leased Premises is taken by condemnation such that the Leased Premises is no longer usable for a temporary, paved surface public parking lot, this Lease Agreement shall terminate. City shall be entitled only to that portion of the proceeds of condemnation which is directly attributable to the value of City's interest in this Lease Agreement.

11. Compliance with Laws. City agrees to comply with all applicable zoning, municipal, county and state laws, ordinances and regulations governing the use of the Leased Premises. City agrees to secure and maintain throughout the Term and any Extended Term any federal, state or local licenses or permits required in order to use the Leased Premises for a temporary surface public parking lot. City's failure to do so shall be considered a material breach of this Lease Agreement. City is responsible for compliance with all Federal requirements for improvements, construction and/or repair work outside of the Lessor's obligations.

12. Assignment.

(a) Prohibition Against Assignment and Encumbrance. This Lease Agreement and any rights or obligations of City hereunder shall not be sold, assigned, transferred, leased, assigned, sublet, conveyed, hypothecated either in whole or in part, or in any manner, without Lessor's prior written consent. The City shall not allow any other person or entity to occupy or use all or any part of the Hotel Parcel or Leased Premises without first obtaining Lessor's written consent. Consent to any assignment shall not constitute a further waiver of the provisions of this section.

(b) Involuntary Assignment. No interest of Lessee in this Lease Agreement shall be assignable by operation of law, including, without limitation, the transfer of this Lease Agreement by testacy or intestacy. Each of the following acts shall be considered an involuntary assignment:

(i) If City is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes a proceeding under the Bankruptcy Act in which City is the bankrupt party; or, if the City is a partnership or consists of more than one person or entity, if any partner of the partnership or other person or entity is or becomes bankrupt or insolvent, or makes an assignment for the benefit of creditors;

(ii) If a writ of attachment or execution is levied on this Lease Agreement;

(iii) If, in any proceeding or action to which Lessee is a party, a receiver is appointed with authority to take possession of the Leased Premises.

(iv) An involuntary assignment shall constitute a default by City and Lessor shall have the right to elect to terminate this Lease Agreement, in which case this Lease Agreement shall not be treated as an asset of City.

(v) If a writ of attachment or execution is levied on this Lease Agreement, City shall have ten (10) days in which to cause the attachment or execution to be removed. If any involuntary proceeding in bankruptcy is brought against Lessee, or if a receiver is appointed, Lessee shall have sixty (60) days in which to have the involuntary proceeding dismissed or the receiver removed.

13. Taxes. Except as otherwise provided in Section 3 above, Lessor shall pay during the term of this Lease Agreement, without abatement, deduction, or offset, any and all real and personal property taxes, general and special assessments, and other charges (including any increase caused by a change in the tax rate or by a change in assessed valuation) of any description levied or assessed during the term of this Lease Agreement by any governmental agency or entity on or against the Undivided Parcel, improvements located on the Housing Parcels, personal property located on or in the Housing Parcels or improvements, and the leasehold interest created by this Lease Agreement.

14. Indemnity. City agrees to and shall defend, indemnify, protect and hold harmless Lessor, its officers, directors, employees and agents harmless from and against any and all loss, damage, injury, accident, casualty, liability, claim, cost or expense (including, but not limited to, reasonable attorneys' fees) of any kind or character to any person or property arising from or related to any act or omission of City, its employees, agents or contractors, the City's use of the Leased Premises, or as a result of this Lease Agreement. To the greatest extent by law, City waives all claims or demands against Lessor for any loss, damage, or injury to City or City's property in connection with this Lease Agreement or the operation or use of the City's property by City or its agents, servants or contractors or employees and agrees to so indemnify and hold Lessor harmless.

15. Reserved.

16. Termination.

(a) Termination for Cause. In the event City engages in, or permits any other person to engage in, any illegal activities in, on, or about the Housing Parcel or the Leased Premises, whether with or without a criminal conviction, Lessor shall have the right to immediately terminate this Lease Agreement and demand City surrender the Leased Premises.

Except for immediate termination as provided for in this Lease Agreement, should City at any time during the term of this Lease Agreement be in default in the performance of any of the terms, conditions, rules, covenants, or requirements herein contained or otherwise agreed to by the parties, including the rules and regulations established by Lessor regarding the use of, or access to, the Housing Parcels and Leased Premises, and should such default continue for thirty (30) days after written notice thereof from Lessor to City specifying the particulars of such default, or should City vacate or abandon the Leased Premises, then in any such event it shall be at the option of the Lessor, the Lessor's right to declare this Lease Agreement terminated and re-enter the Leased Premises and take possession thereof and remove City's fixtures and furnishings, and City shall have no further claim thereon or hereunder.

(b) Lessor's remedies in this section shall be in addition and supplemental to any and all other rights or remedies which Lessor may have pursuant to this Lease Agreement and/or under the law.

(c) In the event that the County of Alameda ("County") provides a loan to Lessor, and so requires, this Lease may be terminated in the event of an uncured default under the County loan and/or subordinated to the County loan.

17. Default. Any of the following events or occurrences shall constitute a material breach of this Lease Agreement by City and, after the expiration of any applicable grace period, shall constitute an event of default (each an "Event of Default"):

(a) The failure by City to perform any obligation under this Lease Agreement, which by its nature City has no capacity to cure;

(b) The failure by City to perform any other obligation under this Lease Agreement, if the failure has continued for a period of ten (10) days after Lessor demands in writing that City cure the failure. If, however, by its nature the failure cannot be cured within ten (10) days, City may have a longer period as is necessary to cure the failure, but this is conditioned on City's promptly commencing to cure within the ten (10) day period and thereafter completing the cure within thirty (30) days after Lessor demands in writing that City cure the failure. City shall indemnify and defend Lessor against any liability, claim, damage, loss, or penalty that may be threatened or may in fact arise from that failure during the period the failure is uncured;

(c) Any of the following: a general assignment by City for the benefit of City's creditors; any voluntary filing, petition, or application by City under any law relating to insolvency or bankruptcy, whether for a declaration of bankruptcy, a reorganization, an arrangement, or otherwise; the abandonment, vacation, or surrender of the Leased Premises by Lessee without Lessor's prior written consent; or the dispossession of City from the Leased Premises (other than by Lessor) by process of law or otherwise;

(d) The abandonment of the Leased Premises by City.

18. Remedies. Upon the occurrence of an Event of Default, Lessor may pursue all rights or remedies available to Lessor at law or in equity.

19. Waiver. Any express or implied waiver of a breach of any term of this Lease Agreement shall not constitute a waiver of any further breach of the same or other term of this Lease Agreement.

20. Surrender of Leased Premises. Upon the expiration of this Lease Agreement, or no later than ten (10) days after its termination, City shall surrender the Leased Premises to Lessor, and all improvements and alterations thereto, in good condition except for ordinary wear and tear occurring after the last necessary maintenance made by City and/or destruction to the Leased Premises covered by Section 10 of this Lease Agreement.

Lessor may elect to retain or dispose of in any manner any alterations,

improvements, fixtures, or furnishings that City does not remove from the Leased Premises on expiration or termination of the Lease Agreement by giving at least ten (10) days' notice to City. Title to any such improvements, alterations, fixtures, or furnishings that Lessor elects to retain or dispose of on expiration of the ten (10) day period shall vest in Lessor. City waives all claims against Lessor for any damage to City resulting from Lessor's retention or disposition of any such improvements, alterations, fixtures, or furnishings. City shall be liable to Lessor for Lessor's costs for storing, removing, and disposing of any improvements, alterations, fixtures, or furnishings.

21. Entry by Lessor. City shall permit Lessor, its officers, employees, and agents to enter into and upon the Leased Premises upon reasonable notice for the purpose of inspecting the Leased Premises, predevelopment activities related to the Project, enforcing the rules and regulations under this Lease Agreement, and the posting of such legal notices as Lessor may deem necessary or convenient.

