EXHIBIT M

AFFORDABLE HOUSING IMPLEMENTATION PLAN

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

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

RECITALS

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

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

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

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

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

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

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

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

ARTICLE 1. TIME OF PERFORMANCE

Section 1.1 Milestone Schedules.

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

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

ARTICLE 2. AFFORDABLE HOUSING OBLIGATIONS AND PROJECT SPECIFIC IMPLEMENTATION

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

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

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

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

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

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

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

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

Section 2.2 Recorded Restrictions.

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

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

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

ARTICLE 3. CONDITIONS FOR AND DISPOSITION OF AFFORDABLE HOUSING SITE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 3.3 Conveyance to Qualified Affordable Housing Developer.

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

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

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

Section 3.4 Affordable Housing Development Financing Plan.

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

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

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

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

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

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

Section 3.5 AHSC Program Grant.

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

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

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

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

Section 3.6 Tax Credits.

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

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

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

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

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

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

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

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

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

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

ARTICLE 4. CONSTRUCTION OF AFFORDABLE HOUSING UNITS

Section 4.1 Schedule for Developing Affordable Housing Units.

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

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

Section 4.2 Timing of Construction

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

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

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

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

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

Section 4.3 Preliminary Development Notice.

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

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

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

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

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

Section 4.4 Coordination of Construction and Deferred Project Infrastructure.

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

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

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

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

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

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

Section 4.6 Performance.

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

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

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

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

Section 4.7 Comparability of Housing Units.

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

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

ARTICLE 5. ON GOING OBLIGATIONS FOR AFFORDABLE HOUSING UNITS

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

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

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

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

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

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

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

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

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

ARTICLE 6. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) "Commence Construction" or Commencement of Construction means, for

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Attachment A

Affordable Housing Development Milestone Schedule

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

timely and complete application for a4% Tax Credit Reservation to TCAC and a tax exempt bond application to CDLAC for the second phase of the Affordable Housing Development. [§3.6(c)]	subsequent preliminary reservation application rounds through October 2018.
Phase I Tax Credit Reservation Allocation. The Qualified Affordable Housing Developer shall have secured an allocation of tax credits for the first phase of the Affordable Housing Development. [§3.6]	No later than December 2018.
Phase II Tax Credit Reservation Allocation. The Qualified Affordable Housing Developer shall have secured an allocation of tax credits for the second phase of the Affordable Housing Development. [§3.6]	No later than December 2018.
AHSC Award. The Qualified Affordable Housing Developer shall have obtained an award of AHSC Program funds. [§3.5]	No later than June 2018 or such date that HCD awards AHSC program funds from the first full application round in 2018.
Affordable Housing Site Conveyance. The Qualified Affordable Housing Developer shall have completed all conditions precedent to conveyance of Affordable Housing Site and City transfers Affordable Housing Site. [§3.3]	No later than December 31, 2018.
Phase I Building Permit. The Qualified Affordable Housing Developer shall have obtained a Tax Credit Reservation for the first phase of the Affordable Housing Development. [§4.2(b)]	Prior to the issuance of the building permit for the three hundred ninety-sixth (396th) market rate Residential Unit.
Phase II Building Permit. The Qualified Affordable Housing Developer shall have obtained a building permit for the second phase of the Affordable Housing Development. [§4.2(c)]	Prior to the issuance of any building permit for the development of residential or commercial private development for Phase II of the Project.
Phase I Commencement of Construction. The Qualified Affordable Housing Developer shall have commenced construction of the first phase of the Affordable Housing Development. [§4.1]	Within 180 days of a 9% tax credit allocation reservation for Phase I of the Affordable Housing Development.
Phase II Commencement of Construction. The Qualified Affordable Housing Developer shall have commenced construction of the second phase of the Affordable Housing Development. [§4.1]	Within 90 days of a 4% tax credit allocation reservation for Phase II of the Affordable Housing Development.

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

Attachment B

Form of City Regulatory Agreement

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

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

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

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

APN: _____

[CITY FORM]
AFFORDABLE HOUSING AGREEMENT

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

This Affordable Housing Agreement ("**Agreement**") dated _____ ("**Effective Date**"), is entered into between the **CITY OF ALAMEDA**, a municipal corporation ("**City**") and Alameda Point Partners, a California limited liability company ("**Developer**").

RECITALS

The following recitals are a substantive part of this Agreement.

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

B. City Municipal Code Section 30-16, added by Ordinance No. 2965-NA adopted on June 15, 2004, sets forth certain inclusionary housing requirements for residential development in the City ("**City Inclusionary Policy**"), consistent with the intent of State law that local governments use the powers vested in them to make adequate provision for the housing needs of all economic segments of the community.

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

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

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

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

NOW THEREFORE, the parties acknowledge and agree as follows:

ARTICLE 1. DEFINITIONS

1.01 "**Affordable Rent**" is the amount of rent considered as "affordable rent" for very low, low or moderate income households, adjusted for family size appropriate to the unit, less a utility allowance (including garbage collection, sewer, water, electricity, gas, other heating, cooking and refrigeration fuel, but not telephone or cable television service), pursuant to California Health and Safety Code Section 50053 or any successor statute thereto. If the statute is no longer in effect and no successor statute is enacted, the City shall establish the Affordable Rent for purposes of this Agreement. For purposes of this Section 1.01 "adjusted for family size appropriate to the unit" shall mean a household of two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

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

1.03 "**Area Median Income**" shall mean the median income for households in Alameda County, California, as published from time to time by the United States Department of Housing and Urban Development ("HUD") in a manner consistent with the determination of median gross income under Section 8 of the United States Housing Act of 1937, as amended, and as defined in Title 25, California Code of Regulations, Section 6932. In the event that such income determinations are no longer published by HUD, or are not updated for a period of at

least 18 months, the City shall provide the Developer with other income determinations that are reasonably similar with respect to methods of calculation to those previously published by HUD.

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

ARTICLE 2. RENT, INCOME AND OCCUPANCY RESTRICTIONS

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

(a) Very Low Income. Not less than ___ of the Affordable Units constructed on the Property shall be available to Eligible Households whose gross income does not exceed fifty percent (50%) of the Area Median Income at an Affordable Rent.

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

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

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

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

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

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

The determination of a status as an Eligible Household shall be made by Developer prior to initial occupancy of the Affordable Unit by such household and shall be subject to review and approval by City. The income of all persons residing in the Affordable Unit shall be considered for purposes of calculating the household income. Developer shall not discriminate against prospective tenants with qualified Public Housing Authority Section 8 certificates or vouchers who are otherwise qualified. Developer shall notify City in writing whenever the tenant in an Affordable Unit changes. The notice shall indicate the name and household size of the tenant vacating the Affordable Unit. Once the Affordable Unit is reoccupied, Developer shall notify City in writing of the new tenant's name, household size and income.

Immediately prior to the first anniversary date of the occupancy of an Affordable Unit by an Eligible Household, and on each anniversary date thereafter, Developer shall re-certify the income of the occupants of such Affordable Unit by obtaining a completed Tenant Income Certification based upon the current income of each occupant of the Affordable Unit. The Tenant Income Certification shall be in the form attached hereto as Exhibit B. If an occupant of an Affordable Unit no longer qualifies as an Eligible Household due to an increase in income above the limitation set forth in paragraph *[Insert (a), (b) and/or (c), as appropriate]*, of this Section 2.01, the occupant may continue to occupy the former Affordable Unit; provided, however, Developer may increase the rental rate for such former Affordable Unit to market rate or the highest rent allowable under regulatory restrictions and Developer shall rent the next available comparable unit within the Housing Project (i.e., same number of bedrooms and bathrooms) as an Affordable Unit. Developer shall send written notice to City with the address and bedroom/bathroom mix of the Affordable Unit designated by Developer as the replacement Affordable Unit.

In lieu of designating another comparable Housing Project unit as the replacement Affordable Unit to meet the income requirements of paragraph *[insert (a), (b) and/or (c), as appropriate]* of this Section 2.01, Developer may designate as an Affordable Unit an occupied unit within the Housing Project that is not currently designated as an Affordable Unit if such unit is then occupied by a tenant meeting the income requirements set forth in paragraph *[insert (a),*

(b) and/or (c), as appropriate], of this Section 2.01. In the event Developer makes such a substitution, Developer shall send written notice to the City with the address and bedroom/bathroom mix of the substituted Affordable Unit, along with the name of the occupant and household size and income of the household occupying the unit.

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

2.03 Marketing and Leasing Program.

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

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

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

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

ARTICLE 3. REPORTING REQUIREMENTS FOR HOUSING PROJECT

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

(a) The number of persons per Affordable Unit;
(b) Name of each Affordable Unit Tenant;
(c) Initial occupancy date;
(d) Rent paid per month; and
(e) Gross income per year.

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

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

The first annual report and annual income certification ("**Initial Report**") shall be submitted to the City within sixty (60) days of the date of the initial rental of all the Affordable Units on the Property. Subsequent annual reports and annual income certifications or recertifications shall be submitted to the City on the anniversary date of submittal of the Initial Report.

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

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

recertification, Developer shall verify the citizenship or qualified alien status of all Affordable Unit tenants.

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

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

ARTICLE 4. PROVISION OF SERVICES AND MAINTENANCE OF PROPERTY

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

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

ARTICLE 5. NO TRANSFER

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

5.02 Permitted Transfers. Notwithstanding any other provision of this Agreement to the contrary, City approval of an assignment or transfer of this Agreement or conveyance of the

Property or Housing Project, or any part thereof, shall not be required in connection with any of the following (the **"Permitted Transfers"**):

(a) The lease of Affordable Units to Eligible Households.

(b) Assignments for financing purposes, and any subsequent transfer to the lender providing such financing by foreclosure or deed in lieu of foreclosure thereunder, subject to such financing being considered and approved by the City.

(c) Transfer of the Property and Housing Project to an affiliate entity which controls, is controlled by or under common control with Developer.

(d) In the event of an assignment by Developer pursuant to subparagraph (c) not requiring the City's prior approval, Developer nevertheless agrees that at least thirty (30) days prior to such assignment or transfer it shall give written notice to the City of such assignment or transfer and that such transferee shall be required to assume Developer's obligations under this Agreement pursuant to a written assignment and assumption agreement in a form reasonably acceptable to the City Attorney.

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

ARTICLE 6. NO DISCRIMINATION

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

ARTICLE 7. NO IMPAIRMENT OF LIEN

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

ARTICLE 8. DURATION

The covenants contained in Articles 2, 3, 4 and 5 of this Agreement shall be deemed to run with the Property and Housing Project permanently following the Effective Date. The covenants against discrimination contained in Article 6 of this Agreement shall run with the land in perpetuity, unless otherwise terminated by the City.

