



AGENDA

SPECIAL CITY COUNCIL MEETING
Tuesday, February 6, 2018 – 6:00 p.m.
Hillside Conference Room

REGULAR CITY COUNCIL MEETING
Tuesday, February 6, 2018 – 7:00 p.m.
City Council Chambers

Meeting Location
El Cerrito City Hall
10890 San Pablo Avenue, El Cerrito

Gabriel Quinto – Mayor

Mayor Pro Tem Rochelle Pardue-Okimoto
Councilmember Paul Fadelli

Councilmember Janet Abelson
Councilmember Greg Lyman

- 6:00 p.m. ROLL CALL**
CONVENE SPECIAL CITY COUNCIL MEETING
ORAL COMMUNICATIONS FROM THE PUBLIC
All persons wishing to speak should sign up with the City Clerk. Remarks are typically limited to 3 minutes per person and to items on the special meeting agenda only.
COMMISSION INTERVIEWS, STATUS AND APPOINTMENTS
Conduct interviews of candidates for the City Boards and Commissions. Interviews may result in an announcement of appointment at the meeting.
ADJOURN REGULAR CITY COUNCIL MEETING
- 7:00 p.m. ROLL CALL**
CONVENE REGULAR CITY COUNCIL MEETING
1. PLEDGE OF ALLEGIANCE TO THE FLAG OR OBSERVATION OF MOMENT OF SILENCE – Mayor Pro Tem Rochelle Pardue-Okimoto.
2. COUNCIL / STAFF COMMUNICATIONS (Reports of Closed Session, commission appointments and informational reports on matters of general interest which are announced by the City Council & City Staff.)

3. ORAL COMMUNICATIONS FROM THE PUBLIC

All persons wishing to speak should sign up with the City Clerk. Remarks are typically limited to 3 minutes per person. The Mayor may reduce the time limit per speaker depending upon the number of speakers. Kindly state your name and city of residence for the record. Comments regarding non-agenda, presentation and consent calendar items will be heard first. Comments related to items appearing on the Public Hearing or Policy Matter portions of the Agenda are taken up at the time the City Council deliberates each action item. Individuals wishing to comment on any closed session scheduled after the regular meeting may do so during this public comment period or after formal announcement of the closed session.

4. ADOPTION OF THE CONSENT CALENDAR – Item Nos. 4(A) through 4(G)

A. Approval of Minutes

Approve the January 16, 2018 Special City Council, Special City Council – Closed Session and Regular City Council meeting minutes.

B. Graffiti Abatement Ordinance

Adopt Ordinance No. 2018–01 amending Title 8 of the El Cerrito Municipal Code to add Chapter 8.42, “Graffiti Abatement” related to the abatement of graffiti. *First reading approved by unanimous vote on January 16, 2018.*

C. El Cerrito Police Department Recognition Proclamations

1. Officer of the Year Proclamation

Approve a proclamation commending and congratulating Officer Sarah Perez for her recognition by the Richmond Elks Lodge No. 1251 Police Officer Appreciation Program and for her selection as Officer of the Year.

2. Police Department Professional Staff of the Year Proclamation

Approve a proclamation commending and congratulating records specialist Stacy Corr for her recognition by the El Cerrito Police Department for her selection as Professional Staff of the Year.

3. Police Department Volunteer of the Year Proclamation

Approve a proclamation commending and congratulating Police Volunteer Bob Rugeroni for his recognition by the El Cerrito Police Department as Volunteer of the Year.

D. Black History Month Proclamation

Approve a proclamation declaring February as Black History Month in the City of El Cerrito, and inviting everyone to recognize this month to celebrate the diversity and character of our community and highlight the importance of sharing our culture, customs and traditions with those around us.

E. Lunar New Year Proclamation

Approve a proclamation recognizing the cultural and historical significance of Lunar New Year and expressing the City Council's deepest respect for Asian Americans and all individuals in El Cerrito and throughout the world who celebrate this significant occasion; and wishing Asian Americans and all individuals who observe this holiday a happy and prosperous new year.

F. Authorization of an Additional Property Assessed Clean Energy (PACE) Financing Program for El Cerrito Property Owners

Staff requests that the City Council take the following actions: 1) Adopt a resolution consenting to the inclusion of properties within the City of El Cerrito's jurisdiction in the Golden State Financing Authority (GSFA) Program to finance renewable energy

generation, energy and water efficiency improvements, electric vehicle charging infrastructure, and other improvements and approving Associate Membership in the GSFA Joint Powers Authority (JPA), and participation in GSFA's Assembly Bill (AB) 811 Authority PACE Program; and 2) Adopt a resolution consenting to the inclusion of properties within the City of El Cerrito's jurisdiction in the GSFA Community Facilities District No. 2014-1 (Clean Energy) to finance renewable energy generation, energy and water efficiency improvements, electric vehicle charging infrastructure, and other improvements and approving Associate Membership in the GSFA JPA, and participation in GSFA's Senate Bill (SB) 555 PACE Community Facilities District. *Exempt from CEQA.*

G. Annual Payment for El Cerrito's Share of the West Contra Costa Integrated Waste Management Authority Operating Expenses

Adopt a resolution authorizing payment for the City of El Cerrito's share of the West Contra Costa Integrated Waste Management Authority's operating expenses for calendar year 2017 in an amount not to exceed \$75,900.

5. PRESENTATIONS

Update on West Contra County Unified School District

Superintendent Matthew Duffy will present an update on schools in El Cerrito and the roadmap for increasing student academic achievement.

6. PUBLIC HEARINGS

Disposition and Development Agreement with HD Mayfair, LLC and Mayfair Affordable, LLC for Development of the Mayfair Block

Conduct a public hearing and upon conclusion adopt a resolution authorizing execution of a Disposition and Development Agreement (DDA) with HD Mayfair, LLC and Mayfair Affordable, LLC and making findings and approvals pursuant to California Government Code Section 52201 in connection with disposition of that certain property located at 11600 and 11690 San Pablo Avenue and 1925 Kearney for development of the Mayfair Block. *The City has determined based on the environmental checklist prepared by LSA Associates and on file with the City, that the Project is consistent with the Program Environmental Impact Report prepared for the San Pablo Avenue Specific Plan pursuant to CEQA Guidelines Sections 15168(c) and 15182 and is subject to the Program Environmental Impact Report mitigation measures specified in the conditions of approval.*

7. POLICY MATTERS

Temporary Modular Buildings for Senior Services – Lease Agreement with Mobile Modular

Adopt a resolution taking the following actions: 1) Authorize the City Manager to execute an agreement with Mobile Modular for leasing of temporary modular buildings for senior services with one-charges of \$103,800 and a monthly rent of up to \$10,000 for a sixty month term; 2) Approve a contingency amount of \$10,000 for delivery and installation charges by Mobile Modular; and 3) Waive all city-related fees for planning approvals and building permits. *Exempt from CEQA.*

8. CITY COUNCIL LOCAL AND REGIONAL LIAISON ASSIGNMENTS

Mayor and City Council communications regarding local and regional liaison assignments and committee reports.

9. ADJOURN REGULAR CITY COUNCIL MEETING

The next regularly scheduled City Council meeting is Tuesday, March 6, 2018 at 7:00 p.m. in the City Council Chambers, 10890 San Pablo Avenue, El Cerrito. A Special City Council meeting is scheduled on February 20, 2018 for the sole purpose of conducting board and commission candidate interviews.

The City of El Cerrito serves, leads and supports our diverse community by providing exemplary and innovative services, public places and infrastructure, ensuring public safety and creating an economically and environmentally sustainable future.

- Council Meetings can be heard live on FM Radio, KECG – 88.1 and 97.7 FM and viewed live on Cable TV - KCRT-Channel 28 and AT&T Uverse Channel 99. The meetings are rebroadcast on Channel 28 the following Thursday and Monday at 12 noon, except on holidays. Live and On-Demand Webcast of the Council Meetings can be accessed from the City's website <http://www.el-cerrito.org/streamingmedia>. Copies of the agenda bills and other written documentation relating to items of business referred to on the agenda are on file and available for public inspection in the Office of the City Clerk, at the El Cerrito Library and posted on the City's website at www.el-cerrito.org prior to the meeting.
- In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk, (510) 215-4305. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title I).
- ***The Deadline for agenda items and communications*** is eight days prior to the next meeting by 12 noon, City Clerk's Office, 10890 San Pablo Avenue, El Cerrito, CA. Tel: 215-4305 Fax: 215-4379, email cmorse@ci.el-cerrito.ca.us
- IF YOU CHALLENGE A DECISION OF THE CITY COUNCIL IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE COUNCIL MEETING. ACTIONS CHALLENGING CITY COUNCIL DECISIONS SHALL BE SUBJECT TO THE TIME LIMITATIONS CONTAINED IN CODE OF CIVIL PROCEDURE SECTION 1094.6.
- The City Council believes that late night meetings deter public participation, can affect the Council's decision-making ability, and can be a burden to staff. City Council Meetings shall be adjourned by 10:30 p.m., unless extended to a specific time determined by a majority of the Council.



Date: February 6, 2018
To: Honorable Mayor and Members of the City Council
From: Cheryl Morse, City Clerk
Subject: Commission Interviews

FEBRUARY 6 INTERVIEW SCHEDULE

6:00 p.m.	Joy Navarrete [PLN 1 st & DRB 2 nd]
6:15 p.m.	Ben Chuaqui [DRB 1 st , Parks 1 st & PLN 2 nd]
6:30 p.m.	Jun Sunseri [Parks]
6:45 p.m.	Greg Crump [PLN]

FEBRUARY 20 TENTATIVE INTERVIEW SCHEDULE

6:00 p.m.	Paul Allen	[CSO 1 st , Parks 2 nd , DRB 3 rd]
6:15 p.m.	Douglas Hund	[PLN 1 st & DRB 2 nd]
6:30 p.m.	Art Machado	[Parks]
6:45 p.m.	Derik Hilliard	[EDC 1 st & HRC 2 nd]
7:00 p.m.	Tenzin Rangdol	[HRC 1 st , FAB 2 nd , EDC 3 rd]
7:15 p.m.	Chris Sterba	[Arts]
7:30 p.m.	John “Barry” Koops	[Library Alternate]
7:45 p.m.	Margo Hunter Parisi	[HRC]
8:00 p.m.	Jessica Laird	[HRC]

BACKGROUND

Staff began publicizing vacancies on all the Boards, Commissions and Committees in September 2017. Vacancies were published on the City’s website and in the West County Times, posted at City Hall, the Community Center and Library. Although the City conducts a continuous recruitment, the deadline for submitting applications for the first round of interviews was set at December 4 however additional applications continued to be submitted throughout December 2017 and the deadline was extended to January 8 and is now posted as a continuous, ongoing recruitment. At

Special City Council Meeting Commission Applicant Interviews

the conclusion of the recruitment approximately 19 applications for boards, commissions and committees had been received. Interviews were conducted on January 16 and continue this evening and February 20. New appointments resulting from the interviews conducted throughout February will either fill existing vacant unexpired terms or become effective March 1, 2018. Candidates who have listed a committee as a preferred choice on their application are contacted by the City Clerk and the staff liaison to discuss the committee appointment process. Two candidates (Keith Alexander and Alison Moreno) who chose a committee as their first choice and commission as their second choice have opted to pursue appointments through the committee process first.

VACANCIES

Existing and upcoming vacancies on each board, commission and committee are listed on the attached matrix and are also listed below for ease of reference. Vacancy information has been updated to reflect appointments made by the City Council at its January 16, 2018 meeting.

EL CERRITO BOARDS AND COMMISSIONS

Arts and Culture Commission	2 Vacancies [1 eligible for reappointment]
Citizens Street Oversight Committee	4 Vacancies
Design Review Board	2 Vacancies [1 eligible for reappointment]
Human Relations Commission	2 Vacancies [2 eligible for reappointment]
Parks and Recreation Commission	2 Vacancies [1 eligible for reappointment]
Planning Commission	2 Vacancies [1 eligible for reappointment]

REGIONAL APPOINTMENTS

Contra Costa Library Commission	[Alternate vacancy]
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TIMING OF FUTURE INTERVIEWS

At the conclusion of the interviews, staff will confer with the City Council regarding the ongoing recruitments, any remaining vacancies and the scheduling of future special meetings to conduct interviews.

Attachments:

1. Applicant Matrix
2. Candidate Applications (*Previously provided. One added.*)
3. Interview questions for consideration
4. Board, Commission and Committee Function Summary

2018 Board and Commission Applicant Matrix

Updated: 1/29/2018

* Currently serving or eligible for appointment/re-appointment

	<i>Arts & Culture (2)</i>	<i>Citizens Street Oversight (4)</i>	<i>Civil Service Commission (1)</i>	<i>Committee on Aging (2)</i>	<i>Crime Prevention (6)</i>	<i>Design Review Board (2)</i>	<i>Economic Devt. Cmte (5)</i>	<i>Environmental Quality (2)</i>	<i>Financial Advisory Board (0)</i>	<i>Human Relations (2)</i>	<i>Park and Recreation (2)</i>	<i>Planning Commission (2)</i>	<i>Urban Forest Committee (9)</i>	<i>CC Library Alternate (1)</i>	<i>CCTA Citizens Advisory (1)</i>	<i>Interview Date</i>	<i>Appointed?</i>
Keith Alexander¹							1					2					
Paul Allen		1				3					2					2/20	
Ben Chuaqui						1					1	2				2/6	
Greg Crump*												1				2/6	
Derik Hilliard							1			2						2/20	
Douglas Hund						2						1				2/20	
John "Barry" Koops														1		2/20	
Jessica Laird										1						2/20	
Art Machado											1					2/20	
Alison H. Moreno²								1			2						
Joy Navarrete						2						1				2/6	
Margo Parisi										1						2/20	
Tenzin Rangdol							3		2	1						2/20	
Christopher Sterba*	1															2/20	
Jun Sunseri											1					2/6	
John Thompson*						1										1/16	
Bruce L. Yow*			1								2				3	1/16	CSC, CCTA

¹ Will pursue appointment to EDC first.² Will pursue appointment to EQC first.



**February 6, 2018
Special City Council Meeting**

Commission Interviews

Attachment 2 Applications

is available for review in hardcopy format at the following
locations:

Office of the City Clerk
10940 San Pablo Avenue
El Cerrito
(510) 215-4305

and

The El Cerrito Library
El Cerrito
6510 Stockton Avenue

City of El Cerrito
BOARD/COMMISSION INTERVIEW QUESTIONS

1. Will you give us a quick summary of why you chose to apply or how you selected the _____ commission/board?
2. Briefly outline what in your professional background, work experience, education, or volunteer work would be relevant to the commission/board and highlight any special or unique qualifications or qualities you feel would contribute to the commission?
3. Are you aware of any issues that this commission addressed recently? Have you attended any commission or council meetings?
4. Do you have any thoughts or ideas on how this commission might contribute to the quality of life in El Cerrito?
5. In the few minutes remaining do you have any questions for us?

City of El Cerrito
REAPPOINTMENT INTERVIEW QUESTIONS

1. How is the commission currently functioning?

2. What suggestions for change might you have for this commission? Please briefly outline them.

3. Are there any Council policies affecting this particular commission which you especially agree with? Disagree with?

COMMISSION MISSION AND FUNCTION SUMMARIES

Arts and Culture Commission

Meetings 4th Monday, 7:00 p.m., City Hall – Council Chambers

The Arts and Culture Commission consists of seven members who demonstrate a commitment to various arts disciplines, including but not limited to: fine arts, visual arts, performing arts, literary arts, art history, and arts education.

Citizens Street Oversight Committee

Meetings 4th Monday in January and September, 2nd Monday in November, 7:00 p.m., City Hall – Hillside Conference Room

The Citizens Street Oversight Committee monitors the expenditures of revenue collected pursuant to ECMC Chapter 4.60 (the “Pothole Repair and Local Street Improvement and Maintenance Transactions and Use Tax”) to determine whether such funds are expended for the purposes specified in the then-current Street Repair and Maintenance Expenditure Plan, and issues reports on their findings to the City Council and public at least annually. The Committee may also review the annual financial or performance audits performed by an independent auditor.

Civil Service Commission

Meetings On-Call, 7:00 p.m., City Hall – Council Chambers

Hears appeals submitted by any person in the competitive civil service relative to any disciplinary action, dismissal, demotion, or alleged violation of the municipal code or the personnel rules and certifies its findings and recommendations. Holds hearings and makes recommendations on any matter of personnel administration requested by the Council or the City Manager.

Committee on Aging

Meetings 3rd Wednesday, 3:00 p.m., City Hall – Council Chambers

Membership on the Committee on Aging is open to any and all interested adult residents of El Cerrito. Members are appointed by the City Council upon recommendation of the Committee and there is no limit on the number of Committee members. The Committee has established four long-term goals as follows: 1) Affordable housing options for older and disabled residents 2) Adequate space and facilities for, and the provision of, quality programs and services for seniors 3) Improved accessible public transportation and paratransit services for persons unable to use public transit facilities and 4) Increased support services to assist frail older adults and their families both within and outside of their homes.

Crime Prevention Committee

Meetings 2nd Wednesday, 7:00 p.m., City Hall – Hillside Conference Room

The Citizen's Crime Prevention Committee was formed by resolution of the City Council in 1975. Membership is composed of El Cerrito residents interested in or knowledgeable of the criminal justice system. Appointments to the committee are made by the City Council upon recommendation of the committee. The committee has received awards for "National Night Out" and has conducted identity theft workshops.

Design Review Board

Meetings 1st Wednesday, 7:30 p.m., City Hall – Council Chambers

The Design Review Board reviews all development (public or private), including all buildings, site layouts, and signing in all districts, except single-family, for the purpose of encouraging quality design of such facilities. The Board provides a framework by which elements of poor layout and design of a project may be prevented. Membership on this Board requires the filing of a Statement of Economic Interests – FPPC Form 700.

Economic Development Committee

Meetings are held on the 4th Wednesday of each month at 7:30 p.m., City Hall – Hillside Conference Room

The Economic Development Committee (EDC) acts in an advisory capacity to perform tasks and duties identified by the Economic Development Strategy and Action Plan. The Committee advises the Council on economic development matters, makes recommendations on the annual economic development work plan, and oversees the work of subcommittees established to concentrate on creating plans for high-priority areas. The Committee also provides input to other City boards and commissions on economic development matters and reviews progress towards achieving the annual work plan goals and long range economic development goals. The EDC encourages community involvement in economic development. The Chamber of Commerce President serves on the Economic Development Committee for one year.

Environmental Quality Committee

Meetings 2nd Tuesday, 7:00 p.m., City Hall – Council Chambers

The fifteen member Environmental Quality Committee serves in an advisory capacity to the City Council, staff, other boards, commissions, and committees, and the residents of the City with regard to environmental quality issues within the City of El Cerrito. The Committee recommends programs, policies, and ordinances to the City Council and promotes the City's environmental quality efforts. The Committee also promotes and fosters public awareness, education, interest and support for environmental quality efforts, fosters volunteer opportunities, and educates El Cerrito residents regarding environmental quality and issues relating to environmental impacts.

Financial Advisory Board

Meetings 2nd Tuesday, 7:00 p.m., City Hall – Hillside Conference Room

The Financial Advisory Board (FAB) conducts a review of the proposed annual budget and long-term financial plan for the City and the Redevelopment Agency to assist the City Council and Redevelopment Agency in making decisions on major expenditures and revenue sources. The FAB develops a long-term financial plan for the City and the Redevelopment Agency, conducts an annual review of the City's investment policies and gives consideration to the managing of the City's financial reserves to assure maximum returns on approved investments. The FAB also reviews the annual audit and management letter and provides the City Council and the Redevelopment Agency with recommended changes in financial practices and reviews and makes recommendations on all proposed bonds or other debt instruments to be issued by the City and the Redevelopment Agency.

Human Relations Commission

Meetings 1st Wednesday, 7:00 p.m., City Hall – Hillside Conference Room

The purpose of the Human Relations Commission is to initiate educational and cultural programs, and promote tolerance and mutual respect between all persons. When requested by the City Council, the Commission will evaluate and make recommendations regarding discrimination charges levied against the City. Commission members shall be generally representative of the demographics of the City including the racial, religious, age, gender, ethnic, and other groups.

Parks and Recreation Commission

4th Wednesday, 7:00 p.m., City Hall – Council Chambers

The Parks and Recreation Commission acts in an advisory capacity to the City Council on all matters pertaining to public recreation, including parks, playgrounds, landscaping, childcare, the arts, educational courses and entertainment. Current projects include an Urban Forest Plan and the Ohlone Greenway. The Commission considers the annual budget of the Recreation Department during its preparation and makes recommendations with respect thereto. Additionally, the Parks Commission assists in the planning of a recreation program for the City-promoting and stimulating public interest; and to that end, solicits to the fullest possible extent the cooperation of special authorities and other interested public and private agencies. The Commission studies present and future needs of the City with regard to park and recreation facilities.

Planning Commission

3rd Wednesday, 7:30 p.m., City Hall – Council Chambers

The Planning Commission, which is a mandated advisory body under the California Conservation and Planning Law, is appointed by the legislative body, with powers and duties as defined by that law. It functions as an advisory body to the City Council in matters relating to planning and the physical development of the City. The Planning

Commission Interviews Attachment 4

Commission reviews the General Plan annually, makes modifications or additions as necessary, hears and acts upon use and variance permits, initiates required zoning amendments or changes to the zoning map, conducts public hearings on subdivisions and other matters, makes recommendations to the City Council, and considers other matters referred by the City Council. Membership on this Board requires the filing of a Statement of Economic Interests – FPPC Form 700.

Urban Forest Committee

2nd Monday, 7:00 p.m., City Hall – Hillside Room

The Urban Forest Committee serves in an advisory capacity to the City Council, other commissions, and the citizens of the City with regard to the growth, maintenance, and location of trees within the City. The Committee recommends programs, policies, and ordinances to implement and promote the City's Master Street Tree Plan and Urban Forest Management Plan and to coordinate with the Public Works staff regarding management and maintenance efforts. The Committee promotes and fosters public awareness, education, interest and support for urban forestry efforts, fosters volunteer opportunities for tree planting and irrigation along the city's streets and in residential front yards, and educates El Cerrito residents regarding selecting, planting and maintaining trees. The Committee also promotes and fosters public awareness and education about potential hazards of trees near underground and above ground utilities and the appropriate tree species for avoiding such hazards.

EL CERRITO CITY COUNCIL

MINUTES

SPECIAL CITY COUNCIL MEETING
Tuesday, January 16, 2018 – 6:00 p.m.
Hillside Conference Room

SPECIAL CITY COUNCIL MEETING – CLOSED SESSION
Tuesday, January 16, 2018 – 6:30 p.m.
Hillside Conference Room

REGULAR CITY COUNCIL MEETING
Tuesday, January 16, 2018 – 7:00 p.m.
City Council Chambers

Meeting Location
El Cerrito City Hall
10890 San Pablo Avenue, El Cerrito

Gabriel Quinto – Mayor

Mayor Pro Tem Rochelle Pardue-Okimoto
Councilmember Paul Fadelli

Councilmember Janet Abelson
Councilmember Greg Lyman

6:00 p.m. ROLL CALL

Councilmembers Fadelli, Lyman, Pardue-Okimoto, Abelson and Mayor Quinto all present.

CONVENE SPECIAL CITY COUNCIL MEETING

Mayor Quinto convened the special City Council meeting at 6:00 p.m.

ORAL COMMUNICATIONS FROM THE PUBLIC – *No speakers.*

COMMISSION INTERVIEWS, STATUS AND APPOINTMENTS

Conduct interviews of candidates for the City Boards and Commissions. Interviews may result in an announcement of appointment at the meeting.

Action: Two interviews completed.

ADJOURNED SPECIAL CITY COUNCIL MEETING at 6:28 p.m.

6:30 p.m. ROLL CALL

Councilmembers Fadelli, Lyman, Pardue-Okimoto, Abelson and Mayor Quinto all present.

CONVENE SPECIAL CITY COUNCIL MEETING CLOSED SESSION

Mayor Quinto convened the Special City Council – Closed Session meeting at 6:30 p.m.

ANNOUNCEMENT OF CLOSED SESSION

Conference with Labor Negotiators (*Pursuant to Government Code Section 5495.7.6*)

Agency Designated Representatives: Scott Hanin, City Manager, Karen Pinkos, Assistant City Manager, Kristen Cunningham, Senior Human Resources Analyst and Glenn Berkheimer, Labor Negotiator.

Employee Organizations: El Cerrito Police Employee Association.

ORAL COMMUNICATIONS FROM THE PUBLIC – *No speakers.*

RECESS INTO CLOSED SESSION at 6:31 p.m.

REPORT OUT OF CLOSED SESSION

Mayor Quinto reported that there was no reportable action taken.

ADJOURNED SPECIAL CITY COUNCIL MEETING CLOSED SESSION at 6:53 p.m.

7:00 p.m. ROLL CALL

Councilmembers Fadelli, Lyman, Pardue-Okimoto, Abelson and Mayor Quinto all present.

CONVENE REGULAR CITY COUNCIL MEETING

Mayor Quinto convened the Regular City Council meeting at 7:03 p.m.

1. PLEDGE OF ALLEGIANCE TO THE FLAG OR OBSERVATION OF MOMENT OF SILENCE was led by Councilmember Greg Lyman.

2. COUNCIL / STAFF COMMUNICATIONS

COUNCIL COMMUNICATIONS

Councilmember Fadelli reminded residents that they can now take their hazardous waste materials to the City's Recycling Center. The annual Martin Luther King, Jr. (MLK) March and Celebration held on January 15 was a wonderful event! Councilmember Fadelli said he is pleased to be the council liaison for the Human Relations Commission (HRC), which is responsible for organizing the MLK events. He thanked the HRC, El Cerrito High School, the Police Department and many others for their work on the event. He was a senior at Kennedy High School when the Vietnam War was going on, Dr. King and Robert F. Kennedy were assassinated, and many riots were happening. He stated that the class of 2018 also has many difficult challenges ahead.

Councilmember Abelson stated that she also attended MLK event and received the MLK Dream Award. She is very appreciative of the award and is honored to have received it.

Councilmember Lyman stated that the City Council met on January 4, 2018 to interview Charter City Committee candidates. The Council appointed members to form the committee.

Mayor Pro Tem Pardue-Okimoto reported that the MLK parade was fantastic and complemented the HRC and Pat Durham for coordinating the parade. Mayor Pro Tem Pardue-Okimoto also reported that she continues to serve as a liaison on the Keep Alta Bates Open Committee and invited all to a Keep Alta Bates Open Community Forum, on February 3, from 11 a.m. to 1 p.m. at the Ed Roberts campus in Berkeley.

Mayor Quinto encouraged all to volunteer with the WriterCoach Connection to help El Cerrito High School students with guidance and reading. Mayor Quinto reported that he attended a new year luncheon with the Contra Costa Board of Supervisors and the new Board President, Karen Mitchoff. He also announced that there is an online pre-

application sign up period underway for affordable housing projects, including Hana Gardens, located at 10860 San Pablo Avenue, in El Cerrito. The selection will be done by lottery. Mayor Quinto also attended the MLK parade and program, thanked everyone who participated and encouraged everyone to see the film, *Gina's Journey: The Search for William Grimes*, which was featured as part of the celebration. Mayor Quinto attended the El Cerrito Chamber of Commerce luncheon with Councilmember Abelson, Mayor Pro Tem Pardue-Okimoto, California State Board of Equalization Board Member Fiona Ma and many other community members today. The speaker talked about tax legislation. Mayor Quinto also thanked Atcha Thai Bistro and Pearl Parmelee for donating hors d'oeuvres at the last City Council meeting and also thanked everyone who attended.

Mayor Quinto also reported that the City Council met during two separate special meetings earlier this evening to interview candidates for boards and commissions and receive an update on labor negotiations.

STAFF COMMUNICATIONS

Melanie Mintz, Community Development Director, introduced Aissia Ashoori, the new Affordable Housing Analyst, who will be working on Affordable Housing Strategy.

Aissia Ashoori, Affordable Housing Analyst, said she was ecstatic to join the El Cerrito team and announced that she will be conducting an affordable housing application workshop with other staff members at the Senior Center on Thursday, January 18 and Friday, January 19.

3. ORAL COMMUNICATIONS FROM THE PUBLIC

Al Miller, El Cerrito, thanked all the sponsors who participated in the MLK parade and celebration. Mr. Miller expressed concerns that there were less marchers in the parade this year. He stated that as a community, El Cerrito needs to encourage others to join the march and other important events in the city. Mr. Miller praised the Police Department for blocking off the streets and making it safe for the marchers.

Cordell Hindler, Richmond, emphasized the need to keep Alta Bates open. Mr. Hindler also advocated for youth to serve on boards, commissions and committees. He thanked the Centennial Task Force for all of their planning throughout El Cerrito's centennial year.

James Sanders, Richmond, asked the City Council to re-consider the project proposed for 11965 San Pablo Avenue as it will block his view of San Francisco and noted its negative impact on the value of houses located on Barrett Avenue. Mr. Sanders also thought the proposed project might pose difficulty for the Police Department in observing potential criminal activities.

4. ADOPTION OF THE CONSENT CALENDAR – Item No. 4(A) through 4(E)

Moved, seconded (Abelson/Fadelli) and carried unanimously to approve Consent Calendar Item Nos. 4(A) through 4(C) and 4(E) in one motion as indicated below. Item No. 4(D) was removed from the consent calendar at the request of Councilmember Fadelli and voted on separately as indicated below.

CITY COUNCIL ITEMS

A. Approval of Minutes

Approve the December 19, 2017 Regular City Council and January 4, 2018 Special meeting minutes.

Action: Approved minutes.

B. Proclamation Celebrating the El Cerrito Lions Club 90th Anniversary

At the request of Councilmember Abelson, approve a proclamation congratulating the El Cerrito Lions Club for its ninety years of dedicated, consistent and inspirational community services.

Action: Approved proclamation.

C. On-Call Geotechnical Engineering and Material Testing Services

Adopt a resolution authorizing the City Manager to execute professional services agreements with three consultant firms, Ninyo & Moore, Smith Emery, and BSK Associates to provide on-call geotechnical engineering and material testing services for three years with options to extend for an additional two years in an amount not to exceed \$100,000 per fiscal year for each agreement. *Exempt from CEQA.*

Action: Adopted Resolution No. 2018-01.

D. Transportation Development Act Article 3 Grant Application Approval

Adopt a resolution approving a request to the Metropolitan Transportation Commission (MTC) by the City of El Cerrito for an allocation of Fiscal Year (FY) 2018/2019 Transportation Development Act Article 3 Pedestrian and Bicycle Project funding in the amount of \$100,000 for Carlson Boulevard and San Diego Street Crosswalk Improvements. *Exempt from CEQA.*

Action: Removed from the Consent Calendar at the request of Councilmember Fadelli. Moved, seconded (Fadelli/Abelson) and carried to adopt Resolution No. 2018-02 as amended by Councilmember Fadelli to include an additional recital in the resolution stating that the City will be including \$20,000 in matching funds from Senate Bill 1.

REDEVELOPMENT SUCCESSOR AGENCY ITEM

E. Successor Agency Recognized Obligation Payment Schedule

Adopt a Redevelopment Successor Agency resolution reviewing and authorizing submittal of the draft Recognized Obligations Payment Schedule (ROPS) 2018-2019.

Action: Adopted Successor Agency Resolution No. 2018-01.

5. PRESENTATIONS

A. Stand Together Contra Costa County – Rapid Response Program

At the request of Mayor Quinto, receive a presentation from Ali Saidi, Contra Costa Public Defender, regarding the Stand Together Contra Costa County – Rapid Response Program.

Action: Received presentation.

B. LimeBike Dockless Bikeshare Program

Presentation by Megan Colford, LimeBike Bay Area Operations Manager.

This program operates within cities, independent of government funding, and allows for bike sharing without having to return the bike to a docking station.

Speakers: Cordell Hindler, Richmond, expressed support for the program.

Al Miller, El Cerrito, encouraged the City to educate the public about how they can participate in the program without smartphones.

Howdy Goudey, El Cerrito, expressed the importance of explicit outreach and thorough implementation that does not conflict with other uses to ensure LimeBike is a positive experience for everyone.

Action: Received presentation.

6. PUBLIC HEARINGS

Consideration of an Ordinance Adding Chapter 8.42 of the El Cerrito Municipal Code Related to the Regulation and Voluntary Abatement of Graffiti

Conduct a public hearing and upon conclusion, waive first reading and introduce by title an ordinance of the City of El Cerrito adding Chapter 8.42 of the El Cerrito Municipal Code to provide an additional graffiti abatement program. *Exempt from CEQA.*

Presenters: Margaret Kavanaugh-Lynch, Development Services Manager.

Mayor Quinto opened the public hearing.

Speaker: Howdy Goudey, El Cerrito, expressed concerns regarding the cumbersome nature of managing numerous accounts and transactions and noted that it may be easier to have one rather than multiple accounts to manage for the common good.

Action: Moved, seconded (Abelson/Lyman) and carried unanimously to close the public hearing.

Moved, seconded (Abelson/Pardue-Okimoto) and carried unanimously to approve by title and waive any further reading of Ordinance No. 2018–01, an ordinance adding Chapter 8.42 of the El Cerrito Municipal Code to provide an additional graffiti abatement program. *Adoption of the ordinance is scheduled for February 6, 2018.*

7. POLICY MATTERS

Annual City Council Local and Regional Liaison Assignments

Discuss the Mayor's appointment of City Council members to regional bodies and assignments to local boards, commissions and committees for 2018.

Speaker: Cordell Hindler, Richmond, stated that he attends meetings so he can update the community on various topics.

Action: No discussion regarding the Mayor's assignment of City Council local and regional liaison assignments. Assignments for 2018 are as follows:

Mayor Quinto

League of California Cities East Bay Division Delegate (also delegate for the League's Annual Conference), Contra Costa Mayors' Conference Delegate, West Contra Costa County Mayors and Supervisors Association Delegate, West Contra Costa Transportation Advisory Committee Alternate, East Bay Green Corridor Principal, Tom Bates Regional Sports Field Joint Powers Authority Alternate, Economic Development Committee Liaison, Municipal Services Corporation Chair, El Cerrito Employee Pension Board Chair and Redevelopment Successor Agency Chair.

Mayor Pro Tem Pardue-Okimoto

Association of Bay Area Governments Alternate, League of California Cities East Bay Division Alternate, Contra Costa Mayors' Conference Alternate, West Contra Costa County Mayors and Supervisors Association Alternate, Tom Bates Regional Sports Field Joint Powers Authority Delegate, Environmental Quality Committee Liaison, Urban Forest Committee Liaison, Municipal Services Corporation Vice-Chair, El Cerrito Employee Pension Board Vice-Chair and Redevelopment Successor Agency Vice-

Chair.

Councilmember Abelson

Association of Bay Area Governments Delegate, West Contra Costa Transportation Advisory Committee Delegate, Crime Prevention Committee Liaison, Committee on Aging Liaison and Park and Recreation Commission Liaison.

Councilmember Fadelli

Marin Clean Energy Board Alternate, West County Integrated Waste Management Authority Alternate, Arts and Culture Commission Liaison, Charter Committee, Financial Advisory Board Liaison and Human Relations Commission Liaison.

Councilmember Lyman

Marin Clean Energy Board Director, West County Integrated Waste Management Authority Delegate, Charter Committee, Design Review Board Liaison and Planning Commission Liaison.