(a) Lessor and its agents may enter the Leased Premises at any reasonable time upon reasonable notice to City, or immediately in the case of an emergency, for the purpose of: (i) inspecting the Leased Premises; (ii) posting notices of nonresponsibility; (iii) supplying any service to be provided by Lessor to City; (iv) showing the Leased Premises to prospective purchasers, mortgagees, or tenants (v) making necessary alterations, additions, or repairs as required by this Lease Agreement or to otherwise perform Lessor's duties under this Lease Agreement; (vi) determining whether City is complying with the terms of this Lease Agreement; (vii) performing City's obligations when City has failed to do so after written notice from Lessor, if required by the terms of this Lease Agreement; (viii) placing on the Leased Premises ordinary for lease signs or for sale signs; (ix) doing of other lawful acts that may be necessary to protect Lessor's interest in the Leased Premises under this Lease Agreement; (x) responding to an emergency; and (xi) performing any predevelopment activities reasonably necessary to develop the Project as contemplated under the DDLA.

(b) Lessor shall have the right to use any means Lessor deems necessary and proper to enter the Leased Premises in an emergency. Any entry into the Leased Premises obtained by Lessor in accordance with this section shall not be a forcible or unlawful entry into, or a detainer of, the Leased Premises, or an eviction, actual or constructive, of City from the Leased Premises, nor shall such entry give rise to a claim for rent abatement.

22. Notices. Wherever in this Lease Agreement it shall be required or permitted that notice or demand be given or served by either party to this Lease Agreement to or on the other, such notice or demand shall be given or served in writing and forwarded by registered mail, addressed as follows, though any party may change such address or contact person by written notice by registered mail to the other:

City: Community Development Director
City of Livermore
1052 South Livermore Avenue
Livermore, California 94550

Lessor: [NAME OF PROJECT OWNER L.P. TO BE INSERTED]

Attn:

23. Holding Over. Any holding over without the Lessor's prior written consent shall be prohibited.

24. Modification. This Lease Agreement may only be modified or amended by written agreement signed by both parties hereto.

25. General Provisions.

(a) Time of Essence. Time is of the essence for each provision of this Lease Agreement.

(b) Relationship of the Parties. Nothing contained in this Lease Agreement shall be deemed or construed by the parties or by a third party to create the relationship of principal and agent, and/or of partnership, and/or of joint venture, and/or of any association between the parties, other than the relationship of Lessor and Lessee.

(c) Entire Agreement. This instrument, including any attachments hereto, constitutes the entire agreement of the parties relating to the subject matter of this Lease Agreement and correctly sets forth the rights, duties, and obligations of each party to the other, but this Lease Agreement does not supersede any provision in the DDLA.

(d) Partial Invalidity. If any provision or portion of this Lease Agreement shall be deemed invalid, it is agreed that such invalidity shall affect only such provision or portion thereof, and the remainder of this Lease Agreement shall remain in force and effect.

(e) California Law. This Lease Agreement shall be governed by and construed in accordance with the laws of the State of California.

(f) Review of Lease. Each party to this Lease Agreement declares that prior to the execution of this Lease Agreement, each party had the opportunity to seek the independent advice of counsel and that they apprised themselves of sufficient relevant information in order that they might intelligently exercise their own judgment in deciding whether to execute this Lease Agreement. Each party agrees that they have completely read and understood the Lease Agreement, know the contents thereof, and have signed the Lease Agreement of their own free will and free of any duress. No single party has drafted this Lease Agreement and it shall not be interpreted against any party as the drafting party.

(g) Performance Excused. The parties shall be excused from performance, as hereunder agreed to, if such performance is rendered impossible, impractical, or unreasonably difficult by, but not limited to, any strike, lockout, labor disturbance of any

kind, civil commotion, war, acts of terrorism, shortage of any supply or labor, shortage of water, weather, act of government authority, enactment or change in laws or regulations, breakdown of facilities or any cause outside of the parties' control.

(h) Mutual Termination. This Lease Agreement may be terminated at any time concerning the rights and responsibilities of the parties who, between them, agree to such a termination.

(i) Headings. The headings used in this Lease Agreement are intended for reference only and do not define or limit the scope or meaning of any provision of this Lease Agreement.

(j) Waiver. A term or condition of this Lease Agreement may be waived at any time by the party entitled to the benefit thereof, but no such waiver shall affect the right of the waiving party to require observance, performance or satisfaction either of that term or condition as it applies on a subsequent occasion or of any other term or condition. City shall not be excused from complying with any of the terms and conditions of this Lease Agreement by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

(k) Attachments. All attachments referred to in and attached to this Lease Agreement are incorporated by reference as though set forth in full.

(l) Attorney's Fees and Costs. If either party commences an action against the other party to enforce this Lease Agreement, the prevailing party is entitled to reasonable attorney's fees, costs of suit, investigation costs and discovery costs, including costs of appeal.

************Signatures and Attachment List On Next Page************

IN WITNESS WHEREOF, the parties to this Lease Agreement have executed this Lease Agreement as of the dates set forth below.

[NAME OF OWNER][ENTITY TYPE]
Lessor
By: _____
[Signer's Name]
[Signer's Title]

City or Lessee

Dated: _____

City of Livermore
A Municipal Corporation

By: _____ Dated:_____

City Manager

Approved as to Form:

By: _____
Assistant/City Attorney

(Signatures must be Notarized)

Attachments:

Exhibit A – Undivided Parcel (Exhibit A to the DDLA)

Exhibit B – Insurance Requirements
(Insurance to be provided at time of execution of Lease Agreement)

COX CASTLE NICHOLSON

Cox, Castle & Nicholson LLP
50 California Street, Suite 3200
San Francisco, California 94111-4710
P: 415.262.5100 **F**: 415.262.5199

Scott B. Birkey
415.262.5162
sbirkey@coxcastle.com

File No. 88889

April 4, 2022

VIA E-MAIL

Paul Spence
Community Development Director
Community Development Department
Livermore, CA 94550

Re: Request for Stay of Expiration Date for Eden Downtown Housing Project Entitlements and Approvals

Dear Mr. Spence:

On behalf of Eden Housing, Inc. ("Eden"), we request a stay of the expiration date of the entitlements and approvals for Eden's Downtown Housing Project. Those entitlements and approvals were granted by the City of Livermore City Council on May 24, 2021.

Eden makes this request in connection with the following entitlements and approvals:

- Vesting Tentative Parcel Map (VTPM) 11186, which would expire on May 24, 2023 unless its expiration date is stayed;
- Downtown Design Review (DDR) 20-019, which would expire on May 24, 2023 unless its expiration date is stayed;
- Non-discretionary Use of State Density Bonus Law, Including a Density Bonus, Relief from Parking Standards, an Increase in Building Height, and an Incentive to Reduce Applicable Setbacks, which has no expiration date; and
- An Amendment to the Disposition, Development, and Loan Agreement, which has no expiration date.

On June 24, 2021, a Petition for Writ of Mandate was filed by Save Livermore Downtown in *Save Livermore Downtown v. City of Livermore, et al.*, Alameda County Superior Court, Case No. RG21102761. On February 14, 2022, the Court entered judgment denying the petition for writ of mandate with prejudice. Pursuant to Section 1049 of the California Code of Civil Procedure, "An action is deemed to be pending from the time of its commencement until its final determination upon appeal, or until the time for appeal has passed, unless the judgment is

sooner satisfied." As such, litigation against the Project is still pending because at this time, the time for an appeal of the Alameda County Superior Court decision has not yet passed.

Government Code Section 66452.6(a)(1) provides that an approved or conditionally approved tentative map shall expire 24 months after its approval or conditional approval, or after any additional period of time as may be prescribed by local ordinance, not to exceed an additional 24 months. (*See also* Livermore Development Code Section 10.02.110(C)(1)(a).)

Section 66452.6(c) provides that the period of time specified in Section 66452.6(a)(1) shall not include the period of time during which a lawsuit involving the approval or conditional approval of the tentative map is or was pending in a court of competent jurisdiction, if the stay of time period is approved by the local agency pursuant to this section. The subdivider may apply to the local agency for a stay pursuant to the local agency's adopted procedures. The local agency shall either stay the time period for up to five years or deny the requested stay.

Livermore Development Code Section 10.02.110(C)(2)(c)(1) provides that if a lawsuit is pending in a court of competent jurisdiction, and a subdivider requests a stay of the time in which a parcel map or tentative map will expire, the Director may stay the map's expiration date until final conclusion of the action, if the Director determines that the action affects the validity of the parcel map or tentative map approval. Because Section 10.02.110(A) of the Livermore Development Code allows by mutual consent of both the subdivider and the City to extend the time limits for acting on a map, the City may exercise its discretion to grant such a stay request at any time during the pendency of that lawsuit so long as both the subdivider and the City mutually agree as to when a stay request can be made.