ARTICLE 9. SUCCESSORS AND ASSIGNS

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

ARTICLE 10. SUBORDINATION AGREEMENT

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

ARTICLE 11. DEFAULT

Any failure by Developer to perform any term or provision of this Agreement shall constitute a "**Default**" (1) if Developer does not cure such failure within thirty (30) days

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

ARTICLE 12. NOTICES, DEMANDS AND COMMUNICATIONS

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

To City:	City of Alameda 2263 Santa Clara Avenue Alameda, CA 94501 Attention: City Manager
With a copy to:	City of Alameda Alameda City Hall, Rm 280 2263 Santa Clara Avenue Alameda, CA 94501 Attn: City Attorney
Authority	Housing Authority of the City of Alameda 701 Atlantic Avenue Alameda, CA 94501 Attn: Executive Director

With a copy to: _____

_____

Attention: _____

To Developer Alameda Point Partners

_____

_____

Attention: _____

With a copy to: _____

_____

_____

Attention: _____

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

ARTICLE 13. ATTORNEYS' FEES

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

ARTICLE 14. RECORDATION OF AGREEMENT

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

ARTICLE 15. COMPLIANCE MONITORING FEE

Developer acknowledges and agrees that the City is obligated to monitor compliance with this Agreement on an annual basis and, therefore, agrees to pay City for a portion of its administrative costs for such monitoring by paying to City an annual monitoring fee in an amount of _____Dollars ($_____) which fee shall be due on the initial date of occupancy and each year on the anniversary date of the initial date of occupancy

ARTICLE 16. INDEMNIFICATION

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

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

ARTICLE 17. MISCELLANEOUS

Each party agrees to cooperate with the other in the implementation and administration of this Agreement and, in that regard, shall execute any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. The words "include" and "including" shall be construed as if followed by the words "without limitation." All exhibits and attachments hereto are incorporated by reference as though fully restated herein. This Agreement shall be interpreted as though prepared jointly by both parties, and shall be construed in accordance with and be governed by the laws of the State of California. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby. A waiver by either party of a breach of any of the covenants, conditions or agreements hereunder to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions hereof. No waiver by City of any of the conditions hereof shall be effective unless in writing expressly identifying the scope of the waiver and signed on behalf of an authorized official of City. Any alteration, change or modification of or to the Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party hereto. Nothing contained in this Agreement or any document executed pursuant to this Agreement shall be construed as creating a joint venture or partnership between the City, the Authority and Developer. Nothing contained in this Agreement shall create or justify any claim against the Authority or City by any person that Developer may have employed or with whom Developer may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the Property or the construction of the Project.

[The Remainder of this Page is Intentionally Left Blank]

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

CITY:

RECOMMENDED FOR APPROVAL:

CITY OF ALAMEDA, a municipal corporation

_____
Executive Director, Housing Authority

_____
City Manager
[Signature must be notarized]

APPROVED AS TO FORM:

_____
City Attorney

- and -

DEVELOPER::

Alameda Point Partners, a California limited liability company

By:_____
[Signature must be notarized]

Print Name:_____

Its:_____

By:_____
[Signature must be notarized]

Print Name:_____

Its:_____

NOTARY ACKNOWLEDGMENTS

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

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

_____
Name: _____
Notary Public

EXHIBIT A

Description of Property

EXHIBIT B

Tenant Income Certification

Project Name and Address:_____ Date: _____

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

Address/Unit Number: _____ Rent:_____

Tenant/Household Name:_____ Date of Lease:_____

Size of Household: _____ Expiration:_____

Total Household Income:_____ per year

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

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

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

_____ _____

Head of Household Date Developer/ Agent Date

EXHIBIT C

Site Plan

[To be inserted]

EXHIBIT D

Materials, Amenities and Finishes

[To be inserted]

EXHIBIT E

CERTIFICATION OF CONTINUING COMPLIANCE

Project Name and Address:_____ Date: _____

Total Affordable Housing Units in Project:

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

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

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

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

Signed:_____ Date:_____
Developer/ Agent

[See Attached]

ANNUAL COMPLIANCE REPORT

Project Name and Address:_____ Date: _____

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

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

(Attach additional sheets as required.)

Signed:_____ Date:_____
Developer / Agent

ANNUAL COMPLIANCE REPORT

Project Name and Address:_____ Date: _____

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

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

(Attach additional sheets as required.)

Signed:_____ Date:_____

Developer / Agent

ANNUAL COMPLIANCE REPORT

Project Name and Address:_____ Date: _____

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

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

(Attach additional sheets as required.)

Signed:_____ Date:_____

Developer / Agent

EXHIBIT F

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

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

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

Space Above This Line For Recorder's Use Only

NOTICE OF AFFORDABILITY RESTRICTIONS ON TRANSFER OF PROPERTY

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

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

Title of Document Containing Affordable Housing Restrictions:

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

Parties to Affordable Housing Restrictions:

City of Alameda ("City") and

_____ ("Owner").

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

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

☐ concurrently with this Notice, official records of _____ County.

Legal Description of Property:

See Exhibit A (Attached hereto)

Street Address of Property: _____, Unit No._____, _____, California.

Assessor's Parcel Number of Property:_____

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

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

_____.

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

_____.

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

_____.

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

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

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

CITY OF ALAMEDA:

Dated: _____, 20___

By: _____
City Manager

OWNER:

Dated: _____, 20___

_____

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

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

_____
Name: _____
Notary Public

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

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

_____
Name: _____
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

[To Be Inserted]

Attachment C

Form of Affordable Housing Covenant

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

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

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

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

[CITY FORM]

AFFORDABLE HOUSING AGREEMENT

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

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

RECITALS

A. Developer is the owner of that certain real property located in the City of Alameda, County of Alameda, State of California, more particularly described in Exhibit A attached hereto ("Property") and wishes to construct residential units on the Property.

B. City Municipal Code Section 30-16, added by Ordinance No. 2965-NA adopted on June 15, 2004, sets forth certain inclusionary housing requirements for residential development in the City ("City Inclusionary Policy"), consistent with the intent of State law that local governments use the powers vested in them to make adequate provision for the housing needs of all economic segments of the community.

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

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

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

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

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

NOW, THEREFORE, Developer and City agree as follows:

ARTICLE 1
DEFINITIONS

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

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

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

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

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

E. "Authority" is defined in Recital E.

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

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

H. "Developer" means _____, a _____.

I. "Deed of Trust" means the deed of trust, in the form provided by the City or the Authority, executed by each buyer of an Affordable Unit, securing the buyer's performance under the Resale Restriction and the Note

J. "Effective Date" means the effective date of this Agreement, as first set forth above.

K. "Eligible Household" means a person or household (i) meeting the definition of "Moderate Income Household," "Low Income Household," or "Very Low Income Household," as applicable, under this Article 1; and (ii) meeting Developer's standard criteria for determining eligibility for occupancy, which may include an evaluation of the applicant's ability to pay the mortgage, employment status and credit history. These standard criteria may vary from time to time, but must be uniformly applied at all times.

L. "Inclusionary Ownership Guidelines" is defined in Section 2.1E.2.

M. "Low Income Household" means a household whose annual income does not exceed the qualifying limits set for "lower income households" in Section 50079.5 of the California Health and Safety Code, or any successor statute thereto.

N. "Market Rate Units" means units in the Project, the sale and occupancy of which are not regulated by this Agreement.

O. "Moderate Income Households" means a household whose annual income does not exceed the qualifying limits set for "persons and families of low or moderate income" in Section 50093 of the California Health and Safety Code, or any successor statute thereto.

P. "Note" means the promissory note, in the form provided by the City or the Authority, executed by each buyer of an Affordable Unit.

Q. "Notice of Affordability Restrictions" means the Notice of Affordability Restrictions on Transfer of Property attached here to as Exhibit __.

R. "Owner-Occupied Monthly Housing Payment" means the sum equal to the principal, interest, property taxes, property maintenance and repairs, reasonable allowance for utilities (including garbage collection, sewer, water, electricity, gas, other heating, cooking and refrigeration fuel, but not including telephone or cable television service), homeowner's insurance and homeowner's association dues, and any other applicable elements of "housing cost" as defined in Section 6290 of Title 25 of the California Code of Regulations, paid on an annual basis divided by twelve (12).

S. "Phasing Schedule" is defined in Section 2.1.D. [If applicable]

T. "Property" is defined in Recital A.

U. "Project Inclusionary Requirement" is defined in Recital C.

V. "Project" is defined in Recital C.

W. "Project Units" means the Market Rate Units and the Affordable Units.

X. "Resale Restriction" is defined in Section 2.1.E.4.

Y. "Term" is defined in Section 4.3.

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

ARTICLE 2
PROJECT INCLUSIONARY REQUIREMENT

2.1 Affordability Requirements and Restrictions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 3
MARKETING

3.1 Marketing and Sales Program and Marketing Reports.

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

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

3.2 Verification of Citizenship or Qualified Alien Status. At the time of sale of an Affordable Unit, Developer shall verify the citizenship or qualified alien status of all adult buyers as required under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law No. 104-193, 8 U.S.C. §1621). Developer shall verify the citizenship or qualified alien status by causing the applicants for purchase to complete and sign under penalty of perjury the HCD Benefit Status Form 1 (2/98) or such other form provided by HCD for this purpose. The signed forms shall be forwarded by Developer to City.

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

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

ARTICLE 4
GENERAL PROVISIONS

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

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

To the Developer:

Alameda Point Partners, LLC
_____
_____
Attention: _____

with a copy to:

_____
_____
_____
Attention: _____.

To the City:

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

with a copy to:

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

To the Authority:

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

with a copy to:

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

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

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

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

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

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

4.7 Successors and Assigns.

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

Agreement and shall be jointly and severally liable for any breach or failure to comply, unless each successor and City enter into an agreement outlining the specific obligations of each successor for compliance with this Agreement. The covenants in this Agreement shall run in favor of City and its successors and assigns for the entire period during which such covenants shall be in force and effect. City and its successors and assigns, in the event of any breach of any such covenants, shall have the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings, to enforce the curing of such breach.

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

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

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

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

4.11 Default and Remedies.

A. Any failure by Developer to perform any term or provision of this Agreement shall constitute an "Event of Default" (1) if Developer does not cure such failure within

thirty (30) days following written notice of default from City, or (2) if such failure is not of a nature which cannot reasonably be cured within such thirty (30) day period, Developer does not within such thirty (30) day period commence substantial efforts to cure such failure or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure.

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

C. Any failure or delay by City in asserting any of its rights or remedies as to any Event of Default shall not operate as a waiver of any Event of Default or of any such rights or remedies or deprive City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

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

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

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

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

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

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

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

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

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

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

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

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

[Signature page follows]

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

RECOMMENDED FOR APPROVAL:

_____
Executive Director, Housing Authority

APPROVED AS TO FORM:

_____
City Attorney

CITY:

CITY OF ALAMEDA, a municipal corporation

_____
[Signature must be notarized]

City Manager

DEVELOPER:

Alameda Point Partners, LLC, a Delaware limited liability company

By:_____
[Signature must be notarized]

Print Name:_____

Its:_____

By:_____
[Signature must be notarized]

Print Name:_____

Its:_____

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

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

_____
Name: _____
Notary Public

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

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

_____
Name: _____
Notary Public

EXHIBIT A

Legal Description of Property

EXHIBIT B

Site Plans for Project

EXHIBIT C

Phasing Schedule

EXHIBIT D

Inclusionary Housing Program Buyer Selection Guidelines

EXHIBIT E

RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO:)
)
)
)
)
City of Alameda)
2263 Santa Clara Avenue, Rm 320)
Alameda, California 94501)
Attention: City Manager)

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

[CITY FORM – FOR-SALE UNITS]

AFFORDABILITY, RESTRICTIONS ON RESALE AND OPTION TO PURCHASE AGREEMENT

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

RECITALS

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

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

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

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

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

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

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

ARTICLE 1
DEFINITIONS

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

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

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

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

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

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

1.5 "Authority" is defined in Recital F.

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

1.7 "City" shall mean the City of Alameda.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.44 "Unit Amenities" shall have the meaning given in Section 4.2.