8. CITY COUNCIL LOCAL AND REGIONAL LIAISON ASSIGNMENTS

Mayor and City Council communications regarding local and regional liaison assignments and committee reports.

Councilmember Lyman reported that the West Contra Costa Integrated Waste Management Authority will be discussing recommendations from the City Managers located within the Authority's jurisdiction regarding potential changes in funding arrangements for some of the Authority's reserves. This may come back to the City Council as a part of a revision of the joint powers agreement.

Mayor Quinto announced the City Council's appointment of Bruce Yow to the Contra Costa Transportation Authority Citizens Advisory Committee and the El Cerrito Civil Service Commission.

9. ADJOURNED REGULAR CITY COUNCIL MEETING at 9:22 p.m.

SUPPLEMENTAL COMMUNICATIONS

Item No. 5(A) Stand Together Contra Costa County – Rapid Response Program

1. Stand Together CoCo Summary Fact Sheet – *Submitted by Ali Saidi, Contra Costa Public Defender.*

Other:

2. Contra Costa County Board of Supervisors Major Achievements in 2017 – *Submitted by Mayor Quinto.*

ORDINANCE NO. 2018-01

AN ORDINANCE OF THE CITY OF EL CERRITO AMENDING TITLE 8 OF THE EL CERRITO MUNICIPAL CODE TO ADD CHAPTER 8.42, "GRAFFITI ABATEMENT" RELATED TO THE ABATEMENT OF GRAFFITI

WHEREAS, the spread of graffiti on public and private buildings, walls, signs and other structures or surfaces causes blight within the City; and

WHEREAS, graffiti causes detriment to the City of El Cerrito due to the deteriorated appearance of the subject property as well as a negative impact to the economic vibrancy of adjacent and surrounding properties; and

WHEREAS, many property owners in the City of El Cerrito have requested a program to work in cooperation with the City towards the timely abatement of graffiti; and

WHEREAS, the City may regulate graffiti through its police power under Article XI, section 7, of the California Constitution.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF EL CERRITO DOES HEREBY ORDAIN as follows:

1. Incorporation of Recitals. The City Council finds that the above Recitals are true and correct and are incorporated herein by reference.

2. Amendment of Title 8 of the Municipal Code. Title 8, "Health and Safety," of the El Cerrito Municipal Code is hereby amended to add Chapter 8.42, "Graffiti Abatement" to read as follows:

Chapter 8.42 – GRAFFITI ABATEMENT

8.42.010 Purpose.

The City Council hereby declares that graffiti is blight and a public nuisance and is therefore subject to abatement as prescribed in Chapters 1.08 and 1.14 the El Cerrito Municipal Code.

The purpose of this ordinance is to provide tools for the removal of graffiti, including a voluntary program to assist in the removal of graffiti from public and private property within the City.

8.42.020 Definitions.

For the purposes of this chapter, the following definitions shall apply:

"Graffiti" includes any unauthorized inscription, word, figure, mark, or design that is written, marked, etched, scratched, drawn, or painted on any real or personal property without the permission of the property owner or Responsible Party.

"Responsible Party" means any occupant, lessor, lessee, manager, licensee, or other person having control over real or personal property. A responsible party also includes the public or private property owner, as listed in the most current equalized assessment role as maintained by the Contra Costa County's Assessor.

8.42.030 Graffiti Declared a Public Nuisance.

The City Council hereby declares that graffiti is a public nuisance and is subject to abatement as prescribed in this code.

8.42.040 Graffiti Prohibited.

- A. It is unlawful for any person to apply graffiti upon any property within the city.
- B. It is unlawful for any Responsible Party or any other person owning or otherwise being in control of any real or personal property within the city to maintain, permit or allow any graffiti to remain upon such property when the graffiti is visible from the street or other public or private property.

8.42.050 Violations.

A. Violations of this chapter may be enforced by either compliance with the provisions of this chapter or pursuant to the administrative procedures contained in El Cerrito Municipal Code Chapter 1.14. Violations which result in administrative citations may be appealed pursuant to El Cerrito Municipal Code section 1.14.080.

B. The criminal citation procedures contained in El Cerrito Municipal Code Section 1.08 shall apply to violations of this chapter. Violations which result in criminal citations shall be deemed infractions unless deemed a misdemeanor by the City Attorney.

8.42.060 Removal of Graffiti.

A. Removal by Responsible Party.

- 1. It is the responsibility of the Responsible Party to remove graffiti from their property.

2. It is unlawful for any Responsible Party to permit graffiti that has been applied on property to remain for a period of ten (10) calendar days after having been given notice of the violation. The City shall provide written notice of the graffiti to the responsible party pursuant to Chapter 1.14 (Administrative Penalties). The notice shall include information regarding the right to an appeal.

B. Removal of Graffiti by City.

1. As an alternative to process described in Chapter 1.14, the City may remove graffiti with the consent of the Responsible Party pursuant to Section 8.42.070 as part of a Graffiti Abatement Program, administration of which is at the discretion of the City.

8.42.070 Voluntary Consent to Remove Graffiti from Property.

- A. Responsible Parties may consent in writing to allow city staff or designees to enter onto their property for graffiti removal purposes. Responsible Parties shall be responsible for and shall reimburse to city the costs of abatement services and related administrative costs. Failure of a Responsible Party to reimburse the city to in a timely manner will result in the forfeiture of the Responsible Party to participate in the Graffiti Abatement Program.
- B. The Graffiti Abatement Program is offered by the City as time and resources of the City allow. Failure of the City to not remove graffiti does not waive the requirement of the Responsible Party to abate graffiti within ten (10) calendar days of receipt of notice listed in 8.42.060.
- C. Consent Forms. Consent forms may be obtained from the City of El Cerrito Community Development Department.

8.42.080 Abatement Upon Failure to Obtain Consent or Removal of Graffiti.

- A. Securing Responsible Party's Consent. In the event that the property owner or Responsible Party fails to remove graffiti within the time provided or to file a timely appeal, the City may initiate removal of the graffiti. Prior to entering upon private property or property owned by a public entity other than the City for the purpose of removal of graffiti, the City shall attempt to secure the consent of the Responsible Party.
- B. Abatement without Responsible Party's Consent. If the Responsible Party has refused to give consent to the City for entry on terms acceptable to the City, consistent with the provisions of this section, the City may commence abatement of graffiti nuisance and recovery of the expense of abatement proceedings, including but not limited to obtaining a warrant to enter upon the property and perform the work pursuant to the provisions set forth in the Code

of Civil Procedure (commencing at California Code of Civil Procedure section [1822.50](#)).

3. Severability. If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The city council hereby declares that it would have passed the ordinance codified in this chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this chapter would be subsequently declared invalid or unconstitutional.

4. Compliance with the California Environmental Quality Act (CEQA). The proposed amendment is exempt from CEQA under the general rule that CEQA applies only to projects that have potential for causing a significant effect on the environment, and in this case it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment (CEQA Guidelines § 15061(b)(3)).

5. Effective Date. This Ordinance shall take effect and be enforced thirty days after the date of its adoption, and prior to the expiration of fifteen days from the passage thereof, the ordinance or a summary thereof shall be posted or published as may be required by law, and thereafter the same shall be in full force and effect.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the City Council on January 16, 2018 and passed by the following vote:

AYES:	Councilmembers Abelson, Fadelli, Lyman, Pardue-Okimoto and Mayor Quinto.
NOES:	None
ABSENT:	None
ABSTAIN:	None

ADOPTED AND ORDERED published at a regular meeting of the City Council held on February 6, 2018 and passed by the following vote:

AYES:	Councilmembers
NOES:	Councilmembers
ABSENT:	Councilmembers
ABSTAIN:	Councilmembers

APPROVED:

Gabriel Quinto, Mayor

ATTEST:

Cheryl Morse, City Clerk

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on February __, 2018.

Cheryl Morse, City Clerk

EL CERRITO CITY COUNCIL PROCLAMATION

Commending and Congratulating Officer Sarah Perez for her recognition by the Richmond Elks Lodge No. 1251 Police Officer Appreciation Program and for her selection as Officer of the Year

WHEREAS, Sarah Perez assumed the position of Police Officer with the El Cerrito Police Department on June 14, 2015; and

WHEREAS, Officer Sarah Perez was selected as the El Cerrito Police Department's first Community Liaison Officer; and

WHEREAS, Officer Sarah Perez has expanded the department's outreach to the community by utilizing social media to disseminate advisory and other important information in a timely and efficient manner; and

WHEREAS, Officer Sarah Perez has increased the trust between the El Cerrito Police Department and the community by organizing fun and creative events for children and families to include a Back to School Water Play at Arlington Park and a holiday coloring contest; and

WHEREAS, Officer Sarah Perez worked tirelessly on a roof of a home for over six hours in the summer heat to negotiate the safe surrender of a suicidal subject threatening to jump; and

WHEREAS, Officer Sarah Perez received the El Cerrito Police Department's Distinguished Service Award on August 24, 2017 for her planning, coordinating, and facilitating of the Barks and Bells Burglary Prevention Expo; and

WHEREAS, Officer Sarah Perez has displayed her dedication to the community and her fellow law enforcement professionals by working to enhance public trust, possesses a commendable work ethic, has displayed exemplary performance throughout the year, and has been selected for special recognition.

NOW THEREFORE, the City Council of the City of El Cerrito does hereby commend and congratulate Officer Sarah Perez on the occasion of her recognition by the Richmond Elks Lodge No. 1251 – Police Officer Appreciation Night. The City Council extends sincere appreciation to Officer Perez for her devotion to the mission, vision and values of the El Cerrito Police Department.

Dated: February 6, 2018

Gabriel Quinto, Mayor

EL CERRITO CITY COUNCIL PROCLAMATION

Commending and Congratulating Records Specialist Stacy Corr for her recognition by the El Cerrito Police Department for her selection as Professional Staff of the Year

WHEREAS, Records Specialist Stacy Corr assumed the position of Records Specialist with the El Cerrito Police Department on December 7, 2015; and

WHEREAS, Records Specialist Stacy Corr took over the Evidence and Property assignment temporarily, starting on October 24, 2016 until October 18, 2017; and

WHEREAS, Records Specialist Stacy Corr took over the Public Safety Executive Assistant assignment temporarily starting November 18, 2017; and

WHEREAS, Records Specialist Stacy Corr also did most of the payroll and attendance record keeping in the absence of the full time Public Safety Executive Assistant throughout the year; and

WHEREAS, Records Specialist Stacy Corr consistently took on these varied assignments without hesitation and with a positive attitude at all times; and

WHEREAS, Records Specialist Stacy Corr has coordinated the Police Department's participation in the American Cancer Society's Relay for Life; and

WHEREAS, Records Specialist Stacy Corr has displayed her dedication to the community and her fellow Law Enforcement Professionals by working tirelessly to help the El Cerrito Police Department serve the community. Records Specialist Stacy Corr possesses a commendable work ethic and through her performance during the year, has indeed been exemplary, and has been selected for special recognition.

NOW THEREFORE, the City Council of the City of El Cerrito does hereby commend and congratulate Records Specialist Stacy Corr on the occasion of her recognition by the El Cerrito Police Department. The City Council extends sincere appreciation to Records Specialist Stacy Corr for her devotion to the mission, vision and values of the El Cerrito Police Department.

Dated: February 6, 2018

Gabriel Quinto, Mayor

EL CERRITO CITY COUNCIL PROCLAMATION

Commending and Congratulating Police Volunteer Bob Rugeroni for his recognition by the El Cerrito Police Department as Volunteer of the Year

WHEREAS, Volunteer Bob Rugeroni assumed the position of Volunteer with the El Cerrito Police Department on June 2, 2016; and

WHEREAS, Volunteer Bob Rugeroni attended every firearms training session during the year and helped immensely by helping set up the training exercises; and

WHEREAS, Volunteer Bob Rugeroni helped organize the files and storage in the Public Safety Building attic, organizing a large quantity of records; and

WHEREAS, Volunteer Bob Rugeroni helped the Evidence & Property Specialist to organize the Property room nearly every Wednesday; and

WHEREAS, Volunteer Bob Rugeroni consistently and graciously volunteered his time to help with these varied assignments without hesitation and with a positive attitude at all times, dedicating over 495 hours of his personal time; and

WHEREAS, Volunteer Bob Rugeroni has displayed a dedication to the community and his fellow Law Enforcement Professionals by working tirelessly to help the El Cerrito Police Department serve the community. Volunteer Bob Rugeroni possesses a praiseworthy work ethic and through his performance during the year, has indeed been a consummate professional, and has been selected for special recognition.

NOW THEREFORE, the City Council of the City of El Cerrito does hereby commend and congratulate Volunteer Bob Rugeroni on the occasion of his recognition by the El Cerrito Police Department. The City Council extends sincere appreciation to Volunteer Bob Rugeroni for his devotion to the mission, vision and values of the El Cerrito Police Department.

Dated: February 6, 2018

Gabriel Quinto, Mayor

***CITY COUNCIL OF THE CITY OF EL CERRITO PROCLAMATION
Recognizing February as Black History Month in the
City of El Cerrito***

WHEREAS, much of the City of El Cerrito's honor, strength and distinction can be attributed to the diversity of cultures and traditions that are celebrated by our residents; and

WHEREAS, African Americans have played a significant role in the history of our nation and California's economic, cultural, spiritual, and political development while working tirelessly to promote their culture and history; and

WHEREAS, as a result of their determination, hard work, and perseverance, African Americans have made valuable and lasting contributions to our community and our state, achieving exceptional success in all aspects of society including business, education, politics, science, and the arts; and

WHEREAS, in 1976, Black History Month was formally adopted to honor and affirm the importance of Black History throughout our American experience, and is full of individuals who took a stance against prejudice, advanced the cause of civil rights, strengthened families, communities, and our nation; and

WHEREAS, all Americans are encouraged to reflect on past successes and challenges of African Americans and look to the future to improve society so that we live up to the ideals of freedom, equality, and justice.

NOW THEREFORE, the City Council of the City of El Cerrito does hereby declare February as Black History Month in the City of El Cerrito, and invites everyone to recognize this month to celebrate the diversity and character of our community and highlight the importance of sharing our culture, customs and traditions with those around us.

Dated: February 6, 2018

Gabriel Quinto, Mayor

***CITY COUNCIL OF THE CITY OF EL CERRITO PROCLAMATION
Recognizing the Cultural and Historical Significance of
Lunar New Year in the City of El Cerrito***

WHEREAS, Lunar New Year begins on the second new moon following the winter solstice, or the first day of the new year according to the lunisolar calendar, and extends until the full moon 15 days later; and

WHEREAS, February 16, 2018, marks the first day of Lunar New Year for calendar year 2018; and

WHEREAS, Lunar New Year began in China more than 4,000 years ago and is widely celebrated in East and Southeast Asia; and

WHEREAS, Lunar New Year is often referred to as Spring Festival in various Asian countries; and

WHEREAS, the Asian diaspora has expanded the Lunar New Year celebration into an annual worldwide event; and

WHEREAS, Lunar New Year is celebrated by Asian Americans and many non-Asian Americans in El Cerrito and throughout California and the entire United States; and

WHEREAS, participants celebrating Lunar New Year travel to spend the holiday reuniting with family and friends, enjoying community activities and cultural performances; and

WHEREAS Lunar New Year is traditionally a time to wish others good fortune, health, prosperity, and happiness.

NOW, THEREFORE, the City Council of the City of El Cerrito recognizes the cultural and historical significance of Lunar New Year; in observance of Lunar New Year, expresses its deepest respect for Asian Americans and all individuals in El Cerrito and throughout the world who celebrate this significant occasion; and wishes Asian Americans and all individuals who observe this holiday a happy and prosperous new year.

Dated: February 6, 2018

Gabriel Quinto, Mayor



AGENDA BILL

Agenda Item No. 4(F)

Date: February 6, 2018
To: El Cerrito City Council
From: Will Provost, Public Works Analyst
Maria Sanders, Operations + Environmental Services Manager
Yvetteh Ortiz, Public Works Director/City Engineer
Subject: Authorization of an Additional Property Assessed Clean Energy (PACE) Financing Program for El Cerrito Property Owners

ACTION REQUESTED

Staff requests that the City Council take the following actions:

- 1) Adopt a resolution consenting to the inclusion of properties within the City of El Cerrito's jurisdiction in the Golden State Financing Authority (GSFA) Program to finance renewable energy generation, energy and water efficiency improvements, electric vehicle charging infrastructure, and other improvements and approving Associate Membership in the GSFA Joint Powers Authority (JPA), and participation in GSFA's Assembly Bill (AB) 811 Authority PACE Program; and
- 2) Adopt a resolution consenting to inclusion of properties within the City of El Cerrito's jurisdiction in the GSFA Community Facilities District No. 2014-1 (Clean Energy) to finance renewable energy generation, energy and water efficiency improvements, electric vehicle charging infrastructure, and other improvements and approving Associate Membership in the GSFA JPA, and participation in GSFA's Senate Bill (SB) 555 PACE Community Facilities District.

BACKGROUND

Property Assessed Clean Energy is a financing mechanism offered by local governmental entities to provide sustainable energy project loans to qualified property owners, who opt-in then repay the loans through a tax assessment on their property. PACE programs are generally provided under the legislative authority of two separate California PACE laws:

The **SB 555 PACE Community Facilities District**: In 2011, SB 555 amended the Mello-Roos Community Facilities Act, set forth in sections 53311 through 53368.3 of the California Government Code and particularly in accordance with sections 53313.5(l) and 53328.1(a) ("Mello-Roos Act"), to allow for the creation of Community Facilities Districts (CFDs) for the purpose of financing or refinancing the acquisition, installation, and improvement of energy efficiency, water conservation, renewable energy and electric vehicle charging infrastructure improvements permanently affixed to private or publicly-owned real property.

Individual properties can be annexed into the district and be subject to the special tax that is imposed to repay project financing only if (i) the Council adopts a resolution consenting to the inclusion of parcels in the incorporated areas of the City within the CFD and (ii) each participating owner provides its unanimous written approval for annexation of its property into the PACE CFD.

AB 811 PACE Contractual Assessment Program: By the passage of AB 811 in 2008, the California State Legislature added Chapter 29 to the Improvement Bond Act of 1911, being Division 7 of the California Streets and Highways Code. This legislation authorized cities and counties to establish voluntary contractual assessment programs for the purpose of financing private property improvements that promote renewable energy generation, energy and water efficiency, and electric vehicle charging infrastructure.

As with the SB 555 CFD, properties can be annexed into the AB 811 PACE program and be subject to the property tax assessment that is imposed to repay project financing only if (i) the Council adopts a resolution consenting to the inclusion of parcels in the incorporated areas of the City within the program and (ii) each participating owner consents in writing to the annexation of its property into the PACE program.

Because PACE financing is most economically administered at a regional level, PACE programs are usually provided through JPAs. Since passage of AB 811 in 2008, multiple California-based JPAs have partnered with various providers to operate PACE programs in participating communities throughout California, offering a variety of products and encouraging competitive financing.

In May 2013, the City Council adopted the City of El Cerrito's Climate Action Plan (CAP), which recommended that the City:

- Pursue commercial PACE financing in conjunction with other public entities; and
- Adopt residential PACE financing if it became available in California.

In March 2015, the El Cerrito City Council adopted five resolutions, authorizing the City to join the following PACE programs and the JPAs that authorized them:

- CaliforniaFIRST PACE Program - Communities Development Authority JPA;
- Open PACE Program - Communities Development Authority JPA;
- Figtree PACE Program - the California Enterprise and Development Authority JPA; and
- California HERO PACE Program - Western Riverside Council of Governments JPA.

On behalf of the JPAs, the above-mentioned program providers market the programs, process the loan agreements with property owners and place the assessments on the property tax roll at no cost to the JPA or its member agencies. These administrative costs

are rolled into the assessments that ultimately are paid for by the property owner who opted to use the program to finance improvements on their property.

By joining these programs and JPAs, the City has enabled El Cerrito property owners to have access to additional financing options for energy and water efficiency projects, electric vehicle charging infrastructure, and seismic improvements. Each of these programs is operated on the assessment district model pursuant to AB 811 (explained in more detail below), and each has its own policy regarding the availability of their PACE program to property owners. Currently, the programs operating in El Cerrito have active programs for improvements on single-family dwellings but do not offer competitive financing for multi-family residential or small commercial properties.

ANALYSIS

Staff is recommending that the City Council authorize the addition of the Ygrene PACE Program to those currently offered in El Cerrito. Ygrene differs from the existing programs operating in El Cerrito in that it also focuses on providing financing primarily for small- and mid-size commercial properties and multi-family residences.¹ Since the PACE programs currently available in El Cerrito focus primarily on single-family homes, addition of the Ygrene program will provide commercial and multi-family property owners with more options to obtain PACE financing.

Ygrene is a PACE program that is provided under the authority of the Golden State Financing Authority (GSFA) JPA. GSFA established its PACE programs under the legislative authority of both California PACE laws, SB 555 and AB 811. The GSFA SB 555 PACE program has been fully operational since August 25, 2015. While GSFA's AB 811 program has been validated, the GSFA has not yet chosen to operationalize this program.

In Contra Costa County, the Ygrene PACE Program has been adopted in Antioch, Brentwood, Concord, Danville, Lafayette, Martinez, Oakley, Pleasant Hill, Richmond, San Ramon, and Walnut Creek.

To participate in the GSFA PACE programs, the City must become an Associate Member of GSFA (JPA Agreement attached) and GSFA's PACE programs. Associate Membership requires no dues or other costs to the City, but permits participation in all GSFA programs including their PACE programs. Pursuant to the JPA Agreement and GSFA Board Resolution 15-01, the GSFA Executive Director has the authority to approve the addition of new Associate Members to the JPA upon receipt of resolutions provided by the participating jurisdiction.

Adoption of the attached resolutions will enable the Ygrene PACE program to operate in El Cerrito. Each authorizes the City to become an Associate Member of the GSFA, one authorizes the City to join the GSFA Community Facilities District while the other

¹ While the CaliforniaFIRST PACE program does offer commercial financing, it is primarily targeted at large businesses that are doing major improvements.

authorizes participation in the GSFA's AB 811 PACE Program. Each resolution also authorizes GSFA to (1) accept applications from property owners within the City's incorporated area to finance authorized improvements; and (2) conduct proceedings and levy special taxes or contractual assessments, as applicable, on the property of participating owners.

Although only the GSFA SB 555 PACE program is currently operational, cities and counties that have approved the Ygrene program to date have generally adopted both resolutions. Authorizing both programs ensures that no matter the market or legislative environment for PACE, the Ygrene program will be established and able to operate successfully without the need for additional review or the need for the City Council to consider approving another resolution.

STRATEGIC PLAN CONSIDERATIONS

Adding additional Property Assessed Clean Energy financing options for residents and business owners will help fulfill El Cerrito Strategic Plan Goal F, "Foster environmental sustainability citywide." Access to an additional PACE program will directly support property owners to make improvements to "energy and water efficiency" and support "greater adoption of clean energy", an objective of Goal F.

The program will also support the City in meeting the goals set forth in the City's Climate Action Plan by providing financing options for important energy improvements relating to energy efficiency, water conservation, renewable energy and electric vehicle charging infrastructure. Moreover, the program helps to address up-front costs associated with efficiency and renewable energy projects, making these improvements more affordable for El Cerrito property owners.

The additional PACE program will also provide property owners with the opportunity to finance water efficiency improvements and seismic upgrades. As a result, the program will help support the City's Strategic Plan Goal E, "Ensure the public's health and safety," making it easier for residents to prepare for emergencies and enabling the community to be more resilient in the event of a natural disaster.

ENVIRONMENTAL CONSIDERATIONS

This proposed action will not result in a project as defined by the California Environmental Quality Act, (CEQA). No further environmental review is needed.

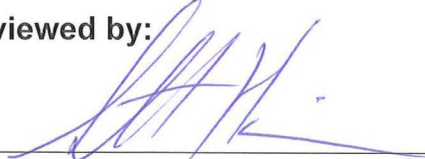
FINANCIAL CONSIDERATIONS

There is no financial impact to the City. City staff does not administer the program.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the proposed action and there are no legal issues.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Resolution - Inclusion in the GSFA AB 811 Authority PACE Program
2. Resolution - Inclusion in the GSFA Community Facilities District
3. Golden State Finance Authority Amended and Restated Joint Exercise of Powers Agreement

RESOLUTION NO. 2018-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO CONSENTING TO INCLUSION OF PROPERTIES WITHIN THE CITY'S JURISDICTION IN THE GOLDEN STATE FINANCE AUTHORITY PROGRAM TO FINANCE RENEWABLE ENERGY GENERATION, ENERGY AND WATER EFFICIENCY IMPROVEMENTS, ELECTRIC VEHICLE CHARGING INFRASTRUCTURE, AND OTHER IMPROVEMENTS AND APPROVING ASSOCIATE MEMBERSHIP IN THE JOINT EXERCISE OF POWERS AUTHORITY RELATED THERETO

WHEREAS, the Golden State Finance Authority ("Authority") is a joint exercise of powers authority established pursuant to Chapter 5 of Division 7, Title 1 of the Government Code of the State of California (Section 6500 and following) (the "Act") and the Joint Power Agreement entered into on July 1, 1993, as amended from time to time (the "Authority JPA"); and

WHEREAS, the Authority has established a property-assessed clean energy ("PACE") Program (the "Authority PACE Program") to provide for the financing of renewable energy generation, energy and water efficiency improvements, electric vehicle charging infrastructure, and other improvements (the "Improvements") pursuant to Chapter 29 of the Improvement Bond Act of 1911, being Division 7 of the California Streets and Highways Code ("Chapter 29") within counties and cities throughout the State of California that elect to participate in such program; and

WHEREAS, the City of El Cerrito (the "City") is committed to development of renewable energy generation and energy and water efficiency improvements, reduction of greenhouse gases, and protection of the environment; and

WHEREAS, pursuant to Chapter 29, the Legislature has authorized cities and counties to assist property owners in financing the cost of installing Improvements through a voluntary contractual assessment program; and

WHEREAS, installation of such Improvements by property owners within the jurisdictional boundaries of the counties and cities that are participating in the Authority PACE Program would promote the purposes cited above; and

WHEREAS, the City wishes to provide innovative solutions to its property owners to achieve energy and water efficiency, and in doing so cooperate with the Authority in order to efficiently and economically assist property owners within the City in financing such Improvements; and

WHEREAS, the Authority has established the Authority PACE Program, which is a voluntary contractual assessment program, as permitted by the Act and the Authority JPA; the City desires to become an Associate Member of the JPA by acknowledgment of the Authority JPA, a copy of which is attached as Exhibit "A" hereto, to participate in the programs of the JPA, and thereby to make it possible for property owners within the jurisdiction of the City to use the Authority PACE Program for financing the cost of installing Improvements; and

WHEREAS, the City will not be responsible for the conduct of any assessment proceedings, the levy and collection of assessments or any required remedial action in the case of delinquencies in the payment of any assessments or the issuance, sale or administration of

any bonds issued in connection with the Authority PACE Program.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The City Council finds and declares that properties in the City's incorporated area will be benefited by the availability of the Authority PACE Program to finance the installation of the Improvements.

2. The City Council consents to inclusion in the Authority PACE Program of all of the properties in the jurisdictional boundaries of the City and to the Improvements, upon the request by and voluntary agreement of owners of such properties, in compliance with the laws, rules and regulations applicable to such program; and to the assumption of jurisdiction thereover by Authority for the purposes thereof.

3. The consent of this City Council constitutes assent to the assumption of jurisdiction by Authority for all purposes of the Authority PACE Program and authorizes the Authority, upon satisfaction of the conditions imposed in this Resolution, to take each and every step required for or suitable for financing the Improvements, including the levying, collecting and enforcement of the contractual assessments to finance the Improvements and the issuance and enforcement of bonds to represent such contractual assessments.

4. This City Council hereby approves joining the JPA as an Associate Member and authorizes the execution by appropriate City officials of any necessary documents to effectuate such membership.

5. City staff is authorized and directed to coordinate with Authority staff to facilitate operation of the Authority PACE Program within the City.

6. This Resolution shall take effect immediately upon its adoption. Public Works Staff is directed to send a certified copy of this resolution to the Secretary of the Authority.

I CERTIFY that at a regular meeting on February 6, 2018 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on February XX, 2018.

Cheryl Morse, City Clerk

APPROVED:

Gabriel Quinto, Mayor

RESOLUTION NO. 2018-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO CONSENTING TO INCLUSION OF PROPERTIES WITHIN THE CITY'S JURISDICTION IN THE GOLDEN STATE FINANCE AUTHORITY COMMUNITY FACILITIES DISTRICT NO. 2014-1 (CLEAN ENERGY) TO FINANCE RENEWABLE ENERGY IMPROVEMENTS, ENERGY EFFICIENCY AND WATER CONSERVATION IMPROVEMENTS, ELECTRIC VEHICLE CHARGING INFRASTRUCTURE AND OTHER IMPROVEMENTS AND APPROVING ASSOCIATE MEMBERSHIP IN THE JOINT EXERCISE OF POWERS AUTHORITY RELATED THERETO

WHEREAS, the Golden State Finance Authority, formerly known as California Home Finance Authority (the "Authority"), is a California joint powers authority established pursuant to Chapter 5 of Division 7, Title 1 of the Government Code of the State of California (Section 6500 and following) (the "Act") and the Joint Power Agreement entered into on July 1, 1993, as amended from time to time (the "Authority JPA"). The Authority has established the Community Facilities District No. 2014-1 (Clean Energy) in accordance with the Mello-Roos Community Facilities Act, set forth in sections 53311 through 53368.3 of the California Government Code (the "Act") and particularly in accordance with sections 53313.5(l) and 53328.1(a) (the "District"); and

WHEREAS, the purpose of the District is to finance or refinance (including the payment of interest) the acquisition, installation, and improvement of energy efficiency, water conservation, renewable energy and electric vehicle charging infrastructure improvements permanently affixed to private or publicly-owned real property (the "Authorized Improvements"); and

WHEREAS, the City of El Cerrito is committed to development of renewable energy generation and energy efficiency improvements, reduction of greenhouse gases, and protection of the environment; and

WHEREAS, in the Act, the Legislature has authorized a parcel within the territory of the District to annex to the District and be subject to the special tax levy of the District only (i) if the city or county within which the parcel is located has consented, by the adoption of a resolution by the applicable city council or county board of supervisors, to the inclusion of parcels within its boundaries in the District and (ii) with the unanimous written approval of the owner or owners of the parcel when it is annexed (the "Unanimous Approval Agreement"), which, as provided in section 53329.6 of the Act, shall constitute the election required by the California Constitution; and

WHEREAS, the City wishes to provide innovative solutions to its property owners to achieve energy efficiency and water conservation and in doing so cooperate with Authority in order to efficiently and economically assist property owners the City in financing such Authorized Improvements; and

WHEREAS, the Authority has established the District, as permitted by the Act, and the City desires to become an Associate Member of the JPA by acknowledgement of the Authority JPA, a copy of which is attached as Exhibit "A" hereto, to participate in the programs of the JPA and, to make it possible for property owners within the incorporated area of the City to access financing provided by the District for the cost of installing Authorized Improvements; and

WHEREAS, the City will not be responsible for the conduct of any special tax proceedings; the levy and collection of special taxes or any required remedial action in the case of delinquencies in the payment of any special taxes in connection with the District.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL CERRITO THAT:

1. The City Council finds and declares that properties in the City's incorporated area will be benefited by the availability of the Authority CFD No. 2014-1 (Clean Energy) to finance the installation of the Authorized Improvements.

2. The City Council consents to inclusion in the Authority CFD No. 2014-1 (Clean Energy) of all of the properties in the incorporated area within the City and to the Authorized Improvements, upon the request of and execution of the Unanimous Approval Agreement by the owners of such properties when such properties are annexed, in compliance with the laws, rules and regulations applicable to such program; and to the assumption of jurisdiction thereover by the Authority for the purposes thereof.

3. The consent of this City Council constitutes assent to the assumption of jurisdiction by the Authority for all purposes of the Authority CFD No. 2014-1 (Clean Energy) and authorizes the Authority, upon satisfaction of the conditions imposed in this resolution, to take each and every step required for or suitable for financing the Authorized Improvements.

4. The City Council hereby approves joining the JPA as an Associate Member and authorizes the execution by appropriate City officials of any necessary documents to effectuate such membership.

5. City staff is authorized and directed to coordinate with Authority staff to facilitate operation of the Authority CFD No. 2014-1 (Clean Energy) within the City.

6. This Resolution shall take effect immediately upon its adoption. Public Works Department staff is directed to send a certified copy of this resolution to the Secretary of the Authority.

I CERTIFY that at a regular meeting on February 6, 2018 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on February xx, 2018.

Cheryl Morse, City Clerk

APPROVED:

Gabriel Quinto, Mayor

GOLDEN STATE FINANCE AUTHORITY

AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT

(Original date July 1, 1993 and as last amended and restated May 5, 2015)

THIS AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT ("Agreement") is entered into by and among the counties listed on Attachment 1 hereof and incorporated herein by reference. All such counties are referred to herein as "Members" with the respective powers, privileges and restrictions provided herein.

RECITALS

A. WHEREAS, the California Rural Home Mortgage Finance Authority ("CRHMFA") was created by a Joint Exercise of Powers Agreement dated July 1, 1993 pursuant to the Joint Exercise of Powers Act (commencing with Article 1 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Act")). By Resolution 2003-02, adopted on January 15, 2003, the name of the authority was changed to CRHMFA Homebuyers Fund. On December 10, 2014, the name of the authority was changed to California Home Finance Authority. The most recent amendment to the Joint Exercise of Powers Agreement was on December 10, 2014..

B. WHEREAS, the Members of California Home Finance Authority desire to update, reaffirm, clarify and revise certain provisions of the joint powers agreement, including the renaming of the joint powers authority, as set forth herein.

C. WHEREAS, the Members are each empowered by law to finance the construction, acquisition, improvement and rehabilitation of real property.

D. WHEREAS, by this Agreement, the Members desire to create and establish a joint powers authority to exercise their respective powers for the purpose of financing the construction, acquisition, improvement and rehabilitation of real property within the jurisdiction of the Authority as authorized by the Act.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Members individually and collectively agree as follows:

1. Definitions

Unless the context otherwise requires, the following terms shall for purposes of this Agreement have the meanings specified below:

"Act" means the Joint Exercise of Powers Act, commencing with Article 1 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, including the Marks-Roos Local Bond Pooling Act of 1985, as amended.

"Agreement" means this Joint Exercise of Powers Agreement, as the same now exists or as it may from time to time be amended as provided herein.

"Associate Member" means a county, city or other public agency which is not a voting member of the Rural County Representatives of California, a California nonprofit corporation ("RCRC"), with legal power and authority similar to that of the Members, admitted pursuant to paragraph 4.d. below to associate membership herein by vote of the Board.

"Audit Committee" means a committee made up of the Executive Committee.

"Authority" means Golden State Finance Authority (GSFA) formerly known as California Home Finance Authority ("CHF"), or CRHMFA Homebuyers Fund or California Rural Home Mortgage Finance Authority.

"Board" means the governing board of the Authority as described in Section 7 below.

"Bonds" means bonds, notes, warrants, leases, certificates of participation, installment purchase agreements, loan agreements and other securities or obligations issued by the Authority, or financing agreements entered into by the Authority pursuant to the Act and any other obligation within the meaning of the term "Bonds" under the Act.