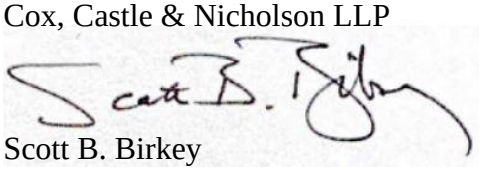
Moreover, the Livermore Development Code contemplates that the expiration date of other approvals related to a map may also be extended when the expiration date of a map is being extended. For example, Section 10.02.110(B) of the Livermore Development Code allows the City to make certain modifications to time limits if necessary "to permit concurrent processing of related approvals." As such, an extension of the expiration date of the Project's Vesting Tentative Parcel Map allows for an extension of the Project's other related approvals, including the Projects' approval of the Downtown Design Review.

Accordingly, pursuant to Section 66452.6 of the Government Code and Section 10.02.110(C)(2)(c)(1), we request that the Community Development Director stay the expiration date of the Vesting Tentative Parcel Map and the Downtown Design Review until final conclusion of *Save Livermore Downtown v. City of Livermore, et al.* litigation.

Please contact me should you have questions regarding this request. Thank you for your consideration.

Sincerely,

Cox, Castle & Nicholson LLP



Scott B. Birkey

SBB:/mtn

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LIVERMORE
CALIFORNIA

May 9, 2022

Linda Mandolini
President
Eden Housing
22645 Grand Street
Hayward, CA 94541

RE: Stay Request filed by Eden Housing

Dear Ms. Mandolini:

On April 4, 2022, Scott Birkey, on behalf of Eden Housing, requested a stay of the vesting tentative map and development entitlements for the Eden Housing Downtown project. Granting this request would stay the following entitlements and approvals (the "Project"):

- Vesting Tentative Parcel Map (VTPM) 11186
- Downtown Design Review (DDR) 20-019
- Non-discretionary Use of State Density Bonus Law (including relief from parking standards and building height, and an Incentive to reduce setback); and
- An Amendment to the Disposition, Development, and Loan Agreement

Unless stayed, the project Vesting Tentative Parcel Map, the Downtown Design Review, and the incentives or concessions granted under State Density Bonus Law would expire on May 25, 2023.

Background

On May 25, 2021, the Livermore City Council adopted resolutions finding the Project exempt from the provisions of the California Environmental Quality Act (CEQA) and approving the Project.

On June 24, 2021, a Petition for Writ of Mandate was filed by Save Livermore Downtown in *Save Livermore Downtown v. City of Livermore, et al.*, Alameda County Superior Court, Case No. RG21102761. On February 14, 2022, the Court entered judgment denying the petition for writ of mandate with prejudice.

On April 13, 2022, an appeal was filed by Save Livermore Downtown in *Save Livermore Downtown v. City of Livermore, et al*. in the Court of Appeal, Case No. RG21102761. As of the writing of this letter, the case is pending.

City and State Standards

Government Code Section 66452.6(a)(1) provides that an approved or conditionally approved tentative map shall expire 24 months after its approval or conditional approval, or after any additional period of time as may be prescribed by local ordinance, not to exceed an additional 12 months.

Government Code Section 66452.6(c) provides that the period of time specified in subdivision (a) (above), shall not include the period of time during which a lawsuit involving the approval or conditional approval of the tentative map is or was pending in a court of competent jurisdiction, if the stay of time period is approved by the local agency pursuant to this section. The subdivider may apply to the local agency for a stay pursuant to the local agency's adopted procedures. The local agency shall either stay the time period for up to five years or deny the requested stay.

Livermore Development Code Section 10.02.110(C)2(c)(1) provides that if a lawsuit is pending in a court of competent jurisdiction, and a subdivider requests a stay of the time in which a parcel map or tentative map will expire, the Director may stay the map's expiration date until final conclusion of the action, if the Director determines that the action affects the validity of the parcel map or tentative map approval.

Determination

Pursuant to Government Code Section 66452.6 (c) and Livermore Development Code Section 10.02.110(C)2(c)(1), the Director stays the expiration date of the Project until final conclusion of *Save Livermore Downtown v. City of Livermore, et al*., up to a maximum of five years, or May 25, 2028.

If you have any questions, please call me at (925) 960-4400.

Sincerely,

Paul Spence
Community Development Director
Community Development Department
City of Livermore
(925) 960-4400

EXHIBIT A

EXHIBIT Q

LONG TERM LEASE AGREEMENT

THIS LONG TERM LEASE AGREEMENT ("**Agreement**") is made as of [_____] ("**Effective Date**"), by and between [the City of Livermore] ("**Lessor**"), and [_____] ("**Leasee**").

BASIC LEASE PROVISIONS

1.	Garage:	That certain parking garage containing approximately 452 parking stalls located approximately at First Street and L Street
2.	Address of Lessor:	
3.	Address of Leasee:	[_____]
4.	Address for Payment:	All payments payable to Lessor under this Agreement shall be sent to the following address or to such other address as Lessor may from time to time designate: [City of Livermore, 1052 S. Livermore Avenue, Livermore, CA 94550]
5.	Premises:	16 parking stalls within the area of the Garage depicted on the plan attached hereto as Exhibit A and made a part hereof.

6

6.	Term:	A period of 55 years commencing on [_____] ("**Commencement Date**") and ending on the day prior to the [_____] anniversary of the Commencement Date ("**Expiration Date**").
7.	Basic Fee:	

Period	Per Parking Stall Per Year	Total Fee Per Year
[Year 1 beginning at project lease up]	[$300.00]	[4,800]
[Years 2 -55]	[$300.00 plus 2.5% annual escalator]	[4,920 (Year 2)]
[_____]	[_____]	[_____]

8.	Permitted Use:	16 Reserved spaces for residents of Eden's Downtown Livermore Apartments
9.	Permitted Users:	Defined in Section 1 of this Agreement, below.

7 This Agreement shall consist of the foregoing Basic Lease Provisions and the provisions
8 of the Standard Lease Provisions (which follow) and Exhibits A through C, inclusive, all of
9 which are incorporated herein by this reference as of the Effective Date. In the event of any
10 conflict between the provisions of the Basic Lease Provisions and the provisions of the Standard
11 Lease Provisions, the Standard Lease Provisions shall control. Any initially capitalized terms
12 used herein and not otherwise defined shall have the meanings set forth in the Basic Lease
13 Provisions.

14

STANDARD LEASE PROVISIONS

1. **Lease of Premises**. Lessor hereby grants to Leasee an irrevocable and exclusive Lease (the "**Lease**") to use the Premises and all [_____] parking stalls comprising the Premises, and Leasee hereby accepts such Lease for use of the Premises and all [_____] parking stalls comprising the Premises from Lessor, for the Term of this Agreement (as provided below and as such Term may be extended as provided herein), and upon all of the terms, covenants and conditions contained in this Agreement. Lessor acknowledges and agrees that (i) Leasee is the [_____] to certain real property located [_____] and described on Exhibit C attached hereto (the "**Benefitted Parcels**"), (ii) the Lease rights granted to Leasee in this Agreement are appurtenant to and benefit the Benefitted Parcels, shall run with the lands comprising the Benefitted Parcels, and shall inure to the benefit of Leasee and its designated successors and assigns in interest as [_____] of the Benefited Parcels, and (iii) Leasee shall have the right to subLease and grant rights of use of the Premises and all [_____] parking stalls comprising the Premises to any employees of Leasee as well as to any and all tenants and occupants of any portion of the Benefitted Parcels, all as may be designated by Leasee, its successors and assigns in interest as to the Benefitted Parcels (each and all such designated third parties together with Leasee and its successors and assigns as [_____] of the Benefitted Parcels, being individually a "**Permitted User**" and collectively, "**Permitted Users**") for the Term of this Lease, as the same may be extended as provided in this Agreement. Leasee acknowledges that Lessor has not made any representations or warranties with respect to the condition of the Premises or the Garage or with respect to the suitability or fitness of any of the same for Leasee's Permitted Use other than for the parking of vehicles therein. Lessor shall have no obligation to construct improvements for Leasee or to repair or refurbish the Premises except as set forth in this Agreement, and the Premises will be delivered to Leasee in its "AS IS" condition. The taking of possession of the Premises by Leasee shall be conclusive evidence that Leasee accepts the Premises "AS IS" and that the Premises is suited for Leasee's Permitted Use (subject to the completion of certain improvements to be completed by Leasee as provided herein which are intended to provide exclusive use of the Premises and parking stalls therein for the Term of this Agreement, as extended), and the Premises is in good and satisfactory condition at the time such possession is taken.