ARTICLE 2
RESTRICTIONS

2.1 Owner Acknowledgments and Agreements. Owner hereby acknowledges and agrees that taking title to the Property shall constitute Owner's acknowledgment and agreement of the following:

A. THE PROPERTY IS BEING ACQUIRED BY OWNER AT A COST WHICH IS BELOW MARKET RATE FOR SUCH PROPERTY AND THAT SUCH PROPERTY IS SUBJECT TO THE RESALE RESTRICTIONS AND CITY'S PURCHASE OPTION CONTAINED IN THIS AGREEMENT GRANTING THE CITY AN IRREVOCABLE POWER OF ATTORNEY COUPLED WITH AN INTEREST TO ACT ON THE OWNER'S BEHALF TO EXECUTE, ACKNOWLEDGE AND DELIVER ANY AND ALL DOCUMENTS RELATING TO THE CITY'S PURCHASE OPTION. THERE SHALL BE NO SALE OR TRANSFER OF THE PROPERTY EXCEPT IN ACCORDANCE WITH THIS AGREEMENT. ANY SALE OR OTHER TRANSFER OF THE PROPERTY IN VIOLATION OF THIS AGREEMENT SHALL CONSTITUTE A DEFAULT AND SHALL BE VOIDABLE BY THE CITY.

B. OWNER SHALL OCCUPY THE PROPERTY AS ITS PRINCIPAL RESIDENCE FOR THE DURATION OF ITS OWNERSHIP. Upon request by the City, each Owner shall submit an affidavit to the City certifying under penalty of perjury that the Property is the Owner's principal residence, and provide City with a recent utility bill or other evidence of residency satisfactory to the City. If an Owner vacates the Property, or for any reason does not continue to occupy the Property as its principal residence, City may declare an Event of Default pursuant to Section 8.11 and exercise any or all of its rights and remedies hereunder, including without limitation the City's Purchase Option pursuant to Article 5.

C. The Owner shall not rent or lease the Property to another party. Any rental or lease of the Property in violation of this Agreement is prohibited, and shall be a default under this Agreement and the Deed of Trust. The Owner further agrees that, in the event the Owner rents or leases the Property to a third party in violation of this Section, any excess rents ("Excess Rental Proceeds") paid to the Owner by the lessee over the Affordable Rent shall be due and payable to the City immediately upon receipt thereof by the Owner. Such Excess Rental Proceeds shall be considered a recourse debt of the Owner to the City, as evidenced by the City Note, which the City may collect by legal action against Owner, including by foreclosure under the City Deed of Trust

D. Owner's right to resell the Property at Market Value is very limited, in certain instances, City will have the option to purchase the Property from Owner. In order to ensure the Property shall remain available at an Affordable Housing Cost over

the Term of this Agreement, Owner's right to resell the Property may not be as favorable as the rights of other property owners whose properties are not affected by this Agreement and are not encumbered by similar agreements.

E. The Property will not necessarily appreciate in value during the duration of Owner's ownership, and the Eligible Buyer Purchase Price may be less than the Initial Price that Owner originally paid for the Property and, thus, when the Owner sells the Property it may receive less than it originally paid for the Property.

2.2 Permitted Transfers. Subject to compliance with the procedures described in Article 3, including but not limited to providing required notices to the City, the following Transfers of the Property without monetary consideration are "Permitted Transfers":

(a) Transfer of title by gift, devise, or inheritance to an Owner's spouse or state registered domestic partner;

(b) Transfer of title by devise or inheritance to an Owner's natural or adopted children, provided such children qualify as Eligible Buyers;

(c) Transfer of title by an Owner's death to a surviving joint tenant, tenant by entireties, or a surviving spouse of community property;

(d) Transfer of title to a spouse or state registered domestic partner as part of divorce or dissolution proceedings; or

(e) Transfer of title or any interest in the Property to the spouse or state registered domestic partner in conjunction with marriage or establishment of a registered domestic partner relationship.

2.3 Permitted Sales. Subject to compliance with the procedures described in Article 4 and Article 5, including but not limited to providing required notices to the City, an Owner may Sell the Property to an Eligible Buyer ("Permitted Sale"). If the City or the Owner are unable to identify an Eligible Buyer as provided in Article 4, then City shall have the option to purchase the Property pursuant to the City's Purchase Option described in Article 5. If the City or the Owner are unable to identify an Eligible Buyer and the City has not exercised the City's Purchase Option, the Owner shall have the right to Sell the Property to a non-Eligible Buyer in accordance with the provisions of Article 6.

2.4 Prohibited Transfers; Prohibited Sales. Any Transfer other than a Permitted Transfer is a Prohibited Transfer. A Prohibited Transfer specifically includes any Transfer of a use, rental or leasehold interest in the Property. Any Sale of the Property other than a Permitted Sale, the City's Purchase Option, or an Extraordinary Sale is a Prohibited Sale. If an Owner attempts or makes a Prohibited Transfer or Prohibited Sale, then in addition to all other rights or remedies the City may have under this Agreement, the City shall have the right to exercise the City's Purchase Option described in Article 5, which may be exercised against the Transferee or the Owner under such Prohibited Transfer or Prohibited Sale.

ARTICLE 3
TRANSFER PROCEDURES

3.1 Transfer by Devise or Inheritance. If an Owner has made a Permitted Transfer (other than by gift) by devise, inheritance or rights of survival under Sections 2.2(a), (b) or (c), the trustee, executor or new owner shall notify City in writing of the change in ownership of the Property within 20 days of such event giving rise to such Permitted Transfer. Any such Transferee shall be bound by and subject to the provisions of this Agreement and the trustee, executor or new owner shall execute, acknowledge and deliver to the City, within such 20-day period, an Assumption Agreement in the form of Exhibit G, and the failure to do so shall constitute a default under Section 8.11; provided that such Transferee shall be bound by and subject to the provisions of this Agreement notwithstanding its failure to deliver such executed and recordable Assumption Agreement.

3.2 Other Permitted Transfers. If an Owner desires to Transfer the Property by gift under Section 2.2(a) or by a Permitted Transfer under Sections 2.2(d) or (e), Owner shall provide City with a Notice of Intent to Transfer, together with any other documentation City may reasonably request in order to ensure that the Transfer is a Permitted Transfer. Upon receipt of a Notice of Intent to Transfer, City shall have 45 days after receipt by the City of such Notice of Intent to Transfer and other documentation to deliver written notice to the Owner of its approval or disapproval of the Transfer as a Permitted Transfer. The Transfer shall be deemed a Permitted Transfer if City fails to disapprove the proposed Transfer within such 45 day period. The Owner shall complete the Permitted Transfer, including recordation of all applicable documents, within 60 days after receipt of approval of the Transfer. Any such Transferee shall be bound by and subject to the provisions of this Agreement as an Owner and shall execute, acknowledge and deliver to the City an Assumption Agreement in the form of Exhibit G, and the failure to do so shall constitute a default under Section 8.11; provided that such Transferee shall be bound by and subject to the provisions of this Agreement as an Owner notwithstanding its failure to deliver such executed and recordable Assumption Agreement.

3.3 Transfer of the Property without City's Approval. If the City determines that the proposed Transfer is a Prohibited Transfer, the Owner shall not Transfer the Property. Any Transfer of the Property without the City's approval shall be voidable and in such event, in addition to all other rights and remedies the City may have under this Agreement, the City shall have the right to exercise City's Purchase Option pursuant to Article 5, which may be exercised against the Transferee or the Owner under such Prohibited Transfer.

ARTICLE 4
SALE PROCEDURES

4.1 Notice of Permitted Sale. If an Owner desires to Sell the Property, the Owner shall provide City with a Notice of Intent to Sell. Within 60 days after receipt of the Notice of Intent to Sell, the City shall use its reasonable efforts to identify an Eligible Buyer, taking into consideration the requirements of the Developer Affordable Housing Agreement, the Grant Deed and this Agreement. If City identifies an Eligible Buyer, the Owner shall Sell the Property to the Eligible Buyer at the Eligible Buyer Purchase Price (as determined pursuant to Section 4.3 herein) within 30 days after identification of the Eligible Buyer. If the Sale to the Eligible Buyer

does not occur within said 30-day period, City may either extend the period of time for the Sale to occur or may, within 30 days thereafter, identify another Eligible Buyer, in which case all the provisions of this Section 4.1 shall be applicable to such Eligible Buyer, including the provisions of this sentence. If City is unable to identify an Eligible Buyer within the applicable time periods set forth above, then the Owner shall have the option to identify an Eligible Buyer, subject to City's written approval, which approval may take into consideration the requirements of the Developer Affordable Housing Agreement, the Grant Deed and this Agreement. If City (or the Owner) fails to identify an Eligible Buyer within the applicable time periods set forth above, City shall have 30 days from the expiration of the final applicable period to exercise City's Purchase Option under Article 5.

4.2 Inspection; Repair Costs. Upon receipt of a Notice of Intent to Sell, the City shall have the right to enter the Property at reasonable times with 24 hours advance notice to the Owner to inspect the dwelling unit on the Property to determine whether any damage or violations of applicable laws or ordinances exist. City shall conduct its inspection within 15 days after receipt of the Notice of Intent to Sell. In the event any damage or violations are discovered, City shall determine the cost of repair or correction of such condition ("Repair Costs"). By way of example, Repair Costs would include the cost of repairing or replacing such things as broken, damaged or worn appliances, fixtures (including lights, shelving, bathroom fixtures, cabinets, countertops, tubs and vanities) walls, ceilings and paint and exterior surfaces, window coverings and carpets (collectively "Unit Amenities") due to stains, extreme wear, damage or destruction. Within 30 days after the inspection, the City will prepare a written report describing the Repair Costs. The Owner shall have the option to either (i) repair or replace the items on such report at Owner's cost prior to closing (without extending the closing date), or (ii) at closing cause the escrow holder to pay the Repair Costs to City. If an Owner elects to repair or replace the items on such report, the City shall have the right to re-inspect the Property under the terms of this Section 4.2 after the repairs and/or replacements are complete. If the City determines that deficiencies still remain, the Owner shall cause the escrow agent at closing to pay the City from the Owner's Gross Proceeds the Repair Costs in such amounts as City determines are necessary to complete the remaining repairs and/or replacements. The City shall use any Repair Costs paid to it to make the necessary repairs and/or replacements.

4.3 Eligible Buyer Purchase Price. The Purchase Price to be paid by an Eligible Buyer for the Property shall be the total sum of (a) the Initial Price paid by Owner for the Property, plus (b) the product of the Initial Price multiplied by the percentage increase in the Affordable Housing Cost that has occurred since the Owner's purchase of the Property to the date when the Notice of Intent to Sell, plus (c) the depreciated value of any Capital Improvements approved by the City as described in Section 1.12. Notwithstanding anything to the contrary herein, in no event shall the Eligible Buyer Purchase Price exceed the Maximum Affordable Housing Cost allowable for a *[insert as applicable: very low, low or moderate]* income household. The Eligible Buyer Purchase Price shall be established by the City in accordance with this Section 4.3, within 20 days following City's receipt of a Notice of Intent to Sell delivered pursuant to Section 4.1.

4.4 Appraisal; City Resale Costs; City Documents. Upon receipt of a Notice of Intent to Sell, the City shall cause an Appraisal to be completed prior to close of escrow to determine the Market Value of the Property as of the date of such Notice. The cost of such Appraisal shall

be paid by the Owner at close of escrow. In addition, the Owner shall pay the City the City Resale Costs at close of escrow. The Owner may pay the cost of the Appraisal and the City Resale Costs from any sources, including, but not limited to, the Owner's Gross Proceeds, to the extent there are any available, as provided in Section 4.5 (b).