"Delegate" means the Supervisor designated by the governing board of each Member to serve on the Board of the Authority.

"Executive Committee" means the Executive Committee of the Board established pursuant to Section 10 hereof.

"Member" means any county which is a member of RCRC, has executed this Agreement and has become a member of the Authority.

"Obligations" means bonds, notes, warrants, leases, certificates of participation, installment purchase agreements, loan agreements and other securities or obligations issued by the Authority, or financing agreements entered into by the Authority pursuant to the Act and any other financial or legal obligation of the Authority under the Act.

"Program" or "Project" means any work, improvement, program, project or service undertaken by the Authority.

"Rural County Representatives of California" or "RCRC" means the nonprofit entity incorporated under that name in the State of California.

"Supervisor" means an elected County Supervisor from an RCRC member county.

2. Purpose

The purpose of the Authority is to provide financing for the acquisition, construction, improvement and rehabilitation of real property in accordance with applicable provisions of law for the benefit of residents and communities. In pursuit of this purpose, this Agreement provides for the joint exercise of powers common to any of its Members and Associate Members as provided herein, or otherwise authorized by the Act and other applicable laws, including assisting in financing as authorized herein, jointly exercised in the manner set forth herein.

3. Principal Place of Business

The principal office of the Authority shall be 1215 K Street, Suite 1650, Sacramento, California 95814.

4. Creation of Authority; Addition of Members or Associate Members

a. The Authority is hereby created pursuant to the Act. As provided in the Act, the Authority shall be a public entity separate and distinct from the Members or Associate Members.

b. The Authority will cause a notice of this Agreement or any amendment hereto to be prepared and filed with the office of the Secretary of State of California in a timely fashion in the manner set forth in Section 6503.3 of the Act.

c. A county that is a member of RCRC may petition to become a member of the Authority by submitting to the Board a resolution or evidence of other formal action taken by its governing body adopting this Agreement. The Board shall review the petition for membership and shall vote to approve or disapprove the petition. If the petition is approved by a majority of the Board, such county shall immediately become a Member of the Authority.

d. An Associate Member may be added to the Authority upon the affirmative approval of its respective governing board and pursuant to action by the Authority Board upon such terms and conditions, and with such rights, privileges and responsibilities, as may be established from time to time by the Board. Such terms and conditions, and rights, privileges and responsibilities may vary among the Associate Members. Associate Members shall be entitled to participate in one or more programs of the Authority as determined by the Board, but shall not be voting members of the Board. The Executive Director of the Authority shall enforce the terms and conditions for prospective Associate Members to the Authority as provided by resolution of the Board and as amended from time to time by the Board. Changes in the terms and conditions for Associate Membership by the Board will not constitute an amendment of this Agreement.

5. Term and Termination of Powers

This Agreement shall become effective from the date hereof until the earlier of the time when all Bonds and any interest thereon shall have been paid in full, or provision for such payment shall have been made, or when the Authority shall no longer own or hold any interest in a

public capital improvement or program. The Authority shall continue to exercise the powers herein conferred upon it until termination of this Agreement, except that if any Bonds are issued and delivered, in no event shall the exercise of the powers herein granted be terminated until all Bonds so issued and delivered and the interest thereon shall have been paid or provision for such payment shall have been made and any other debt incurred with respect to any other financing program established or administered by the Authority has been repaid in full and is no longer outstanding.

6. Powers; Restriction upon Exercise

a. To effectuate its purpose, the Authority shall have the power to exercise any and all powers of the Members or of a joint powers authority under the Act and other applicable provisions of law, subject, however, to the conditions and restrictions herein contained. Each Member or Associate Member may also separately exercise any and all such powers. The powers of the Authority are limited to those of a general law county.

b. The Authority may adopt, from time to time, such resolutions, guidelines, rules and regulations for the conduct of its meetings and the activities of the Authority as it deems necessary or desirable to accomplish its purpose.

c. The Authority shall have the power to finance the construction, acquisition, improvement and rehabilitation of real property, including the power to purchase, with the amounts received or to be received by it pursuant to a bond purchase agreement, bonds issued by any of its Members or Associate Members and other local agencies at public or negotiated sale, for the purpose set forth herein and in accordance with the Act. All or any part of such bonds so purchased may be held by the Authority or resold to public or private purchasers at public or negotiated sale. The Authority shall set any other terms and conditions of any purchase or sale contemplated herein as it deems necessary or convenient and in furtherance of the Act. The Authority may issue or cause to be issued Bonds or other indebtedness, and pledge any of its property or revenues as security to the extent permitted by resolution of the Board under any applicable provision of law. The Authority may issue Bonds in accordance with the Act in order to raise funds necessary to effectuate its purpose hereunder and may enter into agreements to secure such Bonds. The Authority may issue other forms of indebtedness authorized by the Act, and to secure such debt, to further such purpose. The Authority may utilize other forms of capital, including, but not limited to, the Authority's internal resources, capital markets and other forms of private capital investment authorized by the Act.

d. The Authority is hereby authorized to do all acts necessary for the exercise of its powers, including, but not limited to:

- (1) executing contracts,
- (2) employing agents, consultants and employees,
- (3) acquiring, constructing or providing for maintenance and operation of any building, work or improvement,
- (4) acquiring, holding or disposing of real or personal property wherever

- located, including property subject to mortgage,
- (5) incurring debts, liabilities or obligations,
- (6) receiving gifts, contributions and donations of property, funds, services and any other forms of assistance from persons, firms, corporations or governmental entities,
- (7) suing and being sued in its own name, and litigating or settling any suits or claims,
- (8) doing any and all things necessary or convenient to the exercise of its specific powers and to accomplishing its purpose
- (9) establishing and/or administering districts to finance and refinance the acquisition, installation and improvement of energy efficiency, water conservation and renewable energy improvements to or on real property and in buildings. The Authority may enter into one or more agreements, including without limitation, participation agreements and implementation agreements to implement such programs.

e. Subject to the applicable provisions of any indenture or resolution providing for the investment of monies held thereunder, the Authority shall have the power to invest any of its funds as the Board deems advisable, in the same manner and upon the same conditions as local agencies pursuant to Section 53601 of the Government Code of the State of California.

f. All property, equipment, supplies, funds and records of the Authority shall be owned by the Authority, except as may be provided otherwise herein or by resolution of the Board.

g. Pursuant to the provisions of Section 6508.1 of the Act, the debts, liabilities and obligations of the Authority shall not be debts, liabilities and obligations of the Members or Associate Members. Any Bonds, together with any interest and premium thereon, shall not constitute debts, liabilities or obligations of any Member. The Members or Associate Members hereby agree that any such Bonds issued by the Authority shall not constitute general obligations of the Authority but shall be payable solely from the moneys pledged to the repayment of principal or interest on such Bonds under the terms of the resolution, indenture, trust, agreement or other instrument pursuant to which such Bonds are issued. Neither the Members or Associate Members nor the Authority shall be obligated to pay the principal of or premium, if any, or interest on the Bonds, or other costs incidental thereto, except from the revenues and funds pledged therefor, and neither the faith and credit nor the taxing power of the Members or Associate Members or the Authority shall be pledged to the payment of the principal of or premium, if any, or interest on the Bonds, nor shall the Members or Associate Members of the Authority be obligated in any manner to make any appropriation for such payment. No covenant or agreement contained in any Bond shall be deemed to be a covenant or agreement of any Delegate, or any officer, agent or employee of the Authority in an individual capacity, and neither the Board nor any officer thereof executing the Bonds or any document related thereto shall be liable personally on any Bond or be subject to any personal liability or accountability by reason of the issuance of any Bonds.

7. Governing Board

a. The Board shall consist of the number of Delegates equal to one representative from each Member.

b. The governing body of each Member shall appoint one of its Supervisors to serve as a Delegate on the Board. A Member's appointment of its Delegate shall be delivered in writing (which may be by electronic mail) to the Authority and shall be effective until he or she is replaced by such governing body or no longer a Supervisor; any vacancy shall be filled by the governing body of the Member in the same manner provided in this paragraph b..

c. The governing body of each Member of the Board shall appoint a Supervisor as an alternate to serve on the Board in the absence of the Delegate; the alternate may exercise all the rights and privileges of the Delegate, including the right to be counted in constituting a quorum, to participate in the proceedings of the Board, and to vote upon any and all matters. No alternate may have more than one vote at any meeting of the Board, and any Member's designation of an alternate shall be delivered in writing (which may be by electronic mail) to the Authority and shall be effective until such alternate is replaced by his or her governing body or is no longer a Supervisor, unless otherwise specified in such appointment. Any vacancy shall be filled by the governing body of the Member in the same manner provided in this paragraph c..

d. Any person who is not a member of the governing body of a Member and who attends a meeting on behalf of such Member may not vote or be counted toward a quorum but may, at the discretion of the Chair, participate in open meetings he or she attends.

e. Each Associate Member may designate a non-voting representative to the Board who may not be counted toward a quorum but who may attend open meetings, propose agenda items and otherwise participate in Board Meetings.

f. Delegates shall not receive compensation for serving as Delegates, but may claim and receive reimbursement for expenses actually incurred in connection with such service pursuant to rules approved by the Board and subject to the availability of funds.

g. The Board shall have the power, by resolution, to the extent permitted by the Act or any other applicable law, to exercise any powers of the Authority and to delegate any of its functions to the Executive Committee or one or more Delegates, officers or agents of the Authority, and to cause any authorized Delegate, officer or agent to take any actions and execute any documents for and in the name and on behalf of the Board or the Authority.

h. The Board may establish other committees as it deems necessary for any lawful purpose; such committees are advisory only and may not act or purport to act on behalf of the Board or the Authority.

i. The Board shall develop, or cause to be developed, and review, modify as necessary, and adopt each Program.

8. Meetings of the Board

- a. The Board shall meet at least once annually, but may meet more frequently upon call of any officer or as provided by resolution of the Board.
- b. Meetings of the Board shall be called, noticed, held and conducted pursuant to the provisions of the Ralph M. Brown Act, Chapter 9 (commencing with Section 54950) of Part I of Division 2 of Title 5 of the Government Code of the State of California.
- c. The Secretary of the Authority shall cause minutes of all meetings of the Board to be taken and distributed to each Member as soon as possible after each meeting.
- d. The lesser of twelve (12) Delegates or a majority of the number of current Delegates shall constitute a quorum for transacting business at any meeting of the Board, except that less than a quorum may act to adjourn a meeting. Each Delegate shall have one vote.
- e. Meetings may be held at any location designated in notice properly given for a meeting and may be conducted by telephonic or similar means in any manner otherwise allowed by law.

9. Officers; Duties; Official Bonds

- a. The Board shall elect a chair and vice chair from among the Delegates at the Board's annual meeting who shall serve a term of one (1) year or until their respective successor is elected. The chair shall conduct the meetings of the Board and perform such other duties as may be specified by resolution of the Board. The vice chair shall perform such duties in the absence or in the event of the unavailability of the chair.
- b. The Board shall contract annually with RCRC to administer the Agreement and to provide administrative services to the Authority, and the President and Chief Executive Officer of RCRC shall serve *ex officio* as Executive Director, Secretary, Treasurer, and Auditor of the Authority. As chief executive of the Authority, the Executive Director is authorized to execute contracts and other obligations of the Authority, unless prior Board approval is required by a third party, by law or by Board specification, and to perform other duties specified by the Board. The Executive Director may appoint such other officers as may be required for the orderly conduct of the Authority's business and affairs who shall serve at the pleasure of the Executive Director. Subject to the applicable provisions of any indenture or resolution providing for a trustee or other fiscal agent, the Executive Director, as Treasurer, is designated as the custodian of the Authority's funds, from whatever source, and, as such, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Act. The Executive Director, as Auditor, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Act.
- c. The Legislative Advocate for the Authority shall be the Rural County Representatives of California.

d. The Treasurer and Auditor are public officers who have charge of, handle, or have access to all property of the Authority, and a bond for such officer in the amount of at least one hundred thousand dollars (\$100,000.00) shall be obtained at the expense of the Authority and filed with the Executive Director. Such bond may secure the faithful performance of such officer's duties with respect to another public office if such bond in at least the same amount specifically mentions the office of the Authority as required herein. The Treasurer and Auditor shall cause periodic independent audits to be made of the Authority's books by a certified public accountant, or public accountant, in compliance with Section 6505 of the Act.

e. The business of the Authority shall be conducted under the supervision of the Executive Director by RCRC personnel.

10. Executive Committee of the Authority

a. Composition

The Authority shall appoint no fewer than nine (9) and no more than eleven (11) members of its Board to serve on an Executive Committee. The Chair and Vice Chair of the Authority shall serve on the Executive Committee.

b. Powers and Limitations

The Executive Committee shall act in an advisory capacity and make recommendations to the Authority Board. Duties will include, but not be limited to, review of the quarterly and annual budgets, service as the Audit Committee for the Authority, periodically review this Agreement; and complete any other tasks as may be assigned by the Board. The Executive Committee shall be subject to all limitations imposed by this Agreement, other applicable law, and resolutions of the Board.

c. Quorum

A majority of the Executive Committee shall constitute a quorum for transacting business of the Executive Committee.

11. Disposition of Assets

Upon termination of this Agreement, all remaining assets and liabilities of the Authority shall be distributed to the respective Members in such manner as shall be determined by the Board and in accordance with the law.

12. Agreement Not Exclusive; Operation in Jurisdiction of Member

This Agreement shall not be exclusive, and each Member expressly reserves its rights to carry out other public capital improvements and programs as provided for by law and to issue other obligations for those purposes. This Agreement shall not be deemed to amend or alter the

terms of other agreements among the Members or Associate Members.

13. Conflict of Interest Code

The Authority shall by resolution adopt a Conflict of Interest Code as required by law.

14. Contributions and Advances

Contributions or advances of public funds and of personnel, equipment or property may be made to the Authority by any Member, Associate Member or any other public agency to further the purpose of this Agreement. Payment of public funds may be made to defray the cost of any contribution. Any advance may be made subject to repayment, and in that case shall be repaid in the manner agreed upon by the advancing Member, Associate Member or other public agency and the Authority at the time of making the advance.

15. Fiscal Year; Accounts; Reports; Annual Budget; Administrative Expenses

a. The fiscal year of the Authority shall be the period from January 1 of each year to and including the following December 31, except for any partial fiscal year resulting from a change in accounting based on a different fiscal year previously.

b. Prior to the beginning of each fiscal year, the Board shall adopt a budget for the succeeding fiscal year.

c. The Authority shall establish and maintain such funds and accounts as may be required by generally accepted accounting principles. The books and records of the Authority are public records and shall be open to inspection at all reasonable times by each Member and its representatives.

d. The Auditor shall either make, or contract with a certified public accountant or public accountant to make, an annual audit of the accounts and records of the Authority. The minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code of the State of California, and shall conform to generally accepted auditing standards. When an audit of accounts and records is made by a certified public accountant or public accountant, a report thereof shall be filed as a public record with each Member (and also with the auditor of Sacramento County as the county in which the Authority's office is located) within 12 months after the end of the fiscal year.

e. In any year in which the annual budget of the Authority does not exceed five thousand dollars (\$5,000.00), the Board may, upon unanimous approval of the Board, replace the annual audit with an ensuing one-year period, but in no event for a period longer than two fiscal years.

16. Duties of Members or Associate Members; Breach

If any Member or Associate Member shall default in performing any covenant contained herein, such default shall not excuse that Member or Associate Member from fulfilling its other obligations hereunder, and such defaulting Member or Associate Member shall remain liable for the performance of all covenants hereof. Each Member or Associate Member hereby declares that this Agreement is entered into for the benefit of the Authority created hereby, and each Member or Associate Member hereby grants to the Authority the right to enforce, by whatever lawful means the Authority deems appropriate, all of the obligations of each of the parties hereunder. Each and all of the remedies given to the Authority hereunder or by any law now or hereafter enacted are cumulative, and the exercise of one right or remedy shall not impair the right of the Authority to any or all other remedies.

17. Indemnification

To the full extent permitted by law, the Board may authorize indemnification by the Authority of any person who is or was a Board Delegate, alternate, officer, consultant, employee or other agent of the Authority, and who was or is a party or is threatened to be made a party to a proceeding by reason of the fact that such person is or was such a Delegate, alternate, officer, consultant, employee or other agent of the Authority. Such indemnification may be made against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding, if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Authority and, in the case of a criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful and, in the case of an action by or in the right of the Authority, acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

18. Immunities

All of the privileges and immunities from liabilities, exemptions from law, ordinances and rules, all pension, relief, disability, workers' compensation and other benefits which apply to the activity of officers, agents or employees of any of the Members or Associate Members when performing their respective functions, shall apply to them to the same degree and extent while engaged as Delegates or otherwise as an officer, agent or other representative of the Authority or while engaged in the performance of any of their functions or duties under the provisions of this Agreement.

19. Amendment

This Agreement may be amended by the adoption of the amendment by the governing bodies of a majority of the Members. The amendment shall become effective on the first day of the month following the last required member agency approval. An amendment may be initiated by the Board, upon approval by a majority of the Board. Any proposed amendment, including the text of the proposed change, shall be given by the Board to each Member's Delegate for presentation and action by each Member's board within 60 days, which time may be extended by

the Board.

The list of Members, Attachment 1, may be updated to reflect new and/or withdrawn Members without requiring formal amendment of the Agreement by the Authority Board of Directors.

20. Withdrawal of Member or Associate Member

If a Member withdraws as member of RCRC, its membership in the Authority shall automatically terminate. A Member or Associate Member may withdraw from this Agreement upon written notice to the Board; provided however, that no such withdrawal shall result in the dissolution of the Authority as long as any Bonds or other obligations of the Authority remain outstanding. Any such withdrawal shall become effective thirty (30) days after a resolution adopted by the Member's governing body which authorizes withdrawal is received by the Authority. Notwithstanding the foregoing, any termination of membership or withdrawal from the Authority shall not operate to relieve any terminated or withdrawing Member or Associate Member from Obligations incurred by such terminated or withdrawing Member or Associate Member prior to the time of its termination or withdrawal.

21. Miscellaneous

a. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

b. **Construction.** The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section referred to.

c. **Approvals.** Wherever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

d. **Jurisdiction; Venue.** This Agreement is made in the State of California, under the Constitution and laws of such State and is to be so construed; any action to enforce or interpret its terms shall be brought in Sacramento County, California.

e. **Integration.** This Agreement is the complete and exclusive statement of the agreement among the parties hereto, and it supersedes and merges all prior proposals, understandings, and other agreements, whether oral, written, or implied in conduct, between and among the parties relating to the subject matter of this Agreement.

f. **Successors; Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties hereto. Except to the extent expressly provided herein, no Member may assign any right or obligation hereunder without the consent of the Board.

g. **Severability.** Should any part, term or provision of this Agreement be decided by the courts to be illegal or in conflict with any law of the State of California, or otherwise be

rendered unenforceable or ineffectual, the validity of the remaining parts, terms or provisions hereof shall not be affected thereby.

The parties hereto have caused this Agreement to be executed and attested by their properly authorized officers.

AS ADOPTED BY THE MEMBERS:

Originally dated July 1, 1993

Amended and restated December 10, 1998

Amended and restated February 18, 1999

Amended and restated September 18, 2002

Amended and restated January 28, 2004

Amended and restated December 10, 2014

Amended and restated May 5, 2015

[SIGNATURES ON FOLLOWING PAGES]

ATTACHMENT 1
GOLDEN STATE FINANCE AUTHORITY MEMBERS

As of May 5, 2015

Alpine County
Amador County
Butte County
Calaveras County
Colusa County
Del Norte County
El Dorado County
Glenn County
Humboldt County
Imperial County
Inyo County
Lake County
Lassen County
Madera County
Mariposa County
Mendocino County
Merced County
Modoc County
Mono County
Napa County
Nevada County
Placer County
Plumas County
San Benito County
Shasta County
Sierra County
Siskiyou County
Sutter County
Tehama County
Trinity County
Tuolumne County
Yolo County
Yuba County

SIGNATURE PAGE FOR NEW ASSOCIATE MEMBERS

NAME OF COUNTY OR CITY:

Dated:_____

By:_____

Name:_____

Title:_____

Attest:

By _____
[Clerk of the Board Supervisors or City Clerk]



AGENDA BILL

Agenda Item No. 4(G)

Date: February 6, 2018
To: El Cerrito City Council
From: Maria Sanders, Operations + Environmental Services Division Manager
Yvetteh Ortiz, Public Works Director/City Engineer
Subject: Annual payment for El Cerrito's share of the West Contra Costa Integrated Waste Management Authority operating expenses

ACTION REQUESTED

Adopt a resolution authorizing payment for the City of El Cerrito's share of the West Contra Costa Integrated Waste Management Authority's operating expenses for calendar year 2017 in an amount not to exceed \$75,900.

BACKGROUND

The City of El Cerrito is a member of the West Contra Costa Integrated Waste Management Authority (Authority) and a party to the Joint Powers Agreement that created the Authority in 1991. The Authority, commonly known as RecycleMore, provides a variety of services to its member agencies (El Cerrito, Richmond, San Pablo, Pinole, Hercules, and the unincorporated areas of West County). The services provided by the Authority include management and administration of State mandated AB939 recycling diversion reporting and programs, regional household hazardous waste (HHW) collection programs, and other outreach and education to residents, businesses, schools, and community groups.

Historically, the City and all other parties to the Joint Powers Agreement have funded Authority operating expenses via a portion of the Integrated Resource Recovery Facility (IRRF) Fees that were set by the Authority and charged on garbage bills paid by residents and businesses. However, with the December 31, 2013 expiration of the Integrated Resource Recovery Agreement, the Authority ceased setting IRRF Fees as of January 1, 2014. While other Authority members included a mechanism to fund Authority operating expenses in their newly negotiated post-collection agreements with solid waste processor Republic Services, the City's adopted Post-Collection Agreement with Republic Services (Resolution No. 2013-54) is silent on such a mechanism, thereby providing the City with more options to pay its share of Authority expenses.

Since 2014, the City Council has authorized payment of El Cerrito's share of Authority operating expenses through the City's Integrated Waste Management (IWM) Fund, rather than from fees collected and remitted by Republic Services directly to the Authority. Thus, these payments are computed as part of the City's annual IWM fee setting process prior to the start of each calendar year.

ANALYSIS

The City's share of the Authority is based on a price per ton of El Cerrito waste processed through the Golden Bear Transfer Station. This cost is similar to the price per ton paid by other Authority member agencies through their post-collection agreements, as established each calendar year by the Authority Board during its rate setting process. In 2017, the Authority rate per ton was set at \$6.12/ton. Using this rate and estimated tons of El Cerrito waste for 2017, payments for 2017 will amount to approximately \$75,888 (12,400 tons of processed waste at \$6.12 per ton). The City expects to receive a final waste tonnage report for calendar year 2017 in February 2018, and will finalize its payment to the Authority after that time.

STRATEGIC PLAN CONSIDERATIONS

Approval of proposed payments to the Authority is consistent with Goal F - *Foster environmental sustainability citywide* of the City's Strategic Plan. Specifically, approval of the proposed payments will result in the continuation of waste diversion and reduction programs provided to the City by the Authority, which is consistent with the "Reducing the amount of waste generated in El Cerrito" strategy under Goal F.

ENVIRONMENTAL CONSIDERATIONS

Approval of the proposed payments will allow the continuation of waste diversion and reduction programs currently provided to El Cerrito by the Authority.

FINANCIAL CONSIDERATIONS

Funding of \$75,900 for payment of El Cerrito's share to the Authority's annual operating expenses was approved as part of the Adopted Fiscal Year 2017-18 Budget, as an allocation from the Integrated Waste Management Fund.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the proposed action and found that legal considerations have been addressed.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Resolution

RESOLUTION NO. 2018-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AUTHORIZING PAYMENT FOR THE CITY OF EL CERRITO'S SHARE OF THE WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY'S OPERATING EXPENSES FOR CALENDAR YEAR 2017 EXPENSES IN AN AMOUNT NOT TO EXCEED \$75,900

WHEREAS, the City of El Cerrito (City) is a member of the West Contra Costa Integrated Waste Management Authority (Authority) and a party to the Joint Powers Agreement that created the Authority in 1991; and

WHEREAS, the City and all other parties to the Joint Powers Agreement have historically funded Authority operating expenses via a portion of the Integrated Resource Recovery Facility (IRRF) Fees that were set by the Authority and charged on garbage bills paid by residents and businesses; and

WHEREAS, with the expiration of the Integrated Resource Recovery Agreement on December 31, 2013, the Authority ceased setting IRRF Fees, effective January 1, 2014; and

WHEREAS, the City did not include a mechanism to pay its share of Authority operating expenses as a part of its Post-Collection Agreement with Republic Services approved via Resolution No. 2013-54 as other Authority member agencies have done; and

WHEREAS, the City's share of the Authority's 2017 operating expenses are estimated to not exceed \$75,900; and

WHEREAS, funding is available in the Adopted Fiscal Year 2017-18 Budget in an allocation from the Integrated Waste Management Fund.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that it hereby authorizes payment for calendar year 2017 for the City of El Cerrito's share of the West Contra Costa Integrated Waste Management Authority's operating expenses in an amount not to exceed \$75,900.

BE IT FURTHER RESOLVED that this Resolution shall become effective immediately upon passage and adoption.

I CERTIFY that at a regular meeting on February 6, 2018 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

Agenda Item No. 4(G)
Attachment 1

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on February XX, 2018.

Cheryl Morse, City Clerk

APPROVED:

Gabriel Quinto, Mayor



AGENDA BILL

Agenda Item No. 6

Date: February 6, 2018
To: El Cerrito City Council
From: Melanie Mintz, Community Development Director
Subject: Authorization to Enter into Disposition and Development Agreement with HD Mayfair, LLC and Mayfair Affordable, LLC for Development of the Mayfair Block

ACTION REQUESTED

Conduct a public hearing and upon conclusion, adopt a resolution authorizing execution of a Disposition and Development Agreement (DDA) with HD Mayfair, LLC and Mayfair Affordable, LLC and making findings and approvals pursuant to California Government Code Section 52201 in connection with disposition of that certain property located at 11600 and 11690 San Pablo Avenue and 1925 Kearney for development of the Mayfair Block.

BACKGROUND

The “Mayfair Block” is an approximately 1.75 acre site bordered by San Pablo and Knott Avenues, Kearney Street, and Cutting Boulevard. The block is immediately adjacent to the Del Norte BART station, and consists of three parcels of land (APNs 502-062-003, 502-062-029, 502-062-028) that were purchased by the former El Cerrito Redevelopment Agency (RDA) over a period of time. The property was acquired for the purpose of development and to catalyze future development of the Del Norte area. The property was approved to be transferred to the City for future development in the Successor Agency’s Long Range Property Management Plan (Successor Agency Resolution No. 2015-03) and transferred to the City in 2016 (Resolution No. 2016-39).

Over the last year and a half, the City has undertaken a process to solicit a development team for development of a mixed-use residential project on the site and proceeded with negotiation of the proposed Disposition and Development Agreement. (See Table 1 below for a summary of the timeline.) In Spring 2016, Community Development undertook a Request for Qualifications/Request for Proposal process to select a team with whom to enter into an Exclusive Negotiating Rights Agreement (ENRA) for development of the site. In July 2016 the City Council designated Holliday Development, LLC and BRIDGE Housing Corporation as the proposed developer (Resolution No. 2016-55) and authorized execution of an ENRA with them that established a period of exclusive good faith negotiations during which the parties were to negotiate the terms of a Disposition and Development Agreement (DDA). In April 2017, the ENRA was extended (Resolution No. 2017-26). Issues addressed during the exclusive negotiating period have included property purchase price, development schedule, conditions to conveyance of

the property, land title conditions. During this time, the development team also pursued and secured planning entitlements, as described below.

Concurrently with negotiation of the DDA, and per the terms of the ENRA, the Developer applied to the City for entitlement pursuant to the San Pablo Avenue Specific Plan. On September 7, 2016 the Developer presented their project to a joint Planning Commission-Design Review Board study session where they each provided comment on the project. On December 20, 2016 the Development Team submitted a formal application for the project. Staff reviewed the application and provided comments and a revised application was submitted on February 17, 2017. The application was deemed complete by the City's Development Services Division in March 2017 and the Environmental Review process was initiated. The project was brought to the Planning Commission as a Tier IV San Pablo Avenue Specific Plan project on July 12, 2017 and the Design Review Board on August 2, 2017. The project, consisting of 156 market rate residential units, 67 affordable units and one manager's unit, and 8,893 square feet of commercial space was approved at both meetings. (Planning Commission Resolution PC17-07 and Design Review Board Resolution PC17-03, Attachments 2 and 3; The project's entitled plans can be viewed at City Hall; partial plans are included as Exhibit B to the DDA.

Table 1

Task	Date	Action
RFP Issued	March 2016	Submittal Deadline: April 1, 2016
RFP released	April 2016	Submittal Deadline: June 2, 2016
Development Team Selected/Exclusive Negotiating Right Agreement	July 2016	Resolution 2016-55
Joint Study Session Design Review Board-Planning Commission	September 2016	
Exclusive Negotiating Agreement Extension	April 2017	Resolution 2017-26
Planning Commission Approval	July 2017	PC17-07
Design Review Board Approval	August 2017	PC17-03
Disposition and Development Agreement to Council	February 2018	

Compensation Agreement

Under the Successor Agency's approved Long Range Property Management Plan (LRPMP), and as allowed under Health and Safety Code Section 34191.5(c)(2), the Successor Agency transferred former RDA properties, acquired for future development, to the City. Under the approved LRPMP, the City is required to enter into a Compensation Agreement with the Affected Taxing Entities for the future development properties. The City drafted a proposed Compensation Agreement providing for the net sales proceeds from the Mayfair property to be distributed to the taxing entities which was signed by the majority of the taxing entities. The County requested changes to make it consistent with other compensation agreements in the County and the County's overall policy on compensation agreements. The Contra Costa County Board of Supervisors is scheduled to consider the Compensation Agreement at an upcoming meeting. The County's primary concern regarding the Compensation Agreement is that the Property be sold within a reasonable period of time which they have determined to be five years. This requirement of the County has driven some of the schedule provisions of the DDA discussed below. The proposed Compensation Agreement, specifies that the net proceeds generated from the sale of the Mayfair properties (gross sales price less payment of the debt on the property) will be distributed to the taxing entities according to their property tax share. The Compensation Agreement will also be brought to the City Council (as an affected taxing entity) and the Successor Agency for approval at an upcoming meeting.

Summary of Disposition and Development Agreement Terms

The DDA (Attachment 4) includes the term, financial terms, predisposition requirements for conveyance of the parcels, the scope of improvements, development schedule, ongoing developer obligations, and prescribes default and remedies. Below is a summary of the key terms:

Development Project: The scope of the project is consistent with the developer's original proposal and has received its Planning Commission and Design Review Board approvals pursuant to the San Pablo Avenue Specific Plan. (Attachment 2-4) The project is a multi-phased mixed use development that consists of 157 market rate and 67 affordable residential units, plus one manager's unit and 8,893 square feet of commercial space, 150 parking spaces shared by both projects and 348 bicycle parking spaces. The project also features 3,945 square feet of public open space that will be open to the public from dawn to dusk and serve as a "mew" between the two buildings.

Purchase Price: The purchase price of the property is three million three hundred and fifty thousand dollars (\$3,350,000). The purchase price was determined by a fair market value appraisal commissioned by the City.

Close of Escrow: The market rate developer will pay the full purchase price, including the portion of the purchase price attributable to the Affordable Housing parcel as a contribution toward the affordable development. The close of escrow must occur no later

than twelve months after the effective date of the DDA. The market rate developer may obtain two six months extensions of the closing date by making a non-refundable seventy five thousand dollar (\$75,000) payment for each extension into the escrow account. Any extension payment shall be applied toward the Purchase Price in the event escrow closes. If, after 24 months, the Developer has not purchased the property, the DDA will terminate, the City will retain the extension payments and the City may proceed to market the property.

Development Schedule: The entire project will be developed and constructed over a period of approximately five years. The Development Schedule is built upon the close of escrow (Exhibit E to the DDA) and dependent upon securing project financing. The Affordable Housing development and Market Rate development are expected to proceed on different schedules. The Market Rate development is anticipated to be developed prior to the Affordable Housing development. Subdivision of the two parcels will take place within nine months of the effective date of the DDA. Construction of the Market Rate development is anticipated to begin within 6 months of close of escrow and to take approximately 24 months. The Affordable Developer is expected to commence construction of the Affordable Development within 9 months of completion of the Market Rate Development. The Market Rate Developer may under certain conditions extend the date for commencement of construction as set forth in Section 3.3 of the DDA.

Financing: Securing financing for both projects is the responsibility of the developers. Their anticipated financing plans are depicted in Exhibits C-1 and C-2 to the Agreement. Due to the complexity and timelines involved in securing financing for Affordable Housing projects, numerous rounds of applications to the various sources may be required. (See Exhibit C-2 to the DDA.) The City will partner with BRIDGE Housing, where possible, to help secure the funds. It is anticipated that the Affordable Housing Developer will request a predevelopment loan from the City's Low Income Housing Trust Fund, akin to the loan provided to Eden Housing for the development of Hana Gardens. Such funds would increase the project's competitiveness for funding and allow the developer to continue to move through the predevelopment process. This item will be brought to the City Council at a future Council meeting for consideration.

ANALYSIS

The proposed project is the culmination of many years of effort by the former RDA, the Successor Agency and the City. It is staff's opinion that the project will achieve the longstanding goal of catalyzing investment in the vicinity of the Del Norte BART station while providing significant benefits to the City and neighborhood in the form of both market rate and affordable housing, new commercial space, public open space and high quality urban design. The development team was selected through a rigorous process and both the market rate and affordable housing developer have extremely successful track records. The proposed DDA differs slightly from a DDA that may have been contemplated by the former Redevelopment Agency, in two primary ways, including: 1) that the developer is paying fair market value for the property; and 2) the property may be conveyed before a Building Permit application is submitted. Due to the requirements imposed by the Dissolution Statutes and the required Compensation Agreement, the City

must dispose of the property and compensate affected taxing entities. The proposed DDA leverages the investment of the developers to fulfill the requirements of Dissolution while contributing to the City's Regional Housing Needs Allocation (RHNA), increasing the City's tax base, and improving overall quality of life by converting a long vacant property into a high quality transit-oriented development.

STRATEGIC PLAN CONSIDERATIONS

The proposed development fulfills the City's Strategic Plan Goal C: Deepen a sense of place and community identity and specifically the strategy to reimagine underdeveloped and underutilized properties and Goal B: Achieve long-term financial sustainability.

ENVIRONMENTAL CONSIDERATIONS

A Program Environmental Impact Report (program EIR) was certified for the San Pablo Avenue Specific Plan in 2014. This type of environmental documentation is authorized by section 15168 of the California Environmental Quality Act (CEQA) Guidelines for use in documenting the environmental impact of specific plans, and other planning "programs". As explained in the CEQA Guidelines, a program EIR is useful in evaluating the potential environmental impacts of a project that involves a series of interrelated actions. Subsequent activities that fall within the scope of the program may not be subject to further review if the environmental effects of the subsequent activity have been adequately addressed in the program EIR. CEQA Guidelines 15168(c)(4) recommends using a written checklist or similar device to confirm whether the environmental effects of subsequent activity were adequately covered in the program EIR.