2. **Term and Commencement Date**. Unless earlier terminated in accordance with the provisions hereof, the initial Term of this Agreement shall be the period set forth in Item 6 of the Basic Lease Provisions. The Term of this Agreement shall commence on the Commencement Date set forth in Item 6 of the Basic Lease Provisions.

3. **Purpose**. Leasee hereby acknowledges and agrees that this Agreement provides Leasee and Permitted Users designated by Leasee only with the right to use only the Premises and all parking stalls comprising the Premises for the Permitted Use set forth in Item 8 of the Basic Lease Provisions and that Leasee and such designated Permitted Users shall have no right to use the Premises for any use other than the Permitted Use or to use any other portion of the Garage for the Permitted Use, other than such portions of the Garage including the main entry gates, ramps and drive aisles as are necessary to access the Premises and all parking stalls comprising the Premises. In order to enforce the restriction on Leasee and its designated Permitted Users to use only the Premises for the Permitted Use and the prohibition on Leasee and its designated Permitted Users from using any other portion of the Garage other than as

necessary to access the Premises and all parking stalls comprising the Premises, Lessor shall, at Leasee's sole cost and expense, install a scanning system at the Garage, and/or a card key access gate to limit access to the Premises and parking stalls comprising the Premises to solely those designated Permitted Users identified by Leasee to Lessor as to whom Leasee has provided access cards to the Garage and the Premises parking gate. The card key access gate shall be designed by Lessor's parking garage operator for the Garage and shall be subject to Lessor's and Leasee's review and approval of the plans and specifications for the card key access gate, which approval shall not be unreasonably withheld, conditioned or delayed by either Lessor or Leasee). In addition, the cost of the card key access gate (to be paid for by Leasee) shall be subject to approval by Leasee, not to be unreasonably withheld. Leasee shall reimburse Lessor for the previously approved cost incurred by Lessor to install either the scanning system or card key access gate within ten (10) business days of receipt by Leasee of written notice from Lessor and copies of invoices therefor. In the event of the failure by any individual Permitted User to park only in the Premises, such individual Permitted User shall be required to pay the maximum daily rate then being charged by Landlord at the Garage, and the continued failure by such individual Permitted User to park only in the Premises after written notice from Lessor shall provide Lessor with the right to refuse entry into the Garage by such individual Permitted User in the same manner and subject to compliance with the same laws as are applicable to public parking garage users. In no event shall any default or breach by any individual Permitted User constitute a default by Leasee or result in the loss of any parking stalls comprising the Premises or result in any termination of this Lease Agreement or diminution in the total number of parking stalls that are to be provided to Leasee hereunder.

So long as Leasee and all Permitted Users comply with any commercially reasonable security rules and regulations that Lessor may reasonably deem necessary for the safety of the Garage or the Premises, Leasee and all Permitted Users shall have access to the Garage and the Premises 24 hours per day, 7 days per week. Such access shall be subject to full or partial closures which may be required from time to time for construction, maintenance, repairs, actual or threatened emergency or other events or circumstances which make it reasonably necessary to temporarily deny, restrict or limit access in an equitable and non-discriminatory fashion as among all users of the Garage including Permitted Users under this Agreement.

4. **Rent**.

(a) **Basic Fee**. Leasee shall pay to Lessor the Basic Fee set forth in Item 7 of the Basic Lease Provisions. Leasee shall pay, without notice or demand, to Lessor or Lessor's agent at the address set forth in Item 4 of the Basic Lease Provisions, or at such other place as Lessor may from time to time designate in writing, in currency or a check for currency which, at the time of payment, is legal tender for private or public debts in the United States of America, the Basic Fee as set forth in Item 7 of the Basic Lease Provisions, payable in advance on or before the first day of each and every month during the Term of this Agreement, without any setoff or deduction whatsoever, except as provided in this Agreement. The Basic Fee for any fractional month shall be a prorated. Leasee shall pay the first full month's Basic Fee set forth in Item 7 of the Basic Lease Provisions upon execution of this Agreement prior to any use of the Premises. All other fees and expenses incurred will be invoiced by Lessor and are due and payable within

thirty (30) days of the date of the invoice. Basic Fee and all other fees shall collectively be referred to as "Rent" in this Agreement.

(b) **Late Charge**. If any installment of the Basic Fee or any other amount due from Leasee shall not be received by Lessor or Lessor's designee within five (5) days after said amount is due, then Leasee shall pay to Lessor a late charge equal to [_____] percent of the amount due; provided, however that the foregoing late charge shall be waived for the first such late payment of the Basic Fee or any other amount due from Leasee during each twelve (12) month period of the Term of this Agreement, provided, that, such payment is made by Leasee within ten (10) days of the date such payment is due. The right to require the late charge shall be in addition to all of Lessor's other rights and remedies hereunder or at law and shall not be construed as liquidated damages or as limiting Lessor's remedies in any manner. In addition to the late charge described above, any Basic Fee or other amount owing hereunder which is not paid within five (5) days after the date they are due shall thereafter bear interest until paid at a rate equal to [_____].

(c) **All Payments as Rent**. Any and all payments of Basic Fee, and any and all fees, charges, costs, expenses, insurance obligations and all other payments, disbursements or reimbursements which are attributable to, payable by or the responsibility of Leasee under and by reason of this Agreement are payable as additional rent and shall constitute "rent" within the meaning of California Civil Code Section 1951(a) whether or not the same are designated as such; and shall be due and payable within ten (10) days following demand or together with the next succeeding installment of Basic Fee, whichever shall first occur, and Lessor shall have the same remedies therefor as for a default in the payment of Basic Fee.

5. **Interruption**. Leasee agrees that Lessor shall not be liable for damages, for any failure by Lessor to comply with the terms and conditions of this Agreement, when such failure or delay or diminution is not occasioned by Lessor's negligence or willful misconduct, but is occasioned, in whole or in part, by necessary repairs, replacements, or improvements, by any strike, lockout or other labor trouble, or by inability to secure electricity for lighting of the Garage, after reasonable effort to do so, by any accident or casualty whatsoever, by act or default of Leasee or other parties, or by any other cause beyond Lessor's reasonable control; and such failures or delays or diminution shall never be deemed to constitute an eviction or disturbance of Leasee's use and possession of the Premises or relieve Leasee from paying any fees due hereunder or performing any of its obligations under this Agreement; provided, however, if for any of the foregoing reasons or any other reasons not due to the negligence or willful misconduct of Leasee and/or the Permitted Users, any portion of the Premises or any parking stalls therein shall not be available for use by any Permitted Users during normal business hours of 7:00 a.m. to 6:00 p.m. Mondays through Fridays for five (5) consecutive business days, then Lessor shall use its commercially reasonable efforts to provide replacement parking within the Garage for each displaced/unavailable parking stall of the Premises at no additional charge to Leasee or any Permitted Users, or Leasee shall receive a credit against the Basic Fee for each such business day or portion thereof (following the expiration of the first five (5) business days thereof) that the total number of parking stalls comprising the Premises are not available to Leasee and the Permitted Users, such credit to be based upon the ratio that the number of parking stalls which

are not available to Leasee and the Permitted Users bears to the [_____] parking stalls in the Premises to be provided to Leasee and the Permitted Users.