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

(a) the City Note, fully executed by the Eligible Buyer in favor of the City in substantially the form of Exhibit E hereto. The City Note shall be in the principal amount equal to the difference between the then current Market Value of the Property, and the Eligible Buyer Purchase Price being paid for the Property (defined as the Differential Amount in the City Note);

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

(c) the Assumption Agreement, fully executed in recordable form by all appropriate parties, in substantially the form of Exhibit G hereto; and

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

4.5 Proceeds from Permitted Sale. Owner's Gross Proceeds from a Permitted Sale shall be distributed in the following priority to the extent funds from Owner's Gross Proceeds are available:

(a) first, to pay any amounts owed under the Owner's Senior Lien;

(b) second, to pay all customary closing costs that a seller would pay in Alameda County and a basic one-year home warranty as provided in Section 4.8, and, to the extent not already paid by the Owner to the City, the costs of the Appraisal and the City Resale Costs under Section 4.4; and

(c) third, to pay to the City all Repair Costs (if any, and to the extent not already paid) which are owed to the City under Section 4.2; and

(d) fourth, any remaining amounts shall be paid to the Owner as the Owner's Net Proceeds.

4.6 Personal Property. Any sums paid to an Owner by an Eligible Buyer for personal property shall not be part of the Eligible Buyer Purchase Price. No other consideration of any nature whatsoever shall be paid by an Eligible Buyer to the Owner unless first fully disclosed to and approved by City in writing.

4.7 Real Estate Broker Commission. If the City identifies the Eligible Buyer, no real estate broker's commission shall be paid to any real estate broker unless otherwise approved by the City. If the Eligible Buyer is identified by Owner, as between the Owner and the Eligible Buyer, the Owner shall have the sole and exclusive obligation to pay any real estate broker's commission regardless of whether the broker was engaged by the Owner or Eligible Buyer.

4.8 Closing. At closing, the Owner shall convey fee title to the Eligible Buyer by standard title company form Grant Deed. The Owner shall cause the title company to issue to the Eligible Buyer a CLTA standard coverage owner's form of title insurance policy in the amount of the Eligible Buyer Purchase Price insuring title to the Property is vested in the Eligible Buyer, subject to exclusions from coverage, exceptions for current taxes and assessments not yet due, this Agreement and all documents recorded pursuant to this Agreement and such other matters (other than encumbrances created or suffered by the Owner) which were exceptions to title on the date of this Agreement. The Owner shall pay for a basic one-year home warranty contract issued by a reputable and established company to the Eligible Buyer. The Eligible Buyer shall pay the costs of any longer or more extensive warranty. All other closing costs shall be paid by the Owner or the Eligible Buyer pursuant to the custom in Alameda County.

ARTICLE 5
CITY'S PURCHASE OPTION

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

(a) in the event the City or the Owner is unable to identify an Eligible Buyer pursuant to and within the times set forth in Section 4.1;

(b) in the event of any Prohibited Transfer or Prohibited Sale by the Owner;

(c) in the event that the Owner is in default of the occupancy requirement set forth in Section 2.1.B.;

(d) upon occurrence of an Event of Default (as defined in Section 8.11);

(e) in the event that escrow fails to close within the times set forth in Section 4.1 or Section 6.5; or

(f) as reserved to City under Section 6.1 for the period of time from Owner's Notice of Extraordinary Sale pursuant to Section 6.2 hereof to the date of written acceptance by Owner of an offer to purchase the Property from a buyer;

provided, that in the case of (b), (c), (d) or (e), above, the City's Purchase Option shall be in addition to any other remedy provided in this Agreement for an Event of Default. By taking title to the Property, the Owner agrees that the City's facilitation of the Transfers contemplated hereby and its acts, commitments and expenditures in furtherance thereof constitute adequate consideration for the grant of the City's Purchase Option.

5.2 Exercise of Option.

(a) Permitted Sale. If the City's Purchase Option is available to the City pursuant to Subsection 5.1(a), then City may exercise the City's Purchase Option within the 30-day period described in Section 4.1 and in accordance with Section 5.4.

(b) Prohibited Transfer, Prohibited Sale, Failure to Occupy or Event of Default. If the City's Purchase Option is available to the City pursuant to Subsection 5.1(b), (c), or (d) above, then City may exercise its option in accordance with Section 5.4.

(c) Failure to Close Escrow. If the City's Purchase Option is available to the City pursuant to Section 5.1(e) or (f), then City shall exercise its option in accordance with Section 5.4.

5.3 Assignment of City's Purchase Option. After City has notified Owner of its intent to exercise the City's Purchase Option, City may, without the Owner's or Transferee's consent, assign the City's Purchase Option to an Eligible Buyer or to a governmental agency or non-profit organization that agrees to be subject to this Agreement; provided, however, that any such assignment shall not extend any time limits contained in this Agreement.

5.4 Procedure Upon Exercise of Option. The City shall exercise the City's Purchase Option by delivering written notice to the Owner (and to Transferee, if applicable). Closing of escrow shall occur within 110 days (plus any time delays caused by the Owner), or such additional time as reasonably determined by the City is necessary under the circumstances after the date of City's written notice exercising the City's Purchase Option.

5.5 Failure to Close. If after City exercises the City's Purchase Option pursuant to Section 5.1(a), the City fails to close escrow pursuant to Section 5.4, then the Owner may conduct an Extraordinary Sale under Article 6. If after City exercises the City's Purchase Option pursuant to Section 5.1(b), (c), (d), (e) or (f), the City fails to close escrow pursuant to Section 5.4, then the City shall be deemed to retain all remedies available under Section 8.11.

5.6 Power of Attorney. By taking title to the Property, each Owner grants to the City an irrevocable power of attorney coupled with an interest to act on the Owner's behalf to execute, acknowledge and deliver any and all documents relating to the City's Purchase Option.

ARTICLE 6
EXTRAORDINARY SALE

6.1 When Extraordinary Sale Permitted. If City or an Owner fails to identify an Eligible Buyer within the times set forth in Section 4.1 after City's receipt of a Notice of Intent to Sell, and:

(a) The City fails to exercise the City's Purchase Option within the times set forth in Sections 4.1 and 5.2(a), or

(b) The City fails to close escrow pursuant to Section 5.4 after exercising the City's Purchase Option pursuant to Section 4.1 and 5.2(a),

then the Owner shall have the right to make an Extraordinary Sale in accordance with the procedures set forth in this Article 6; provided, however that City shall retain the City's Purchase Option for the period of time from Owner's Notice of Extraordinary Sale pursuant to Section 6.2 hereof to the date of written acceptance by Owner of an offer to purchase the Property from a buyer. In no event shall an Owner have the right to make an Extraordinary Sale in the event of

any attempted or actual Prohibited Transfer or Prohibited Sale by the Owner or if there is any other Event of Default by the Owner under this Agreement.

6.2 Notice of Extraordinary Sale; Appraisal; City Resale Costs. Each Owner shall notify the City of the Owner's intent to make an Extraordinary Sale by delivering a Notice of Extraordinary Sale. The Notice of Extraordinary Sale shall contain a request that the City calculate the current Market Value of the Property based upon an Appraisal, the cost of which shall be paid by the Owner through escrow. The City shall provide the Owner with a copy of the Appraisal within 10 days after receipt by the City. The City shall use reasonable efforts to obtain the Appraisal within 60 days after receipt of the Notice of Extraordinary Sale. The Owner shall be required to Sell the Property at a price not less than the current Market Value, unless otherwise approved by the City in writing. All transfer documents relating to the Extraordinary Sale shall be submitted to the City for its review and approval as consistent with the terms of this Agreement. The actual gross sales price for the Property under any such sale is the "Extraordinary Sale Price." In addition, the Owner shall pay the City the City Resale Costs at close of escrow.

6.3 City's Shared Appreciation. In the event of an Extraordinary Sale, the Owner whose Property is the subject of the Extraordinary Sale shall pay to the City in addition to the principal amount of the City Note, a share of the appreciation (the "City's Shared Appreciation") in the value of the Property between the time the Property was acquired by the Owner and the Extraordinary Sale in accordance with California Civil Code Section 1917.006 and as provided for herein.

The appreciation in the value of the Property shall be determined based on the difference between the Appraisal prepared at the time the Property was acquired by the Owner, and the Extraordinary Sale Price. The distribution of any appreciation in value of the Property to City or Owner shall only be available after payment of all other sums set forth in Section 6.4 (a) through (e) and shall be shared by the Owner and the City in proportion to the amount of initial equity contributed by each party as follows:

(a) The City's initial equity contribution shall equal the principal amount of the City Note (which shall be equal to the difference between the Market Value of the Property at the time of acquisition by the Owner and the Initial Price, in the case of the original Owner, or the applicable Eligible Buyer Purchase Price, in the case of a subsequent Owner, and which is defined as the Differential Amount in the City Note).

(b) The Owner's initial equity contribution shall be equal to the amount of the down-payment paid by the Owner at the time Owner acquired the Property plus any escrow fees, transfer taxes, recording fees, brokerage commissions and similar costs of acquisition actually paid by the Owner for the acquisition of the Property, as substantiated by the Owner pursuant to Section 6.7 hereof.

[Example: If, (i) at the time an Owner acquired the Property, the Owner paid a down-payment equal to $18,000 and, escrow fees, transfer taxes, recording fees, brokerage commissions and similar costs of acquisition actually paid by Owner equal to $2,000, resulting in a total Owner equity amount of $20,000, and (ii) the City Note for such transaction reflected a

principal amount of $80,000, then (iii) after payment of all other sums set forth in Section 6.4 (a) through (d), the Owner would receive 20% of any remaining appreciation value, and the City would receive 80% of any remaining appreciation value at the time of an Extraordinary Sale.]

(c) The City's Shared Appreciation shall be included in the City Note as a contingent deferred amount payable to City in the event of an Extraordinary Sale.

(d) The amount of City's Shared Appreciation collected by City shall be used by City to assist in the provision of housing that is affordable to persons and families of low and moderate income in accordance with Civil Code Section 1917.006(a)(1).

6.4 Distribution of Proceeds. The Extraordinary Sale Price shall be distributed in the following priority to the extent funds are available:

(a) first, to pay any amounts owed under the selling Owner's Senior Lien;

(b) second, subject to the provisions of Section 6.7 below, to pay all customary closing costs and escrow fees that are the responsibility of the selling Owner, and, to the extent not already paid by Owner to City, the costs of the Appraisal and the City Resale Costs under Section 6.2;

(c) third, to pay to City all amounts owing under the City Note and City Deed of Trust, including the initial principal amount and any other amounts owed pursuant to the City Note, except the City's Shared Appreciation;

(d) fourth, subject to the provisions of Section 6.7 below, to pay the selling Owner the following:

i. amount of down payment paid by the Owner at the time the Owner acquired the Property;

ii. amount of installment payments of mortgage principal repaid on Owner's Senior Lien by Owner prior to the Extraordinary Sale;

iii. amount of escrow fees, transfer taxes, recording fees, brokerage commissions and similar costs of acquisition actually paid by the Owner;

iv. amount of money paid by the Owner for Capital Improvements to the Property; and

v. amount equal to the "legal rate of interest" (as defined in the City Note) on cash payments by Owner as identified in (i) through (iv) above.