An Initial Study Checklist has been prepared for the Mayfair project (available on the City's Community Development website, August 2, 2017 DRB meeting at p. 302). The responses contained in the checklist confirm that the project is considered within the scope of the evaluation completed for the program EIR. No new impacts were identified and no new mitigation measures are required. Conditions of approval were included in the Planning Commission and Design Review Board Resolutions to ensure that key mitigation measures of the San Pablo Avenue Specific Plan EIR are implemented with regard to the project (Attachments 2 and 3). The inclusion of these conditions ensures that the project will not have environmental effects that have not previously been addressed in the San Pablo Avenue Specific Plan EIR.

FINANCIAL CONSIDERATIONS

Upon Close of Escrow, pursuant to the terms in the proposed DDA, the City would remit the Disposition Proceeds (less the balance of the Valente Note which is secured by the Property) to the County Auditor-Controller for distribution to the Taxing Entities in proportion to their shares of the base property tax. For the City of El Cerrito, this share is approximately 22%. The City would thus receive approximately \$432,419 from the disposition of the property per the terms of the proposed DDA. With the repayment of the Valente Note, the City (and other taxing entities) would also receive an increase in residual distributions from the Redevelopment Property Tax Trust Fund (RPTTF) via the ROPS. Finally, the City will also receive its portion of the increased property tax as the property would be reappraised at sale and again when the project is complete.

LEGAL CONSIDERATIONS

This has been reviewed by the Successor Agency Legal Counsel and City Attorney.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Draft Resolution
2. Planning Commission Resolution PC17-07
3. Design Review Board Resolution PC17-03
4. Disposition and Development Agreement and Exhibits

RESOLUTION NO. 2018-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO (THE "CITY") AUTHORIZING EXECUTION OF A DISPOSITION AND DEVELOPMENT AGREEMENT WITH HD MAYFAIR LLC AND MAYFAIR AFFORDABLE LLC. AND MAKING FINDINGS AND APPROVALS PURSUANT TO THE CALIFORNIA GOVERNMENT CODE SECTION 52201 IN CONNECTION WITH DISPOSITION OF THAT CERTAIN PROPERTY LOCATED AT 11600 AND 11690 SAN PABLO AVENUE AND 1925 KEARNEY

WHEREAS, the City Council (the "City Council") of the City of El Cerrito (the "City") has adopted the City of El Cerrito Redevelopment Plan, originally adopted by Ordinance No. 77-17, dated November 28, 1977, (the "Redevelopment Plan"). The Redevelopment Plan sets forth a plan for redevelopment of the City of El Cerrito Redevelopment Project Area (the "Project Area"); and

WHEREAS, the former El Cerrito Redevelopment Agency (the "Agency") and City of El Cerrito have encouraged redevelopment in specific portions of the El Cerrito Redevelopment Project Area in accordance with the goals and objectives of the City of El Cerrito Redevelopment Plan as amended; and

WHEREAS, the Agency acquired 11600 and 11690 San Pablo Avenue and 1925 Kearney (the "Property") for development consistent with the Redevelopment Plan; and

WHEREAS, the Agency, was dissolved effective February 1, 2012 pursuant to operation of State law; and

WHEREAS, the Successor Agency to the Agency prepared and approved a Long Range Property Management Plan providing for the disposition of the Agency's real property assets, which Long Range Property Management Plan was approved by the California Department of Finance; and

WHEREAS, the City acquired the Property from the Successor Agency to the Agency pursuant to the Long Range Property Management Plan as a future development site; and

WHEREAS, the City issued a Request for Qualifications followed by a Request for Proposals for the development of the Property consistent with the goals and objectives of the Redevelopment Plan and the San Pablo Avenue Specific Plan; and

WHEREAS, after consideration of the proposals received, the City selected BRIDGE Housing Corporation and Holliday Development, LLC to acquire and develop the Property consistent with the proposal to develop a mixed income mixed use property consisting of 156 market rate residential units, 67 affordable residential units, one manager's unit, 8,893 square feet of commercial space, vehicle and bicycle parking

spaces, open space including public open space and related landscaping ("Project"); and

WHEREAS, the City, BRIDGE Housing Corporation and Holliday Development LLC entered into an Exclusive Negotiating Rights Agreement on August 23, 2016 which was extended pursuant to a First and Second Amendment; and

WHEREAS, the El Cerrito Planning Commission granted Tier IV site plan and design review approval of the Project and adopted conditions of approval on July 12, 2017 and the Design Review Board granted Tier IV site plan and design review approval on August 2, 2017; and

WHEREAS, the City desires to enter into a Disposition and Development Agreement (the "DDA") with HD Mayfair LLC, an affiliate of Holliday Development LLC and Mayfair Affordable LLC, an affiliate of BRIDGE Housing Corporation, substantially in the form on file with the City Clerk, pursuant to which the City would sell the Property to the Developer and the Developer would develop the Project on the Property; and

WHEREAS, redevelopment of the Property pursuant to the DDA would serve major Redevelopment Plan and San Pablo Avenue Specific Plan goals and objectives by eliminating blight, redeveloping an underutilized site, improving and increasing the community's supply of affordable housing and creating economic opportunities; and

WHEREAS, the City has placed on file a copy of the DDA, and the summary called for in Government Code Section 52201 (the "Section 52201 Summary"), and has made the DDA and the Section 52201 Summary available for public inspection and copying pursuant to Government Code Section 52201. The Section 52201 Summary is incorporated in this Resolution by this reference; and

WHEREAS, the City Council has conducted a duly noticed public hearing on the DDA pursuant to Government Code Section 52201 for the purpose of receiving the input and comments of the public on the DDA; and

WHEREAS, in considering approval of the DDA the City has determined, based on the environmental checklist prepared by LSA Associates and on file with the City, that the Project is consistent with the Program Environmental Impact Report prepared for the San Pablo Avenue Specific Plan pursuant to CEQA Guidelines Sections 15168(c) and 15182 and is subject to the Program Environmental Impact Report mitigation measures specified in the conditions of approval; and

WHEREAS, by a staff report accompanying this Resolution and incorporated into this Resolution by this reference (the "Staff Report"), the City has been provided with additional information upon which the findings and actions set forth in this Resolution are based.

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

1. The City Council finds that the above recitals are accurate.
2. Based on the Environmental Checklist prepared by LSA Associates, the City Council hereby finds that the Project is consistent with the Program Environmental Impact Report prepared for the San Pablo Avenue Specific Plan pursuant to CEQA Guidelines Sections 15168(c) and 15182, and that no substantial changes in environmental circumstances have occurred, no new information leading to new or more severe significant impacts has become known and no changes to the Project have occurred since the certification of the Program Environmental Impact Report.
3. Pursuant to Government Code Section 52201, the City Council hereby finds that the purchase price for the Property in the DDA of \$3,350,000 is not less than the fair market value of the Property at its highest and best use. This finding is based on the facts and analysis set forth in the Staff Report and the Section 52201 Summary accompanying this Resolution.
4. Pursuant to Government Code Section 52201, the City Council hereby finds that the development of the Project on the Property will assist in the creation of an economic opportunity by providing increased property tax revenues. This finding is based on the facts and analysis set forth in the Staff Report and the Section 52201 Summary accompanying this Resolution.
5. The City Council hereby approves the DDA and all ancillary documents; approves execution by the City Manager of the DDA and all ancillary documents in substantially the form on file with the City Clerk, with such changes as are approved by the City signatory (such approval to be conclusively evidenced by the execution of the DDA); and approves the sale of the Property by the City pursuant to the provisions of the DDA.
6. Nothing in this Resolution shall affect the City's policy discretion in granting or denying land use approvals for the Project.
7. This Resolution shall take immediate effect upon its adoption.

I CERTIFY that at the regular meeting on February 6, 2018, the City Council of the City of El Cerrito passed this resolution by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

IN WITNESS of this action, I have hereunto set my hand and affixed the official Seal of said City, this ____ day of February, 2018.

Cheryl Morse, City Clerk

Approved:

Gabriel Quinto, Mayor

Planning Commission Resolution PC17-07

APPLICATION NO. PL16-0168

A RESOLUTION OF THE CITY OF EL CERRITO PLANNING COMMISSION GRANTING TIER IV SITE PLAN AND DESIGN REVIEW APPROVAL FOR CONSTRUCTION OF TWO NEW BUILDINGS CONTAINING 223 RESIDENTIAL UNITS AT 11600, 11690 SAN PABLO AVENUE AND 1925 KEARNEY STREET.

WHEREAS, the site is located within the San Pablo Avenue Specific Plan Area;

WHEREAS, the General Plan land use classification of the site is Transit-Oriented Higher-Intensity Mixed Use;

WHEREAS, the zoning district of the site is Transit-Oriented Higher-Intensity Mixed Use and the project is located on a San Pablo Avenue Community Street, a Gateway Street and Neighborhood Street designations;

WHEREAS, the site is located at 11600 and 11690 San Pablo Avenue and 1925 Kearney Street;

WHEREAS, the existing Assessor's Parcel Numbers of the site are 502-062-029, 502-062-028 and 502-062-003;

WHEREAS, on December 19, 2016, the applicant submitted an application for Tier IV Design Review;

WHEREAS, on May 22, 2017, the applicant was determined to be complete; and

WHEREAS, on July 12, 2017, the Planning Commission, after due consideration of all evidence and reports offered for review does find and determine the following:

1. The project is consistent with the Program Environmental Impact Report certified for the San Pablo Avenue Specific Plan, pursuant to CEQA Guidelines Sections 15168(c) and 15182 and is subject to the Program Environmental Impact Report mitigation measures listed below.
2. The project will strengthen the sense of place in the El Cerrito del Norte station area by adding new commercial and residential uses adjacent to a major transit hub. The project also features well-designed publicly-accessible open space. The proposed street frontages address the street at a human scale and will promote activity on the adjacent streets. The location of the project, adjacent to a major transit hub, will promote transit use. The amount of auto parking provided and the abundance of bike parking will help achieve mode shift from private autos.
3. The project will provide 67 units of affordable housing. The project will also provide open space and bike parking in excess of the requirements.

The proposed affordable housing units, will further the goals of the Housing Element of the El Cerrito General Plan, specifically Goals H2 and H5. The provided publicly accessible open space will provide a mid-block connection consistent with the goals of the Urban Greening Plan.

4. With the exceptions of shadow standards, building length, building height, ground floor transparency, frontage type, and vehicular access, the project is consistent with the standards of the San Pablo Avenue Specific Plan, including the standards of the Transit Oriented Higher-Intensity Mixed Use Transect Zone. The proposed land uses are permitted in the Transit Oriented Higher-Intensity Mixed

Use Transect Zone and the project is consistent with the land uses permitted throughout the San Pablo Avenue Specific Plan.

The project is consistent with the higher-intensity vision for the area surrounding the El Cerrito del Norte BART station. The project has been determined not to have environmental impacts which were not addressed in the San Pablo Avenue Specific Plan Program EIR. The project is consistent with the vision for an active and vibrant mixed-use environment near in the El Cerrito del Norte BART station area.

5. The intent of the Transit Oriented High-Intensity Mixed Use Transect Zone is to:

Provide a vibrant, walkable, transit oriented higher intensity area within a 1/2 mile BART walkshed that allows a wide variety of uses including retail, commercial, residential and public uses in the distinctive Downtown and Uptown areas. Encourage multifamily residential uses to provide a variety of housing types, including units with 3 or more bedrooms, to meet the diverse needs of residents.

The proposed project will provide a mix of affordable and market-rate housing units adjacent to a major transit hub. In addition, the project will provide 8,893 square feet of commercial land uses. The project represents the higher-intensity vision of the Specific Plan for development near the El Cerrito del Norte BART station.

6. The proposed project will implement the following goals of the El Cerrito General Plan: LU1.5: Suitable Housing, LU2.1: San Pablo Avenue Specific Plan Area, LU4.1: Mixture of Uses, LU6.2: Circulation Alternatives, CD1.9: Building Design, CD2.1: Street Frontages, CD2.3: Streetscape Improvements, CD3.2: Usable Open Space, CD3.3: Site Landscaping, T2.1: Land Use Patterns, T2.2: Project Design, Policies H2.2, H2.3, and H2.13 of Housing Element Goal H2: New Housing Development, and Policy H5.4 of Housing Element Goal H5: Energy Conservation and Sustainable Development.

NOW, THEREFORE, BE IT RESOLVED, that after careful consideration of maps, facts, exhibits, correspondence, and testimony, and other evidence submitted in this matter, and, in consideration of the findings, the El Cerrito Planning Commission hereby approves Application No. PL16-0168, subject to the following conditions:

Planning Division:

Standard conditions- All projects:

1. The project will be constructed substantially in conformance with the plans dated April 5, 2017. Minor changes may be approved by the Zoning Administrator. All improvements shall be installed in accordance with these approvals. Once constructed or installed, all improvements shall be maintained as approved.
2. If Applicant constructs buildings or makes improvements in accordance with these approvals, but fails to comply with any of the Conditions of Approval or limitations set forth in these Conditions of Approval and does not cure any such failure within a reasonable time after notice from the City of El Cerrito, then such failure shall be cause for nonissuance of a certificate of occupancy, revocation or modification of these approvals or any other remedies available to the City.

3. These Conditions of Approval shall apply to any successor in interest in the property and Applicant shall be responsible for assuring that the successor in interest is informed of the terms and conditions of this approval.
4. If not used, this approval shall expire two years from the date of this action.
5. If the Design Review Board does not act to approve this project within two years of this action, the Planning Commission approval shall become null and void.
6. The applicant shall share the conditions of approval with their general contractor for the project. The general contractor shall sign a copy of the conditions of approval to acknowledge that he/she is aware of all these conditions of approval and will comply as directed.
 - a. Prior to the issuance of a building permit, this signed copy shall be returned to the planning and building division and kept as part of the project file. The conditions of approval shall be reviewed at the mandatory pre-construction meeting held between the City and the General Contractor. A copy of the conditions of approval shall be maintained on the project site at all times during construction.
7. Prior to issuance of building permit, the applicant shall demonstrate compliance with Chapter 13.50: Art in Public Places of the El Cerrito Municipal Code to the satisfaction of the Zoning Administrator. The project shall be fully compliant with Chapter 13.50 prior to issuance of Certificate of Occupancy.
8. In compliance with Chapter 16.34 of the El Cerrito Municipal Code, the applicant shall submit plans for undergrounding of utilities adjacent to the project to the satisfaction of the Building Official prior to issuance of building permit.
9. The cost of all automobile parking shall be separate from the sale or rental price of all residential units. All renters and/or buyers of residential units shall be free to not rent and/or purchase parking. The Zoning Administrator may approve exceptions to this condition of approval, if necessary to fulfill the requirements of funding sources for the affordable housing component of the project and/or the requirements of other agencies with regard to affordable housing.

Conditions based on applicable mitigation measures from the San Pablo Avenue Specific Plan Program EIR:

10. Aesthetics and Visual Resources. (Mitigation 4.2): The project shall install landscaping and incorporate other measures into and around parking structure(s) (light source shielding, etc.) as necessary to ensure that potential light and glare from vehicles would be avoided toward the Ohlone Greenway, residential uses, and other sensitive uses, consistent with El Cerrito City Resolution 82-9 and the El Cerrito design review process.

Regarding reflective building materials, for all future development in the Specific Plan area, facades shall be of non-reflective materials, and windows shall incorporate non-reflective coating.

11. Air Quality (Mitigation Measure 5.1): Implement the following BAAQMD-recommended measures to control particulate matter emissions during construction. City staff will spot check that these measures are being implemented throughout the construction phase of the project. These measures reduce diesel particulate matter *PM*_{2.5} and *PM*₁₀ created from construction to ensure that short-term health impacts to nearby sensitive receptors are avoided or reduced:

Dust (PM_{2.5} and PM₁₀) Control Measures:

- b. Water all active construction areas at least twice daily and more often during windy periods. Active areas adjacent to residences should be kept damp at all times.
- c. Cover all hauling trucks or maintain at least two feet of freeboard.
- d. Pave, apply water at least twice daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas and sweep streets daily (with water sweepers) if visible soil material is deposited onto the adjacent roads.
- e. Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (i.e., previously graded areas that are inactive for 10 days or more).
- f. Enclose, cover, water twice daily, or apply (non-toxic) soil binders to exposed stockpiles.
- g. Limit traffic speeds on any unpaved roads to 15 mph.
- h. Replant vegetation in disturbed areas as quickly as possible.
- i. Suspend construction activities that cause visible dust plumes to extend beyond the construction site.
- j. Post a publically visible sign(s) with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

Additional Measures to Reduce Diesel Additional Measures to Reduce Diesel Particulate Matter and PM2.5 and other construction emissions:

- k. The developer or contractor shall provide a plan for approval by the City or BAAQMD demonstrating that the heavy-duty (>50 horsepower) off-road vehicles to be used in the construction project, including owned, leased and subcontractor vehicles, will achieve a project wide fleet-average 20 percent NOX reduction and 45 percent particulate reduction compared to the most recent CARB fleet average for the year 2011.
 - l. Clear signage at all construction sites shall be posted indicating that diesel and gasoline equipment standing idle for more than five minutes shall be turned off. This would include trucks waiting to deliver or receive soil, aggregate or other bulk materials. Rotating drum concrete trucks could keep their engines running continuously as long as they were on-site or adjacent to the construction site.
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- a. Construction equipment selection.
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 - d. Implementation of BAAQMD Basic and/or Additional Construction Mitigation Measures for control of fugitive dust.
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In the event that an active nest is discovered in the areas to be cleared, or in other habitats within 150 feet of construction boundaries, clearing and construction shall be postponed for at least two weeks or until a wildlife biologist has determined that the young have fledged (left the nest), the nest is vacated, and there is no evidence of second nesting attempts.

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The survey for nesting birds, bats and suitable bat roosting habitat may be conducted simultaneously.

14. Prior to the issuance of a building permit, the applicant shall implement a program that includes the following elements:
 - a. Archeological resource identification training procedures for construction personnel
 - b. Procedures for reporting archeological discoveries
15. Historic and Cultural Resources (Mitigation Measure 7.2): If subsurface archeological or cultural resources are encountered during ground-disturbing activities, work in the immediate vicinity shall be stopped and a qualified archaeologist shall be retained to evaluate the finds following the procedures described in Mitigation Measure 7-3 of the San Pablo Avenue Specific Plan Environmental Impact Report. Project personnel shall not collect cultural resources. If human remains are found, special rules set forth in State Health and Safety Code section 7050.5 and CEQA Guidelines section 15126.4(b) shall apply, and there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains until the Contra Costa County Coroner has been notified of the remains and has determined that the remains are not subject to the provisions of Section 27491 of the Government Code or any other related provisions of law concerning investigation of the circumstances, manner and cause of any death, and the recommendations concerning the treatment and disposition of the human remains have been made to the person responsible for the excavation, or to his or her authorized representative, in the manner provided in Section 5097.98 of the Public Resources Code.
16. Paleontological Resources (Mitigation Measure 7.3): The applicant shall implement a program that includes the following elements:
 - c. Paleontological resource identification training procedures for construction personnel
 - d. Spot-checks by a qualified paleontological monitor of all excavations deeper than seven feet below ground surface
 - e. Procedures for reporting paleontological discoveries and their geologic context

If subsurface paleontological resources are encountered, excavation shall halt in the vicinity of the resources, and the project paleontologist shall evaluate the resource and its stratigraphic context. The monitor shall be empowered to temporarily halt or redirect construction activities to ensure avoidance of adverse impacts to paleontological resources. During monitoring, if potentially significant paleontological resources are found, "standard" samples shall be collected and processed by a qualified paleontologist to recover micro vertebrate fossils. If significant fossils are found and

collected, they shall be prepared to a reasonable point of identification. Excess sediment or matrix shall be removed from the specimens to reduce the bulk and cost of storage. Itemized catalogs of material collected and identified shall be provided to a local museum repository with the specimens. Significant fossils collected during this work, along with the itemized inventory of these specimens, shall be deposited in a local museum repository for permanent curatorship and storage. A report documenting the results of the monitoring and salvage activities, and the significance of the fossils, if any, shall be prepared and submitted to the Zoning Administrator.

17. Geology and Soils (Mitigation Measure 8.1): As required by the Building Official, subject to City review and approval, the applicant shall complete and implement the geotechnical mitigation recommendations identified in the required site-specific geotechnical investigations and engineering studies, in coordination with City grading permit and building permit performance standards.
18. Noise and Land Use Compatibility/ Construction Noise (Mitigation Measure 13.2): New commercial development proposed in the same building as or adjacent to residential development could result in noise levels exceeding City standards.
 - a. Noise levels at residential property lines from commercial development shall be maintained not in excess of the general plan and municipal code limits for the Cities of El Cerrito and Richmond. The approval of the commercial development shall require a noise study demonstrating how the business- including loading docks, refuse areas, and ventilation system would meet these requirements and would be consistent with the respective City's noise standards.
 - b. Ensure that noise-generating activities, such as maintenance activities and loading and unloading activities, are limited to the hours of 7:00 AM to 9:00 PM.
19. (Mitigation Measure 13.3): Construction equipment shall be well-maintained and used judiciously to be as quiet as practical. The following measures shall be implemented to reduce noise from construction activities:
 - a. Equip all internal combustion engine-driven equipment with mufflers that are in good condition and appropriate for the equipment.
 - b. Utilize "quiet" models of air compressors and other stationary noise sources where technology exists.
 - c. Locate stationary noise-generating equipment as far as feasible from sensitive receptors when sensitive receptors adjoin or are near a construction area.
 - d. Prohibit unnecessary idling of internal combustion engines.
 - e. Pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.
 - f. Construct solid plywood fences around construction sites adjacent to operational business, residences, or noise-sensitive land uses.
 - g. If noise conflicts occur which are not irresolvable by proper scheduling, a temporary noise control blanket barrier shall be erected, as determined to be necessary by the Zoning Administrator, along building facades facing construction sites.
 - h. Route construction-related traffic along major roadways and as far as feasible from sensitive receptors.
 - i. Construction activities (including the loading and unloading of materials and truck movements) and excavating, grading, and filling activities (including warming of equipment motors) shall be limited to the hours of 7:00 AM to 6:00 PM on weekdays and to the hours of 9:00 AM and 5:00 PM on Saturdays. Work shall be prohibited on Sundays and Holidays.
 - j. Businesses, residences, or noise-sensitive land uses adjacent to construction sites shall be notified of the construction schedule in writing.
 - k. Designate a "construction liaison" who would be responsible for responding to any local complaints about construction noise. The liaison would determine the cause of the noise complaints (e.g., starting too early, bad muffler, etc.) and institute reasonable measures to

correct the problem. Conspicuously post a telephone number for the liaison at the construction site.

20. (Mitigation 13-4) The following measures are recommended to reduce vibration from construction activities:

- a. Avoid impact pile driving where possible. Drilled piles causes lower vibration levels where geological conditions permit their use.
- b. Avoid using vibratory rollers and tampers near sensitive areas.
- c. In areas where project construction is anticipated to include vibration-generating activities, such as pile driving, in close proximity to existing structures, site-specific vibration studies shall be conducted to determine the area of impact and to present appropriate mitigation measures that may include the following:
 - a) Identify sites that would include vibration compaction activities (such as pile driving) and have the potential to generate ground-borne vibration, and the sensitivity of nearby structures to ground-borne vibration. Vibration limits shall be applied to all vibration-sensitive structures located within 200 feet of the project. A qualified structural engineer should conduct this task.
 - b) Develop a vibration monitoring and construction contingency plan to identify structures where monitoring would be conducted, set up a vibration monitoring schedule, define structure-specific vibration limits, and address the need to conduct photo, elevation, and crack surveys to document before and after construction conditions.
 - c) - Design construction contingencies that would be implemented when vibration levels approached the limits.
 - d) - At a minimum, conduct vibration monitoring during initial demolition activities and during pile driving activities. Monitoring results may indicate the need for more or less intensive measurements.
 - e) - When vibration levels approach limits, suspend construction and implement contingencies to either lower vibration levels or secure the affected structures.
 - f) - Conduct post-survey on structures under either of these circumstances: (a) when construction monitoring has indicated high vibration levels or (b) when complaints of damage have been made due to construction activities. Make appropriate repairs or compensation when damage has resulted from construction activities.

Project Specific Conditions of Approval - Noise:

21. The project design shall implement the following measures for all units to reduce interior noise impacts in compliance with City noise standards:

- a. All windows and glass doors shall be rated STC 36 or higher such that noise reduction provided will satisfy the interior noise standard of 45 dBA Ldn.
- b. In order for windows and doors to remain closed, mechanical ventilation such as air conditioning shall be provided for all units.
- c. All vent ducts connecting interior spaces to the exterior (i.e., bathroom exhaust, etc.) shall have at least two 90 degree turns in the duct.
- d. All windows and doors shall be installed in an acoustically-effective manner. Sliding-window panels shall form an air-tight seal when in the closed position and the window frames shall be caulked to the wall opening around the perimeter with a non-hardening caulking compound to prevent sound infiltration. Exterior doors shall seal air-tight around the full perimeter when in the closed position.

Project Specific Conditions of Approval - Traffic:

22. Ensure that the project driveways on Kearney Street would provide adequate sight distance between exiting vehicles and pedestrians on the adjacent sidewalk (Adequate sight distance is defined as a clear line-of-sight between a motorist ten feet back from the sidewalk and a pedestrian ten feet away on each sides of the driveway).
23. Ensure that on-street parking and trees directly north of both project driveways on Kearney Street would not restrict sight distance for exiting vehicles by providing at least 10 feet of red curb and ensuring that the tree canopy is higher than six feet from the ground.

Public Works Department:

24. Prior to the issuance of a building permit, the applicant shall submit a detailed grading plan, obtain a Grading & Transportation Permit, and pay all associated fees for earthwork and grading operations in excess of 50 cubic yards.
25. Prior to the issuance of a building permit, the applicant shall provide a drainage plan for new roof and any rain leaders. All drainage shall stay on-site, draining away from the foundations, 10' from property lines, and shall not cause a nuisance to neighboring properties.
26. The building plans shall note that all sidewalk, curb and gutter along the development's public right-of-way frontages shall be replaced to meet current City and ADA standards to the satisfaction of the Public Works Director.
27. Prior to the issuance of the Certificate of Occupancy, the applicant shall replace the existing flashing crossing signs at the intersection of Lincoln Avenue and San Pablo Avenue with standard Rapid Rectangular Flashing Beacons on both sides of SPA in both the northbound and southbound approaches.
28. All improvements on the property frontage shall comply with the standards of the San Pablo Avenue Specific Plan, including the Complete Streets chapter to the satisfaction of the Public Works Director.
29. Before any work commences related to any street tree, sidewalk and driveway, applicant shall obtain a Public Works Encroachment Permit and pay all associated fees.
30. Prior to the issuance of a building permit. Plans shall be revised to note that artificial turf is not suitable for Stormwater filtration.
31. If any new street trees are to be installed, they must be from the City Master Tree List and approved by the City Arborist before installation. Tree species, location, spacing, tree well size, and planting details, are to be approved by the City Arborist before installation. Street Trees species: Either Pistachia chinensis or Ulmus 'Frontier' or 'Accolade' if no overhead utilities present.
32. Any new street trees are required to have irrigation and an establishment period of 3 years prior to acceptance by the City.
33. Applicant shall pay a fair share of the San Pablo Avenue Specific Plan Complete Streets Improvements as determined by the Public Works Director.

Building/Fire Department:

34. Building construction shall meet current Building, California Fire Codes, and the El Cerrito Fire Code.

35. Prior to issuance of building permit:

- a. The applicant shall provide code analysis of required total firefighting water. Based on required fire flow, the applicant shall show on plans the number of fire hydrants required and locations based on maximum spacing requirements.
- b. The applicant shall submit plans for fire service underground.
- c. Fire sprinkler plans shall be submitted for review and approval to the satisfaction of the Fire Marshall.

36. The following information shall be included on the Construction Plans:

- a. Fire Department Connections (FDC's) shall be in locations acceptable to the fire department for emergency operations.
- b. Fire FDC's shall be interconnected between standpipes and fire sprinkler system and standpipes.
- c. The standpipes shall be wet and extend to the roof.
- d. Fire Department valve connections shall be in the intermediate landings of stairwells.
- e. A fire standpipe shall be required in each common stairway.
- f. Smoke detection shall be installed in each bedroom, in hallways adjacent to bedrooms, and one detector per floor level (top and bottom of stairs). Smoke detectors shall be 120v powered with battery backup. Smoke detectors shall be interconnected.
- g. Carbon monoxide alarm shall be installed outside of and adjacent to sleeping areas where fuel-burning appliances are installed; and in dwelling units that have attached garages. Carbon Monoxide detectors shall be installed in accordance with NFPA 720. Carbon Monoxide alarms shall be 120 v Powered with battery backup and be interconnected with the smoke detectors.
- h. All electrical breakers shall be labeled.
- i. Approved numbers or address shall be provided in such a position to be plainly visible and legible from the street fronting the property. Address shall be either internally or externally illuminated.
- j. Automatic Fire Sprinklers shall be installed throughout the Complex.
- k. An automatic fire alarm system is required in all common areas of the building. The automatic fire alarm system shall be interconnected with the fire sprinkler system.
- l. Every sleeping room shall have at least one operable window or door approved for emergency escape or rescue in accordance with CBC 310.4. Escape or rescue windows shall be installed in accordance with CBC 310.4.
- m. Radio frequency signal strength analysis shall be conducted throughout the buildings. If deficiencies are identified, signal boosters shall be installed to achieve adequate signal strength.

37. Prior to issuance of a Certificate of Occupancy, a "KNOX BOX" shall be installed with keys for all common areas.

38. At each garage vehicle entry, a warning system will be installed to alert bicycles and pedestrians when a vehicle is about to leave the garage. This will include both an audible alarm and a visual light strobe, to the satisfaction of the Building Official.

Solid Waste and Recycling:

39. Prior to the issuance of a building permit, the applicant shall finalize the size of the refuse rooms and frequency of the solid waste and recycling pick-up.

Stege Sanitary District:

40. The applicant shall participate in the San Pablo Avenue Sewer Capacity Improvement Fee Program, and pay all applicable fees. This fee is intended to satisfy the requirement for a Sewer Capacity Study.

CERTIFICATION

I Certify that this resolution was adopted by the El Cerrito Planning Commission at a regular meeting held on July 12, 2017, upon motion of Commission member _____, second by Commission member _____:

AYES:

NOES:

ABSTAIN:

ABSENT:

Sean Moss, AICP
Senior Planner

Design Review Board Resolution PC17-03

APPLICATION NO. PL16-0168

A RESOLUTION OF THE CITY OF EL CERRITO DESIGN REVIEW BOARD GRANTING TIER IV SITE PLAN AND DESIGN REVIEW APPROVAL FOR CONSTRUCTION OF TWO NEW BUILDINGS CONTAINING 223 RESIDENTIAL UNITS AT 11600, 11690 SAN PABLO AVENUE AND 1925 KEARNEY STREET.

WHEREAS, the site is located within the San Pablo Avenue Specific Plan Area;

WHEREAS, the General Plan land use classification of the site is Transit-Oriented Higher-Intensity Mixed Use;

WHEREAS, the zoning district of the site is Transit-Oriented Higher-Intensity Mixed Use and the project is located on a San Pablo Avenue Community Street, a Gateway Street and Neighborhood Street designations;

WHEREAS, the site is located at 11600 and 11690 San Pablo Avenue and 1925 Kearney Street;

WHEREAS, the existing Assessor's Parcel Numbers of the site are 502-062-029, 502-062-028 and 502-062-003;

WHEREAS, on December 19, 2016, the applicant submitted an application for Tier IV Design Review;

WHEREAS, on May 22, 2017, the applicant was determined to be complete; and

WHEREAS, on July 12, 2017, the Planning Commission unanimously approved their component of the project; and

WHEREAS, on August 2, 2017, the Design Review Board, after due consideration of all evidence and reports offered for review does find and determine the following:

1. The project is consistent with the Program Environmental Impact Report certified for the San Pablo Avenue Specific Plan, pursuant to CEQA Guidelines Sections 15168(c) and 15182 and is subject to the Program Environmental Impact Report mitigation measures listed below. No further environmental review is required.
2. This project complies with the intent of the Specific Plan. It will be a gateway project for the Uptown area of the city, adding 223 market rate and affordable housing units, a 8,893 square feet commercial area and 3,945 square feet of public open space mews to a vacant parcel abutting the El Cerrito del Norte BART station.
3. The proposed project will implement the following goals of the El Cerrito General Plan: LU1.5: Suitable Housing, LU2.1: San Pablo Avenue Specific Plan Area, LU4.1: Mixture of Uses, LU6.2: Circulation Alternatives, CD1.9: Building Design, CD2.1: Street Frontages, CD2.3: Streetscape Improvements, CD3.2: Usable Open Space, CD3.3: Site Landscaping, T2.1: Land Use Patterns, T2.2: Project Design, Policies H2.2, H2.3, and H2.13 of Housing Element Goal H2: New Housing Development, and Policy H5.4 of Housing Element Goal H5: Energy Conservation and Sustainable Development.

NOW, THEREFORE, BE IT RESOLVED, that after careful consideration of maps, facts, exhibits, correspondence, and testimony, and other evidence submitted in this matter, and, in consideration of the findings, the El Cerrito

Design Review Board hereby approves Application No. PL16-0168, subject to the following conditions:

Planning Division:

Standard conditions- All projects:

1. The project will be constructed substantially in conformance with the plans dated July 27, 2017. Minor changes may be approved by the Zoning Administrator. All improvements shall be installed in accordance with these approvals. Once constructed or installed, all improvements shall be maintained as approved.
2. If Applicant constructs buildings or makes improvements in accordance with these approvals, but fails to comply with any of the Conditions of Approval or limitations set forth in these Conditions of Approval and does not cure any such failure within a reasonable time after notice from the City of El Cerrito, then such failure shall be cause for nonissuance of a certificate of occupancy, revocation or modification of these approvals or any other remedies available to the City.
3. These Conditions of Approval shall apply to any successor in interest in the property and Applicant shall be responsible for assuring that the successor in interest is informed of the terms and conditions of this approval.
4. If not used, this design review approval shall expire two years from the date of this action.
5. The applicant shall share the conditions of approval with their general contractor for the project. The general contractor shall sign a copy of the conditions of approval to acknowledge that he/she is aware of all these conditions of approval and will comply as directed.
 - a. Prior to the issuance of a building permit, this signed copy shall be returned to the planning and building division and kept as part of the project file. The conditions of approval shall be reviewed at the mandatory pre-construction meeting held between the City and the General Contractor. A copy of the conditions of approval shall be maintained on the project site at all times during construction.
6. Prior to issuance of building permit, the applicant shall demonstrate compliance with Chapter 13.50: Art in Public Places of the El Cerrito Municipal Code to the satisfaction of the Zoning Administrator. The project shall be fully compliant with Chapter 13.50 prior to issuance of Certificate of Occupancy.
7. In compliance with Chapter 16.34 of the El Cerrito Municipal Code, the applicant shall submit plans for undergrounding of utilities adjacent to the project to the satisfaction of the Building Official prior to issuance of building permit.
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9. The gates that separate the public open space from San Pablo Avenue and Kearney Street shall have all weather signs made of a durable material that state that the gates are to remain open from dawn to dusk.