6. **Insurance**. Leasee shall, at its expense, procure and keep in full force and effect during the entire Term the following insurance policies, providing the following coverage to Leasee and Lessor, and their respective property managers, trustees, beneficiaries, directors, officers, employees, partners, agents and other representatives:

(a) Workers' compensation insurance in accordance with the laws of the State of California to the extent required with waiver of subrogation;

(b) Employer's liability insurance for occupational accidents or diseases, for limits of not less than [_____] Dollars for any one occurrence;

(c) Commercial general liability insurance (or commercial garage liability) on an occurrence form basis with limits of not less than [_____] per occurrence (provided Leasee shall carry a minimum annual aggregate limit of [_____] and Umbrella liability insurance, in excess following form, with an annual aggregate limit of not less than [_____]); provided, however that so long as Leasee carries Umbrella liability insurance, in excess following form, with an annual aggregate limit of not less than [_____], individual tenant entities which are Permitted Users will not be required to carry any such Umbrella liability insurance;

(d) Automobile liability insurance covering losses for owned, non-owned or hired vehicles including comprehensive and collision coverage with a limit of not less than [_____] per occurrence.

All expenses incurred by Leasee and any third-party tenants in obtaining insurance policies required under this Section 6 shall be paid by Leasee or such third party tenants.

Lessor shall, at its expense, procure and keep in full force and effect during the entire Term and any subsequent term created by any extension or renewal of this Agreement, and shall cause its parking garage operator for the Garage and any valet parking operator or other concessionaire for the Garage to procure and keep in force at all times, the following insurance policies, providing the following coverage to Lessor, and its property managers, trustees, beneficiaries, directors, officers, employees, partners, agents and its other representatives:

(e) Workers' compensation insurance in accordance with the laws of the State of California to the extent required;

(f) Employer's liability insurance for occupational accidents or diseases, for limits of not less than [_____] Dollars for any one occurrence; and

(g) Commercial general liability insurance, or, with respect to the Garage operator, Commercial garage keepers liability (including coverage for damage to automobiles in the care, custody or control of the Garage operator, manager and any concessionaires of the Garage), each on an occurrence form basis with limits of not less

than [_____] per occurrence (provided Lessor shall carry a minimum annual aggregate limit of [_____] and umbrella liability insurance, in excess following form, with an annual aggregate limit of not less than [_____]).

All expenses incurred by Lessor and any third-party parking garage operators, valet parking operators and other concessionaires in obtaining insurance policies required under this Section 8 shall be paid by Lessor or such third parties.

All insurance required under Sections 8(a) through (d) shall be in such companies as shall be reasonably satisfactory to Lessor, and all such policies shall provide that they may not be canceled or altered without at least ten (10) days' prior written notice to Lessor. All insurance carried by Leasee and its tenants or any other Permitted Users shall be primary and non-contributory as respects the Premises. All insurance carried by Lessor shall be primary and non-contributory as respects the Garage exclusive of the Premises. Leasee shall promptly deliver commercially reasonable, satisfactory certificates of such insurance to Lessor and certificates for any renewal policies shall be obtained and delivered to Lessor at least ten (10) days prior to the expiration of any policies furnished hereunder. In addition to the requirements set forth in this Section 8, the insurance required under this Sections 8(a) through (d) must be issued by an insurance company with a rating of no less than [_____] or that is otherwise acceptable to Lessor, and admitted to engage in the business of insurance in the State in which the Building is located.

Lessor agrees to have its insurance company issuing property damage insurance and workers compensation insurance waive any rights of subrogation that such company may have against Leasee, and Lessor hereby waives any right that it may have against Leasee on account of any loss or damage to the Garage or any other Lessor's property to the extent such loss or damage is insurable under policies of insurance for fire and all risk coverage, theft, public liability or other similar insurance and as to any workers compensation claims.

Leasee agrees to have its insurance company issuing property damage insurance and workers compensation insurance waive any rights of subrogation that such company may have against Lessor, and Leasee hereby waives any right that it may have against Lessor on account of any loss or damage to Leasee's property to the extent such loss or damage is insurable under policies of insurance for fire and all risk coverage, theft, public liability, or other similar insurance and as to any workers compensation claims.

7. **Waiver of Claims and Indemnity**.

(a) **Waiver of Claims**. To the extent permitted by applicable law, Lessor and the Lessor Indemnified Parties shall not be liable for any damage to any of Leasee's personal property entrusted to Lessor, and its employees or agents, nor for loss of damage to any of Leasee's personal property (including without limitation, the personal property of any Permitted User) by theft or otherwise, except to the extent arising out of the gross negligence or willful misconduct of Lessor or any Lessor Indemnified Parties. The foregoing shall not constitute a release or waiver by Leasee or any Leasee Indemnified Parties (as defined below) as to any parking garage operator of the Garage, any valet parking operator or other concessionaire of the Garage respecting the negligence or

willful misconduct of any such parties. Lessor and the Lessor Indemnified Parties shall not be liable for any latent or patent defects in the Premises or the Garage or for any consequential damages arising out of any loss of use of the Premises. Leasee shall look solely to Lessor to enforce Lessor's obligations hereunder and shall not seek any damages against any of the Lessor Indemnified Parties (provided, however, nothing contained in this Section will preclude any Permitted Users from seeking separately damages or any other remedy as against Lessor or any parking garage operator of the Garage, any valet parking operator or other concessionaire of the Garage respecting the negligence or willful misconduct of any such parties). As used herein, "**Lessor Indemnified Parties**" shall mean Lessor's managing agent and Lessor's and its managing agent's respective parent companies and/or corporations, their respective controlled, associated, affiliated and subsidiary companies and/or corporations and their respective representatives, members, partners, shareholders, officers, directors, employees, agents, representatives, trustees, consultants, successors, assigns or lenders of any type.

(b) To the extent permitted by applicable law, neither Leasee nor any Leasee Indemnified Parties shall be liable for any damage to the Garage or any of Lessor's personal property (including without limitation, by actions of any individual Permitted Users or by theft or otherwise) except to the extent arising out of the gross negligence or willful misconduct of Leasee or any Leasee Indemnified Parties. The foregoing shall not constitute a release or waiver by Lessor or any Lessor Indemnified Parties (as defined below) as to any Permitted Users respecting the negligence or willful misconduct of any such Permitted Users. Lessor shall look solely to Leasee to enforce Leasee's obligations hereunder and shall not seek any damages against any of the Leasee Indemnified Parties (provided, however, nothing contained in this Section will preclude Lessor from seeking separately damages or any other remedy as against any Permitted Users arising out of the use of the Garage by any such Permitted Users including, without limitations as respects any negligence or willful misconduct of any such Permitted Users). As used herein, "**Leasee Indemnified Parties**" shall mean Leasee's property manager, managing agent and Leasee's and its property manager and managing agent's respective parent companies and/or corporations, their respective controlled, associated, affiliated and subsidiary companies and/or corporations and their respective representatives, members, partners, shareholders, officers, directors, employees, agents, representatives, trustees, consultants, successors, assigns or lenders of any type, and any tenants of Leasee who Lease use of parking spaces in the Garage to any employees of such tenants.

(c) **Indemnification**.

(i) Lessor to the fullest extent permitted by law, agrees to indemnify, protect, defend and hold Leasee and the Leasee Indemnified Parties harmless from and against any and all claims, damages, costs, losses and liabilities: (1) arising from or out of the gross negligence or willful misconduct of Lessor or its agents, contractors or employees, or (2) arising from or out of any breach, infringement, violation or non-performance of any term, covenant or condition of this Agreement on the part of Lessor to be performed and observed hereunder. Leasee to the fullest extent permitted by law, agrees to indemnify, protect, defend and hold Lessor and the Lessor Indemnified Parties

harmless from and against any and all claims, damages, costs, losses and liabilities: (1) arising from or out of any occurrence in, upon, around or at the Premises or the occupancy or use of the Premises or any part thereof by, through or under Leasee or its authorized agents, employees, contractors and/or direct tenant entity sublessees (but not as to any individual Permitted Users which do not qualify as Leasee's authorized agents, employees, contractors and/or direct tenant entity sublessees), (2) arising from or out of all acts, failures, errors, omissions, willful misconduct or negligence of Leasee, its authorized agents, employees, contractors and/or, direct tenant entity sublessees (but not as to any individual Permitted Users which do not qualify as Leasee's authorized agents, employees, contractors and/or direct tenant entity sublessees) which occur in or about the Premises or anywhere else within or about the Garage, or (3) arising from or out of any breach, infringement, violation or non-performance of any term, covenant or condition of this Agreement on the part of Leasee to be performed and observed hereunder.