(e) fifth, to pay any remaining balance pro-rata on the basis of percentages determined in accordance with Sections 6.3 (a) and (b), to the City for the amounts owing under

the City Note for the City's Shared Appreciation and to the selling Owner, as the Owner's Net Proceeds.

6.5 Time Requirements for Extraordinary Sale. Each Owner shall complete an Extraordinary Sale within 120 days after receipt of the Appraisal under Section 6.2. If the Extraordinary Sale is not completed within such time, and the Owner is not bound by written contract with a buyer to Sell the Property, the City may either (i) designate an Eligible Buyer for the Property pursuant to Section 4.1, in which case the provisions of Article 4 shall apply in lieu of the provisions of this Article 6, or (ii) exercise the City's Purchase Option under Section 5.1, in which case the provisions of Article 5 shall apply in lieu of the provisions of this Article 6.

6.6 Effect of Extraordinary Sale. Upon the close of escrow for an Extraordinary Sale in compliance with the provisions of this Article 6, the purchaser at the Extraordinary Sale shall acquire title to the Property free and clear of the provisions of this Agreement, including the City's Purchase Option. Pursuant to Section 8.13 and in accordance with this Section 6.6, City agrees to execute, acknowledge and record a release or other documentation sufficient to release the Property sold at an Extraordinary Sale from the provisions of this Agreement, including the City's Purchase Option.

6.7 Owner's Burden to Substantiate Costs; Extraordinary Sale; Foreclosure. Prior to the close of escrow in the event of an Extraordinary Sale, selling the Owner shall submit evidence to the reasonable satisfaction of the City not less than 30 days prior to the first scheduled date for the close of escrow to allow the City to verify the evidence provided by the Owner of the Owner's initial equity as set forth in Section 6.3(b) and the Owner's costs as set forth in Section 6.4(b) and (d). To the extent such evidence is not submitted by Owner to the reasonable satisfaction of City at least 30 days prior to the first scheduled date for the close of escrow, such costs shall be deemed waived by the Owner and the Owner shall not be entitled to have such costs, as applicable, included as part of the Owner's initial equity under Section 6.3(b) or to receive payment of the sums set forth in Section 6.4(b) and (d). The City acknowledges that such evidence may include, by way of example and not limitation, the Owner's original closing statement, bank statements, copies of cancelled checks, and invoices from contractors, and shall be considered reasonable evidence of the Owner's initial equity as set forth in Section 6.3(b). In the event of a foreclosure sale, this Section 6.7 shall operate to require the same obligations of the Owner as in an Extraordinary Sale and all references to the "close of escrow" shall be replaced by "foreclosure sale."

ARTICLE 7
LENDER PROVISIONS

7.1 Senior Liens. Mortgages, deeds of trust, sales and leases-back or any other form of conveyance required for any reasonable method of financing (subject to Section 7.2, the "Senior Lien") are permitted, but only as follows:

(a) for the sole purpose of securing a purchase money loan of funds to be used by an Owner for financing the acquisition of the Property by the Owner ("Initial Financing"), provided such Initial Financing shall be obtained through a bank, savings and loan association, insurance

company, pension fund, publicly traded real estate investment trust, governmental agency, or charitable organization engaged in making residential real estate loans ("Senior Lender"); or

(b) for the sole purpose of refinancing an Owner's Initial Financing ("Refinancing"), provided such Refinancing shall be limited solely to the outstanding principal balance owed under the Owner's Initial Financing, and shall not include any additional amounts, such as fees or costs associated with such Refinancing or additional funds disbursed to the Owner and refinancing shall not include secondary financing such as subordinate deeds of trust or home equity loans; and provided the Owner has paid the City all administrative and document preparation costs and fees incurred by the City in connection with the processing of any documents required to effectuate such Refinancing.

7.2 Subordination. The City may, at its sole discretion, enter into a subordination agreement with a Senior Lender to subordinate the provisions of this Agreement and its lien under the City Note and City Deed of Trust to the Senior Lien. Any such subordination agreement shall require the Senior Lender to agree to the Default and Foreclosure provisions set forth in Section 7.3, below, and may contain any other provisions required by or acceptable to the City.

7.3 Default and Foreclosure.

(a) The City shall record a request for notice of default and any notice of sale under any deed of trust or mortgage with a power of sale encumbering the Property pursuant to California Civil Code Section 2924b. Whether or not a request for a notice of default is recorded, the Owner shall provide a true and correct copy of any notice of default to the City within three (3) business days of the Owner's receipt thereof.

(b) In the event of default and foreclosure, the City shall have the same right as the Owner to cure any defaults, reinstate the loan (not less than a specified number of times to be set forth in the subordination agreement between the City and the Senior Lender) or redeem the Property prior to foreclosure sale or the acceptance of a deed in lieu of foreclosure by the Senior Lender. Such redemption shall be subject to the same fees, charges and penalties that would otherwise be assessed against the Owner. Nothing herein shall be construed as creating any obligation on the part of the City to cure any such default, nor shall this right to cure and redeem operate to extend any time limitations in the default provisions of the underlying deed of trust or mortgage.

(c) If the trustee set forth in Senior Lender's deed of trust sells the Property at a foreclosure sale the proceeds shall be delivered in the following priority to the extent funds are available:

(i) first, to pay all sums due and owing under the Senior Lien, including without limitation the principal amount, interest, fees and costs of sale;

(ii) second, to pay to the City all amounts owing under the City Note and City Deed of Trust, including the initial principal amount and any other amounts owed pursuant to the City Note, except the City's Shared Appreciation;

(iii) third, subject to the provisions of Section 6.7, to pay the Owner the following:

1. amount of down payment paid by the Owner at the time the Owner acquired the Property;

2. amount of installment payments of mortgage principal repaid on the Owner's Senior Lien by Owner prior to the foreclosure sale;

3. amount of escrow fees, transfer taxes, recording fees, brokerage commissions and similar costs of acquisition actually paid by the Owner;

4. amount of money paid by the Owner for Capital Improvements to the Property; and

5. amount equal to the "legal rate of interest" (as defined in the City Note) on cash payments by Owner as identified in (1) through (4) above.

(iv) fourth, to pay any remaining balance pro-rata in the percentages determined in accordance with Sections 6.3 (a) and (b), to the City for the amounts owing under the City Note for the City's Shared Appreciation, and to the Owner or the person or persons legally entitled thereto, as required by law.

(d) By taking a loan from a Senior Lender, each the Owner represents that it has provided Senior Lender the necessary consent and authorization to provide the City, upon the City written request, with a report of the payment status of the Owner and all other financial information concerning the Owner to the City. Therefore, upon written request by the City, Senior Lender is hereby authorized by the Owner to furnish a report of the payment status of the Owner and all other financial information concerning the Owner to te City.

(e) Except as otherwise expressly provided in a City-approved subordination agreement, by making a loan to the Owner, Senior Lender grants to the City the option to purchase the Senior Lien from Senior Lender at any time after the filing of a notice of default under the Senior Lien but prior to consummation of the foreclosure or the giving of a deed-in-lieu of foreclosure. Pursuant to this subsection, the City may purchase the Senior Lien from the Senior Lender for an amount equal to the entire indebtedness secured by the Senior Lender's deed of trust. The City may exercise this option by giving the Senior Lender written notice of its intent to do so (A) with respect to a foreclosure, at any time prior to the filing of a notice of sale under the Senior Lien, and (B) with respect to a deed-in-lieu of foreclosure, within ten (10) days after receiving written notice from Senior Lender of its intent to accept a deed-in-lieu of foreclosure with respect to the Property. Upon receipt of such written notice from the City, the Senior Lender shall promptly give the City a written statement setting forth the amount of the total indebtedness secured by the Senior Lender deed of trust, which shall be the purchase price for the Senior Lien, and a copy of the policy of title insurance insuring the priority and validity of the Senior Lender deed of trust. Within ten (10) days after the City gives such written notice, City shall establish an escrow at such title company and concurrently therewith give Senior the

Lender written notice thereof, and the City shall deposit the purchase price in such escrow. Within fifteen (15) days after Senior Lender's receipt of notice of the opening of the escrow, the Senior Lender shall deposit in the escrow the promissory note evidencing the Senior Lien endorsed in favor of the City, the original of the Senior Lender deed of trust, an assignment of the Senior Lender deed of trust duly executed by the Senior Lender and in recordable form and all other documents, instruments, agreements, certificates and other items that evidence, secure or otherwise relate to the Senior Lien. The escrow holder shall be instructed to close the escrow within two (2) business days after receipt of all such items and upon such close of escrow to issue to City a CLTA Form No. 104.1 endorsement to the title policy, showing the City as the Senior Lender's assignee with respect to the Senior Lender deed of trust. The Senior Lender and the City shall execute and deliver escrow instructions and such other documents as may be necessary or appropriate in connection with such escrow and to implement the intent hereof. The City shall pay the escrow fees (irrespective of whether the escrow closes), recording fees and the premium for the CLTA Form No. 104.1 endorsement.

ARTICLE 8
MISCELLANEOUS

8.1 No Option Assignment Liability. In no event shall the City in any way become liable to the Owner or become obligated in any manner to any other party by reason of the assignment of the City's Purchase Option, nor shall City in any way be obligated or liable to any Owner for any failure of City to purchase the Property or to comply with the terms of the City's Purchase Option.

8.2 Distribution of Insurance and Condemnation Proceeds. If the Property is condemned or the improvements damaged or destroyed, all proceeds from insurance or condemnation shall be distributed in accordance with the CC&Rs or, if not covered by the CC&R's, to Owner or its successors or assigns, for purposes of restoring or replacing the Property, unless the Senior Lender deed of trust or, if not covered by the Senior Lender Deed of Trust, the City Deed of Trust provides otherwise, in which case the Senior Lender Deed of Trust or, if not covered by the Senior Lender Deed of Trust, the City Deed of Trust shall control.

8.3 Maintenance and Use. Each Owner shall maintain the Property, including all structures and landscaping [*Insert*: "in a good and clean condition" *or* "in accordance with the CC&Rs", *if applicable*]. Each Owner shall maintain the interior of the single-family dwelling unit on the Property in a clean condition and all appliances and fixtures in good working order. The Property shall be used and occupied by each Owner solely for residential purposes, and in addition to the residential purpose may also be used for any accessory uses that comply with the provisions of the City's Zoning Ordinance, as it may be amended from time to time, and the provisions of the Grant Deed, and the Developer Affordable Housing Agreement [*Insert if applicable*: "and the CC&R's"]. No Owner shall grant use of, rent or lease all or any part of the Property, but shall occupy the Property as its principal residence as provided in Article 2.

8.4 Default Remedies. In addition to any other rights or remedies set forth in this Agreement or allowed by law or equity, in the event of a default by an Owner of any of the Owner's obligations under this Agreement, City may apply to a court of competent jurisdiction for specific performance of this Agreement, for an injunction prohibiting a proposed Sale or

Transfer in violation of this Agreement or for enforcing the City's Purchase Option, or for any such other relief as may be appropriate (including, but not limited to, monetary damages).

8.5 Attorneys' Fees and Costs. If any action is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

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

8.7 Severability. If any one or more of the provisions contained in this Agreement for any reason shall be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein.

8.8 Time of the Essence. Time is of the essence of this entire Agreement. Whenever the time for performance falls on a day which is not a business day, such time for performance shall be extended to the next business day.