Conditions based on applicable mitigation measures from the San Pablo Avenue Specific Plan Program EIR:

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notified of the remains and has determined that the remains are not subject to the provisions of Section 27491 of the Government Code or any other related provisions of law concerning investigation of the circumstances, manner and cause of any death, and the recommendations concerning the treatment and disposition of the human remains have been made to the person responsible for the excavation, or to his or her authorized representative, in the manner provided in Section 5097.98 of the Public Resources Code.

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- e. Procedures for reporting paleontological discoveries and their geologic context

If subsurface paleontological resources are encountered, excavation shall halt in the vicinity of the resources, and the project paleontologist shall evaluate the resource and its stratigraphic context. The monitor shall be empowered to temporarily halt or redirect construction activities to ensure avoidance of adverse impacts to paleontological resources. During monitoring, if potentially significant paleontological resources are found, "standard" samples shall be collected and processed by a qualified paleontologist to recover micro vertebrate fossils. If significant fossils are found and collected, they shall be prepared to a reasonable point of identification. Excess sediment or matrix shall be removed from the specimens to reduce the bulk and cost of storage. Itemized catalogs of material collected and identified shall be provided to a local museum repository with the specimens. Significant fossils collected during this work, along with the itemized inventory of these specimens, shall be deposited in a local museum repository for permanent curatorship and storage. A report documenting the results of the monitoring and salvage activities, and the significance of the fossils, if any, shall be prepared and submitted to the Zoning Administrator.

17. Geology and Soils (Mitigation Measure 8.1): As required by the Building Official, subject to City review and approval, the applicant shall complete and implement the geotechnical mitigation recommendations identified in the required site-specific geotechnical investigations and engineering studies, in coordination with City grading permit and building permit performance standards.

18. Noise and Land Use Compatibility/ Construction Noise (Mitigation Measure 13.2): New commercial development proposed in the same building as or adjacent to residential development could result in noise levels exceeding City standards.

- a. Noise levels at residential property lines from commercial development shall be maintained not in excess of the general plan and municipal code limits for the Cities of El Cerrito and Richmond. The approval of the commercial development shall require a noise study demonstrating how the business- including loading docks, refuse areas, and ventilation system would meet these requirements and would be consistent with the respective City's noise standards.
- b. Ensure that noise-generating activities, such as maintenance activities and loading and unloading activities, are limited to the hours of 7:00 AM to 9:00 PM.

19. (Mitigation Measure 13.3): Construction equipment shall be well-maintained and used judiciously to be as quiet as practical. The following measures shall be implemented to reduce noise from construction activities:

- a. Equip all internal combustion engine-driven equipment with mufflers that are in good condition and appropriate for the equipment.
- b. Utilize "quiet" models of air compressors and other stationary noise sources where technology exists.

- c. Locate stationary noise-generating equipment as far as feasible from sensitive receptors when sensitive receptors adjoin or are near a construction area.
- d. Prohibit unnecessary idling of internal combustion engines.
- e. Pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.
- f. Construct solid plywood fences around construction sites adjacent to operational business, residences, or noise-sensitive land uses.
- g. If noise conflicts occur which are not irresolvable by proper scheduling, a temporary noise control blanket barrier shall be erected, as determined to be necessary by the Zoning Administrator, along building facades facing construction sites.
- h. Route construction-related traffic along major roadways and as far as feasible from sensitive receptors.
- i. Construction activities (including the loading and unloading of materials and truck movements) and excavating, grading, and filling activities (including warming of equipment motors) shall be limited to the hours of 7:00 AM to 6:00 PM on weekdays and to the hours of 9:00 AM and 5:00 PM on Saturdays. Work shall be prohibited on Sundays and Holidays.
- j. Businesses, residences, or noise-sensitive land uses adjacent to construction sites shall be notified of the construction schedule in writing.
- k. Designate a "construction liaison" who would be responsible for responding to any local complaints about construction noise. The liaison would determine the cause of the noise complaints (e.g., starting too early, bad muffler, etc.) and institute reasonable measures to correct the problem. Conspicuously post a telephone number for the liaison at the construction site.

20. (Mitigation 13-4) The following measures are recommended to reduce vibration from construction activities:

- a. Avoid impact pile driving where possible. Drilled piles causes lower vibration levels where geological conditions permit their use.
- b. Avoid using vibratory rollers and tampers near sensitive areas.
- c. In areas where project construction is anticipated to include vibration-generating activities, such as pile driving, in close proximity to existing structures, site-specific vibration studies shall be conducted to determine the area of impact and to present appropriate mitigation measures that may include the following:
 - a) Identify sites that would include vibration compaction activities (such as pile driving) and have the potential to generate ground-borne vibration, and the sensitivity of nearby structures to ground-borne vibration. Vibration limits shall be applied to all vibration-sensitive structures located within 200 feet of the project. A qualified structural engineer should conduct this task.
 - b) Develop a vibration monitoring and construction contingency plan to identify structures where monitoring would be conducted, set up a vibration monitoring schedule, define structure-specific vibration limits, and address the need to conduct photo, elevation, and crack surveys to document before and after construction conditions.
 - c) - Design construction contingencies that would be implemented when vibration levels approached the limits.
 - d) - At a minimum, conduct vibration monitoring during initial demolition activities and during pile driving activities. Monitoring results may indicate the need for more or less intensive measurements.
 - e) - When vibration levels approach limits, suspend construction and implement contingencies to either lower vibration levels or secure the affected structures.
 - f) - Conduct post-survey on structures under either of these circumstances: (a) when construction monitoring has indicated high vibration levels or (b) when complaints of damage

have been made due to construction activities. Make appropriate repairs or compensation when damage has resulted from construction activities.

Project Specific Conditions of Approval - Noise:

21. The project design shall implement the following measures for all units to reduce interior noise impacts in compliance with City noise standards:
 - a. All windows and glass doors shall be rated STC 36 or higher such that noise reduction provided will satisfy the interior noise standard of 45 dBA Ldn.
 - b. In order for windows and doors to remain closed, mechanical ventilation such as air conditioning shall be provided for all units.
 - c. All vent ducts connecting interior spaces to the exterior (i.e., bathroom exhaust, etc.) shall have at least two 90 degree turns in the duct.
 - d. All windows and doors shall be installed in an acoustically-effective manner. Sliding-window panels shall form an air-tight seal when in the closed position and the window frames shall be caulked to the wall opening around the perimeter with a non-hardening caulking compound to prevent sound infiltration. Exterior doors shall seal air-tight around the full perimeter when in the closed position.

Project Specific Conditions of Approval - Traffic:

22. Ensure that the project driveways on Kearney Street would provide adequate sight distance between exiting vehicles and pedestrians on the adjacent sidewalk (Adequate sight distance is defined as a clear line-of-sight between a motorist ten feet back from the sidewalk and a pedestrian ten feet away on each sides of the driveway).
23. Ensure that on-street parking and trees directly north of both project driveways on Kearney Street would not restrict sight distance for exiting vehicles by providing at least 10 feet of red curb and ensuring that the tree canopy is higher than six feet from the ground.

Public Works Department:

24. Prior to the issuance of a building permit, the applicant shall submit a detailed grading plan, obtain a Grading & Transportation Permit, and pay all associated fees for earthwork and grading operations in excess of 50 cubic yards.
25. Prior to the issuance of a building permit, the applicant shall provide a drainage plan for new roof and any rain leaders. All drainage shall stay on-site, draining away from the foundations, 10' from property lines, and shall not cause a nuisance to neighboring properties.
26. The building plans shall note that all sidewalk, curb and gutter along the development's public right-of-way frontages shall be replaced to meet current City and ADA standards to the satisfaction of the Public Works Director.
27. All improvements on the property frontage shall comply with the standards of the San Pablo Avenue Specific Plan, including the Complete Streets chapter to the satisfaction of the Public Works Director.
28. Before any work commences related to any street tree, sidewalk and driveway, applicant shall obtain a Public Works Encroachment Permit and pay all associated fees.

29. Prior to the issuance of a building permit. Plans shall be revised to note that artificial turf is not suitable for Stormwater filtration.
30. Tree species, location, spacing, tree well size, and planting details, are to be approved by the City Arborist before installation.
31. Any new street trees are required to have irrigation and an establishment period of 3 years prior to acceptance by the City.
32. Applicant shall pay a fair share of the San Pablo Avenue Specific Plan Complete Streets Improvements as determined by the Public Works Director.

Building/Fire Department:

33. Building construction shall meet current Building, California Fire Codes, and the El Cerrito Fire Code.
34. Prior to issuance of building permit:
 - a. The applicant shall provide code analysis of required total firefighting water. Based on required fire flow, the applicant shall show on plans the number of fire hydrants required and locations based on maximum spacing requirements.
 - b. The applicant shall submit plans for fire service underground.
 - c. Fire sprinkler plans shall be submitted for review and approval to the satisfaction of the Fire Marshall.
35. The following information shall be included on the Construction Plans:
 - a. Fire Department Connections (FDC's) shall be in locations acceptable to the fire department for emergency operations.
 - b. Fire FDC's shall be interconnected between standpipes and fire sprinkler system and standpipes.
 - c. The standpipes shall be wet and extend to the roof.
 - d. Fire Department valve connections shall be in the intermediate landings of stairwells.
 - e. A fire standpipe shall be required in each common stairway.
 - f. Smoke detection shall be installed in each bedroom, in hallways adjacent to bedrooms, and one detector per floor level (top and bottom of stairs). Smoke detectors shall be 120v powered with battery backup. Smoke detectors shall be interconnected.
 - g. Carbon monoxide alarm shall be installed outside of and adjacent to sleeping areas where fuel-burning appliances are installed; and in dwelling units that have attached garages. Carbon Monoxide detectors shall be installed in accordance with NFPA 720. Carbon Monoxide alarms shall be 120 v Powered with battery backup and be interconnected with the smoke detectors.
 - h. All electrical breakers shall be labeled.
 - i. Approved numbers or address shall be provided in such a position to be plainly visible and legible from the street fronting the property. Address shall be either internally or externally illuminated.
 - j. Automatic Fire Sprinklers shall be installed throughout the Complex.
 - k. An automatic fire alarm system is required in all common areas of the building. The automatic fire alarm system shall be interconnected with the fire sprinkler system.
 - l. Every sleeping room shall have at least one operable window or door approved for emergency escape or rescue in accordance with CBC 310.4. Escape or rescue windows shall be installed in accordance with CBC 310.4.
 - m. Radio frequency signal strength analysis shall be conducted throughout the buildings. If deficiencies are identified, signal boosters shall be installed to achieve adequate signal strength.

36. Prior to issuance of a Certificate of Occupancy, a "KNOX BOX" shall be installed with keys for all common areas.
37. At each garage vehicle entry, a warning system will be installed to alert bicycles and pedestrians when a vehicle is about to leave the garage. This will include both an audible alarm and a visual light strobe, to the satisfaction of the Building Official.

Solid Waste and Recycling:

38. Prior to the issuance of a building permit, the applicant shall finalize the size of the refuse rooms and frequency of the solid waste and recycling pick-up.

Stege Sanitary District:

39. The applicant shall participate in the San Pablo Avenue Sewer Capacity Improvement Fee Program, and pay all applicable fees. This fee is intended to satisfy the requirement for a Sewer Capacity Study.

Planning Commission:

40. The applicant shall study the following recommendations and if feasible, the applicant shall do any/all of the following:
- a. Add balconies and/or Juliettes on the upper floors of the interior courtyard on the south building.
 - b. Create eight foot high fencing on the new entrances that consists of transparent material. (e.g. sheets of tilted glass forming a wall) instead of the metal wall proposed.
 - c. Reconsider the roof line on the south building to see if removing the overhang elements improves the overall aesthetic of the structure.
 - d. Mimic the aesthetic qualities and materials found in the public art to be located on the south building's Kearney Street elevation in the creation of the artistic glazing to be located in the north building's northeast window. Also consider ways to modify the floor plan to further activate the space behind the glazing.
 - e. Deepen the vertical recess adjacent to the tower element on the southeast side of the south building and consider using glass as the finish.

CERTIFICATION

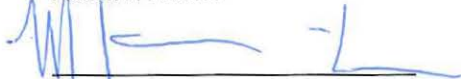
I certify that this resolution was adopted by the El Cerrito Design Review Board at a regular meeting held on August 2, 2017, upon motion of Board member Thompson, second by Board member Wood:

AYES: Groch, Leighly, Riley, Thompson, Wood

NOES: None

ABSTAIN: None

ABSENT: None



Margaret Kavanaugh-Lynch
Development Services Manager

DISPOSITION AND DEVELOPMENT AGREEMENT

AMONG

THE CITY OF EL CERRITO

AND

HD MAYFAIR LLC

AND

MAYFAIR AFFORDABLE LLC

(Mayfair Development)

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DISPOSITION AND DEVELOPMENT AGREEMENT
(Mayfair Development Site)

This Disposition and Development Agreement (the "Agreement") is entered into as of _____, 2018 (the "Effective Date"), by and among the City of El Cerrito, a municipal corporation (the "City"), and HD Mayfair, LLC, a California limited liability company ("Holliday") and Mayfair Affordable LLC, a California limited liability company ("Mayfair Affordable" and collectively with Holliday, the "Developer"), with reference to the following facts, understandings and intentions of the parties:

RECITALS

A. These Recitals refer to and utilize certain capitalized terms which are defined in Article 1 of this Agreement. The Parties intend to refer to those definitions in connection with the use of capitalized terms in these Recitals.

B. The City is the owner of that certain property located at 11600 and 11690 San Pablo Avenue and 1925 Kearney as more particularly described in Exhibit A attached hereto (the "Property"). The City acquired the Property from the Successor Agency to the El Cerrito Redevelopment Agency ("Agency") in accordance with the Agency's approved Long Range Property Management Plan for future development consistent with the goals and objectives of the El Cerrito Redevelopment Plan. In accordance with the Long Range Property Management Plan, the City is required to enter into a compensation agreement with the affected taxing entities prior to conveyance of the Property for development.

C. The City issued a Request for Qualifications followed by a Request for Proposal for the development of the Property consistent with the goals and objectives of the Redevelopment Plan and the San Pablo Avenue Specific Plan.

D. The City, after consideration of the proposals received, selected BRIDGE Housing Corporation and Holliday Development LLC to acquire and develop the Property consistent with the Developers' proposal to develop a mixed income mixed use project consisting of 156 market rate residential units, 67 affordable residential units (including one manager's unit), 8,893 square feet of commercial space, 150 vehicle parking spaces, 348 bicycle parking spaces, 23,631 square feet of open space (consisting of 19,686 square feet of private/common open space and 3,945 square feet of public open space) and related landscaping and public amenities ("Project"). Mayfair Affordable is an Affiliate of BRIDGE Housing Corporation. HD Mayfair LLC is an Affiliate of Holliday Development LLC.

E. On August 23, 2016 the City and the Developers' predecessors in interest entered into an Exclusive Negotiating Rights Agreement ("ENRA"), which ENRA was extended pursuant to a First Amendment and Second Amendment (Resolutions No. 2016-55 and 2017-26).

F. This Agreement will further the City's goals to promote residential and commercial development along the San Pablo transit corridor and to provide housing for a mix of income ranges in support of and in accordance with the City's San Pablo Avenue Specific Plan. Under the terms of this Agreement, the City is imposing occupancy and affordability restrictions on portions of the Project in compliance with the California Redevelopment Law and

the City's approvals for the Project. The City intends to apply the Affordable Units to be developed pursuant to this Agreement toward satisfaction of any statutorily mandated affordable housing production requirements for the Project Area under Health and Safety Code Section 33413(b)(2) and to meet any replacement housing requirements applicable to the Project Area pursuant to Health and Safety Code Section 34176.1.

G. The City Council has determined that this Agreement is in the best interests of the community, and will materially contribute to the implementation of the General Plan, the Redevelopment Plan, and the San Pablo Avenue Specific Plan.

H. The City Council has conducted a duly noticed public hearing on this Agreement pursuant to Government Code Section 52201, and the City is authorized and intends to convey the Property in compliance with Health and Safety Code Section 52201, the Long Range Property Management Plan and the Compensation Agreement.

I. On July 12, 2017 the El Cerrito Planning Commission granted Tier IV site plan and design review approval of the Project and adopted conditions of approval. On August 2, 2017, the El Cerrito Design Review Board granted Tier IV site plan and design review approval of the Project.

J. Pursuant to Government Code Section 65402, the Planning Commission has made the findings of General Plan conformance with respect to this Agreement.

K. Concurrently with the consideration of this Agreement, the City, in accordance with CEQA, has determined that the development of the Project on the Property is consistent with the Program Environmental Impact Report prepared for the San Pablo Avenue Specific Plan pursuant to CEQA Guidelines Sections 15168(c) and 15182 and has made the relevant findings.

L. This Agreement does not authorize or guarantee the granting of the Governmental Approvals or the construction of the Project. Such actions may be authorized and will become possible only upon subsequent action of the City and the parties performance under this Agreement.

THEREFORE, and in consideration of the foregoing recitals which are hereby incorporated into this Agreement by this reference, and for other good and valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, the City and the Developer do hereby agree as follows:

ARTICLE 1. DEFINITIONS AND EXHIBITS

Section 1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following definitions apply throughout this Agreement.

(a) "Affiliate" means, with respect to a specified Person, any other Person that directly or indirectly Controls, is Controlled by or is under Common Control with such specified Person.

(b) "Affordable Developer" means Mayfair Affordable LLC, a California limited liability company and its successors and assigns as permitted by this Agreement.

(c) "Affordable Development" means the Affordable Development Parcel and the Affordable Development Improvements.

(d) "Affordable Development Financing Plan" means the Affordable Developer's plan for financing the construction of the Affordable Development Improvements and the operation of the Affordable Development. The Affordable Development Financing Plan shall be approved by the City pursuant to Section 4.2 and may be revised from time to time with the approval of the City pursuant to Section 4.2.

(e) "Affordable Development Improvements" means approximately 67 units of affordable multifamily housing units (including one manager's units), all common areas, amenities, plans, entitlements, appurtenances, improvement easements, buildings and fixtures, and landscaping associated with the Affordable Development to be developed on the Affordable Development Parcel.

(f) "Affordable Development Parcel" means that certain portion of the Property on which the Affordable Development Improvements will be constructed, as depicted in the attached Conceptual Site Plans.

(g) "Affordable Housing Regulatory Agreement" means that certain Regulatory Agreement and Declaration of Restrictive Covenants imposing the specified affordability requirements associated with the conveyance of the Affordable Housing Parcel, in substantially the form of Exhibit F. The Affordable Housing Regulatory Agreement will be recorded in the Official Records against the Affordable Development Parcel upon the Close of Escrow.

(h) "Affordable Unit" means any one of the residential units to be constructed on the Affordable Development Parcel.

(i) "Agreement" means this Disposition and Development Agreement, as such may be amended from time to time.

(j) "Appraisal" means the appraisal of the Property prepared by Valbridge Associates dated May 3, 2017.

(k) "Approved Financing" means the loans, grants, and other financing to be secured by a Developer, and approved by the City for the purpose of financing the costs of a Phase of the Project, consistent with the applicable approved Development Financing Plan.

(l) "Business Day" means a day other than a Saturday, Sunday or other day on which national banks in California are closed to the public for carrying on substantially all business functions.

(m) "CEQA" means the California Environmental Quality Act (Public Resource Code 21000 et seq.), and its implementing regulations.

(n) "Certificate of Completion" means the certificate to be issued by the City pursuant to Section 7.13 of this Agreement, a form of which is attached hereto as Exhibit K, on the completion of construction of the improvements associated with a Phase or particular component of the Project.

(o) "Certificate of Occupancy" means one of the certificates to be issued by the City upon Completion of Construction and final inspection by the City's Building Department, approving occupancy of any unit in any of the improvements associated with a Phase or particular component of the Project.

(p) "City" means the City of El Cerrito, a California municipal corporation.

(q) "City Event of Default" has the meaning set forth in Section 10.4.

(r) "Close of Escrow" means the closing of the escrow in which the City conveys the Parcels to the Developer or Developers.

(s) "Commencement of Construction" means the date on which a Developer commences construction on a specified component of the Project. Commencement of Construction shall include grading and shoring work on the applicable Developer Parcel, provided, however, grading and shoring work performed by the Market Rate Developer on the Affordable Development Parcel shall not constitute Commencement of Construction of the Affordable Development Improvements.

(t) "Completion of Construction" means the date a Developer receives a Certificate of Occupancy for a Phase of the Project improvements, respectively.

(u) "Conceptual Site Plans" means the schematic document showing the basic physical characteristics of the Development Improvements and the location of the Development Improvements. The Conceptual Site Plans are attached hereto as Exhibit B, incorporated herein by this reference.

(v) "Control" means direct or indirect management or control of the: (1) managing member or members in the case of a limited liability company; (2) the managing general partner or general partners in the case of a partnership; and (3) boards of directors that overlap by fifty percent (50%) or more of their directors, or a majority of the directors in the case of a corporation.

(w) "Developer Event of Default" has the meaning set forth in Section 10.2.

(x) "Developer Parcels" or "Parcels" means the Affordable Development Parcel and the Market Rate Development Parcel. The term Developer Parcel or Parcels means any one of the Developer Parcels.

(y) "Developers" means collectively Mayfair Affordable and Holliday. The term "Developer" means any of the Developers.

(z) "Development Improvements" means the Affordable Development Improvements and the Market Rate Development Improvements, as applicable.

(aa) "Development Schedule" means the schedule attached hereto as Exhibit E, as approved by the City setting forth the Developers' anticipated schedule for the conveyance of the Developer Parcels and construction of the phases of the Project by the Developers.

(bb) "Effective Date" means the date this Agreement is entered into by the Parties as first written above.

(cc) "ENRA" means that certain Exclusive Negotiating Agreement dated August 23, 2016 as amended by the First Amendment dated April 6, 2017, as further amended by the Second Amendment dated _____ by and among the City and the Developers' predecessors in interest, as such ENRA may be amended from time to time.

(dd) "Environmental Assessment Documents" shall mean: (1) the "Phase I Environmental Site Assessment report, dated April 7, 2005; and (2) the "Soil, Groundwater and Soil Vapor Sample Results" report, dated February 23, 2017.

(ee) "Final Subdivision Map" means the final subdivision map or parcel map creating the Developer Parcels.

(ff) "Financing Plans" means a Developer's plan for financing the acquisition of a Developer Parcel, if applicable, and the development of the applicable improvements, including a detailed development budget, construction and permanent financing commitment letters, to be approved by the City pursuant to Sections 4.2 and 4.3.

(gg) "Financing Proposal" means the proposed sources and uses breakdown of the development and operating costs of the phased components of the Project prepared by the Developer and approved by the City as of the Effective Date. The Approved Financing Proposals are attached to this Agreement as Exhibit C-1 and Exhibit C-2, incorporated herein by this reference. The Approved Financing Proposals shall serve as the base documents for the Financing Plans which the Developers must submit for City approval pursuant to the terms of this Agreement.

(hh) "General Plan" means the City's General Plan.

(ii) "Governmental Approvals" has the meaning set forth in Section 7.2, below.

(jj) "Grant Deed" means the grant deeds by which the City conveys a Developer Parcels, substantially in the form attached hereto as Exhibit H, incorporated herein by this reference.

(kk) "Hazardous Materials" means: (1) any "hazardous substance" as defined in Section 101(14) of CERCLA (42 U.S.C. Section 9601(14)) or Section 25281(d) or 25316 of the California Health and Safety Code as amended from time to time; (2) any "hazardous waste," "infectious waste" or "hazardous material" as defined in Section 25117, 25117.5 or 25501(j) of the California Health and Safety Code as amended from time to time; (3) any other waste, substance or material designated or regulated in any way as "toxic" or "hazardous" in the RCRA (42 U.S.C. Section 6901 et seq.), CERCLA (42 U.S.C. Section 9601 et seq., Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), Safe Drinking Water Act (42 U.S.C.

Section 300(f) et seq.), Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), Clean Air Act (42 U.S.C. Section 7401 et seq.), California Health and Safety Code (Section 25100 et seq., Section 39000 et seq.), or California Water Code (Section 13000 et seq.) as amended from time to time; and (4) any additional wastes, substances or materials which at such time are classified, considered or regulated as hazardous or toxic under any other present or future environmental or other similar laws relating to the Project. The term "Hazardous Materials" does not include: (i) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction or maintenance, of residential or commercial developments, or typically used in office or residential activities; or (ii) certain substances which may contain chemicals listed by the State of California pursuant to California Health and Safety Code Sections 25249.8 et seq., which substances are commonly used by a significant portion of the population living within the region of the Project, including, but not limited to, alcoholic beverages, aspirin, tobacco products, nutrasweet and saccharine, so long as such materials and substances are stored, used and disposed of in compliance with all applicable Hazardous Materials Laws.

(ll) "Hazardous Materials Laws" means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the Property or any portion thereof.

(mm) "Indemnitees" means the City and its council members, officers, directors, representatives, contractors, consultants, employees and agents.

(nn) "Market Rate Developer" means HD Mayfair, LLC or an entity to be formed Controlled by Holliday Development LLC, and its successors and assigns as permitted by this Agreement.

(oo) "Market Rate Development" means the Market Rate Development Parcel together with the Market Rate Development Improvements.

(pp) "Market Rate Development Financing Plan" means the Market Rate Developer's plan for financing the acquisition of the Market Rate Development Parcel and the development and operation of the Market Rate Development Improvements to be approved by the City pursuant to Section 4.3 and which may be revised from time to time with the approval of the City pursuant to Section 4.3.

(qq) "Market Rate Development Improvements" means the 156 market rate multifamily housing units, the 8,883 square feet of commercial space, the 150 vehicular parking spaces, ___ bicycle parking spaces, and 23,631 square feet of open space, including all common areas, amenities, plans, entitlements, appurtenances, improvement easements, buildings and fixtures, and landscaping associated with the Market Rate Development.

(rr) "Market Rate Development Parcel" means that certain portion of the Property on which the Market Rate Development Improvements will be constructed, as depicted in the attached Conceptual Site Plans.

(ss) "Market Rate Housing Component" has the meaning set forth in Section 2.2, below.

(tt) "Market Rate Unit" means any one of the residential units to be constructed as part of the Market Rate Development Improvements.

(uu) "Memorandum of DDA" means the Memorandum of Disposition and Development Agreement to be recorded against the applicable Developer Parcels at the Close of Escrow. A form of the Memorandum of DDA is attached hereto as Exhibit G, and incorporated herein by this reference.

(vv) "Notice of Affordability Restrictions" means that certain Notice of Affordability Restrictions on Transfer of Property that will be recorded in the Official Records against the Affordable Development Parcel at the Close of Escrow and will restrict the development and operation of the Affordable Development Parcel to affordable housing, in a form to be provided by the City, pursuant to Sections 33334.3 and/or 33413(c)(5) of the Community Redevelopment Law, or successor provisions.

(ww) "Official Records" means the official land records of the County of Contra Costa.

(xx) "Operating Memorandum" has the meaning given in Section 13.19 below.

(yy) "Parties" means the City and the Developers and the term Party refers to each of them individually.

(zz) "Partnership" means a partnership created for the purpose of syndicating the Tax Credits, which will own the Affordable Development.

(aaa) "Partnership Agreement" means the limited partnership agreement of the Partnership and related documents (including, without limitation, a budget for the use of capital contributions, any funding agreement, any option for the Affordable Developer or another Affiliate of the Affordable Developer to repurchase the Affordable Development from the Partnership) approved by the City pursuant to Section 9.4.

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

(ccc) "Phase" shall mean generally either the Market Rate Housing Component or the Affordable Housing Component of the Project as described in Section 2.2, below.

(ddd) "Project Area" means the El Cerrito Redevelopment Project Area, as more particularly defined in the Redevelopment Plan.

(eee) "Project Documents" means all construction documentation, upon which a Developer, and the Developer's several contractors, must rely in building each and every part of the Development Improvements (including landscaping, parking, and common areas) and may include, but not necessarily be limited to, the Concept Site Plans, the final architectural drawings, landscaping plans and specifications, final elevations, building plans and specifications (also known as "working drawings") and a time schedule for construction.

(fff) "Redevelopment Plan" means the Redevelopment Plan for the El Cerrito Redevelopment Project Area, adopted by Ordinance No. 77-17 dated November 28, 1977 as amended from time to time.

(ggg) "Security Financing Interest" has the meaning set forth in Section 11.1.

(hhh) "Subdivision Code" means Title 18 of the City Municipal Code.

(iii) "Tax Credit Investor" means a reputable equity investor, reasonably acceptable to the City, committed to in consideration of an allocation of Tax Credits, acquiring a limited partner interest in the Partnership.

(jjj) "Tax Credit Reservation" means a preliminary allocation of Tax Credits from TCAC.

(kkk) "Tax Credits" means 4% or 9% Low Income Housing Tax Credits granted pursuant to Section 42 of the Internal Revenue Code and/or California Revenue and Taxation Code Sections 17057.5, 17058, 23610.4 and 23610.5 and California Health and Safety Code Sections 50199, *et seq.*, as such may be amended.

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

(mmm)"Term" means the term of this Agreement, commencing on the Effective Date, and unless terminated earlier or extended by the Parties pursuant to this Agreement, ends for the first Phase, upon the issuance of the Certificate of Completion for such Phase and for the second Phase, upon issuance of a Certificate of Completion of such Phase.

(nnn) "Title Company" means Old Republic Title Company, or such other title company as the Parties may mutually select.

(ooo) "Title Report" means that certain title report dated _____, 2017, issued by the Title Company for the Property.

(ppp) "Transfer" has the meaning set forth in Section 9.1.

Section 1.2 Exhibits. The following exhibits are attached to and incorporated in the Agreement:

- Exhibit A: Legal Description of Property
- Exhibit B: Conceptual Site Plans
- Exhibit C-1: Affordable Development Financing Proposal
- Exhibit C-2: Market Rate Development Financing Proposal
- Exhibit D: Intentionally Omitted
- Exhibit E: Development Schedule
- Exhibit F: Form of Affordable Housing Regulatory Agreement
- Exhibit G : Form of Memorandum of DDA
- Exhibit H: Form of Grant Deed
- Exhibit I: Form of DDA Assignment and Assumption Agreement
- Exhibit J: Insurance Requirements

Exhibit K: Form of Certificate of Completion

ARTICLE 2.
PURPOSE AND OVERVIEW

Section 2.1 Project Overview.

The Mayfair Development is a multi-phased mixed use development (the "Project"), which is anticipated to include an Affordable Development Component and a Market Rate Housing Component, all a further described in Section 2.2 below.

The purposes of this Agreement, as more specifically set forth herein, are to: (1) govern the conditions and requirements for the conveyance of the Property to the Developer for the components of the Project; (2) cause the construction and completion of the Affordable Development Improvements and the Market Rate Development Improvements; and (3) set forth the ongoing requirements for the operation and maintenance of the various Development Improvements.

Section 2.2 Development Components.

The redevelopment of the Property and implementation of the Project is currently planned to consist of two phases: (1) an Affordable Housing Component; and (2) a Market Rate Housing Component. All details of the redevelopment phases set forth in this Agreement may be changed by mutual agreement of the Parties.

(a) Affordable Housing Component. The Affordable Housing Component refers to the Phase of the Project consisting of the construction of the Affordable Development Improvements on the Affordable Development Parcel. All of the low-income housing tax credit units will be made available to households at or below sixty percent (60%) of the area median income, as adjusted for household size. The Affordable Housing Component will be implemented by the Affordable Developer. Without the consent of the City or the Market Rate Developer and independent of any City restrictions or requirements, the Affordable Developer may restrict some or all of the Affordable Units to households with incomes lower than sixty percent (60%) of area median income, in the Affordable Developer's discretion or if required by other Affordable Development financing sources

(b) Market Rate Housing Component. The Market Rate Housing Component refers to the Phase of the Project consisting of the construction of the Market Rate Development Improvements on the Market Rate Development Parcel. The Market Rate Component will be implemented by the Market Rate Developer.

Section 2.3 Development Schedule.

(a) The Project and specific components described in Section 2.2 above, are anticipated to be constructed in one or more Phases.

(b) Status of Development Schedule. The Parties recognize that the Project will be developed and constructed over a period of approximately five (5) years. The Parties expect as set forth in the Development Schedule that the Market Rate Component will be

developed prior to the Affordable Housing Component. The Developer has prepared the Development Schedule based on the most current information that it has as of the Effective Date on each Phase of the Project. The Developer shall update the Development Schedule whenever there is a material change in the schedule or activities for the applicable Phase. The Parties acknowledge and agree that aspects of the Development Schedule may be amended in writing, subject to Section 3.3.

Section 2.4 Recordation of Memorandum of Agreement.

(a) Concurrently with a Developer's acquisition of a Developer Parcel, a Memorandum of DDA shall be recorded in the Official Records against title to the Property, subject only to such liens, encumbrances and other exceptions to title approved in writing and in advance by the City.

(b) Concurrently with the Developer's acquisition of the Developer Parcels the Affordable Housing Regulatory Agreement and Notice of Affordability Restrictions shall be recorded in the Official Records against title to the Affordable Development Parcel, subject only to such liens, encumbrances and other exceptions to title approved in writing and in advance by the City. The City, upon request of the Affordable Developer, shall consent to subordination of the Affordable Housing Regulatory Agreement if (a) the Developer demonstrates to the reasonable satisfaction of the City Manager that an economically feasible alternative method of financing, refinancing, or assisting the units or parcels on substantially comparable terms and conditions, but without subordination, is not reasonably available, and (b) where the City obtains written commitments reasonably designed to protect the City's Regulatory Agreement including, but not limited to, any of provisions listed in Health and Safety Code Section 333334.14(a)(4)(A)-(D).

ARTICLE 3.
TERM OF AGREEMENT

Section 3.1 Effective Date. The Effective Date of this Agreement is stated in the first paragraph of this Agreement. As independent consideration for this Agreement, the Developer shall pay to the City One Hundred Dollars (\$100) on or before the Effective Date.

Section 3.2 Term. This Agreement shall commence on the Effective Date and end on the earliest of: (a) for the first Phase, the date that a Certificate of Completion is issued for such Phase and for the second phase, the date a Certificate of Completion is issued for such Phase; (b) the date of any termination of this Agreement in accordance with the provisions hereof.

Section 3.3 Development Schedule. During the Term, the Developer and the City will each be required to perform certain tasks and to fulfill certain obligations as set forth in this Agreement, the exhibits and other implementing documents. A schedule of the deadlines for performance of various conditions and requirements under this Agreement is set forth in the Development Schedule attached as Exhibit E. The Development Schedule may be modified by an Operating Memoranda approved by the Developer and the City in accordance with Section 13.19. The City agrees that (a) the Developer may extend the date for the Close of Escrow set forth in the Development Schedule and Section 6.4 of this Agreement in accordance with the provisions of Section 6.4 of this Agreement. The date for Commencement of Construction for

the Market Rate Development set forth in the Development Schedule (a) may be extended for up to six (6) months by the Market Rate Developer giving written notice to the City no later than the date set forth in the Development Schedule for Commencement of Construction for the Market Rate Development. The Market Rate Developer may request an additional twelve (12) month extension for the Commencement of Construction of the Market Rate Development which extension shall be granted by the City if the Market Rate Developer demonstrates to the City Manager's reasonable satisfaction that it is making good faith efforts to further the Market Rate Development. The date for Commencement of Construction of the Affordable Development set forth in the Development Schedule (a) may be extended by the Affordable Developer with written notice to the City no later than the date for Commencement of Construction set forth in the Development Schedule by twelve (12) months; and (b) shall be further extended by the City Manager if the Affordable Developer demonstrates to the City Manager's satisfaction that it is making good faith efforts to further the Affordable Development, provided, however, in no event shall the Commencement of Construction for the Affordable Development be extended beyond the later of (a) five (5) years from the date of acquisition of the Affordable Development Parcel by the Affordable Developer or (b) nine (9) months following the Completion of Construction of the Market Rate Development without the City's consent.