(ii) In the event Leasee or any of Leasee's Indemnified Parties are involved in any litigation covered by Lessor's indemnity as herein provided, Lessor shall defend Leasee and/or Leasee's Indemnified Parties, as applicable, and shall pay all judgments, claims, damages, liabilities and expenses (including without limitation, attorneys' fees and disbursements) in connection with the litigation, unless it is determined that Leasee has breached its obligations hereunder or is otherwise liable under Leasee's indemnity of Lessor herein. Lessor shall advise Leasee promptly, in writing of the service upon Leasee or Leasee's Indemnified Parties of any summons, notices, letters or other communications alleging any claim or liability against Leasee's Indemnified Parties or with respect to the property or its surrounding area. In the event Lessor or any of Lessor's Indemnified Parties are involved in any litigation covered by Leasee's indemnity as herein provided, Leasee shall defend Lessor and/or Lessor's Indemnified Parties, as applicable, and shall pay all judgments, claims, damages, liabilities and expenses (including without limitation, attorneys' fees and disbursements) in connection with the litigation, unless it is determined that Lessor has breached its obligations hereunder, or is otherwise liable under Lessor's indemnity of Leasee herein. Leasee shall advise Lessor promptly, in writing of the service upon Lessor or Lessor's Indemnified Parties of any summons, notices, letters or other communications alleging any claim or liability against Lessor's Indemnified Parties or with respect to the property or its surrounding area.

(iii) The provisions of this Section 9 shall survive the expiration or sooner termination of this Agreement. Leasee shall give prompt notice to Lessor of any occurrence within the Premises or the Garage for which Leasee may be liable to Lessor. Lessor shall give prompt notice to Leasee of any occurrence within the Premises or the Garage for which Lessor may be liable to Leasee. Any indemnity contained in this Agreement for the benefit of Lessor shall be deemed to inure to the benefit of Lessor's Indemnified Parties as well. Any indemnity contained in this Agreement for the benefit of Leasee shall be deemed to inure to the benefit of Leasee's Indemnified Parties as well.

(d) **Survival of Indemnities**. The provisions of Sections 9 (a) and (b) together with any other indemnification provisions of this Agreement shall survive the

expiration or termination of this Agreement with respect to any claims, expenses or liability occurring prior to such expiration or termination. Lessor's and Leasee's covenants, agreements and indemnification obligations in Sections 9(a) and (b) above are not intended to and shall not relieve any insurance carrier of its obligations under policies required to be carried by Lessor or Leasee pursuant to the provisions of this Agreement

8. **Attorneys' Fees**. If either Lessor or Leasee shall commence any action or other proceeding against the other arising out of, or relating to, this Agreement or the Premises, the prevailing party shall be entitled to recover from the losing party, in addition to any other relief, its actual attorneys' fees and costs irrespective of whether or not the action or other proceeding is prosecuted to judgment and irrespective of any court schedule of reasonable attorneys' fees.

9. **Surrender of Premises; Holding Over**. Upon the expiration or earlier termination of this Agreement, Lessor shall have the right to turn off all card keys issued to Leasee and all Permitted Users under this Agreement which allow access to the Garage and to the Premises parking stalls and Leasee shall remove all of its property from the Premises (including all access gates and parking identification signs).

10. **Assignment and Sublicensing**. Leasee shall have the right to assign or subLease the Lease rights granted herein to any and all successors in interest to Leasee as [_____] of any of the Benefitted Parcels to which Leasee expressly assigns in writing such rights and to any and all tenants and occupants of the Benefitted Parcels noted in Section 1 of this Agreement which Leasee identifies to Lessor as Permitted Users and to whom Leasee issues access cards for access to the Garage and the Premises parking stalls as provided in this Agreement. Leasee shall also have the right to pledge its interest in this Agreement as security for any mortgage encumbering any Benefitted Parcels or any portion thereof, pursuant to a form prepared by Leasee's lender and to be subject to the reasonable approval of Lessor and Leasee, such Collateral Assignment to include a consent by Lessor to such pledge of Leasee's rights under this Agreement to Leasee's lender. Except as provided in the foregoing sentences, Leasee shall not assign or otherwise transfer this Agreement or any interest hereunder (all of the foregoing are hereinafter sometimes referred to collectively as "**Transfers**" and any person to whom any Transfer is made or sought to be made is hereinafter sometimes referred to as a "**Transferee**"). Upon any Transfer of this Lease to a designated successor owner of any of the Benefitted Parcels and assumption of such Transfer by the Transferee owner, such Transfer shall relieve Leasee of further obligation and liability under this Agreement.

11. **Rules and Regulations**. Lessor shall provide a copy of the rules and regulations set forth in Exhibit B hereto, as the same may from time to time be amended, to each Permitted User receiving access to the Garage from time to time under this Agreement.

12. **Estoppel Certificate**. At any time, within ten (10) business days following any written request which either party may make from time to time, Leasee or Lessor, as applicable, shall execute and deliver to the other (or to the Holders or any prospective holders of a Mortgage and/or purchasers or prospective purchasers or transferees) without charge, a written statement, duly acknowledged (an "**Estoppel Certificate**"): (a) ratifying this Agreement, (b) confirming the Commencement Date and Expiration Date, (c) certifying that this Agreement is in full force and effect and has not been assigned, modified, supplemented or amended, except by such

writings as shall be stated, (d) certifying that Lessor and Leasee have each fulfilled their respective obligations under this Agreement as of the date of such Estoppel Certificate, except such as shall be stated, (e) certifying that there are no defenses or offsets against enforcement of this Agreement by either party, except such as shall be stated; (f) reciting the amount of Basic Fee and additional rent then payable monthly and (g) certifying as to such other matters concerning this Agreement as may be reasonably required by either party or the holder of a Mortgage.

13. **Default by Leasee**.

(a) **Events of Default**. The occurrence of any of the following shall constitute a material default and breach of this Agreement on the part of Leasee (an "**Event of Default**"): (i) any failure by Leasee to pay any installment of Basic Fee or any other charge of item of rent required to be paid under this Agreement, or any part thereof, within fifteen (15) business days of notice that same is due, which notice shall be in lieu of and not in addition to any notice required under Section 1161 of the California Code of Civil Procedure or any similar or successor law, or (ii) the failure of Leasee to perform or breach of any obligations, agreement or covenant under this Agreement (other than as specified above), where such failure or breach continues for 30 days after Leasee's receipt of written notice of such failure; provided, however, that if the nature of the default is such that it cannot be cured within 30 days, Leasee shall not be in default of this Agreement if Leasee promptly after notice from Lessor commences to cure the default within the 30 day period and thereafter diligently prosecutes the same to completion. The 30 day notice described herein shall be in lieu of, and not in addition to, any notice required under Section 1161 of the California Code of Civil Procedure or any other law now or hereafter in effect requiring that notice of default be given prior to the commencement of an unlawful detainer or other legal proceeding. Any failure to pay Basic Fee and any other monetary obligation to be paid by Leasee under this Agreement which is specifically designated as "rent" in this Agreement shall be construed as a failure to perform the obligation for payment of rent.

(b) **Remedies**. Upon an Event of Default, in addition to any other remedies available to Lessor at law or in equity, Lessor shall have the immediate right to deny Leasee access to and/or use of the Premises and to terminate this Agreement and all rights of Leasee hereunder by giving Leasee written notice of such election to terminate.

14. **Damage By Fire or Other Casualty**.

(a) **Agreement Governs**. The provisions of this Agreement, including this Section 17, constitute an express agreement between Lessor and Leasee with respect to any and all damage to, or destruction of, all or any part of the Premises or any other portion of the Garage by fire or other casualty ("**Damage**") and no statute or regulation which is inconsistent with this Section 17, now or hereafter in effect, including without limitation, Sections 1932(2) and 1933(4) of the California Civil Code, shall have any application to this Agreement with respect to any damage or destruction to all or any part of the Premises or any other portion of the Garage.

(b) **Damage to the Premises and/or the Garage**. If the Premises and/or the Garage or any portion thereof required for Leasee and the Permitted Users to access and use the Premises and the [_____] parking stalls comprising the Premises suffer Damage, then Lessor shall have the option, to be exercised by written notice to Leasee within thirty (30) days after the date Lessor is informed of the Damage, either (i) if more than one-half (1/2) of the Garage is subject to Damage, to terminate this Agreement as of the date not less than thirty (30) days nor more than sixty (60) days after Lessor's notice to Leasee (although rent shall be abated until such termination in the manner and to the extent provided in Section 17(c)), or (ii) to repair the base building portion of the Garage due to such Damage with reasonable diligence and subject to reasonable delays for insurance adjustment and other matters beyond Lessor's reasonable control, in which event this Agreement shall continue in full force and effect, and the Basic Fee shall be abated in the manner and to the extent provided in Section 17(c).