8.9 Notices. All notices, demands, requests for approval and other communications provided for in this Agreement shall be in writing and shall be deemed received if sent to the addresses set forth below (a) on the date of delivery when personally delivered; (b) one business day after deposit with a reputable overnight courier or delivery service with all delivery charges paid; or (c) date of receipt by party if deposited in the United States first class mail, postage prepaid, registered or certified, return receipt requested. Any party may change its address by notice delivered in the manner specified above.

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

If to Owner: At the Property address of the Owner

8.10 Covenants Running with the Land. All provisions of this Agreement, including the benefits and burdens, are equitable servitudes, run with the land and are binding upon the heirs, successors, assigns and personal representatives of the Owner hereto and inure to the benefit of City and its permitted successors and assigns. The covenants benefit and bind the City, the Property, and all owners and successor owners thereto. Each and every contract, deed or other instrument covering, conveying or otherwise transferring the Property or any interest therein shall conclusively be held to have been executed, delivered and accepted subject to this Agreement regardless of whether the other party or parties have actual knowledge of this Agreement.

8.11 Default. If an Owner defaults in the performance or observance of any covenant, agreement or obligation of Owner set forth in this Agreement, and if such default remains

uncured for a period of 30 days after written notice has been given by the City (or if such cure reasonably takes longer than 30 days, if such cure has not been commenced within the 30-day period and thereafter diligently prosecuted to completion), or in the event an Owner has provided false information or documentation required in connection with the purchase or sale of the Property, then the City may declare an "Event of Default" has occurred, and City may exercise any or all of its rights or remedies under this Agreement, including without limitation any or all of the following:

(a) by any suit, action or proceeding at law or in equity, require the Owner to perform its obligations and covenants under this Agreement or enjoin any unlawful acts;

(b) by taking such other action at law or in equity as may appear necessary or desirable to enforce the Owner's obligations, covenants and agreements; or

(c) by exercising the City's Purchase Option pursuant to Article 5.

8.12 Construction. The rule of strict construction does not apply to this Agreement. This Agreement shall be given a reasonable construction to create a valid and enforceable City's Purchase Option and to prevent any Prohibited Transfer or Prohibited Sale or any use of the Property in violation of this Agreement. Whenever the context and construction so requires, all words used in the singular shall be deemed to be used in the plural, all masculine shall include the feminine and neuter, and vice versa.

8.13 Termination of Agreement. This Agreement shall terminate as to the Property as a result of an Extraordinary Sale pursuant to Section 6.5. In addition, if the City has subordinated this Agreement pursuant to Section 7.2, this Agreement shall terminate as a result of foreclosure through a trustee's sale, a judicial foreclosure sale or deed in lieu of foreclosure. Upon termination of this Agreement, on request of the then record Owner of the Property, City shall execute, acknowledge and record a termination of this Agreement. To the extent permitted by law, any unfulfilled obligations of any Owner shall survive the termination of this Agreement but this Agreement shall no longer affect title to the Property.

8.14 Indemnification. Each Owner, at its sole cost and expense, agrees to indemnify, defend, and hold harmless the City and its respective officers, directors, employees and agents from and against all liabilities, losses, claims, actions, damages, judgments, costs and expenses (including, without limitation, reasonable attorney's fees) incurred by the City arising out of or relating to any action by the Owner. Each Owner agrees that if any claims, demands, suits or other legal proceedings are made or instituted by any person against City which arise out of any of the matters relating to this Agreement, the Owner shall cooperate fully with the City in the defense or other disposition.

8.15 Entire Agreement and Modifications. This Agreement, together with the exhibits attached hereto, represents the entire agreement between the parties with respect to the subject matter set forth herein and replaces and supersedes any and all prior or contemporaneous oral or written agreements, subject to Section 8.16. This Agreement may be modified only in a writing duly signed by the affected Owner or Owners and an authorized agent of City. The

modifications shall be effective when recorded in the Official Records of Alameda County, California.

8.16 Modification of Covenants. Each Owner hereby agrees as follows:

(a) To the extent any amendments to sections of the California Health & Safety Code referenced in this Agreement or any amendments to the City Inclusionary Policy retroactively impose requirements upon the ownership or operation of the Property more restrictive than those imposed by this Agreement, and if such requirements are applicable to the Property, this Agreement shall be deemed to be automatically amended to impose such additional or more restrictive requirements.

(b) Each Owner and City shall execute, deliver and, if applicable, record any and all documents and instruments necessary to effectuate the intent of this Section 8.16, and each Owner hereby appoints the City as its true and lawful attorney-in-fact to execute, deliver and, if applicable, record on behalf of the Owner and City, as applicable, any such document or instrument (in such form as may be approved in writing by the City) if the Owner defaults in the performance of its obligations under this subsection (b).

8.17 Term. This Agreement shall become effective upon its execution and delivery and unless sooner terminated in accordance with Section 8.13, shall permanently remain in full force and effect from the date of recordation of this Agreement. T the non-discrimination covenant in Section 8.18shall run with the land in perpetuity.

8.18 No Discrimination. Notwithstanding the following, Owner acknowledges under this Agreement that it is expressly prohibited from leasing the Property and is required to occupy the Property as its principal residence at all times:

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

8.19 Compliance Monitoring. The Owner acknowledges and agrees that the City is obligated to monitor compliance with this Agreement on an annual basis. The Owner agrees to cooperate with City's annual monitoring requirements by supplying true, correct and complete annual owner information as required by Authority's Affordable Housing Ownership Program Qualified Household Annual Update Questionnaire.

8.20 Payment of City Fee for Administrative Costs of Processing Agreement. Owner acknowledges and agrees to pay City a portion of its administrative costs for preparing and processing this Agreement in the amount of Three Hundred Dollars ($300), which amount may

be part of the closing costs and shall be paid to City at Owner's close of escrow for purchase of the Property.

8.21 Recordation of Agreement. Immediately following the Effective Date, this Agreement, and pursuant to Health and Safety Code Section 33334.3(f)(3), the Notice of Affordability Restrictions on Transfer of Property, in the form attached hereto as Exhibit H, shall be recorded against the Property in the Official Records of Alameda County.

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

Exhibit A: Property Description
Exhibit B: Notice of Intent to Transfer
Exhibit C: Notice of Intent to Sell
Exhibit D: Notice of Extraordinary Sale
Exhibit E: City Note
Exhibit F: City Deed of Trust
Exhibit G: Disclosure, Acknowledgment and Assumption Agreement
Exhibit H: Notice of Affordability Restrictions on Transfer of Property

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

CITY:

CITY OF ALAMEDA, a public body corporate and politic

By:_____
City Manager
[Signature must be notarized]

OWNER(S):

_____
[Signature must be notarized]

_____
[Signature must be notarized]

RECOMMENDED FOR APPROVAL:

_____
Executive Director
Housing Authority of the City of Alameda

APPROVED AS TO FORM:

_____
City Attorney

EXHIBIT A

Property Description

EXHIBIT B

NOTICE OF INTENT TO TRANSFER

Date _____

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

The undersigned _____, owner of that certain real property located in Alameda, California, commonly known as _____[*insert address*]_____, (the "Property") hereby notifies you of its intent to Transfer in compliance with Section 3.2 of the Affordability, Restrictions on Resale and Option to Purchase Agreement (the "Agreement"). The reason or circumstances relating to such transfer are as follows:_____
_____
_____. Any additional information regarding the proposed transferee will be provided to you immediately upon request. The undersigned acknowledges that all applicable time periods under the Agreement commence only upon City's receipt of this notice. The undersigned further acknowledges and agrees that any such transfer is subject to the provisions of the Agreement.

_____
Owner

EXHIBIT C

NOTICE OF INTENT TO SELL

Date _____

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

The undersigned _____, owner of that certain real property located in Alameda, California, commonly known as _____[*insert address*]_____, (the "Property") hereby notifies you of its intent to Sell the Property in compliance with Section 4.1 of the Affordability, Restrictions on Resale and Option to Purchase Agreement (the "Agreement").

The undersigned acknowledges that all applicable time periods under the Agreement commence only upon City's receipt of this notice and that terms not defined in this Notice shall have the meaning given in the Agreement.

A. The following information is provided to the City pursuant to Section 4.1 of the Agreement:

1. Address of Property: _____

2. Date Owner purchased Property: _____

3. Purchase Price paid by Owner when Property was purchased: _____

4. Date Owner intends to vacate Property: _____

5. Date Property will be placed on market: _____

6. Name and phone number of person for Authority to contact to schedule inspection: _____ (name) and _____ (phone number)

B. The following documents are attached to this Notice:

1. Copy of HUD-1 Settlement Statement from Owner's purchase of the Property

2. If the Owner believes the Property is in good condition with no deferred maintenance and no deduction for repairs will be necessary, check box below:

☐ Yes, I believe the Property is in good condition and that no deduction for repairs will be necessary pursuant to Section 4.3 of the Agreement. I hereby authorize the Authority or its designee to enter and inspect the Property to verify its condition.

3. If the Owner has made Eligible Capital Improvements and wants such improvements included in the calculation of the Eligible Buyer Purchase Price for the Property pursuant to Section 4.4, check the box below.

☐ Yes, include my Eligible Capital Improvements in the price calculation. I am attaching a copy of the Authority letter approving these improvements and documentation of costs incurred.

C. I have not yet listed the Property for sale with a multiple listing service, or contacted a real estate broker or financial institution. I agree to prepare the Property for sale by:

1. obtaining a pest control report within thirty (30) days of the date of this Notice,

2. repairing all damage noted in the pest report within the sooner of: (i) sixty (60) days from the date of this Notice, or (ii) two (2) weeks prior to close of escrow or the transfer of the Property,

3. allowing the Authority or its designee to inspect the Property within thirty (30) days of this Notice,

4. if requested by the Authority following the Authority's inspection, I will obtain a home inspection report from a licensed home inspector,

5. maintaining utility connections until the Property is transferred, and

6. permitting a walk through by the Authority prior to close of escrow or the transfer.

This Owner's Notice of Intent to Transfer is certified by Owner to be true and correct and is signed on _____ **[insert date]** under penalty of perjury.

_____
Owner

EXHIBIT D

NOTICE OF EXTRAORDINARY SALE

Date: _____

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

The undersigned _____, ("Owner") is the owner of that certain real property located in Alameda, California, commonly known as _____[*insert address*]_____, ("Property"). On _____, 20___, the Owner provided the City with written notice of its intent to sell the Property. The City has failed to identify an Eligible Buyer in accordance with Section 4.1 of the Affordability, Restrictions on Resale and Option to Purchase Agreement ("Agreement") and the City has failed to exercise the City's Purchase Option pursuant to Article 5, or failed to close escrow within the time set forth in Section 5.4 of the Agreement. Accordingly, the Owner hereby notifies City of its intent to make an Extraordinary Sale of the Property in accordance with Section 6.2 of the Agreement. The Owner hereby requests that City calculate the Market Value of the Property based on an Appraisal in accordance with Article 6 of the Agreement. The Owner hereby acknowledges that the City shall retain the City's Purchase Option until the time that the Owner has accepted in writing an offer to purchase the Property from a buyer, and that all applicable time periods for an Extraordinary Sale under the Agreement commence only upon the City's receipt of this Notice.

_____
Owner

EXHIBIT E

FORM OF CITY NOTE

(Shared Appreciation Loan)

Differential Amount Alameda, California

FOR VALUE RECEIVED, _____ ("Maker") promises to pay the CITY OF ALAMEDA, a California charter city ("City") the Differential Amount, as defined and calculated under Section 3 below and payable under Section 5 below, plus a contingent deferred amount equal to the City's Shared Appreciation as calculated and payable under Section 6, below, any additional amounts due and owing pursuant to Sections 8 and 10, below, any additional amounts due and owing pursuant to the Deed of Trust (as defined below), and any additional amounts due and owing as permitted by law.