ARTICLE 4. FINANCIAL TERMS

Section 4.1 Financing Proposal.

As of the Effective Date, the City has approved the preliminary Financing Proposals attached to this Agreement as Exhibits C-1 and C-2. Each of the Developers must submit for City approval an update to the Financing Proposal in the form of a Financing Plan as required under Section 4.2 or 4.3 respectively, evidencing availability of the funds necessary to finance the acquisition of the fee interest in the Developer Parcel, if applicable, and development and operation of the Development Improvements on the Developer Parcels.

Section 4.2 Affordable Development Financing Plan.

(a) By the time specified in the Development Schedule, the Affordable Developer shall submit for the City's approval a draft Affordable Development Financing Plan, which at a minimum must contain: (1) a proposed development budget; (2) a "sources and uses" breakdown of the costs of constructing the Affordable Development Improvements, and an updated operating proforma for the Affordable Development, including an analysis of subsidized financing necessary, if any; (3) copies of any funding commitments for construction and permanent financing for the Affordable Development, including a preliminary tax credit reservation and an executed commitment letter from an equity investor acceptable to the City for the Tax Credits, if any; (4) a rent schedule showing the anticipated rents for Affordable Units and appropriate utility allowances; (5) a project cash flow showing the estimated costs of operating the Affordable Development in accordance with this Agreement, the Affordable Housing Regulatory Agreement and other project documents, as applicable, for fifty-five (55) years after the anticipated dates of completion; (6) any other information that is reasonably necessary to the City in determining that the Affordable Developer has the financial capability to pay all costs of constructing the Affordable Development Improvements, such as evidence of the availability of equity funds required to construct the Affordable Development Improvements,

other than Tax Credit Investor equity; (7) as reasonably requested by the City, financial information concerning the providers of the funds showing their ability to provide the committed funds, including certified financial statement or other financial statement in such form reasonably satisfactory to the City evidencing other sources of capital sufficient to demonstrate that the Affordable Developer has adequate funds available and is committing such funds to cover the difference, if any, between costs of development and construction of the Affordable Development Improvements and the amount available to the Affordable Developer from external sources; and (8) all underlying assumptions for each of the above, including terms, conditions, and approximate pricing of all anticipated debt and equity.

(b) The City shall review the Affordable Development Financing Plan and any proposed amendments of the Affordable Development Financing Plan for the sole purpose of determining if, in the City's reasonable judgment, the Affordable Developer has the financial capability (taking into account all committed funds), to pay all realistically established costs of constructing the Affordable Development Improvements and operating them in a manner consistent with the Affordable Housing Regulatory Agreement and any other regulatory requirements imposed on the Affordable Development. The City shall either approve or disapprove the Affordable Development Financing Plan and any proposed amendments of the Affordable Development Financing Plan in writing within fifteen (15) Business Days of receipt. If disapproved, the City shall give specific reasons for disapproval. If the Affordable Development Financing Plan is disapproved, the Affordable Developer may resubmit, and the City shall promptly review, a revised Affordable Development Financing Plan that addresses the reasons for disapproval.

(c) The Affordable Developer shall submit any material revision to an approved Affordable Development Financing Plan to the City for its review and approval. Any proposed revised Affordable Development Financing Plan shall be considered and approved or disapproved by the City in the same manner and according to the same timeframe set forth above for the initial Affordable Development Financing Plan. Until a revised Affordable Development Financing Plan is approved by the City, the previously approved Affordable Development Financing Plan shall govern the financing of the Affordable Development.

(d) All Approved Financing necessary to construct the Affordable Development Improvements, as approved by the City in the Affordable Development Financing Plan, must be closed by the Affordable Developer prior to, or simultaneously with, the Commencement of Construction of the Affordable Development Improvements. The Affordable Developer must also submit to the City evidence, reasonably satisfactory to the City, that any conditions to the release or expenditure of the Approved Financing described in the approved Affordable Development Financing Plan as the sources of funds to pay the costs of constructing the Affordable Development Improvements have been met, or will be met before Commencement of Construction of the Affordable Development Improvements, and that such funds will be available subject to the Affordable Developer's satisfaction of standard disbursement preconditions required to be satisfied on a periodic basis, for constructing the Affordable Development Improvements.

Section 4.3 Market Rate Development Financing Plan.

(a) By the time specified in the Development Schedule, the Market Rate Developer shall submit for the City's approval a draft Market Rate Development Financing Plan, which at a minimum must contain: (1) a proposed development budget; (2) a "sources and uses" breakdown of the costs of purchasing the Market Rate Development Parcel and constructing the Market Rate Development Improvements, and an updated operating proforma for the Market Rate Development; and (3) copies of all required funding commitments for construction and permanent financing for the Market Rate Development, acceptable to the City.

(b) The City shall review the Market Rate Development Financing Plan and any proposed amendments of the Market Rate Development Financing Plan for the sole purpose of determining if, in the City's reasonable judgment, the Market Rate Developer has the financial capability (taking into account all committed funds), to pay all realistically established costs of purchasing the Market Rate Development Parcel and constructing the Market Rate Development Improvements. The City shall either approve or disapprove the Market Rate Development Financing Plan and any proposed amendments of the Market Rate Development Financing Plan in writing within fifteen (15) Business Days of receipt. If disapproved, the City shall give specific reasons for disapproval. If the Market Rate Development Financing Plan is disapproved, the Market Rate Developer may resubmit, and the City shall promptly review, a revised Market Rate Financing Plan that addresses the reasons for disapproval. The City shall approve the Market Rate Development Financing Plan (and any revisions to such plan) if such plan demonstrates that the Market Rate Developer has the capacity to fund the Market Rate Development and perform its obligations under this Agreement.

(c) The Market Rate Developer shall submit any material revision to an approved Market Rate Development Financing Plan to the City for its review and approval. Any proposed revised Market Rate Development Financing Plan shall be considered and approved or disapproved by the City in the same manner and according to the same timeframe set forth above for the initial Market Rate Development Financing Plan. Until a revised Market Rate Development Financing Plan is approved by the City, the previously approved Market Rate Development Financing Plan shall govern the financing of the Market Rate Development

(d) All Approved Financing necessary to purchase the Market Rate Development Parcel and construct the Market Rate Development Improvements, as approved by the City in the Market Rate Development Financing Plan, must be closed by the Market Rate Developer prior to the Commencement of Construction of the Market Rate Development Improvements. The Market Rate Developer must also submit to the City evidence, reasonably satisfactory to the City, that any conditions to the release or expenditure of the Approved Financing described in the approved Market Rate Development Financing Plan as the sources of funds to pay the costs of purchasing the Market Rate Parcel and constructing the Market Rate Development Improvements have been met, or will be met before Commencement of Construction of the Market Rate Development Improvements.

ARTICLE 5.
PREDISPOSITION REQUIREMENTS FOR
CONVEYANCE OF DEVELOPER PARCELS

Section 5.1 Conditions Precedent to Disposition of the Developer Parcels.

The requirements set forth in this Article 5 are conditions precedent to the City's obligation to convey the Developer Parcels to the Developers. The City has no obligation to convey the Developer Parcels to the Developers unless the Developers have satisfied the conditions precedent set forth in this Article 5 in the manner set forth below and within the timeframe set forth in the Development Schedule.

Section 5.2 Creation of Parcels, Subdivision Approval and Recordation.

(a) By the time specified in the Development Schedule, the Developer, in cooperation with the City, shall prepare and submit to the City for approval, a Final Subdivision Map consistent with the Subdivision Code. The Final Subdivision Map shall be in substantial conformance with the Conceptual Site Plans, the applicable conditions of approval and the Governmental Approvals. The Developer shall diligently pursue and obtain City approval of the Final Subdivision Map. The City and the Developer shall work together to submit a Final Subdivision Map to be recorded in the Official Records prior to the Close of Escrow.

(b) Recordation of the Final Subdivision Map will create, as applicable, the Affordable Development Parcel and the Market Rate Development Parcel as legal parcels and the final legal description for such parcels, as applicable, shall be by reference to the parcels as shown in the recorded Final Subdivision Map.

Section 5.3 Reciprocal Easement Agreement, Open Space Easement.

As a condition precedent to the Close of Escrow, the Developers shall execute and record a Reciprocal Easement Agreement, in the form approved by the City and the Developers. The Reciprocal Easement Agreement shall be recorded concurrently with the Close of Escrow against each Developer Parcel. The Reciprocal Easement Agreement shall govern the shared Developer access rights, maintenance, and construction cost obligations for the open space mews and the Affordable Developer parking spaces and access located in the Market Rate Development. The Reciprocal Easement shall allow for the Affordable Developer (and its successors and assigns) to access and use ___ vehicle spaces on the Market Rate Development in connection with the operation of the Affordable Development. The Reciprocal Easement Agreement shall also allow the Developers (and their successor and assigns) to access and use open space mews on the Property in connection with the operation or completed operation of the Development Improvements. In addition to the Reciprocal Easement Agreement, the Developer shall record an easement agreement providing public access to those areas designated in the Conceptual Site Plan as public open space ("Open Space Easement"). The Open Space Easement shall include rules limiting access to the easement area consistent with the City's approvals and shall allow the Developer to establish additional rules as needed to address Project operational issues, so long as such rules are consistent with the City's entitlements for the Project. Notwithstanding anything to the contrary herein, and subject to the City's approval of any necessary amendments to the land use entitlements applicable to the Affordable Development

Parcel or issuance of new entitlements, the Affordable Developer may elect to provide parking for the Affordable Housing Development in a location other than on the Market Rate Development Parcel.

Section 5.4 Developer Agreement.

No later than the date set forth in the Development Schedule, and as a condition precedent to the Close of Escrow, the Developer shall submit to the City an agreement between the Affordable Developer and the Market Rate Developer that, at a minimum, provides the Affordable Developer with an option to acquire the Affordable Development Parcel subject to reasonable terms and conditions consistent with the terms of this Agreement.

Section 5.5 Insurance.

No later than the date set forth in the Development Schedule, the Developer (and all subsequent Developers when applicable) must furnish to the City evidence of the insurance coverage meeting the requirements of Exhibit J.

Section 5.6 Compensation Agreement. Prior to conveyance of the Property, the City shall have entered into a compensation agreement (the "Compensation Agreement") with the County of Contra Costa, a political subdivision of the State of California (the "County") and other taxing entities (collectively, the "Taxing Entities") in accordance with California Health and Safety Code Section 34180(f). The City shall use commercially reasonable efforts to cause such condition to be satisfied, by the date set forth in the Development Schedule. In the event the City does not enter into a Compensation Agreement on or before the date that is ninety (90) days from the Effective Date ("Compensation Agreement Deadline"), then Developers' performance dates under this Agreement and the Development Schedule shall be extended on a day for day basis by the number of days between the Compensation Agreement Deadline and the date on which the Compensation Agreement is fully executed and effective.

ARTICLE 6. TRANSFER OF THE PROPERTY

Section 6.1 Sale and Purchase. Provided the pre-disposition requirements set forth in Article 5, and the additional closing conditions set forth in this Article 6 have been satisfied in the manner set forth above and by the dates set forth in the Development Schedule, (a) the City will convey to the Market Rate Developer, and the Market Rate Developer will accept transfer from the City of the Market Rate Development Parcel pursuant to the terms, covenants, and conditions of this Agreement and (b) the City will convey to the Affordable Developer and the Affordable Developer will accept transfer from the City of the Affordable Development Parcel pursuant to the terms, covenants and conditions of this Agreement.

Section 6.2 Purchase Price. The Purchase Price for the Property shall be Three Million Three Hundred Fifty Thousand Dollars (\$3,350,000), which represents the fair market value of the entirety of the Developer Parcels as determined by the Appraisal. The Market Rate Developer acknowledges that the Market Rate Developer is paying the full Purchase Price,

including any portion attributable to the Affordable Development Parcel as a contribution toward the Affordable Development.

Section 6.3 Opening Escrow. To accomplish the purchase and transfer of the Property, the Parties will establish the escrow with the Title Company. The Parties will execute and deliver all written instructions to the Title Company to accomplish the terms hereof, which instructions must be consistent with this Agreement.

Section 6.4 Close of Escrow.

(a) The Close of Escrow must occur no later than twelve (12) months after the Effective Date ("Outside Closing Date"), and only in the event that all conditions precedent to conveyance set forth in Article 5 have been satisfied or waived by the City. The Developer recognizes that the City is obligated to sell the Property within a certain time period set forth in the Compensation Agreement and failure of the City to complete a sale will result in the City incurring certain penalties and costs. Developer may obtain two six (6) month extensions of the Outside Closing Date by depositing with Escrow seventy-five thousand dollars (\$75,000) as a nonrefundable extension payment ("Extension Payment") for each such extension. Any Extension Payment made by Developer must be deposited in Escrow on or prior to the Outside Closing Date being extended. Any Extension Payment, along with any interest earned on the Extension Payment, shall be applied toward the Purchase Price in the event escrow closes prior to expiration of the Outside Closing Date, as extended. If for any reason (except for a City Event of Default) the Close of Escrow does not occur by the Outside Closing Date, as extended, the Extension Payment(s) and any interest earned thereon shall be released to the City and this Agreement shall be terminated and the City may proceed to market the Property. In addition to the conditions precedent set forth in Article 5, the following conditions must be satisfied, or waived in writing by the City, prior to or concurrently with, and as conditions of, the Close of Escrow:

(1) There exists no condition, event or act which would constitute a breach or default under this Agreement, or which, upon the giving of notice or the passage of time, or both, would constitute such a breach or default.

(2) The Market Rate Developer has provided the City with copies of its organizational documents and a certified copy of corporate authorizing resolutions approving the transactions contemplated under this Agreement and the Affordable Developer has provided the City with copies of its organizational documents and a certified copy of a corporate authorizing resolution approving the transaction.

(3) There exists no material adverse change in the financial condition of Market Rate Developer from that shown by the financial statements and other data and information furnished by the Market Rate Developer to the City.

(4) The Market Rate Developer has executed and delivered to the City the Grant Deed for the Market Rate Development Parcel, the Memorandum of DDA, the Reciprocal Easement Agreement and all other documents and instruments required to be executed and delivered, all in form and substance satisfactory to the City.

(5) The Affordable Housing Developer has executed and delivered to the City the Grant Deed for the Affordable Development Parcel, the Notice of Affordability Restrictions, the Affordable Housing Regulatory Agreement, the Memorandum of DDA, the Reciprocal Easement Agreement and all other documents and instruments required to be executed and delivered, all in form and substance satisfactory to the City.

(6) The Developer has furnished the City with evidence of the insurance coverage meeting the general insurance requirements set forth in Section 5.5.

(7) The Grant Deeds, the Notice of Affordability Restrictions, the Affordable Housing Regulatory Agreement, the Reciprocal Easement Agreement and the Memorandum of DDA have been, or concurrently with the Close of Escrow, will be recorded against the applicable portion of the Property.

(8) All representations and warranties of the Developer contained in this Agreement are true and correct in all material respects as of the Close of Escrow.

Section 6.5 Condition of Title. Upon the Close of Escrow, the applicable Developer will have insurable title to the applicable Developer Parcel which will be free and clear of all liens, encumbrances, deeds of trust, mortgages, clouds and conditions, rights of occupancy or possession, except: (a) applicable building and zoning laws and regulations; (b) the provisions of the Redevelopment Plan; (c) the Memorandum of DDA, the Affordable Housing Regulatory Agreement as to the Affordable Development Parcel, and the Notice of Affordability Restrictions as to the Affordable Development Parcel; (d) the applicable Grant Deed; (e) the Reciprocal Easement Agreement; (f) any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of the Grant Deed; (g) exceptions in the Title Report mutually agreed to by the City and the applicable Developer; and (h) the liens of any Approved Financing approved by the City.

Section 6.6 Condition of the Property.

(a) In fulfillment of the purposes of Health and Safety Code Section 25359.7(a), the City hereby represents and warrants that, other than the Environmental Assessment Documents provided to the Developer, it has no knowledge, and has no reasonable cause to believe, that any release of Hazardous Materials has come to be located on or beneath the Property.

(b) **"AS IS" PURCHASE. PRIOR TO THE EFFECTIVE DATE, THE DEVELOPER WAS PROVIDED THE OPPORTUNITY TO INVESTIGATE THE PROPERTY, AND HAS APPROVED THE PHYSICAL CONDITION OF THE PROPERTY. THE DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE CITY IS SELLING AND THE DEVELOPER IS BUYING THE PROPERTY (AND ALL IMPROVEMENTS THEREON) ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT WITH THE EXCEPTION OF THOSE REPRESENTATIONS AND WARRANTIES MADE BY THE CITY IN THIS AGREEMENT, THE DEVELOPER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS (EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT) OR IMPLIED, FROM THE CITY AS TO ANY MATTERS**

CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION: (A) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, TOPOGRAPHY, CLIMATE, AIR, WATER RIGHTS, WATER, GAS, ELECTRICITY, UTILITY SERVICES, GRADING, DRAINAGE, SEWERS, ACCESS TO PUBLIC ROADS AND RELATED CONDITIONS); (B) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY AND GROUNDWATER; (C) THE EXISTENCE, QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF UTILITIES SERVING THE PROPERTY; (D) THE DEVELOPMENT POTENTIAL OF THE PROPERTY, AND THE USE, HABITABILITY, MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE PROPERTY FOR ANY PARTICULAR PURPOSE; (E) THE ZONING OR OTHER LEGAL STATUS OF THE PROPERTY OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON THE USE OF THE PROPERTY; (F) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ANY APPLICABLE CODES, LAWS, REGULATIONS, STATUTES, ORDINANCES, COVENANTS, CONDITIONS AND RESTRICTIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY OR OF ANY OTHER PERSON OR ENTITY; (G) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT THE PROPERTY OR THE ADJOINING OR NEIGHBORING PROPERTY; AND (H) THE CONDITION OF TITLE TO THE PROPERTY. THE DEVELOPER AFFIRMS THAT THE DEVELOPER HAS NOT RELIED ON THE SKILL OR JUDGMENT OF THE CITY OR ANY OF ITS AGENTS, EMPLOYEES OR CONTRACTORS TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT THE CITY MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE. THE DEVELOPER ACKNOWLEDGES THAT IT SHALL USE ITS INDEPENDENT JUDGMENT AND MAKE ITS OWN DETERMINATION AS TO THE SCOPE AND BREADTH OF ITS DUE DILIGENCE INVESTIGATION WHICH IT SHALL MAKE RELATIVE TO THE PROPERTY AND SHALL RELY UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, WHETHER THE PROPERTY IS LOCATED IN ANY AREA WHICH IS DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY). THE DEVELOPER UNDERTAKES AND ASSUMES ALL RISKS ASSOCIATED WITH ALL MATTERS PERTAINING TO THE PROPERTY'S LOCATION IN ANY AREA DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY.

(c) Survival. The terms and conditions of this Section expressly survive the Close of Escrow, will not merge with the provisions of the Grant Deed, or any other closing documents and are deemed to be incorporated by reference into the Grant Deed. The City is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property furnished by any contractor, agent, employee, servant or other person.

The Developer has fully reviewed the disclaimers and waivers set forth in this Agreement with the Developer's counsel and understands the significance and effect thereof.

(d) Acknowledgment. The Developer acknowledges and agrees that: (1) to the extent required to be operative, the disclaimers of warranties contained in this Section are "conspicuous" disclaimers for purposes of all applicable laws and other legal requirements; and (2) the disclaimers and other agreements set forth in such sections are an integral part of this Agreement and that the City would not have agreed to sell the Property to the Developer for the Purchase Price without the disclaimers and other agreements set forth in this Section.

(e) Developer's Release of the City. The Developer, on behalf of itself and anyone claiming by, through or under the Developer hereby waives its right to recover from and fully and irrevocably releases the City, its officers, directors, agents, employees and consultants ("Released Parties") from any and all claims, responsibility and/or liability that the Developer may have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to: (1) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Property, or its suitability for any purpose whatsoever; (2) any presence of Hazardous Materials; and (3) any information furnished by the Released Parties under or in connection with this Agreement.

(f) Scope of Release. The release set forth in this Section includes claims of which the Developer is presently unaware or which the Developer does not presently suspect to exist which, if known by the Developer, would materially affect the Developer's release of the Released Parties. The Developer specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, the Developer agrees, represents and warrants that the Developer realizes and acknowledges that factual matters now unknown to the Developer may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and the Developer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Developer nevertheless hereby intends to release, discharge and acquit the Released Parties from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. Accordingly, the Developer, on behalf of itself and anyone claiming by, through or under the Developer, hereby assumes the above-mentioned risks and hereby expressly waives any right the Developer and anyone claiming by, through or under the Developer, may have under Section 1542 of the California Civil Code, which reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Developer's Initials: _____

Notwithstanding the foregoing, this release does not apply to, nor will the City be released from, the City's actual fraud or misrepresentation.

Section 6.7 Costs of Escrow and Closing. Ad valorem taxes, if any, will be prorated as of the date of conveyance of the Property from the City to the Developer. The Developer must pay the cost of title insurance, transfer tax, Title Company document preparation, recordation fees and the escrow fees of the Title Company, if any, and any additional costs to close the escrow. The costs borne by the Developer are in addition to the Purchase Price for the Property.

Section 6.8 City Representations. City makes the following representations and warranties for the benefit of the Developers, collectively, or for each Developer individually, as applicable.

(a) No Conflicts. The execution and delivery of this Agreement, the consummation of the transactions herein contemplated, and compliance with the terms of this Agreement will not conflict with, or, with or without notice or the passage of time or both, result in a breach of any of the terms or provisions of, or constitute a default under any agreement, or other document or instrument to which City is a party or by which City is bound, or any applicable law, rule or regulation of any governmental agency, or any judgment, order or decree of any court having jurisdiction over City or any portion of the Parcels.

(b) Due Organization; Consents. All requisite action has been taken by City in connection with entering into this Agreement, and will be taken prior to the conveyance of the Parcels in connection with the execution and delivery of the instruments referenced herein and the consummation of the transactions contemplated hereby. No consent of any partner, member, shareholder, beneficiary, creditor, investor, judicial or administrative body, governmental authority or other party is required in connection herewith that has not been obtained.

(c) Legal Compliance. City has received no notices from any governmental authority of any zoning, safety, building, fire, environmental, health code or any other violations whatsoever with respect to the Parcels other than as disclosed in writing to the Developers. To the best of City's knowledge, the Parcels comply with all state and municipal laws, ordinances, and regulations regarding tenant security deposits and the payment of interest thereon.

(d) Valid Binding Agreement. This Agreement and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute, or if not yet executed or delivered, will when so executed and delivered, constitute, legal, valid and binding obligations of the City, enforceable against the City in accordance with their respective terms.

(e) Litigation. Other than *El Cerrito Redevelopment Agency Successor Agency et al. v. Michael Cohen, Sacramento County Superior Court Case No. 34-2013-80001671*, currently pending in the Court of Appeal, there is no litigation or proceeding (including, but not limited to, condemnation or eminent domain proceedings, pending grievances or arbitration proceedings or foreclosure proceedings threatened) or pending unfair labor practice charges or complaints, pending, or, threatened, against or relating to the City or the Developer Parcels. City has not received notice of any special assessment(s) from any governmental authority.

(f) Tenant Leases. City has not entered into or assumed any lease agreement relating to the Property.

(g) Service Contracts. There are no maintenance, operating or other agreements affecting the Developer Parcels other than: none. City has not entered into any contract, agreement, understanding or commitment that will be binding on Developers after conveyance of the Developer Parcels.

Section 6.9 Survival and Restatement. All of the representations and warranties of City set forth in Section 6.8 (collectively, "City's Warranties") shall be deemed re-made by City as of the Close of Escrow by the City with the same force and effect as if in fact made at that time, subject to any qualifications made by City and accepted by Developers pursuant to the provisions set forth below. All such representations and warranties shall survive for a period of 60 days following the Close of Escrow.

Section 6.10 Additional City Covenants. City shall operate and maintain the Property in the same manner that it operated and maintained the Property during the 12 months immediately prior to the Effective Date. City shall promptly notify Developers of any change in the physical condition of any portion of the Property of which City acquires knowledge after the Effective Date or of any other event or circumstance of which City acquires knowledge after the Effective Date that (a) materially, adversely affects any material portion of the Property or the use, operation or development of any material portion of the Property, or (b) makes any City's representations and warranties materially untrue or misleading, it being expressly understood that City's obligation to provide information to Developer under this Section shall in no way relieve City of any liability for a breach by City of any of City's Warranties or of any of City's covenants or agreements under this Agreement.

Section 6.11 Right of Entry.

(a) The City grants the Developer the right to enter onto the Property, for purposes of conducting investigations to further the objectives of this Agreement. In connection with such entry and investigation, the Developer shall:

- (1) give the City reasonable written advance notice (at least two (2) days);
- (2) repair and restore any damage it may cause;
- (3) deliver to the City, within ten (10) days of receipt thereof, a complete copy of any investigation, test, report or study which the Developer conducts, or causes to be conducted, with respect to the Property (except confidential or proprietary information);
- (4) indemnify, defend and hold the Indemnitees harmless from any and all claims, liabilities, damages, losses, expenses, costs and fees (including attorneys' fees and costs) to the extent arising out of the Developer's entry upon the applicable parcel or the investigation(s) and test(s) which the Developer may conduct; provided, however, that this indemnity shall not apply to matters to the extent arising from the results of the Developer's investigations, tests and inspections (including the discovery of existing environmental

conditions on the Property), or due to the gross negligence or willful misconduct of the Indemnitees; and

(5) prior to entry, cause the City to be named as an additional insured on a Commercial General Liability insurance policy with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverage for Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations. The required insurance shall be provided under an occurrence form by an insurer authorized and licensed to provide such insurance in the State of California, and the Developer shall maintain such coverage for not less than two (2) years after the expiration of this Agreement.

ARTICLE 7. CONSTRUCTION OF IMPROVEMENTS

Section 7.1 Construction Pursuant to Plans.

The Affordable Development Improvements and the Market Rate Development Improvements shall be constructed by the applicable Developer substantially in accordance with the conditions of the Governmental Approvals.

Section 7.2 Governmental Approvals.

(a) No later than the date set forth in the Development Schedule, each Developer shall apply for, and exercise diligent good faith efforts to obtain, all governmental approvals necessary for development and operation of the Developer Improvements, including but not limited to grading plans, infrastructure plans and a building permit or permits (collectively, the "Governmental Approvals"). Without limiting any other provision of this Agreement, the Developer's failure to obtain the Governmental Approvals, including building permits by the date set forth in the Development Schedule will be a Developer Event of Default. The City will render all reasonable assistance (at no cost to the City) to the Developer to obtain the building permit.

(b) The Developer's application for the Governmental Approvals must be substantially consistent with the Conceptual Site Plans and the entitlements previously issued by the City for the applicable Phase of the Project.

(c) The Developer acknowledges that execution of this Agreement by the City does not constitute approval by the City of any required entitlements, building permits, applications, or allocations, and in no way limits the discretion of the City in the permit allocation and approval process.

(a) The City agrees that the number of residential units in the Affordable Development and the Market Rate Development may be increased so long as such increase is consistent with the City's land use entitlements for the applicable portion of the Project or the Developer obtains any necessary amendments to the land use entitlements.

Section 7.3 Evidence of Availability of Funds.

As a condition precedent to the Commencement of Construction of the applicable Phase, the Developer shall submit to the City evidence reasonably satisfactory to the City that the financing and funding identified in the applicable Financing Plan approved by the City pursuant to Section 4.2 or Section 4.3, as applicable, will be available for the construction of the applicable Phase of the Project.

Section 7.4 Course of Construction.

Once the applicable Developer commence construction of the applicable Development Improvements, that Developer shall not halt or cease construction for a period of more than thirty (30) consecutive days.

Section 7.5 Construction Pursuant to Laws.

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

(b) Each Developer must construct the applicable Development Improvements to comply with all applicable federal and state disabled persons accessibility requirements including but not limited to the Federal Fair Housing Act, Section 504 of the Construction Act of 1973, Title II and/or Title III of the Americans with Disabilities Act of 1990, Title 24 of the California Code of Regulations and the Uniform Federal Accessibility Standards ("UFAS").

Section 7.6 Commencement of Construction.

(a) Subject to the terms of Section 13.3, as applicable, the Affordable Developer shall commence construction of the Affordable Development Improvements no later than the date set forth in the Development Schedule as such date may be extended pursuant to Section 3.3.

(b) Subject to the terms of Section 13.3, as applicable, the Market Rate Developer shall commence construction of the Market Rate Development Improvements no later than the date set forth in the Development Schedule as such date may be extended pursuant to Section 3.3.

(c) Failure by the applicable Developer to commence construction of the applicable Development Improvements within such time periods shall constitute a Developer Event of Default within the meaning and with the effect set forth in Section 10.2.

Section 7.7 Completion of the Improvements.

(a) Subject to Section 13.3, the Affordable Developer must diligently prosecute to completion the construction of the Affordable Development Improvements no later the date set forth in the Development Schedule.

(b) Subject to Section 13.3, the Market Rate Developer must diligently prosecute to completion the construction of the Market Rate Development Improvements no later the date set forth in the Development Schedule.

(c) Failure by the applicable Developer to commence construction of the applicable Development Improvements within such time periods shall constitute a Developer Event of Default within the meaning and with the effect set forth in Section 10.2.

Section 7.8 Prevailing Wage.

(a) Affordable Development. If required by applicable law, the Affordable Developer must pay and will cause the contractor and subcontractors to pay prevailing wages in the construction of the Affordable Development as those wages are determined pursuant to California Labor Code Section 1720 et seq., to employ apprentices as required by California Labor Code Sections 1777.5 et seq., and the implementing regulations of the Department of Industrial Relations (the "DIR"). If required by applicable law, the Affordable Developer must and cause its contractor and subcontractors to comply with the other applicable provisions of California Labor Code Sections 1720 et seq., 1777.5 et seq., and implementing regulations of the Department of Industrial Relations ("DIR"). If required by applicable law, the Affordable Developer must and will cause its contractor and subcontractors to keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to California Labor Code Section 1720 et seq., and apprentices have been employed are required by California Labor Code Section 1777.5 et seq. Copies of the currently applicable per diem prevailing wages are available from DIR. If required by applicable law, during the construction of the Affordable Development, the Affordable Developer will or will cause its contractor to post at the Affordable Development Parcel the applicable prevailing rates of per diem wages. If required by applicable law, the Affordable Developer must cause its respective contractors and subcontractors to be registered as set forth in Labor Code Section 1725.5. If required by applicable law, the Affordable Developer must cause its respective contractors and subcontractors to do all the following: (1) all calls for bids, bidding materials and the construction contract documents for the Affordable Development must specify that: (1) no contractor or subcontractor may be listed on a bid proposal or be awarded a contract for the Affordable Development unless registered with the DIR pursuant to Labor Code Section 1725.5; (2) the Affordable Development is subject to compliance monitoring and enforcement by the DIR; (3) The Affordable Developer is required to provide the City all information required by Labor Code Section 1773.3 as set forth in the DIR's online form PWC-100 within two (2) days of the award of the contract (<https://www.dir.ca.gov/pwc100ext/>); (4) The Affordable Developer must cause its respective contractors to post job site notices, as prescribed by regulation by the DIR; and (5) the Affordable Developer must cause its respective contractors to furnish payroll records required by Labor Code Section 1776 directly to the Labor Commissioner, at least monthly in the electronic format prescribed by the Labor Commissioner. Provided that the Affordable Developer develops the Affordable Development Improvements, the Affordable

Developer, individually agrees to indemnify, hold harmless and defend (with counsel reasonably acceptable to the City), the Indemnitees against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Affordable Developer, its contractors and subcontractors), if required by applicable law, to pay prevailing wages as determined pursuant to California Labor Code Section 1720 et seq., to employ apprentices pursuant to California Labor Code Section 1777.5 et seq., and implementing regulations of the DIR or to comply with the other applicable provisions of California Labor Code Section 1720 et seq., 1777.5 et seq., to meet the conditions of Section 1771.4 of the Labor Code set forth above and the implementing regulations of the DIR in connection with the construction of the Affordable Development Improvements or any other work undertaken or in connection with the Affordable Development Parcel. The indemnification provided hereunder will survive the expiration of the Term or termination of this Agreement.

(b) Market Rate Development. This Agreement has been structured such that no part of the Market Rate Development will be paid for in whole or in part out of public funds. As a consequence, the Market Rate Development is not a public work subject to the requirements of Labor Code Section 1720. Nonetheless, the Market Rate Developer shall provide the indemnity required under subsection (c) below as to the construction of the Market Rate Development.

(c) Indemnity. The Market Rate Developer, individually agrees to indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the Indemnitees against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including the Market Rate Developer, its contractor and subcontractors), if required by applicable law, to pay prevailing wages as determined pursuant to California Labor Code Section 1720 et seq., to employ apprentices pursuant to California Labor Code Section 1777.5 et seq., and implementing regulations of the DIR or to comply with the other applicable provisions of California Labor Code Sections 1720 et seq., 1777.5 et seq., to meet the conditions of Section 1771.4 of the Labor Code as set forth above and the implementing regulations of the DIR in connection with the construction of the applicable Market Rate Development Improvements or any other work undertaken or in connection with the applicable Market Rate Developer Parcel. The indemnification provided hereunder will survive the expiration of the Term, or termination of this Agreement.

Section 7.9 Equal Opportunity.

During the construction of the Development Improvements, each applicable Developer, and its successors, assigns and subcontractors must not discriminate against any employee or applicant for employment in connection with the construction of the Development Improvements because of race, color, religion, ethnic group identification, sex, sexual preference, marital status, ancestry or national origin. Each of the following activities must be conducted in a non-discriminatory manner: hiring; upgrading; demotion and transfers; recruitment and recruitment advertising; layoff and termination; rate of pay and other forms of compensation; and selection for training including apprenticeship.

Section 7.10 Progress Report.

Until such time as the applicable Developer has completed construction of the applicable Development Improvements, as evidenced by the Certificate of Completion, the Developer must provide the City with copies of quarterly progress reports, or more frequent updates if the City reasonably requires, regarding the status of the construction of the applicable Development Improvements, including a certification that the actual construction costs to date conform to the development budget as set forth in the applicable Financing Plan (as it may be amended and modified).

Section 7.11 Construction Responsibilities.

(a) Each Developer must coordinate and schedule the work to be performed so that Commencement of Construction and Completion of Construction will take place in accordance with this Agreement.

(b) Each Developer is solely responsible for all aspects of the Developer's conduct in connection with the applicable Development Improvements, including but not limited to the quality and suitability of the Project Documents, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by the City with reference to the Development Improvements is solely for the purpose of determining whether a Developer is properly discharging its obligations to the City, and should not be relied upon by a Developer or by any third parties as a warranty or representation by the City as to the quality of the design or construction of the Development Improvements.