(c) **Abatement of Basic Fee**. If the Premises and/or the Garage or any portion thereof is rendered untenantable or inaccessible and is not used by Leasee and the Permitted Users as a result of Damage, the Basic Fee pro rated as to the number of parking stalls comprising the Premises as are rendered untenantable or inaccessible shall be abated for such time as the Premises and/or the Garage or any portion thereof remain untenantable and are not used by Leasee and the Permitted Users, in the proportion that the number of parking stalls allocated to Leasee that are rendered untenantable or inaccessible and are not used by Leasee and the Permitted Users bears to the [_____] parking stalls in the Premises; provided, however, there shall be no abatement of Basic Fee if Lessor provides to Leasee replacement parking stalls in the Garage for all or any parking stalls which are rendered untenantable or inaccessible by reason of such Damage.

(d) **Destruction of Leasee's Personal Property**. In the event of any Damage to or destruction of the Premises or the Garage, under no circumstances shall Lessor be required to repair any injury, or damage to, or make any repairs to or replacements of any of Leasee's equipment, vehicles and other property or effects of Leasee placed in the Premises by or on behalf of Leasee. Lessor shall have no responsibility for any contents placed or kept in or on the Premises and/or the Garage by Leasee or Leasee's employees, agents, contractors or any Permitted Users, except to the extent of the gross negligence or willful misconduct of Lessor or its agents, employees, Leasees or contractors.

Lessor shall not be liable for any loss of business, inconvenience or annoyance to Leasee arising from any Damage or any repair or restoration of any portion of the Premises and/or the Garage as a result of any Damage.

(e) **Property Damage**. Any Garage employee to whom any property shall be entrusted by or on behalf of Leasee shall be deemed to be acting as Leasee's agent with respect to such property and neither Lessor nor its agents shall be liable for any damage to property of Leasee or others entrusted to employees of the Garage, nor for the loss of or damage to any property of Leasee by theft or otherwise. Neither Lessor nor its agents shall be liable for any injury or damage to persons or property or interruption of Leasee's business resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or snow, leaks or other perils from any part of the Garage or from the pipes, appliances or

plumbing works or from the roof, street or subsurface or from any other place or by dampness or by any other cause of whatsoever nature, except to the extent of the gross negligence or willful misconduct of Lessor or any of its agents, employees, Leasees or contractors; nor shall Lessor or its agents be liable for any such damage caused by other persons in the Garage or caused by construction of any private, public or quasi public work; nor shall Lessor be liable for any latent defect in the Premises or in the Garage.

15. **Eminent Domain**.

(a) **Total or Partial Taking**. If all or any portion of the Premises and/or the Garage is taken or appropriated under the power of eminent domain or conveyed in lieu thereof, such that any of Leasee's [_____] parking stalls are rendered untenantable or inaccessible, and provided Lessor is unable to relocate any such parking stalls to other locations of the Garage which are tenantable and accessible, then Lessor shall have the right to terminate this Agreement at its option as to all such parking stalls rendered untenantable or inaccessible, exercisable within sixty (60) days of such taking or conveyance, in which event the Basic Fee payable hereunder shall be reduced pro rata based the number of parking stalls which are rendered untenantable or inaccessible as compared to Leasee's total of [_____] parking stalls. This Agreement shall remain in effect in the event that and to the extent that the effectiveness of this Agreement is necessary under applicable laws to allow Lessor to obtain or receive any award of compensation in connection with the exercise of such power of eminent domain. In such events, Lessor shall receive (and Leasee shall assign to Lessor upon demand from Lessor) any income, rent, award or any interest therein which may be paid in connection with the exercise of such power of eminent domain and Leasee shall have no claim against Lessor for any part of the sums paid by virtue of such proceedings or for the value of the unexpired portion of the Term, it being the intent of the parties hereto that Leasee shall have no right to recover or make any claim upon any such sums. Leasee hereby waives any and all rights it might otherwise have pursuant to 1265.130 of the California Code of Civil Procedures.

(b) **Temporary Taking**. Notwithstanding anything to the contrary contained in this Section 18, if the temporary use of any part of the Premises shall be taken or appropriated under the power of eminent domain during the Term, this Agreement shall be and remain unaffected by such taking or appropriation provided the Basic Fee shall abate for any and all parking stalls within the Premises which are taken or appropriated.

16. **Impossibility of Performance**. Neither Lessor nor Leasee shall be bound to the terms and conditions of this contract if failure to perform pursuant to this Agreement is due to fire, flood, strike, storms, disasters, or the acts of God, or any other cause beyond the control of the parties.

17. **Non-Waiver**. Lessor's decision not to enforce any provision of this Agreement, including any exhibit, shall not mean that Lessor has waived its rights to do so at any time.

18. **Notices**. Except as otherwise in this Agreement provided, notice or communication which Lessor may desire or be required to give to Leasee shall be deemed

sufficiently given or rendered if, in writing, delivered to Leasee personally or sent by registered or certified mail addressed to Leasee at the address set forth in Item 5 of the Basic Lease Provisions and shall be deemed to be at the time when the same is delivered to Leasee or mailed. Any notice by Leasee to Lessor must be served by registered or certified mail addressed to Lessor at the address set forth in Item 3 of the Basic Lease Provisions.

19. **Binding Agreement**. Each party hereto represents and warrants to the other that this Agreement is duly executed by such party and is a valid, binding obligation of each such party.

20. **No Amendments**. This Agreement, including all attachments and exhibits hereto sets forth the entire understanding between the parties and may not be altered or amended except by another writing executed by both parties.

21. **Alterations**. Following the Commencement Date, Leasee will not make or cause to be made any alterations, installations, improvements, additions or other physical changes in or about the Premises without obtaining the prior written consent of Lessor thereto, which Lessor shall have the right to withhold in its sole and absolute discretion.

22. **Maintenance**. Lessor, at its sole cost and expense, will maintain and repair the Garage and all portions thereof, consistent with the manner in which it stands as of the date hereof; provided, however, if such maintenance and repairs are caused in whole or in part by the act, neglect, fault or omission by Leasee, its agents, contractors, employees, or Permitted Users, Leasee shall pay to Lessor, as additional rent, the reasonable cost of such maintenance and repairs. Subject to Section 7 of this Agreement, Lessor shall not be liable to Leasee for any failure to make any such repairs, or to perform any maintenance hereunder, and there shall be no abatement of rent and no liability of Lessor by reason of any injury to or interference with Leasee's business arising from the making of or a failure to make any repairs, alterations or improvements in or to any portion of the Premises or the Project or in or to fixtures, appurtenances and equipment therein. Leasee hereby waives and releases its right to make repairs at Lessor's expense under Sections 1941 and 1942 of the California Civil Code; or under any similar law, statute, or ordinance now or hereafter in effect. Leasee shall advise Lessor of the need for any repairs or replacements to the Premises and/or the Garage which are Lessor's responsibility under this Agreement.

Leasee shall at its cost, repair all damages to the Premises caused by any installations made by Leasee or the moving or removing of Leasee's property in or to the Premises.

23. **Requirements of Law**. Except with respect to customary quantities of hazardous materials commonly found in automobiles, including, without limitation, gasoline and petroleum and petroleum by-products ("**Automotive Haz Mats**"), Leasee shall not transport, use, store, maintain, generate, manufacture, handle, dispose, release or discharge any hazardous material (as defined by any applicable law) upon or about the Premises and/or the Garage, nor permit Leasee's employees, invitees or Leasees or other occupants of the Premises to engage in such activities upon or about the Premises and/or the Garage. If any hazardous material other than Automotive Haz Mats is released, discharged or disposed of by Leasee, Leasee's employees, invitees or Leasees or any other occupant of the Premises, on or about the Premises and/or the

Garage, Leasee shall immediately, properly and in compliance with applicable laws clean up and remove, or cause the Permitted User responsible for such hazardous material to remove, the hazardous material from the Premises and/or the Garage and any other affected property and clean or replace any affected personal property (whether or not owned by Lessor), at Leasee's expense. Such clean up and removal work shall be subject to Lessor's prior written approval (except in emergencies), not to be unreasonably withheld, and shall include, without limitation, any testing, investigation, and the preparation and implementation of any remedial action plan required by any governmental body having jurisdiction or reasonably required by Lessor. If Leasee shall fail to comply with the provisions of this Section 26 within five (5) days after written notice by Lessor, or such shorter time as may be required by applicable law or in order to minimize any hazard to persons or property, Lessor may (but shall not be obligated to) arrange for such compliance directly or as Leasee's agent through contractors or other parties selected by Lessor, at Leasee's expense (without limiting Lessor's other remedies under this Agreement or applicable law).