1. PROPERTY. The "Property" is that certain real property commonly known as _____[insert address]_____, Alameda, California, and more particularly described on Exhibit A, attached hereto and incorporated herein, which together with all improvements located thereon is referred to in this promissory note ("Note") as the "Property." The Property is part of a residential development known as "_____[insert housing project name]_____" ("Project").

2. AFFORDABILITY COVENANTS, RESALE RESTRICTIONS. The Property, along with certain other residential lots in the Project, is part of an affordable housing program designed to create, preserve, maintain and protect housing for persons of low and moderate income as described in and pursuant to an Affordable Housing Agreement between the City and _____ ("Developer") dated _____ ("Developer Affordable Housing Agreement"). Under the Developer Affordable Housing Agreement, the Developer was required to sell the Property to Maker at an Affordable Housing Cost, as defined below, subject to the covenants, conditions, restrictions and option to purchase set forth herein. Maker assumes title to the Property subject to that certain Affordability, Restrictions on Resale and Option to Purchase Agreement, between the Maker and City recorded on _____, 20__, as Document No. _____, in the Official Records of Alameda County, California ("Resale Restrictions"). Capitalized terms used herein and not defined in this Note shall have the meanings set forth in the Resale Restrictions.

3. BASIS OF PRINCIPAL AMOUNT OF NOTE. In the event that this Note is due and payable pursuant to Section 5 below, the Maker shall pay the City an amount equal to the difference between the fair market value of the Property, as established based on an Appraisal of the Property at the time the Property was acquired by the Maker, and the Initial Price (the "Differential Amount"). The Maker acknowledges and agrees that the Differential Amount represents the amount by which the purchase price of the Property has been reduced as a result of the City's covenants, conditions and restrictions placed on the Property as set forth in the Developer Affordable Housing Agreement, and which amount is reflected above as the Differential Amount of this Note.

4. DEED OF TRUST. Payment of this Note is secured by a deed of trust, assignment of rents, security agreement and fixture filing (the "Deed of Trust") from the Maker in favor of the City, which Deed of Trust is dated concurrently herewith and recorded against the Property.

5. REPAYMENT OF NOTE. There shall be no payments due under this Note, unless payments are otherwise due pursuant to provisions of Sections 5 (c) and (d) of this Note. All amounts due under this Note shall be assumed, repaid and/or cancelled, as follows:

a. In the event of a Permitted Transfer pursuant to Section 2.2 and Article 3 of the Resale Restrictions, the Transferee shall assume the rights and obligations of Maker under this Note and the Deed of Trust securing this Note.

b. In the event of a Permitted Sale to an Eligible Buyer pursuant to Section 2.3 and Article 4 of the Resale Restrictions, or upon acquisition of the Property by the City pursuant to the City's Purchase Option provided in Section 2.3 and Article 5 of the Resale Restrictions, then this Note, and all amounts due and owing to the City hereunder, shall be cancelled. In such event, the City shall execute and deliver for the benefit of Maker any documents necessary to effectuate such cancellation and release of the lien under this Note and the Deed of Trust.

c. In the event of an Extraordinary Sale to a non-Eligible Buyer pursuant to and in compliance with the requirements of Section 2.3 and Article 6 of the Resale Restrictions, Maker shall pay to the City, through escrow and from the proceeds of such sale, all amounts owing under this Note and Deed of Trust, including the initial Differential Amount of this Note and any other amounts owed pursuant to this Note, except for the contingent deferred amount of the City's Shared Appreciation which shall be paid to the City in accordance with Section 6 of this Note and Section 6.4 of the Resale Restrictions. Upon receipt of such payments, the City shall execute and deliver any documents necessary to effectuate such cancellation and release of the lien under this Note and the Deed of Trust.

d. In the event of a default by Maker under this Note or under the Deed of Trust, all amounts owing under this Note and Deed of Trust, including the initial Differential Amount and any other amounts owed pursuant to this Note, except for the contingent deferred amount of the City's Shared Appreciation, shall be due and payable in full, at City's option, without notice or demand. The City's Shared Appreciation shall be due and payable to the City in accordance with Section 6 of this Note and Section 6.4 of the Resale Restrictions. If Maker defaults in the performance or observance of any agreement or obligation of Maker set forth in this Note or the Deed of Trust, and if such default remains uncured for a period of 30 days after written notice has been given by the City (or if such cure reasonably takes longer than 30 days, if such cure has not been commenced within the 30-day period and thereafter diligently prosecuted to completion), then the City may declare an "Event of Default" has occurred, and City may exercise any or all of its rights or remedies under this Note and the Deed of Trust.

6. CITY'S SHARED APPRECIATION. In the event of an Extraordinary Sale pursuant to and in compliance with the requirements of Section 2.3 and Article 6 of the Resale Restrictions or in the event of a default by Maker under this Note or under the Deed of Trust, City shall receive, and Owner shall to pay to City in addition to the unpaid Differential Amount of this Note, a share of the appreciation ("City's Shared Appreciation") in the value of the Property between the time the Property was acquired by Maker and the Extraordinary Sale in accordance with California Civil Code Section 1917.006 and as provided for herein. The distribution of any appreciation in the value of the Property to City shall be determined based on the difference between the Appraisal prepared at the time the Property was acquired by Maker, and the Extraordinary Sale Price. The distribution of any appreciation in value shall be shared by Maker and the City in proportion to the amount of initial equity contributed by each party as follows.

a. The City's initial equity contribution shall equal the Differential Amount of this Note, as calculated in accordance with Section 3 of this Note.

b. Maker's initial equity contribution shall be equal to the aggregate amount of the following:

i. amount of the down payment paid by Maker at the time Maker acquired the Property; and
ii. escrow fees, transfer taxes, recording fees, brokerage commissions and similar costs of acquisition actually paid by Maker.

[Example of Maker's initial equity: If, (i) at the time Maker acquired the Property, the Maker paid a down payment equal to $18,000 and, escrow fees, transfer taxes, recording fees, brokerage commissions and similar costs of acquisition actually paid by Maker equal $2,000 resulting in a total Maker equity amount of $20,000, and (ii) the Differential Amount of this Note were $80,000, then (iii) the Owner would receive 20% of any remaining appreciation value available for distribution, and the City would receive 80% of any remaining appreciation value available for distribution at the time of an Extraordinary Sale.]

c. The City's right to receive the City's Shared Appreciation shall be subject to the Maker's superior right to receive repayment of the following items as described in California Civil Code Section 1917.006(a)(3) and the requirements of Section 6(e) below:

i. amount of the down payment paid by Maker at the time Maker acquired the Property;
ii. amount of installment payments of mortgage principal repaid to a Senior Lender by Maker prior to the Extraordinary Sale;
iii. amounts of escrow fees, transfer taxes, recording fees, brokerage commissions and similar costs of acquisition actually paid by Maker;
iv. money paid by Maker for Capital Improvements to the Property; and
v. amount equal to the "legal rate of interest" (as defined herein in Section 6(d) below) on cash payments by Maker as identified in (i) through (iv) above.

d. Because there is no generally accepted definition of "legal rate of interest," as the term is used in Civil Code Section 1917.006(a)(3), Maker and City stipulate and agree that the "legal rate of interest" for purposes of this Note shall be calculated using the annual compound interest rate for the Long-Term Applicable Federal Rate (AFR) as defined in 26 U.S.C. Section 1274(d) and as is issued by the United States Internal Revenue Service monthly, as then in effect at the time this Note is executed. Based on the foregoing, the legal rate of interest for purposes of this Note is stipulated to be _____ _____percent (_____%) per annum, compounded annually.

e. Prior to payment to Maker of the amounts set forth in Section 6(c) of this Note, Maker shall submit evidence not less than 30 days prior to the first scheduled date for the close of escrow or foreclosure sale to allow the City to verify the evidence provided by Maker to the reasonable satisfaction of the City of the Maker's initial equity as set forth in Section 6(b) and Maker's actual payments as set forth in Section 6(c). To the extent such evidence is not timely submitted by Maker to the reasonable satisfaction of City, such costs shall be deemed waived by the Maker and Maker shall not be entitled to have such costs, as applicable, included as part of Maker's initial equity under Section 6(b) or to receive payment of the sums set forth in Section 6(c) herein. City acknowledges that such evidence may include, by way of example and not limitation, Owner's original closing statement, bank statements, copies of cancelled checks, and invoices from contractors.

7. PAYMENTS. Payments shall be made payable to the City of Alameda, 2263 Santa Clara Avenue, Alameda, California 94501, Attention: City Manager *(or Authority Executive Director)*. The place of payment may be changed from time to time as City may from time to time designate in writing. Payments shall be made in lawful money of the United States of America.

8. COLLECTION. This Note is secured by a Deed of Trust recorded against the Property. Maker agrees to pay all collection and enforcement costs, expenses and attorneys' fees paid or incurred by the City or adjudged by a Court in any litigation or controversy connected with this Note, or security for it, including but not limited to actions for declaratory relief that the City is required to prosecute or defend and actions for relief based on rescission, or actions to cancel this Note that the City is required to defend.

9. SHARED APPRECIATION LOAN. This Note evidences a "Shared Appreciation Loan" as defined in California Civil Code Section 1917.006 and the parties therefore intend this Note to be exempt from any usury limitations. Notwithstanding anything to the contrary contained herein, to the extent the City's Shared Appreciation is deemed interest (other than as permitted under California Civil Code Section 1917.006) and therefore subject to limitation by usury law, that portion of interest in excess of applicable usury limitation shall be forgiven.

10. COSTS. Maker agrees to pay immediately upon demand all costs and expenses of City including reasonable attorneys' fees:

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

b. If after a default hereunder or under the Deed of Trust and after the expiration of all notice and cure periods City finds it necessary or desirable to secure the services or advice of one or more attorneys with regard to collection of this Note against Maker, any guarantor or any other party liable therefor or to the protection of its rights under this Note or the Deed of Trust, or

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

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

11. MISCELLANEOUS. This Note, the Deed of Trust, the Resale Restrictions, and any other documents executed by the parties relating thereto, embody the entire agreement between the City and Maker. The obligations of the Maker hereunder shall run with the land and be enforceable against Maker and the successors and assigns of Maker approved in writing by the City. Except in the event of a Permitted Transfer pursuant to Section 2.2 and Article 3 of the Resale Restrictions, Maker shall not assign or transfer any of its interest and obligations under this Note without the express prior written consent of City. The City, at its sole option, may negotiate transfer or assumption of this Note. This Note may not be modified or amended except by an instrument in writing executed by the parties sought to be bound thereby. This Note shall be governed by and construed in accordance with the laws of the State of California. If any provision of this Note shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

MAKER:

_____

Address:

_____

_____

_____

Address:

_____

_____

EXHIBIT F

FORM OF CITY DEED OF TRUST

The City Deed of Trust shall be a standard title company deed of trust with a rider in the form set forth below.

RIDER TO CITY DEED OF TRUST

This Rider to Deed of Trust is executed by _____ ("Trustor") for the benefit of the CITY OF ALAMEDA ("Beneficiary").

1. This Deed of Trust also secures the obligations of the Trustor under that certain Affordability, Restrictions on Resale and Option to Purchase Agreement dated _____ and recorded on _____ as Document No. _____ in the Official Records of Alameda County, California ("Agreement"), against the property encumbered by this Deed of Trust. A default under the Agreement shall be considered a default under this Deed of Trust.