Section 7.12 Inspections.

The Developers must permit and facilitate, and require their contractors to permit and facilitate, observation and inspection at the Development Improvements by the City and by public authorities during reasonable business hours upon forty-eight (48) hours' notice for the purposes of determining compliance with this Agreement.

Section 7.13 Certificate of Completion.

(a) Promptly after completion of the applicable Development Improvements in accordance with those provisions of this Agreement relating solely to the obligations of a Developer's obligation to construct the applicable Development Improvements (including the dates for beginning and completion thereof), the City will provide a Certificate of Completion so certifying. Such certification will be conclusive determination that certain covenants in this Agreement with respect to the obligations of a Developer to construct the Development Improvements (excluding the Developer's compliance with Section 7.8, related to the payment of Prevailing Wages) and the dates for the beginning and completion thereof have been met. Such certification must be in substantially in the form attached hereto as Exhibit K, incorporated herein by this reference and be recorded among the Official Records. Such certification and determination will not constitute evidence of compliance with or satisfaction of any obligation of a Developer: (a) to any holder of deed of trust securing money loaned to finance the applicable Development Improvements or any part thereof; (b) to pay prevailing wages; and (d) may not be deemed a notice of completion under the California Civil Code.

Section 7.14 Necessary Safeguards. Each Developer shall or shall cause their contractors to erect and properly maintain at all times, as required by the project and site conditions and progress of work performed by the Developer, all reasonable and necessary safeguards for the protection of works and public.

Section 7.15 Applicability of Requirements. The requirements of this Article 7 are applicable to the Affordable Developer for the Affordable Development and the Market Rate Developer for the Market Rate Development and for the purposes of clarity are not intended to result in any cross-default of Affordable Developer's or Market Rate Developer's respective obligations hereunder.

ARTICLE 8. ONGOING DEVELOPER OBLIGATIONS

Section 8.1 Applicability.

The conditions and obligations set forth in this Article shall apply for the specified period for each particular condition or obligation. The Affordable Developer shall satisfy the obligations in this Article 8 only to the extent they pertain to the Affordable Development and the Market Rate Developer shall satisfy the obligations in this Article 8 only to the extent they pertain to the Market Rate Development; and for purposes of clarity are not intended to result in any cross-default of Affordable Developer's or Market Rate Developer's respective obligations hereunder.

Section 8.2 Affordable Housing Development Use.

The Developer hereby agrees that the entitlements granted to the Project by the City were conditioned upon the Affordable Development Parcel being used for housing affordable to low income households and hereby agrees that the Affordable Development Parcel shall only be used for purposes consistent with the Affordable Housing Regulatory Agreement for so long as the Affordable Housing Regulatory Agreement is in effect or for interim uses approved by the City. The City agrees that the Affordable Development Parcel may be used as a construction staging area for the construction of the Market Rate Development Improvements prior to the Commencement of Construction of the Affordable Development Improvements. In order to ensure that the Affordable Development Parcel is used for uses consistent with the entitlements and this Agreement, the Affordable Developer hereby agrees to provide the City with quarterly progress reports on the first day of each calendar quarter on the financing and development of the Affordable Development commencing on the date set forth in the Development Schedule, which progress reports will include (i) any applications for funding submitted by the Affordable Developer during the prior quarter; (ii) any funding commitments received during the prior quarter; (iii) the projected dates that the Affordable Developer expects to apply for Affordable Housing Development funding (other than Tax Credits); (iv) the projected dates that the Affordable Developer expects to apply for Tax Credits; and (v) an updated Development Schedule based on the Affordable Developer's projected funding applications. At the City's request, the Affordable Developer shall meet with the City to discuss the quarterly progress reports and proposed Development Schedule for the Affordable Development. If for any reason the Affordable Developer has failed to secure adequate financing for the Affordable Development by the later of (i) five (5) years from the date the Affordable Developer acquires

the Affordable Development Parcel or (ii) nine (9) months following the Market Rate Developer's Completion of Construction of the Market Rate Development, the Affordable Developer, the Market Rate Developer and the City shall meet and confer within thirty (30) days regarding the Affordable Development. If after meeting and conferring, the Parties are either unable to agree on a revised Development Schedule for the Affordable Development or have determined that the Affordable Developer is unable to secure financing for the Affordable Development Improvements on the Affordable Development Parcel, the City and the Market Rate Developer shall have the option to seek proposals from other affordable housing developers and the provisions of Section 10.5(b)(3) shall apply.

Section 8.3 Maintenance of Developer Parcel and Development Improvements.

(a) Each Developer hereby agrees that, prior to completion of the applicable Development Improvements and following the Close of Escrow the Property owned by such Developer shall be maintained in a neat and orderly condition, that any graffiti on the Property shall be immediately removed and the Property shall be adequately secured, once the Development Improvements are completed, the Development Improvements shall be well maintained by the applicable Developer as to both external and internal appearance of the units, the common areas, and the open spaces. Each Developer shall maintain the applicable Development Improvements in good repair and working order, and in a neat, clean and orderly condition, including the walkways, driveways, alleyways and landscaping, and from time to time make all necessary and proper repairs, renewals, and replacements.

(b) In the event that there arises a condition in contravention of the above maintenance standard, then the City shall notify the applicable Developer in writing of such condition, giving the applicable Developer fifteen (15) days from receipt of such notice to cure said condition. In the event that the applicable Developer fails to cure or commence to cure the condition within the time allowed, the City shall have the right to perform all acts necessary to cure such a condition, or to take other recourse at law or equity the City may then have and to receive from the applicable Developer, the City's cost in taking such action. The Parties hereto further mutually understand and agree that the rights conferred upon the City expressly include the right to enforce or establish a lien or other encumbrance against the applicable Development, but such lien shall be subject to previously recorded liens and encumbrances.

Section 8.4 Mandatory Language in All Subsequent Deeds, Leases and Contracts.

(a) Basic Requirement. No Developer may restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Development Improvements on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code. Each Developer or any person claiming under or through the Developer cannot establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Development Improvements. The foregoing covenant runs with the land.

(b) Provisions in Conveyance Documents. All deeds, leases or contracts made or entered into by a Developer, and its successor and assigns permitted under this Agreement, as to any portion of the Property must contain therein the following language:

(1) In Deeds:

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

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(2) In Leases:

"(1) Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee or any person claiming under or through the lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(3) In Contracts:

"(1) There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1,

subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

Section 8.5 Development Hazardous Materials.

(a) Certain Covenants and Agreements. Each Developer covenants and agrees throughout the Term but only as to the Developer Parcel then owned by such Developer:

(1) The Developer will keep and maintain its applicable Developer Parcel and the Development Improvements located thereon, in compliance with all Hazardous Materials Laws, and may not cause or permit the Development Improvements or any portion thereof to be a site for the release, use, generation, treatment, manufacture, storage, discharge, disposal or transportation of Hazardous Materials or otherwise permit the unlawful presence of Hazardous Materials in, on or under the Development Improvements;

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

(3) Upon receiving actual knowledge of the same the Developer must immediately advise the City in writing of: (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Developer or the applicable Development Improvements pursuant to any applicable Hazardous Materials Laws; (ii) any and all claims made or threatened by any third party against the Developer or the applicable Development Improvements relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in the foregoing clause (i) and this clause (ii) are hereinafter referred to as "Hazardous Materials Claims"); (iii) the presence of any Hazardous Materials in, on or under the Development Improvements; or (iv) the Developer's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Development Improvements that is subject to any restrictions on the ownership, occupancy, transferability or use of the Development Improvements under any Hazardous Materials Laws. The City has the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorney's fees in connection therewith paid by the Developer.

(4) Developer shall provide to the City written copies of all correspondence between Developer and regulatory agencies regarding the presence of any Hazardous Materials on, under or about the Development Improvements within three (3) days of receipt of such correspondence and shall also provide to the City copies of any submissions made by the Developer to regulatory agencies including any proposed remediation action plans related to the Property at the same time such submissions are made to the regulatory agencies. The City shall be entitled to submit comments to the Developer and regulatory agencies on any such submissions. The Developer will not take any remedial action in response to the presence of any Hazardous Materials on, under, or about the Development Improvements (other than in emergency situations or as required by governmental agencies having jurisdiction), nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claims, without the City's prior written consent, which shall not be unreasonably withheld, provided, however, the City shall consent to any such remedial action if it is being undertaken pursuant to a remedial action plan or order approved by the applicable regulatory agency pursuant to a submission that has been previously provided to the City.

(b) Indemnity. Without limiting the generality of the indemnification set forth in Section 13.6 below, in consideration of transfer of the Property to the Developer by the City and from and after the conveyance of the Property or any portion thereof by the City to a Developer, the applicable Developer hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the City) the Indemnitees from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, reasonable attorney's fees and expenses), arising directly or indirectly, in whole or in part, out of: (1) the failure of such Developer or any other person or entity during Developer's ownership of the Developer Parcel to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Development; (2) during such Developer's ownership of the Developer Parcel, the presence in, on or under the applicable Development Parcel of any Hazardous Materials or any releases or discharges of any Hazardous Materials into, on, under or from the applicable Development Parcel; or (3) during such Developer's ownership of the applicable Developer Parcel, any activity carried on or undertaken on or off the Developer Parcel whether by the Developer or any employees, agents, contractors or subcontractors of the Developer or any third persons at any time occupying or present on the applicable Developer Parcel, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials at any time located or present on or under the applicable Development Improvements. The foregoing indemnity applies to any residual contamination on or under the Development Improvements, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws. The provisions of this subsection survive expiration of the Term or other termination of this Agreement, and will remain in full force and effect. The foregoing indemnity does not apply to any claims, losses, damages, liabilities, fines, penalties, or charges that are caused by the active negligence or willful misconduct of the City. For avoidance of doubt, the indemnification obligations hereunder are

not joint and several and neither the Affordable Developer nor the Market Rate Developer shall be liable for the others actions or obligations hereunder.

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

Section 8.6 Taxes and Assessments.

(a) Each Developer shall be solely responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Developer Parcel to the extent owed by the Developer, and shall pay such charges prior to delinquency. However, the Developers shall not be required to pay and discharge any such charge so long as: (1) the legality thereof is being contested diligently and in good faith and by appropriate proceedings; and (2) if requested by the City, the applicable Developer deposits with the City any funds or other forms of assurance that the City in good faith from time to time determines appropriate to protect the City from the consequences of the contest being unsuccessful.

(b) The Parties acknowledge and agree that the Affordable Developer shall be allowed to apply to the State Board of Equalization for or obtain a welfare exemption from property taxes under California Revenue and Taxation Code Section 214 for the Affordable Development.

(c) The Parties further agree and acknowledge that, other than the Affordable Developer pursuant to subsection (b) above, the Developers shall not be allowed to apply to the State Board of Equalization for or obtain a welfare exemption from property taxes under California Revenue and Taxation Code Section 214 for any portion of the Market Rate Development.

(d) The conditions and obligations set forth in this Section shall apply for the entire Term.

Section 8.7 Notice of Litigation. Each Developer must promptly notify the City in writing of any litigation materially affecting the Developer or the applicable Developer Parcel and of any claims or disputes that involve a material risk of such litigation.

ARTICLE 9. ASSIGNMENT AND TRANSFERS

Section 9.1 Definitions. The term "Transfer" means:

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

(b) Any total or partial sale, assignment or conveyance, of any trust or power, or any transfer in any other mode or form, of or with respect to any ownership interest in a Developer, or any contract or agreement to do any of the same;

(c) Any merger, consolidation, sale or lease of all or substantially all of the assets of a Developer; or

(d) The leasing of part or all of the Developer Parcel or the Development Improvements thereon, provided.

(e) The leasing of the Affordable Units included within the Affordable Development Improvements to tenant occupants in accordance with the Affordable Housing Regulatory Agreement and the leasing of the market rate rental units in the Market Rate Development in the ordinary course of business will not be deemed a Transfer for purposes of this Article.

Section 9.2 Purpose of Restrictions on Transfer.

(a) This Agreement is entered into solely for the purpose of the development and operation of the Project and the subsequent use of the Development Improvements in accordance with the terms hereof. The Developer recognizes that the qualifications and identity of the Developers are of particular concern to the City, in view of:

(1) The importance of the redevelopment of the Property and each of the Developer Parcels to the general welfare of the community;

(2) The reliance by the City upon the unique qualifications and ability of the Developers, to serve as the catalyst for development of the Property and each of the Developer Parcels;

(3) The fact that a change in ownership or Control of the Developer, or applicable Developer, or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership or with respect to the identity of the parties in control of a Developer or the degree thereof is for practical purposes a transfer or disposition of the Development Site or the applicable Developer Parcel;

(4) The fact that the Property and each of the Developer Parcels is not to be acquired or used for speculation, but only for development and operation by the Developer in accordance with the Agreement and associated ancillary documents; and

(5) The importance to the City and the community of the standards of use, operation and maintenance of the Property and each of the Developer Parcels.

(b) The Developer further recognizes that it is because of such qualifications and identity that the City is entering into this Agreement with the Developer and that Transfers are permitted only as provided in this Agreement.

Section 9.3 Prohibited Transfers. The limitations on Transfers set forth in this Article apply with respect to any of the Developer Parcels until such time as a Certificate of Completion

has been issued for such Developer Parcel. Except as expressly permitted in this Agreement, the Developer represents and agrees that the Developer has not made or created, and will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law without the prior written approval of the City.

Any Transfer made in contravention of this Section are void and are deemed to be a Developer Event of Default under this Agreement whether or not the Developer knew of or participated in such Transfer.

Section 9.4 Permitted Transfers. Notwithstanding the provisions of Section 9.3, the following Transfers are permitted and are hereby approved by the City:

- (a) Any Transfer creating a Security Financing Interest permitted pursuant to the approved applicable Financing Plan;
- (b) Any Transfer directly resulting from the foreclosure of a Security Financing Interest or the granting of a deed in lieu of foreclosure of a Security Financing Interest or as otherwise permitted under Article 11.
- (c) The leasing of residential units within the Affordable Development in accordance with the Affordable Housing Regulatory Agreement or the leasing of residential units within the Market Rate Development in the ordinary course of business.
- (d) The leasing of commercial space in the Market Rate Development in the ordinary course of business.
- (e) The granting of easements, licenses or permits to facilitate the development of the Developer Parcels.
- (f) A transfer of the Affordable Development Parcel to BRIDGE Housing Corporation or an Affiliate thereof.
- (g) A transfer to an Affiliate of Holliday Development, LLC or any change in the Market Rate Developer that does not result in a change in Control.
- (h) A Transfer of a limited partnership interest in the Affordable Developer to the Tax Credit Investor, or to an Affiliate of the Tax Credit Investor (provided such Affiliate provides documentation reasonably acceptable to the City that the Affiliate has sufficient financial capability to provide the capital contributions set forth in the Affordable Development Financing Plan) and future Transfers of such interest provided that: (1) the Affordable Developer's Partnership Agreement provides for capital contributions of the limited partners consistent with Affordable Development Financing Plan and is first approved by the City in its reasonable discretion; (2) all documents associated with the tax credit syndication of the Affordable Development are submitted to the City for approval prior to execution, which approval may not be unreasonably withheld or delayed; and (3) in subsequent transfers the Tax Credit Investor (or an Affiliate of the Tax Credit Investor reasonably acceptable to the City) remains liable for all unpaid capital contributions. The Parties agree and acknowledge that an entity controlled by the Affordable Developer will remain the managing general partner of any assignee of the Affordable Developer throughout the Term. In the event the general partner of

the Affordable Developer is removed by the limited partner of the Affordable Developer for cause following default under the Developer's partnership agreement, the general partner interest of the Affordable Developer may be Transferred to a 501(c)(3) tax-exempt nonprofit public benefit corporation that is selected by the limited partner and approved in advance and in writing by the City, which approval may not be unreasonably withheld.

(i) The Transfer of the limited partner interest in the Affordable Developer provided that: (1) such Transfers do not affect the timing and amount of the limited partner capital contributions provided for in the Partnership Agreement approved by the City; (2) in such Transfers, a wholly owned Affiliate of the general partners retains a membership or partnership interest and serves as a managing member or managing general partner of the successor limited partner.

Section 9.5 Transfers of Market Rate Development.

(a) Notwithstanding the provisions of Section 9.3 and subject to satisfaction of the requirements of Section 9.6, the City may, in its reasonable discretion, approve in writing Transfers of the Market Rate Development. In reviewing any particular transfer request under this Section, the City, may take the following criteria into consideration:

(1) The identity of the proposed transferee and whether the proposed Transfer is to: (i) a subsidiary, Affiliate, division, partnership, limited liability company or corporation Controlling, Controlled by or under common Control of the Market Rate Developer; (ii) an entity in which the Market Rate Developer maintains ownership of at least fifty-one percent (51%) of the equity, membership, or partnership interests (as applicable) in, and the power to direct the management of, the relevant entity; or (iii) an unaffiliated person or entity;

(2) The proposed transferee's demonstrated experience in developing multifamily rental housing projects comparable to the Market Rate Development;

(3) The proposed transferee's demonstrated experience in constructing multifamily market rate rental housing projects in first-class condition comparable to the Market Rate Development. A preference will be given to proposed transferees with at least five (5) years of experience in constructing multifamily market rate rental housing projects in first-class condition comparable to the Market Rate Development;

(4) The proposed transferee's record of loan defaults, maintenance problems, housing or building code violations, or substantiated fair housing complaints at properties it owns and/or operates. The Parties agree and acknowledge that the City will have the right to disapprove a proposed Transfer to any person or entity with loan defaults, maintenance problems, housing or building code violations, and/or substantiated fair housing complaints at properties it owns and/or operates;

(5) The proposed transferee's financial status and creditworthiness. The City will not consider any proposed transferee unless the proposed transferee has a net worth equal to or greater than the net worth of the Market Rate Developer as of the proposed date of Transfer and satisfactory credit as reasonably determined by the City; and

(6) Any other factors or criteria the City deems necessary to make a determination of whether a proposed transferee has the necessary expertise, skill and ability to carry out the commitments set forth in this Agreement and the proposed transferee's ability to materially contribute to the timely implementation and performance of the requirements of this Agreement.

(b) In connection with a request under this Section, there shall be submitted to the City for review all instruments and other legal documents proposed to effect any such Transfer. If a requested Transfer is approved by the City such approval shall be indicated to the Market Rate Developer in writing. Such approval shall be granted or denied by the City within thirty (30) Business Days of receipt by the City of the Market Rate Developer's request for approval of a Transfer.

Section 9.6 Effectuation of Certain Permitted Transfers.

(a) No Transfer of this Agreement permitted pursuant to Section 9.4 or 9.5 will be effective unless, at the time of the Transfer, the person or entity to which such Transfer is made, by an instrument in writing substantially in the form of the DDA Assignment and Assumption Agreement attached hereto as Exhibit I, expressly assumes the obligations of the applicable Developer under this Agreement and agrees to be subject to the conditions and restrictions to which the Developer is subject arising during the Term, to the fullest extent that such obligations are applicable to the particular portion of or interest in the Development Improvements conveyed in such Transfer. Anything to the contrary notwithstanding, the holder of a Security Financing Interest whose interest have been acquired by, through or under a Security Financing Interest or have been derived immediately from any holder thereof will not be required to give to City such written assumption until such holder or other person is in possession of the Developer Parcel or entitled to possession thereof pursuant to enforcement of the Security Financing Interest.

(b) In the absence of specific written agreement by the City, no such Transfer, assignment or approval by the City will be deemed to relieve the Developer or any other party from any obligations under this Agreement.

Section 9.7 Other Transfers with City Consent.

The City may, in its sole discretion, approve in writing other Transfers as requested by a Developer. In connection with such request, there must be submitted to the City for review all instruments and other legal documents proposed to effect any such Transfer. If a requested Transfer is approved by the City such approval must be indicated to the applicable Developer in writing. Such approval must be granted or denied by the City within thirty (30) days of receipt by the City of Developer's request for approval of a Transfer.

Section 9.8 Assumption of Obligations.

Upon the occurrence of a Permitted Transfer, described in this Article, the transferor of such Transfer or Permitted Transfer shall have no further liability or obligation under this Agreement and all such liabilities and obligations shall be assumed by the transferee of such Transfer or Permitted Transfer.

Section 9.9 Transfer of Market Rate Parcel. In the event the Market Rate Developer transfers the Market Rate Parcel prior to Commencement of Construction of the Market Rate Development Improvements, the Market Rate Developer shall pay to the City, as additional consideration for the conveyance of the Market Rate Parcel to the Market Rate Developer, fifty percent (50%) of the Net Proceeds of such sale, as defined below. For purposes of this Section 9.9, the Net Proceeds shall mean the amount by which the purchase price received by the Market Rate Developer for the Market Rate Parcel exceeds the Purchase Price paid by the Market Rate Developer for the Property minus reasonable closing costs, fees and commissions, the Market Rate Developer's verifiable and documented holdings costs incurred during the time that the Market Rate Developer held the Market Rate Parcel and the cost paid by the Market Rate Developer for any construction plans or specifications, entitlements and other soft costs incurred in connection with the Market Rate Parcel.

ARTICLE 10. DEFAULT AND REMEDIES

Section 10.1 General Applicability. The provisions of this Article 10 govern the Parties' remedies for breach or failure of this Agreement.

Section 10.2 Events of Default.

(a) Each of the following shall constitute a "Developer Event of Default" under this Agreement as to the Developer party whose act or inaction results in such Developer Event of Default and for purposes of clarity are not intended to result in any cross-default of Affordable Developer's or Market Rate Developer's respective obligations hereunder:

(1) Failure to Commence Construction Work. Subject to Section 10.3 and 13.3, as applicable, failure of a Developer, to commence the construction of the applicable Development Improvements within the time frames set forth in this Agreement;

(2) Failure to Complete Construction Work. Subject to Section 13.3, as applicable, failure of a Developer to complete construction of the Development Improvements within the time frames set forth in this Agreement;

(3) Breach of Covenants. Failure of a Developer to duly perform, comply with, or observe any of the other conditions, terms, or covenants of this Agreement, and such failure having continued uncured for forty-five (45) days after receipt of written notice thereof from the City to a Developer, which notice provides reasonable detail of such failure and the required cure for such failure, provided that if the breach or failure is of such a nature that it cannot be cured within forty-five (45) days, the Developer shall commence to cure within such forty-five (45) days and thereafter diligently complete such cure within a reasonable time thereafter, and provided, further, that if a different period or notice requirement is specified under any other section of this Article, the specific provisions shall control;

(4) Default Under Other Loans. There shall occur any default declared by any lender under any loan document related to any loans secured by a deed of trust on the applicable Development Parcel, and all cure periods provided by such loan document have expired without a remedy of the default and the default has not been waived by the lender;

(5) Insolvency. A court having jurisdiction shall have made or entered any decree or order: (1) adjudging a Developer or any of the entities which are general partners, limited partners, members, assigns, Affiliates or joint venture partners in the Developer to be bankrupt or insolvent; (2) approving as properly filed a petition seeking reorganization of a Developer or any of the entities which are general partners, limited partners, members, assigns, Affiliates or joint venture partners in a Developer seeking any arrangement for either of the Developers or any of the entities which are general partners, limited partners, members, assigns, Affiliates or joint venture partners in a Developer under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction; (3) appointing a receiver, trustee, liquidator, or assignee of a Developer or any of the entities which are general partners, limited partners, members, assigns, Affiliates or joint venture partners in the Developer in bankruptcy or insolvency or for any of their properties; or (4) directing the winding up or liquidation of a Developer or any of the entities which are general partners, limited partners, members, assigns, Affiliates or joint venture partners in a Developer, if any such decree or order described in clauses (1) to (4), inclusive; provided however that in the case of the limited partners in the Affordable Developer, no Developer Event of Default shall occur if the Partnership shall have received all capital contributions required under the Partnership Agreement and such contributions are not subject to recapture pursuant to the any such decree or order described in clauses (1) to (4);

(6) Assignment; Attachment. A Developer shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within thirty (30) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the Development Parcel, in which event such lesser time period shall apply under this Subsection as well) or prior to a sooner sale pursuant to such sequestration, attachment, or execution;

(7) Suspension; Dissolution. A Developer shall: (1) have the operation of its business voluntarily or involuntarily suspended by the State of California, (2) voluntarily stops or terminates the operation of its business; or (3) if a Developer is a partnership, the partnership shall have the operation of the partnership voluntarily or involuntarily dissolved, suspended or terminated by the State of California; or (4) if a Developer is a limited liability company, the company shall have the operation of the company voluntarily or involuntarily dissolved, suspended or terminated by the State of California;

(8) Unauthorized Transfer. Any Transfer other than as permitted by Article 9; and/or

(9) Representation or Warranty Incorrect. Any representation or warranty of a Developer, respectively, contained in this Agreement, or in any application, financial statement, certificate, or report submitted to the City in connection with this Agreement or any related documents, proves to have been incorrect in any material and adverse respect when made and which default cannot be cured within thirty (30) days after receipt of written notice thereof from the City to the Developers. Following closing this shall be a default only if the representation or warranty has a material adverse effect on the applicable Development, applicable Developer or the City.

(b) Notwithstanding the foregoing, the City shall not declare a default or exercise remedies against the Affordable Developer if such default is caused by the Market Rate Developer. If the Market Rate Developer commits a Developer Event of Default under this Agreement, the City and the Affordable Developer shall meet and confer within thirty (30) days regarding the Affordable Development. If such Developer Event of Default will have a material adverse effect on the Affordable Developer's ability to construct the Affordable Housing Development and the Affordable Developer cannot demonstrate that it can meet its obligations hereunder despite the default of the Market Rate Developer, the City may exercise its option under Section 10.5(b)(3).

Section 10.3 No Fault of Parties.

(a) The following events constitute a basis for a Party to terminate this Agreement without the fault of the other prior to Close of Escrow:

(1) The City, despite good faith and diligent efforts, is unable to convey the Property or a particular Developer Parcel to a Developer and the Developer is otherwise entitled to such conveyance.

(2) A material adverse change in the physical or legal condition of the Property occurs, through no fault of the City or the Developer.

(b) Upon the happening of the above-described event and at the election of any Party, this Agreement may be terminated by written notice to the other Parties. After such termination of this Agreement, no Party will have any rights against or liability to the other under this Agreement, except that the indemnification provisions of this Agreement will survive such termination and remain in full force and effect.

(c) In the event that the Affordable Developer is unable to secure Governmental Approvals or financing for the Affordable Development, despite Affordable Developer's good faith and diligent efforts, by the date that is the later of five (5) years from the Close of Escrow or nine (9) months after the Completion of Construction of the Market Rate Development, then the Affordable Developer shall not be in default hereunder and the provisions of Section 8.2 shall apply.

Section 10.4 Fault of City. Except as to the events constituting a basis for termination under Section 10.3, the following events each constitute a City Event of Default and a basis for the Developer to take action against the City:

(1) The City, without good cause, fails to convey the Developer Parcel to a Developer within the time set forth in the Development Schedule and in the manner set forth in Article 6 and the Developer is otherwise entitled by this Agreement to such conveyance;

(2) The City fails to assign this Agreement to the El Cerrito Municipal Services Corporation in accordance with that certain resolution approved by the City Council dated February 6, 2018, Resolution No. _____ in the event that the City and the El Cerrito Municipal Services Corporation prevail in their appeal of the trial court decision in that certain case titled *El Cerrito Redevelopment Agency Successor Agency et al. v. Michael Cohen*,

Sacramento County Superior Court Case No. 34-2013-80001671 and as a result of the resolution of such litigation, the Property reverts to the Municipal Services Corporation; or

(3) The City breaches any other material provision of this Agreement (including failure to timely respond to performance time frames set forth in this Agreement).

(b) Upon the happening of any of the above-described events, a Developer must first notify the City in writing of its purported breach or failure, giving the City forty-five (45) days from receipt of such notice to cure or, if cure cannot be accomplished within forty-five (45) days, to commence to cure such breach, failure, or act. In the event the City does not then so cure within said forty-five (45) days, or if the breach or failure is of such a nature that it cannot be cured within forty-five (45) days, the City fails to commence to cure within such forty-five (45) days and thereafter diligently complete such cure within a reasonable time thereafter, then the Developer will be afforded all of its rights at law or in equity, by taking all or any of the following remedies: (1) terminating in writing this Agreement (provided, however, that the indemnification provisions of this Agreement will survive such termination); and (2) prosecuting an action for specific performance.

Section 10.5 Remedies.

(a) Prior to Conveyance. Upon the happening of any of the above-described Developer Events of Default, and prior to the Close of Escrow, the City shall be afforded any of the following remedies including:

(1) Termination. The City shall have the right to terminate this Agreement by written notice to the Developer; provided, however, that the City's remedies pursuant to this Agreement, the indemnification provisions of Section 6.6, Section 7.8, Section 8.5, Section 12.2, Section 13.6 and Section 13.8, and the obligations that are specified to survive termination hereof, shall survive such termination.

(b) Remedies Following Conveyance. Upon the happening of any of the above-described Developer Events of Default following the Close of Escrow, the City shall be afforded all of its rights at law or in equity including:

(1) Termination. The City shall have the right to terminate this Agreement; provided, however, that the City's remedies pursuant to this Agreement, the indemnification provisions in this Agreement and the obligations that are specified to survive termination hereof, shall survive such termination;

(2) Specific Performance. The City shall have the right to mandamus or other suit, action, or proceeding at law or in equity to require the Developer to perform its obligations and covenants under this Agreement or to enjoin acts on things which may be unlawful or in violation of the provisions of this Agreement;

(3) Option to Purchase – Affordable Development Parcel. In addition to other remedies of the City, and in consideration for the City's agreement to enter into this Agreement and convey the Property, including the Affordable Development Parcel, the Developer grants to the City the additional right at the City's option to purchase, enter and take possession of the Affordable Development Parcel with all improvements thereon, after (1) a

Developer Event of Default caused by the Affordable Developer or as described in Sections 8.2, 10.2(b) or 10.3(c) prior to the issuance of a Certificate of Completion for the Affordable Development. If the Affordable Developer has commenced construction of the Affordable Development Improvements, the City may exercise this option only in the event of an uncured material Developer Event of Default by the Affordable Developer. Such option to purchase, enter and take possession, to the extent provided in this Agreement, shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit: any Security Financing Interest encumbering the Affordable Development Parcel permitted by this Agreement; or any rights or interest provided in this Agreement for the protection of the holder of such Security Financing Interest encumbering the Affordable Development Parcel.

To exercise the rights under this Section with respect to the Affordable Development Parcel, the City shall pay to the Affordable Developer, in cash an amount equal to: (i) the fair market value of the improvements existing on the Affordable Development Parcel at the time of the repurchase, reentry and repossession; less (ii) any gains or income (including, but not limited to developer fees) withdrawn or made by the Affordable Developer from the Affordable Development Parcel or the improvements thereon; less; (iii) the value of any unpaid liens or encumbrances on the Affordable Development which the City assumes or takes subject to.

Except in the event the City acquires the Affordable Development Parcel due to a Developer Event of Default caused by the Affordable Developer, if the City acquires the Affordable Development Parcel and within fifteen(15) years of such acquisition transfers the Affordable Development Parcel to a third party, the City shall pay to the Affordable Developer from any revenue received by the City from the transfer of the Affordable Development Parcel an amount equal to the verifiable and documented costs incurred by the Affordable Developer in connection with the Affordable Housing Development, including but not limited to its costs incurred in connection with: obtaining entitlements; preparing plans, specifications and drawings, and any due diligence or other reports and studies; paying property taxes, insurance and other carrying costs; attorney and consultant fees; and escrow and closing costs, provided such costs were not funded by a loan from the City, if any. Such payment to the Developer shall be made concurrently with the transfer of the Affordable Development Parcel by the City to a third party.

The City shall exercise its option to purchase, enter and take possession by giving written notice of such exercise to the Affordable Developer within ninety (90) days from the expiration of any applicable cure period of an uncured Developer Event of Default pursuant to Section 10.2 above or within one hundred twenty (120) days of the occurrence of the events described in Section 8.2 that trigger the City's option rights or the events described in Section 10.2(b). Upon the City's exercise of such option, the Affordable Developer shall execute a grant deed in a form acceptable to the City transferring the Affordable Development to the City. The granting of this option to purchase, enter and take possession to the City shall not impair or limit the City's ability to exercise any other rights or remedies granted to the City in this Agreement.

Section 10.6 Right to Cure at Developers' Expense.

The City shall have the right to cure any monetary defaults by a Developer under a loan in connection with the Developer Parcel after notice to a Developer of the City's intent to cure. Each of the Developers agree to reimburse the City for any funds advanced by the City to cure a monetary default by such Developer upon demand therefore, together with interest thereon at the

lesser of the rate of ten percent (10%) per annum or the maximum rate permitted by law from the date of expenditure until the date of reimbursement.

Section 10.7 Rights of Mortgagees.

Any rights of the City under this Article will not defeat, limit or render invalid any Security Financing Interest permitted by this Agreement or any rights provided for in this Agreement for the protection of holders of Security Financing Interests. Any conveyance or reentry of the Developer Parcel to the City pursuant to this Article will be subject to Security Financing Interests permitted by this Agreement.

Section 10.8 Remedies Cumulative.

No right, power, or remedy given by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy will be cumulative and in addition to every other right, power, or remedy given by the terms of any such instrument, or by any statute or otherwise. Neither the failure nor any delay to exercise any such rights and remedies will operate as a waiver thereof, nor will any single or partial exercise of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

Section 10.9 Waiver of Terms and Conditions.

The City Manager may, at the City Manager's discretion, waive in writing any of the terms and conditions of this Agreement (as applicable), without the City and a Developer completing an amendment to this Agreement. No waiver of any default or breach by the Developer hereunder will be implied from any omission by the City to take action on account of such default if such default persists or is repeated, and no express waiver will affect any default other than the default specified in the waiver, and such waiver will be operative only for the time and to the extent therein stated. Waivers of any covenant, term, or condition contained herein will not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. The consent or approval by the City to or of any act by the Developer requiring further consent or approval will not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act. The exercise of any right, power, or remedy will in no event constitute a cure or a waiver of any default under this Agreement, nor will it invalidate any act done pursuant to notice of default, or prejudice the City in the exercise of any right, power, or remedy under this Agreement, unless in the exercise of any such right, power, or remedy all obligations of the Developer to City are discharged in full.

Section 10.10 Limited Liability of Tax Credit Investor.

No Tax Credit Investor, nor any constituent partner, member, owner, officer, agent, employee, attorney or consultant of the Tax Credit Investor, including any person executing this instrument required under this Agreement, shall be liable personally under this Agreement (provided that the Tax Credit Investor is not acting as the general partner of the Partnership). No recourse shall be had against any Tax Credit Investor, or any constituent partner, member, owner, officer, employee or agent, as such, of the Tax Credit Investor or any successor whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise (provided that the Tax Credit Investor is not acting as the general partner of

the Partnership). The Tax Credit Investor shall be provided with any notice of default from the City to the Affordable Developer, at the address provided by Tax Credit Investor. Tax Credit Investor shall have the same cure rights and cure periods as the Affordable Developer under this Agreement and the Affordable Housing Regulatory Agreement.

ARTICLE 11.
SECURITY FINANCING AND RIGHTS OF HOLDERS

Section 11.1 No Encumbrances Except for Development Purposes.