24. **Limitation of Liability**.

(a) Lessor's obligations under this Agreement will not be binding upon Lessor after the sale, conveyance, assignment or transfer by Lessor of its interest in the Premises, and in the event of any such sale, conveyance, assignment or transfer, Lessor will be and hereby is entirely freed and relieved of all covenants and obligations of Lessor hereunder to the extent that such transferee assumes Lessor's obligations under this Agreement, subject to the terms hereof. None of Lessor's Indemnified Parties shall be liable for the performance of Lessor's obligations under this Agreement. Leasee will look solely to Lessor to enforce Lessor's obligations hereunder and shall not seek any damages against any of Lessor's Indemnified Parties. Lessor's liability for its obligations under this Agreement will be limited to Lessor's interest in the Garage and Leasee will not look to any other property or assets of Lessor or the property or assets of any of the Lessor's Indemnified Parties in seeking either to enforce Lessor's obligations under this Agreement or to satisfy a judgment for Lessor's failure to perform such obligations. In no event shall Lessor (or any Lessor Indemnified Parties) ever be liable for incidental or consequential damages.

(b) Leasee's obligations under this Agreement will not be binding upon Leasee after the Transfer by Leasee of its interest in this Agreement pursuant to the terms and conditions of Section 12, and in the event of any such Transfer, Leasee will be and hereby is entirely freed and relieved of all covenants and obligations of Leasee hereunder to the extent that the Transferee assumes Leasee's obligations under this Agreement, subject to the terms hereof. None of Leasee's Indemnified parties shall be liable for the performance of Leasee's obligations under this Agreement. Lessor will look solely to Leasee to enforce Leasee's obligations hereunder and shall not seek any damages against any of Leasee's Indemnified Parties or any Permitted Users for performance of this Agreement by Leasee (provided, however, nothing contained in this Section 28(b) will preclude Lessor from seeking separately damages or any other remedy as against any Permitted Users arising out of the use of the Garage by any such Permitted Users). Leasee's liability for its obligations under this Agreement will be limited to Leasee's interest in the Benefitted Parcels and Lessor will not look to any other property or assets of Leasee or the property or assets of any of the Leasee's Indemnified Parties in seeking either to enforce Leasee's obligations under this Agreement or to satisfy a judgment for Leasee's

failure to perform such obligations. In no event shall Leasee (or any Leasee Indemnified Parties) ever be liable for incidental or consequential damages).

25. **Entry**. Lessor reserves the right at all reasonable times to enter the Premises to (a) inspect them; (b) show the Premises to prospective purchasers, mortgagees or Leasees, or to the ground or underlying lessors; (c) post notices of nonresponsibility; or (d) alter, improve or repair the Premises or the Garage if necessary to comply with current building codes or other applicable laws, or for structural alterations, repairs or improvements to the Garage. In addition to the foregoing, Lessor may enter the Premises at any time to (i) perform services required of Lessor; (ii) take possession due to any breach of this Agreement in the manner provided herein; and (iii) perform any covenants of Leasee which Leasee fails to perform. Any such entries shall be without the abatement of the Basic Fee and shall include the right to take such reasonable steps as required to accomplish the stated purposes. Leasee hereby waives any claims for damages or for any injuries or inconvenience to or interference with Leasee's business, lost profits, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby, except to the extent attributable to the gross negligence or willful misconduct of Lessor or any employee, agent or contractor of Lessor. Any entry into the Premises in the manner herein before described shall not be deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an actual or constructive eviction of Leasee from any portion of the Premises.

26. **Partial Invalidity**. If any term, provision or condition contained in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Agreement shall be valid and enforceable to the fullest extent possible permitted by law.

27. **No Warranty**. In executing and delivering this Agreement, Leasee has not relied on any representation or any warranty or any statement of Lessor which is not set forth herein or in one or more of the exhibits attached hereto.

28. **Governing Law**. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

29. **Signage**. Except to the extent expressly provided in this Section 36, Leasee shall not place or install (or permit to be placed or installed) any signs, advertisements, logos, identifying materials, pictures or names of any type on the Premises or the Garage. Subject to the compliance with applicable laws and such Garage signage criteria as Lessor shall apply from time to time and subject to receipt of Lessor's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, Leasee may at its sole cost and expense install appropriate directional and identification signage for the Premises (including reserved parking signage and markings) and for any or all parking stalls comprising the Premises. The exact location, size, style, color, materials and lighting of Leasee's signage shall be consistent and compatible with the Garage's signage criteria and the cost of installation, maintenance, insurance, removal and utilities for all such Leasee identification signs shall be at Leasee's sole cost and expense.

30. **No Liens**. Leasee has no authority or power to cause or permit any lien or encumbrance of any kind whatsoever, whether created by act of Leasee, operation of law or otherwise, to attach to or be placed upon the Garage or Premises, and any and all liens and encumbrances created by Leasee shall attach to Leasee's interest only. Lessor shall have the right at all times to post and keep posted on the Premises any notice which it deems necessary for protection from such liens. Leasee covenants and agrees not to suffer or permit any lien of mechanics or materialmen or others to be placed against the Garage or the Premises with respect to work or services claimed to have been performed for or materials claimed to have been furnished to Leasee or the Premises, and, in case of any such lien attaching or notice of any lien, Leasee covenants and agrees to cause it to be immediately released and removed of record. Notwithstanding anything to the contrary set forth in this Agreement, in the event that such lien is not released and removed on or before the date which is five (5) business days following notice of such lien is delivered by Lessor to Leasee, Lessor, at its sole option, may immediately take all action necessary to release and remove such lien, without any duty to investigate the validity thereof, and all reasonable, actual and documented sums, costs and expenses, including reasonable attorneys' fees and costs, incurred by Lessor in connection with such lien shall be deemed immediately due and payable by Leasee.

31. **Recordation**. Each party shall have the right to require that the other execute and deliver for recordation a memorandum of Lease to provide notice that the Garage and the Benefitted Parcels are subject to the terms and conditions of this Agreement ("**Memo of Lease**"), which shall be recorded against the title of both the Garage and the Benefitted Parcels. Upon the expiration or earlier termination of this Agreement, the party who shall have recorded the Memo of Lease ("**Recording Party**") shall, at its sole cost and expense, remove the Memo of Lease from title of the Garage and the Benefitted Parcels, failing which the Recording Party hereby authorizes the other party to so remove the Memo of Lease from title of the Garage and the Benefitted Parcels.

32. **Entire Agreement**. It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by Lessor to Leasee with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Agreement. This Agreement and any side letter or separate agreement executed by Lessor and Leasee in connection with this Agreement and dated of even date herewith contain all of the terms, covenants, conditions, warranties and agreements of the parties relating in any manner to the rental, use and occupancy of the Premises, shall be considered to be the only agreement between the parties hereto and their representatives and agents, and none of the terms, covenants, conditions or provisions of this Agreement can be modified, deleted or added to except in writing signed by the parties hereto. All negotiations and oral agreements acceptable to both parties have been merged into and are included herein. There are no other representations or warranties between the parties, and all reliance with respect to representations is based totally upon the representations and agreements contained in this Agreement.

*[*SIGNATURES ON NEXT PAGE*]*

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

Leasee:

[_____]

By: _____
Name: _____
Title: _____

Lessor:

[_____]

By: _____
Name: _____
Title: _____

EXHIBIT A

PREMISES

EXHIBIT B

RULES AND REGULATIONS

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659 EXHIBIT C

660 [BENEFITTED PARCELS LEGAL DESCRIPTION]

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