2. This Deed of Trust secures a Shared Appreciation Loan and Note.

_____
Trustor

EXHIBIT G

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

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

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

DISCLOSURE, ACKNOWLEDGMENT AND ASSUMPTION AGREEMENT

THIS AGREEMENT is made by and among _____ ("Seller" or "Transferor"), _____ ("Buyer" or "Transferee") and the CITY OF ALAMEDA ("City").

WHEREAS, Seller is the current owner of the real property commonly known as [insert street address] _____, Alameda, California, more particularly described on Exhibit A, which together with all improvements located thereon is referred to in this Agreement as the "Property"; and

WHEREAS, Seller wishes to sell, transfer and convey the Property to the Buyer; and

WHEREAS, the Property is subject to affordability restrictions applicable to the Property as described in the Affordability, Restrictions on Resale and Option to Purchase Agreement, recorded on _____, 20__, as Document No. _____, in the Official Records of Alameda County, California (the "Resale Restrictions") which restricts the Property from being sold at its fair market value; and

WHEREAS, the Property is being sold to Buyer subject to a Shared Appreciation Loan that may result in the Buyer being obligated to pay a contingent deferred amount as discussed below in Section 2; and

WHEREAS, the Buyer is purchasing, or otherwise acquiring, the Property and will assume the obligations of an Owner under the Resale Restrictions; and

WHEREAS, capitalized terms used herein and not defined in this Agreement shall have the meanings set forth in the Resale Restrictions.

NOW THEREFORE, the parties hereto agree as follows:

1. THE BUYER HEREBY ACKNOWLEDGES AND AGREES TO THE FOLLOWING:

a. THAT THE PROPERTY IS SUBJECT TO THE RESALE RESTRICTIONS AND, BUYER AGREES AS AN OWNER TO BE BOUND BY ALL OF THE CONDITIONS AND COVENANTS CONTAINED IN THE RESALE RESTRICTIONS. THE PROPERTY IS PART OF AN AFFORDABLE HOUSING PROGRAM OPERATED BY THE CITY AND DESIGNED TO CREATE, PRESERVE, MAINTAIN AND PROTECT HOUSING AFFORDABLE TO PERSONS OF LOW AND MODERATE INCOME. BUYER ACKNOWLEDGES THAT IT HAS RECEIVED A COPY OF THE RESALE RESTRICTIONS AND UNDERSTANDS AND ACKNOWLEDGES THAT ITS RIGHT TO SELL THE PROPERTY AT FAIR MARKET VALUE IS VERY LIMITED, AND THAT, IN CERTAIN INSTANCES, THE CITY WILL HAVE THE OPTION TO PURCHASE THE PROPERTY FROM BUYER. THESE RESTRICTIONS WILL BE IN EFFECT UNTIL _____. IF BUYER SELLS THE PROPERTY IN VIOLATION OF THE RESALE RESTRICTIONS, THE CITY IS ENTITLED TO EXERCISE THE CITY'S PURCHASE OPTION UNDER THE RESALE RESTRICTIONS.

b. THAT BUYER SHALL OCCUPY THE PROPERTY AS ITS PRINCIPAL RESIDENCE FOR THE DURATION OF ITS OWNERSHIP.

c. THAT THE PROPERTY WILL NOT NECESSARILY APPRECIATE IN VALUE DURING THE DURATION OF ITS OWNERSHIP, AND THAT THE RESALE PRICE (THE ELIGIBLE BUYER PURCHASE PRICE AS DEFINED IN THE RESALE RESTRICTIONS) MAY BE LESS THAN WHAT BUYER ORIGINALLY PAID FOR THE PROPERTY AND THUS WHEN BUYER SELLS THE PROPERTY IT MAY RECEIVE LESS THAN IT PAID FOR THE PROPERTY.

2. City Note and City Deed of Trust.

a. If Buyer is an Eligible Buyer, as provided in Section 4.1 of the Resale Restrictions, the Buyer has concurrently with this Agreement executed a new City Note and a new City Deed of Trust in favor of the City, as provided in Section 4.4 of the Resale Restrictions. The City Note is in the initial principal amount equal to the difference between the market value of the Property and the Eligible Buyer Purchase Price being paid for the Property (defined as the Differential Amount in the City Note). The new City Note also provides for payment to the City of the City's Shared Appreciation in the event of an Extraordinary Sale under the Resale Restrictions; or

b. If Buyer is taking title through a Permitted Transfer, as provided in Section 2.2 and Article 3 of the Resale Restrictions, then Buyer hereby assumes the City Note and the City Deed of Trust as provided for under Section 5(a) of the City Note and Buyer agrees to be bound by and subject to the provisions of the Resale Restrictions, the City Note and the City Deed of Trust.

3. The City hereby consents to the transfer of the Property to the Buyer as an Eligible Buyer or to the Transferee under a Permitted Transfer within the meaning of the Resale Restrictions.

4. All questions with respect to the interpretation of this Agreement, and the rights and liabilities of the parties hereto, shall be governed by the laws of the State of California.

5. This Agreement shall inure to the benefit of, and shall be binding upon, the assigns, successors in interest, personal representatives, estates, heirs and legatees of each of the parties hereto.

6. Buyer hereby grants to City an irrevocable power of attorney coupled with an interest to act on Buyer's behalf to execute, acknowledge and deliver any and all documents relating to the City's Purchase Option under Article 5 of the Resale Restrictions.

7. This Agreement and the City's lien under the City Note and City Deed of Trust shall be subordinate to that certain deed of trust in favor of _____ recorded concurrently herewith, subject to the conditions set forth in Article 7 of the Resale Restrictions.

Executed on _____, 20__, at Alameda, California.

SELLER:

Dated:_____

_____

Print name:_____

BUYER:

Dated:_____

_____

Print name:_____

-AND-

CITY:

CITY OF ALAMEDA

Dated:_____

By: _____
Print name: _____

Its: City Manager

ATTEST:

By: _____

NOTARY ACKNOWLEDGMENTS

[TO BE INSERTED]

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

All that certain real property located in the City of Alameda, County of Alameda and more particularly described as Lot ___ as shown on that certain final subdivision map entitled "_____" recorded on _____, 20__ as Document No. _____ in the Official Records of Alameda County.

EXHIBIT H

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

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

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

Space Above This Line For Recorder's Use Only

NOTICE OF AFFORDABILITY RESTRICTIONS ON TRANSFER OF PROPERTY

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

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

Title of Document Containing Affordable Housing Restrictions: Affordability, Restrictions on Resale and Option to Purchase Agreement (referred to in this Notice as the "Affordable Housing Restrictions").

Parties to Affordable Housing Restrictions:

City of Alameda ("City") and

_____ ("Owner").

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

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

☐ concurrently with this Notice, as Document No. _____, official records of Alameda County.

Legal Description of Property:

See Exhibit A (Attached hereto)

Street Address of Property: _____, Unit No._____,

_____, California.

Assessor's Parcel Number of Property:_____

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

☐ The Property is restricted for resale to a low- or moderate-income household at a purchase price affordable to a low- or moderate-income household, as applicable.

☐ The Owner must occupy the Property as the Owner's principal residence, unless approved in writing by the Authority or the City.

☐ The Owner must give notice to the Authority and the City before resale of the Property.

☐ The Owner has granted the City an option to purchase the Property upon resale or default.

☐ The Owner's rights to pledge the Property as security for a debt are limited.

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

_____.

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

_____.

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

_____.

☐ Term of Restrictions: _____ years, commencing on _____ and terminating on _____.

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

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

CITY OF ALAMEDA:

Dated: _____, 20___ By: _____
City Manager

OWNER:

Dated: _____, 20___ _____

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

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

_____
Name: _____
Notary Public

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

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

_____
Name: _____
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

[To Be Inserted]

Attachment D

Memorandum of City Option

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

(Space Above This Line For Recorder's Use)

MEMORANDUM OF
PURCHASE OPTION

This Memorandum of Purchase Option (this "Memorandum") is entered into as of _____ ___, 20__, by and between Alameda Point Partners LLC, a Delaware limited liability company (the "Developer"), and the City of Alameda, a California charter City (the "City"), with respect to certain rights provided under that certain Affordable Housing Implementation Plan (the "Housing Implementation Plan") dated as of _____, 2015, appended as Exhibit M of that certain Disposition, Development Agreement, dated as of _____, 2015, as may be amended (the "DDA").

This Memorandum confirms that pursuant to Section 3.2(c)(7) of the Affordable Housing Implementation Plan, the Developer has granted to the City an option to purchase the property owned by the Developer, located in the City of Alameda, County of Alameda, California, more particularly described in Exhibit A attached hereto (the "Property").

This Memorandum shall incorporate all of the terms and provisions stated in the Affordable Housing Implementation Plan as though fully set forth herein.

This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the provisions of the Affordable Housing Implementation Plan.

This Memorandum may be executed in any number of counterparts, all of which shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

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

CITY:

CITY OF ALAMEDA, a California charter city

By: _____

Elizabeth D. Warmerdam, Interim City Manager

Approved as to Form:

_____
Farimah F. Brown
Senior Assistant City Attorney

_____
Andrico Q. Penick
Assistant City Attorney

DEVELOPER:
ALAMEDA POINT PARTNERS, LLC,
a Delaware limited liability company

By: Alameda Point Properties, LLC,
a California limited liability company,
its managing member

By: NCCH 100 Alameda, L.P.,
a Delaware limited partnership,
its managing member

By: Maple Multi-Family Development,
L.L.C., a Texas limited liability
company,
its General Partner

By: _____

Name: _____

Title: _____

[SIGNATURES MUST BE NOTARIZED]

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

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

_____
Name: _____
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

[NOTE: Legal Descriptions To Be Inserted At The Time Option Is Recorded Against Parcels are conveyed pursuant to terms of DDA and Housing Implementation Plan.]

Attachment E

Legal Description of Affordable Housing Site

BkF
ENGINEERS
SURVEYORS
PLANNERS

DESCRIPTION FOR:
ALAMEDA POINT SITE A
AFFORDABLE HOUSING PARCEL

All that real property situate in the City of Alameda, Alameda County, California, described as follows:

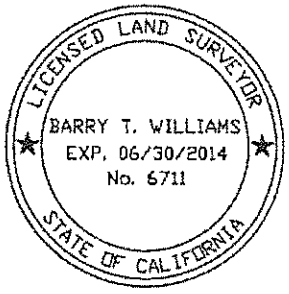
Commencing at a U.S.C & G.S. brass disk, labeled "MAIN-ATL", as said disk is shown on Record of Survey "RS No. 2565", recorded in Book 39 of Maps, at Page 88, Alameda County records, a U.S.C & G.S. brass disk, labeled "MAIN" bears North 00°31'07" East 1179.82 feet;

Thence North 84°38'27" West 734.21 feet to the **Point of Beginning;** Thence North 85°08'27" West 210.00 feet; Thence North 4°51'33" East 360.00 feet; Thence South 85°08'27" East 210.00 feet; Thence South 4°51'33" West 360.00 feet to the **Point of Beginning.**

Containing 75,600 square feet, 1.74 acres, more or less

This description is not to be used for any purpose that would violate the California Subdivision Map Act

This description has ~~been~~ prepared by me of under my supervision for BKF Engineers

By: _____
Barry T. Williams P.L.S. No. 6711
License Expires: 06/30/2016

Dated: 6-2-15