Notwithstanding any other provision of this Agreement, mortgages and deeds of trust, or any other reasonable method of security are permitted to be placed upon the Developers' fee interest in the Developer Parcels. Mortgages, deeds of trust, or other reasonable security instruments securing loans approved by the City pursuant to the approved Financing Plan are each referred to as a "Security Financing Interest." The words "mortgage" and "deed of trust" as used in this Agreement include all other appropriate modes of financing real estate acquisition, construction, and land development.

Section 11.2 Holder Not Obligated to Construct.

The holder of any Security Financing Interest authorized by this Agreement is not obligated to construct or complete any improvements or to guarantee such construction or completion; nor will any covenant or any other provision in conveyances from the City to a Developer evidencing the realty comprising the Developer Parcel or any part thereof be construed so to obligate such holder. However, nothing in this Agreement is deemed to permit or authorize any such holder to devote the Developer Parcel or any portion thereof to any uses, or to construct any improvements thereon, other than those uses of improvements provided for or authorized by this Agreement and the Affordable Housing Regulatory Agreement, as applicable.

Section 11.3 Notice of Default and Right to Cure.

Whenever the City pursuant to its rights set forth in Article 10 of this Agreement delivers any notice or demand to a Developer with respect to the commencement, completion, or cessation of the construction of the Development Improvements, the City will at the same time deliver to each holder of record of any Security Financing Interest creating a lien upon the Developer's fee interest in the Developer Parcel or any portion thereof, a copy of such notice or demand. Each such holder (insofar as the rights of the City are concerned) has the right, but not the obligation, at its option, within ninety (90) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default or breach affecting the Developer Parcel which is subject to the lien of the Security Financing Interest held by such holder and to add the cost thereof to the security interest debt and the lien on its security interest. Nothing contained in this Agreement is deemed to permit or authorize such holder to undertake or continue the construction or completion of the Development Improvements (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed in writing a Developer's obligations to the City relating to such Development Improvements under this Agreement pursuant to an assignment and assumption agreement prepared by the City and recordable among the Official Records (the "Security Financing Interest Assignment"). The holder in that event must agree to complete, in the manner

provided in this Agreement (or as may be amended by the Security Financing Interest Assignment; provided, however, the City is under no obligation to extend the dates for performance set forth in this Agreement), the Development Improvements to which the lien or title of such holder relates. Any such holder properly completing such Development Improvements pursuant to this paragraph must assume all rights and obligations of the Developer under this Agreement and will be entitled, upon completion and written request made to the City, to a Certificate of Completion from the City.

Section 11.4 Failure of Holder to Complete Improvements.

In any case after an uncured Developer Event of Default in completion of construction of the Development Improvements under this Agreement, the holder of record of any Security Financing Interest, having first exercised its option to construct pursuant to the Security Financing Interest Assignment, has not proceeded diligently with construction (as reasonably determined by the City) within six (6) months of taking possession of the Development Improvements, the City must be afforded those rights against such holder it would otherwise have against Developer under this Agreement.

Section 11.5 Right of City to Cure.

In the event of a default or breach by a Developer of a Security Financing Interest prior to the completion of the Development Improvements, and the holder has not exercised its option to complete the Development Improvements on the Developer Parcel, the City may cure the default, prior to the completion of any foreclosure. In such event the City will be entitled to reimbursement from the applicable Developer of all costs and expenses incurred by the City in curing the default. The City will also be entitled to a lien upon the Developer Parcel or any portion thereof to the extent of such costs and disbursements. The City agrees that such lien will be subordinate to any Security Financing Interest, and the City will execute from time to time any and all documentation reasonably requested by Developer to effect such subordination.

Section 11.6 Right of City to Satisfy Other Liens.

After the conveyance of title to the Property or any portion thereof and after the Developer has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on the Property or any portion thereof, the City will have the right to satisfy any such lien or encumbrances; provided, however, that nothing in this Agreement will require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith may contest the validity or amount therein and so long as such delay in payment will not subject the Property or any portion thereof to forfeiture or sale.

Section 11.7 Holder to be Notified.

The Developer will insert each term contained in this Article into each Security Financing Interest or will procure acknowledgement of such terms by each prospective holder of a Security Financing Interest prior to its coming into any security right or interest in the Property or portion thereof.

ARTICLE 12. REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 12.1 Developer Representations and Warranties. Each Developer makes the following representations and warranties to the City as follows:

(a) Good Standing. The Developer is a duly organized and validly existing and in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted.

(b) Corporate Authority. The Developer has full power and authority to execute and deliver this Agreement and to make and accept the grant contemplated hereunder, to execute and deliver all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Authority of Persons Executing Documents. This Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf the Developer and all actions required under the Developer's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

(d) Valid Binding Agreements. This Agreement and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of the Developer, enforceable against the Developer in accordance with their respective terms.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on the Developer, or any provision of the organizational documents of the Developer, or will conflict with or constitute a breach of or a default under any agreement to which the Developer is a party, or will result in the creation or imposition of any lien upon any assets or property of the Developer, other than liens established pursuant hereto.

(f) Compliance With Laws; Consents and Approvals. The Developer represents and warrants that the construction of the Development Improvements will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency.

(g) Pending Proceedings. The Developer is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of the Developer, threatened against or affecting the Developer, respectively, or the Developer Parcel, at law or in

equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to the Developer, materially affect the Developer's ability to perform its obligations under this Agreement or impair the security to be given to the City pursuant hereto.

(h) Financial Statements. The financial statements of the Developer and other financial data and information furnished by the Developer to the City fairly present the information contained therein. There has not been any adverse, material change in the financial condition of the Developer from that shown by such financial statements and other data and information.

Section 12.2 Effect of Representations and Warranties. All of the representations and warranties made by each of the Developers, respectively in this Agreement shall be true and correct throughout the Term of this Agreement as they pertain to their properties and entities. Each Developer shall indemnify and defend the Indemnitees against and hold the Indemnitees harmless from all claims, demands, liabilities, losses, damages, costs and expenses, including reasonable attorneys' fees and disbursements, that are suffered or incurred by the City if any representation or warranty made by such Developer, respectively, in this Agreement was untrue or incorrect in any respect when made or that are caused by any breach of the Developers, respectively, of any such representation or warranty. The foregoing indemnity shall survive the termination or expiration of this Agreement. Each representation and warranty in this Agreement is made by each Developer on behalf of itself only. For the purposes of clarity, any breach by a Developer under this Article 12 is not intended to result in any cross-default of Affordable Developer's or Market Rate Developer's respective obligations hereunder.

ARTICLE 13. GENERAL PROVISIONS

Section 13.1 Notices, Demands and Communications.

Formal notices, demands, and communications between the City and the Developer will be sufficiently given if, and not be deemed given unless, dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by reputable overnight delivery service, or delivered personally, to the principal office of the City and the Developer as follows:

City: City of El Cerrito
10890 San Pablo Avenue
El Cerrito, CA 94530
Attention: City Manager

Developer: HD Mayfair LLC
c/o Holliday Development LLC
1201 Pine Street, #141
Oakland, CA 94607

Mayfair Affordable LLC
c/o BRIDGE Housing Corporation
600 California Street
San Francisco, CA 94108

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section.

Section 13.2 Non-Liability of City Officials, Employees and Agents.

No board members, officers, directors, representatives, consultants, employees and agents of the City shall be personally liable to any Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or successor or on any obligation under the terms of this Agreement.

Section 13.3 Forced Delay.

In addition to specific provisions of this Agreement, performance by either party hereunder will not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God, or other deities; acts of terrorism or the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation (including suits filed by third parties concerning or arising out of this Agreement or the Project); acts of the other Parties; acts or failure to act of any public or governmental agency or entity (other than the acts or failure to act of the City); or any other causes (other than Developer's inability to obtain financing for the Development Improvements) beyond the control or without the fault of the party claiming an extension of time to perform. In no event will the cumulative delays exceed one hundred twenty (120) days, unless otherwise agreed to by the Parties in writing.

Section 13.4 Provision Not Merged with Deeds.

None of the provisions of this Agreement are intended to or will be merged by any grant deed transferring title to any real property which is the subject of this Agreement from City to a Developer or any successor in interest, and any such grant deed will not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 13.5 Title of Parts and Sections.

Any titles of the articles, sections or subsections of this Agreement are inserted for convenience of reference only and should be disregarded in construing or interpreting any part of its provision.

Section 13.6 General Indemnification.

(a) Except for claims described in (b) below, the Developer, for itself and all assigns hereunder, hereby agrees to indemnify, defend (with counsel reasonably selected by the City) and hold the Indemnitees harmless against any and all claims, suits, actions, losses and liability of every kind, nature and description made against all or any of the Indemnitees, and expenses (including reasonable attorneys' fees) which arise out of or in connection with this Agreement.

(b) The Affordable Developer, for itself and all assigns hereunder, hereby agrees to indemnify, defend (with counsel reasonably selected by the City) and hold the Indemnitees harmless against any and all claims, suits, actions, losses and liability of every kind, nature and description made against all or any of the Indemnitees, and expenses (including reasonable attorneys' fees) which arise out of or in connection with Affordable Developers' actions or omissions, except to the extent such claim arises from the active negligence or willful misconduct of the Indemnitees. The Market Rate Developer, for itself and all assigns hereunder, hereby agrees to indemnify, defend (with counsel reasonably selected by the City) and hold the Indemnitees harmless against any and all claims, suits, actions, losses and liability of every kind, nature and description made against all or any of the Indemnified Parties, and expenses (including reasonable attorneys' fees) which arise out of or in connection with Market Rate Developers' actions or omissions, except to the extent such claim arises from the active negligence or willful misconduct of the Indemnitees. The provisions of this Section survive both the issuance of a Certificate of Completion by the City and termination of this Agreement.

Section 13.7 Applicable Law.

This Agreement must be interpreted under and pursuant to the laws of the State of California.

Section 13.8 No Brokers.

Each Party represents to the other that it has not had any contact or dealings regarding the property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee. If any broker or finder makes a claim for a commission or finder's fee based upon a contact, dealings, or communications, the Party through whom the broker or finder makes this claim must indemnify, defend with counsel of the indemnified party's or parties' choice, and hold the indemnified parties harmless from all expense, loss, damage and claims, including the indemnified parties' reasonable attorneys' fees, if necessary, arising out of the broker's or finder's claim. The provisions of this section survive expiration of the Term or other termination of this Agreement, and will remain in full force and effect.

Section 13.9 Severability.

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

Section 13.10 Legal Actions.

Any legal action commenced to interpret or to enforce the terms of this Agreement must be filed in the Superior Court of the County of Contra Costa.

Section 13.11 Attorney's Fees.

In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the Party prevailing in any

such action will be entitled to recover against the Party not prevailing all reasonable attorneys' fees and costs incurred in such action.

Section 13.12 Binding Upon Successors.

This Agreement is binding upon and inures to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the Parties hereto, except that there may be no Transfer of any interest by any of the Parties hereto except pursuant to the terms of this Agreement. Any reference in this Agreement to a specifically named Party is deemed to apply to any successor, heir, administrator, executor or assign of such Party who has acquired an interest in compliance with the terms of this Agreement, or under law.

The covenants and restrictions set forth in this Agreement run with the land, and will bind all successors in title to the Property. Each and every contract, deed, or other instrument hereafter executed covering or conveying the Property will be held conclusively to have been executed, delivered, and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed, or other instrument, unless the City expressly releases the Property from the requirements of this Agreement.

Section 13.13 Parties Not Co-Venturers.

Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.

Section 13.14 Discretion Retained by City.

The City's execution of this Agreement does not constitute approval by the City and in no way limits the discretion of the County in the permit and approval process in connection with development of the Development Improvements.

Section 13.15 Time of the Essence.

In all matters under this Agreement, the Parties agree that time is of the essence.

Section 13.16 Action by the City.

Except as may be otherwise specifically provided in this Agreement, whenever any approval, notice, direction, finding, consent, request, waiver, extension, or other action by the City is required or permitted under this Agreement, such action may be given, made, or taken by the City Manager, or by any person who have been designated in writing to the Developer by the City Manager, without further approval by the City Council. Any such action must be in writing.

Section 13.17 Entry by the City.

The City, through its officers, agents, consultants or employees, at all reasonable times, and upon forty-eight hours' notice, shall have the right to enter into the Development Improvements: (a) to inspect the work of construction to determine that the same is in conformity with the requirements of this Agreement; and (b), following completion of construction to inspect the ongoing operation and management of the Development

Improvements to determine that the same is in conformance with the requirements of this Agreement. The Developer acknowledges that the City is under no obligation to supervise, inspect, or inform the Developer of the progress of construction, or operations and the Developer may not rely upon the City therefor. Any inspection by the City during the construction is entirely for its purposes in determining whether the Developer is in compliance with this Agreement and is not for the purpose of determining or informing the Developer of the quality or suitability of construction. Each Developer must rely entirely upon its own supervision and inspection in determining the quality and suitability of the materials and work, and the performance of architects, subcontractors, and material suppliers.

Section 13.18 Entire Understanding of the Parties. This Agreement constitutes the entire understanding and agreement of the Parties. All prior discussions, understandings and written agreements are superseded by this Agreement. The Developer and the Developers' counsel have read and reviewed this Agreement and agree that any rule of construction (including, but not limited to Civil Code Section 1654, as may be amended from time to time) to the effect that ambiguities are to be resolved against the drafting Party will not apply to the interpretation of this Agreement.

Section 13.19 Operating Memoranda; Implementation Agreements.

(a) The parties acknowledge that the provisions of this Agreement require a close degree of cooperation and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the Parties under this Agreement. The Parties desire, therefore, to retain a certain degree of flexibility with respect to the details of performance for those items covered in general terms under this Agreement. If and when, from time to time, the Parties find that refinements or adjustments are desirable, such refinements or adjustments may be accomplished through operating memoranda or implementation agreements approved by the Parties which, after execution will be attached to this Agreement as addenda and become a part hereof, each an "Operating Memorandum". This Agreement describes some, but not all, of the circumstances in which the preparation and execution of operating memoranda or implementation agreements may be appropriate. Such refinements and adjustments may include changes to the dates for performance in this Agreement and the Development Schedule, as well as extensions thereto.

(b) Each Operating Memorandum or implementation agreements may be negotiated and executed on the City's behalf by the City Manager, or his or her designee. In the event a particular subject requires notice or hearing, such notice or hearing must be appropriately given. Any significant modification to the terms of performance under this Agreement must be processed as an amendment of this Agreement in accordance with Section 13.20 and must be approved by the City Council.

Section 13.20 Amendments. The Parties can amend this Agreement only by means of a writing executed by the Developer and the City.

Section 13.21 Counterparts; Multiple Originals. This Agreement may be executed in counterparts, each of which is deemed to be an original.

Section 13.22 Third Party Beneficiary. This Agreement is made solely for the benefit of the Parties and the Parties' permitted successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the City and the Developer have executed this Agreement as of the Effective Date.

DEVELOPER:

HD MAYFAIR LLC, a California limited liability company

BY: _____

Name: _____

Its: _____

MAYFAIR AFFORDABLE LLC, a California limited liability company

By: _____

Name: _____

Its: _____

CITY:

CITY OF EL CERRITO, a municipal corporation

By: _____

Name: _____

Its: _____

APPROVED AS TO FORM:

By: _____
City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

The land referred to is situated in the County of Contra Costa, City of El Cerrito, State of California, and is described as follows:

Parcel One:

Lots 1 through 12, inclusive and Lots 21 through 32, inclusive, in Block 2, as shown on the map entitled, "Richmond Junction", Contra Costa Co., California, filed on May 6, 1913 in Book 9 of Maps, at Page 221.

EXCEPTING THEREFROM:

That portion as condemned to the People of the State of California, acting by and through the Department of Transportation, recorded November 6, 1695, as Instrument No. 95-193521, Official Records.

APN: 502-062-029

Parcel Two:

Lots 13, 14, 15, 16, 17 and 18, in Block 2, as shown on the map entitled, "Richmond Junction", Contra Costa Co., California, filed on May 6, 1913 in Book 9 of Maps, at Page 221.

EXCEPTING THEREFROM:

That portion deeded to the State of California recorded August 31, 2005, Instrument No. 94-46446.

APN: 502-062-028

Parcel Three:

Lots 19 and 20, in Block 2, as shown on the map entitled, "Richmond Junction", Contra Costa Co., California, filed on May 6, 1913 in Book 9 of Maps, at Page 221.

APN 502-062-003

EXHIBIT B
CONCEPTUAL SITE PLANS



CONSULTANT

NOT FOR
CONSTRUCTION

[illegible]

ENTITLEMENT SET

RENDERINGS

PROJECT NUMBER:
16-043

SHEET NUMBER

A5.1

ALL DRAWINGS AND WRITTEN MATERIAL APPEARING
HEREIN CONSTITUTE ORIGINAL AND UNPUBLISHED
WORK OF THE ARCHITECT AND MAY NOT BE
REPRODUCED, COPIED, REPRODUCED, USED OR DISCLOSED WITHOUT WRITTEN
CONSENT OF THE ARCHITECT



VIEW FROM KEARNY ST AND CUTTING BLVD

1. ACCESSIBLE PATHS OF TRAVEL SHALL MEET REQUIREMENTS OF CBC 11B-302. SHALL HAVE A CONTINUOUS COMMON SURFACE, NOT INTERRUPTED BY STEPS OR BY ABRUPT CHANGES IN LEVEL EXCEEDING 1/4 INCH AND SHALL BE A MINIMUM OF 48 INCHES IN WIDTH. SURFACE CROSSES SLOPES SHALL NOT EXCEED 1/4 INCH PER FOOT. WHEN THE SLOPE IN DIRECTION OF TRAVEL OF ANY WALK EXCEEDS ONE UNIT VERTICAL TO 20 UNITS HORIZONTAL, IT SHALL COMPLY WITH PROVISIONS OF CBC 11B-405 FOR RAMPS.

EL CERRITO MAYFAIR:



BRIDGEHousing

600 SAN PABLO AVE

CONSULTANT

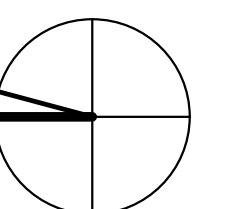
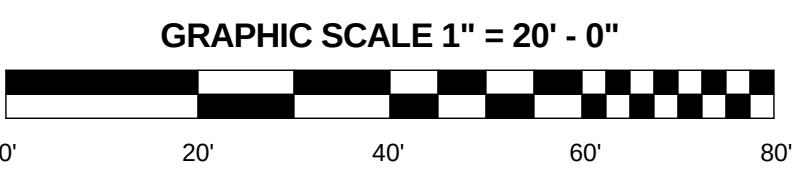
NOT FOR
CONSTRUCTION

[illegible]

SITE PLAN

A1.0

DRAWINGS AND WRITTEN MATERIAL APPEARING
HEREIN CONSTITUTE ORIGINAL AND UNPUBLISHED
WORK OF THE ARCHITECT AND MAY NOT BE
REPRODUCED, COPIED, USED OR DISCLOSED WITHOUT WRITTEN
CONSENT OF THE ARCHITECT



1 SITE PLAN
1" = 20'-0"

4/26/2017 2:11:12 PM

NOT FOR
CONSTRUCTION

[illegible]

ENTITLEMENT SET

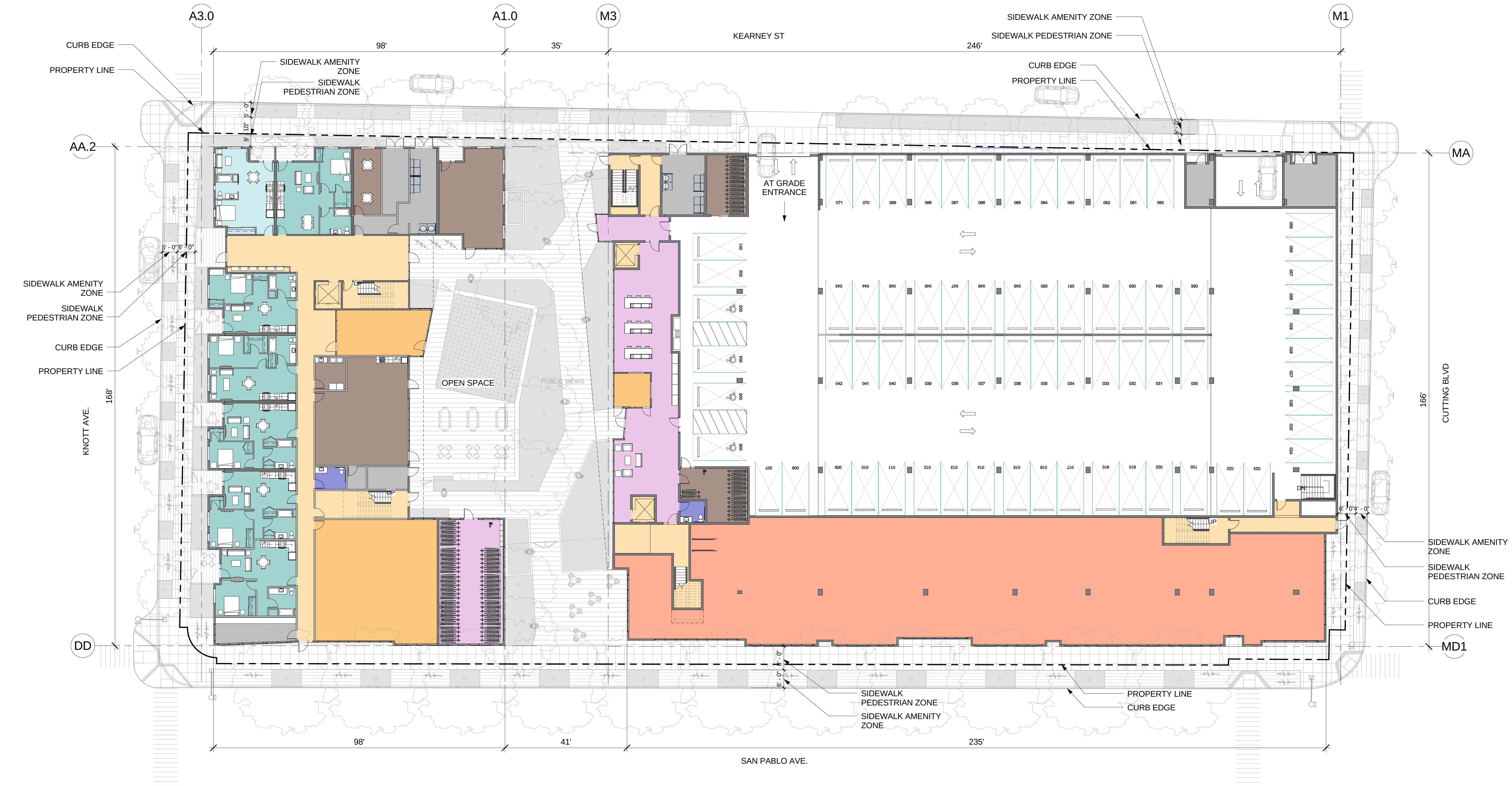
OVERALL -
GROUND FLOOR
PLAN

PROJECT NUMBER:
16-043

SHEET NUMBER

A2.0

ALL DRAWINGS AND WRITTEN MATERIAL APPEARING
HEREIN CONSTITUTE ORIGINAL AND UNPUBLISHED
WORK OF THE ARCHITECT AND MAY NOT BE
REPRODUCED, COPIED, REPRODUCED, USED OR DISCLOSED WITHOUT WRITTEN
CONSENT OF THE ARCHITECT

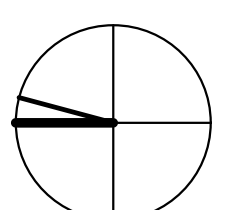
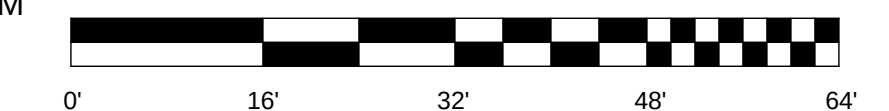


① GROUND FLOOR - OVERALL
1/16" = 1'-0"

Legend

 STUDIO	 UTILITY	 RETAIL
 1-BD	 GARAGE	 BATHROOM
 CIRCULATION	 LOBBY	
 AMENITY	 OFFICE	

GRAPHIC SCALE 1/16" = 1'-0"



NOT FOR
CONSTRUCTION

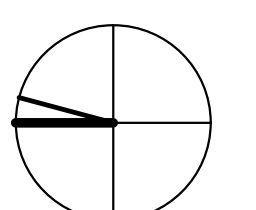
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GARAGE LEVEL 1
 FLOOR PLAN -
 MARKET RATE

PROJECT NUMBER: 16-043	SHEET NUMBER
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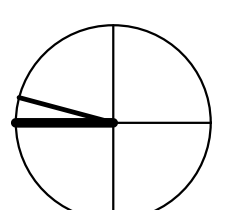
A2.7

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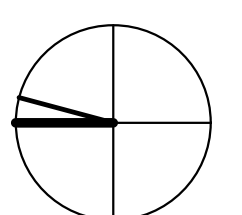


CONSULTANT

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CONSENT OF THE ARCHITECT



NOT FOR
CONSTRUCTION

[illegible]

ENTITLEMENT SET

LEVEL 6 FLOOR
PLAN - MARKET
RATE

PROJECT NUMBER:
16-043

SHEET NUMBER

A2.13

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① LEVEL 6 - MARKET HOUSING
1/8" = 1'-0"

Legend

STUDIO

1-BD

■ 2-BD

CIRCULATION

 ENTRY
 AMENITY

UTILITY

GRAPHIC SCALE 1/8" = 1' - 0"

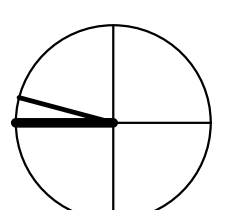
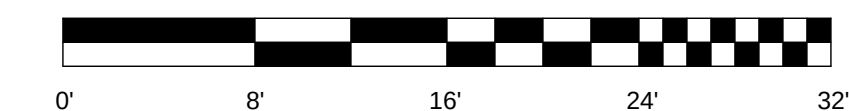


EXHIBIT C-1

AFFORDABLE DEVELOPMENT FINANCING PROPOSAL

Proposed Financing Plan for El Cerrito Affordable Housing Development January 26, 2018

The financing for the 68-unit Mayfair Affordable Housing Development includes several capital and operating sources that BRIDGE is expecting to secure over the next few years.

The Affordable Housing & Sustainable Communities Program (AHSC) will be evaluated as a potential capital source for the project. AHSC is awarded on an annual basis and applications are due every year in January. A key threshold requirement to apply for AHSC is that 90% of the project's financing (inclusive of the AHSC award and projected 4% tax credit equity) has been secured. Therefore nearly all of the soft sources must be committed before BRIDGE may apply for AHSC.

Another important source of funding for this project could be SB 3 bond funds. In late 2016, Governor Brown signed this bill which places a \$3B bond measure on the November 2018 statewide ballot to pay for the construction of affordable housing. If the bond measure passes, our financial consultants believe that applications will be available by late 2019 and that the soonest these funds will be committed is in 2020, potentially enabling an AHSC application in January 2021. Assuming a substantial commitment of State affordable housing bond funds and a successful AHSC application, construction on the Affordable Project can commence by December 2021 but is contingent on securing all gap subsidy needed for the project. The start of construction may be delayed to the extent subsidy sources are not available per the below schedule.

Below is a summary of the ideal, approximate timing to secure the project's financing sources:

Source	Timing to Secure funds (Approximate)	Notes
City loan	Spring 2018	Funding for predevelopment
Affordable Housing Program	Summer 2019 or 2020	
Housing Authority Vouchers	Late 2018	Operating subsidies from County HA
County Funds	2018/2019 or 2021 (If affordable housing bond measure is placed on ballot in 2020)	Should the County have funds available for affordable housing, BRIDGE would seek to secure them
SB 3 Bond Funds	Late 2020	Competitive RFP released in 2020
AHSC	Spring 2021	Apply once 90% of funds committed
4% Tax Credits/Bonds	Fall 2021	Non-competitive applications
Close financing & start construction	December 2021	Schedule may be delayed if project all gap subsidy funding needed

This schedule represents an approximation taking into account the timing required to secure funds and start construction in a timely manner based on the information available as of the Effective Date in the DDA. Should any of these financing applications be unsuccessful, or should the tax credit/debt market materially change, the project may need to pursue additional gap financing sources which could delay construction commencement.

Below please find our preliminary budget, including sources and uses of funds:

Sources of Funds

Source	Amount
Permanent Mortgage	\$5,391,646
Affordable Housing Program (AHP) loan	\$680,000
Affordable Housing and Sustainable Communities (AHSC) loan	\$4,303,991
Investor Equity – 4% Tax Credits	\$11,282,178
General Partner Equity	\$2,400,000
Reimbursement from Holliday Development for Common Amenity Space	\$628,425
Land Donation from Holliday Development	\$3,400,000
Other Gap Subsidy Sources	\$4,203,847
<i>Total</i>	<i>\$32,290,087</i>

Uses of Funds

Use	Amount
Acquisition	\$3,400,000
Construction	\$20,688,205
A/E, Permits	\$2,779,589
Indirect Expenses	\$574,821
Financing and Carrying Costs	\$1,127,992
Other (Prop. Taxes & Soft Cost Contingency)	\$293,690
Developer Fee & Syndication Costs	\$3,425,791
<i>Total</i>	<i>\$32,290,087</i>

EXHIBIT C-2

MARKET RATE DEVELOPMENT FINANCING PROPOSAL

Proposed Financing Plan for El Cerrito Market Rate Housing Development

January 26, 2018

For nearly 30 years, Holliday Development has successfully worked to design, finance, and construct complex infill developments. We are excited to now be working on the Mayfair project and bringing new housing and investment to El Cerrito. During 2018, Holliday Development will invest predevelopment funds to further the Mayfair project through design development and into construction drawings towards the goal of refining the project budget and making a formal building permit submittal. During this time, we will be continuing working with our potential equity partners and construction lenders for the project construction. In particular, Citi Community Capital is a lender that we have worked with for over a decade and that has expressed strong interest in financing the Mayfair project.

Below please find our preliminary budget, sources, and uses for taking the Mayfair project through construction.

Projected Development Costs:

Acquisition: \$3,350,000

Soft Costs:

Permits & Fees \$1,650,000

Utility Hook-Ups \$1,950,000

Architecture & Engineering \$1,750,000

Developer Overhead \$1,500,000

Other Soft Costs \$2,400,000

Hard Costs: \$49,000,000

Finance Costs: \$2,000,000

Total: \$63,600,000

Source	Timing	Amount	Notes
Citi Community Capital	Q1 2019	\$49,000,000	Construction Loan
Equity Partners	Q1 2019	\$14,600,000	Construction Equity
Start of Construction	Q2 2019	\$63,600,000	Loan & Equity Combined
Citi Community Capital	Q2 2021	\$49,000,000	Permanent Loan Conversion

This schedule reflects our preliminary budget estimate and financing plan. As more detailed information becomes available during the construction document phase, we will continue to refine our budget and plans.

EXHIBIT D

Intentionally Omitted

EXHIBIT E

DEVELOPMENT SCHEDULE

Development Schedule	
Compensation Agreement (Section 5.8)	City to execute with County within 90 days of Effective Date.
Map for Property (Section 5.3)	9 months after the Effective Date of the DDA.
Insurance (Section 5.7)	To the extent applicable, at acquisition, and prior to construction of each Phase.
Submission of first Affordable Housing Progress Reports (Section 8.2)	9 months after the Effective Date.
Developer Agreement to be submitted to City (Section 5.6)	30 days prior to Close of Escrow.
Close of Escrow (Acquisition of Property by Developers/Conveyance by City) (Section 6.4; Section 10.4)	12 months after the Effective Date of the DDA (as such date may be extended pursuant to Section 6.4)
Market Rate Development Financing Plan (Section 4.3)	60 days before Commencement of Construction of the Market Rate Development
Affordable Housing Financing Plan (Section 4.2)	60 days before Commencement of Construction of the Affordable Housing Development
Government Approvals (Section 5.2)	For the Market Rate Development, on or prior to Commencement of Construction of the Market Rate Development For the Affordable Development, on or prior to Commencement of Construction of the Affordable Housing Development
Commencement of Construction	For the Market Rate Development, 6 months following the acquisition of the Market Rate Development Parcel (as such date may be extended pursuant to Section 3.3). For the Affordable Development, the later of (a) nine (9) months following the Completion of Construction of the Market Rate Development or (b) five (5) years after acquisition of the Affordable Development Parcel by the Affordable Developer.
Completion of Construction	24 months after Commencement of Construction of the applicable Development Improvements.

Development Schedule	
City and Market Rate Developer may locate an Alternate Affordable Developer (Section 8.2)	If Developer fails to secure financing for the Affordable Development by the later of (a) five (5) years after acquisition of the Affordable Development Parcel by the Affordable Developer or (b) nine(9) months following the Completion of Construction of the Market Rate Development

EXHIBIT F

Form of Affordable Housing Regulatory Agreement

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of El Cerrito
10890 San Pablo Avenue
El Cerrito, CA 94530
Attn: City Manager

NO FEE DOCUMENT PURSUANT TO
GOVERNMENT CODE SECTION 27383

REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS
(Mayfair Affordable LLC)

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is made and entered into as of _____ 1, 201_, by and between the City of El Cerrito, a municipal corporation (the "City") and Mayfair Affordable LLC, a California limited liability company (the "Owner").

RECITALS

A. The City has entered into a Disposition and Development Agreement (the "DDA") with the Owner and HD Mayfair LLC dated as of _____, 201_. Pursuant to the DDA the City has conveyed to the Owner that certain property located in the City of El Cerrito and more particularly described in Exhibit A attached hereto and incorporated herein (the "Property") upon which the Developer intends to construct 67 units of affordable rental housing (including one manager's unit), landscaping and amenities (the "Affordable Development"). Pursuant to the DDA, the City has conveyed the property adjacent to the Property to HD Mayfair LLC for the development of 156 market rate residential units, commercial space, open space and parking, including the parking for the Affordable Development ("Market Rate Development" and with the Affordable Development, the "Development").

B. The City is requiring the recordation of covenants or restrictions to ensure that sixty seven units (67) of the Units (excluding the manager's unit) in the Development to be developed on the Property are restricted for occupancy by Low Income Households ("Affordable Units"), as required as a condition of transfer of the Property pursuant to the Agreement.

C. On July 12, 2017 the El Cerrito Planning Commission granted Tier IV site plan and design review approval of the Project and adopted conditions of approval. On August 2, 2017, the El Cerrito Design Review Board granted Tier IV site plan and design review approval of the Development. A condition of the Tier IV approval for the Development was the requirement that the Affordable Units be included in the Development.

D. The following covenants and restrictions are recorded against the Property in consideration of the City's agreement to sell the Property pursuant to the Agreement to Developer for the purchase price set forth in the Agreement.

THEREFORE, the City and Owner hereby agree as follows:

ARTICLE 2. DEFINITIONS

Section 2.1 Definitions. When used in this Agreement, the following terms shall have the respective meanings assigned to them in this Article 1.

(a) "Actual Household Size" shall mean the actual number of persons in the applicable household.

(b) "Adjusted Income" shall mean the total anticipated annual income of all persons in a household, as calculated in accordance with 25 California Code of Regulations Section 6914 or pursuant to a successor State housing program that utilizes a reasonably similar method of calculation of adjusted income. In the event that no such program exists, the City shall provide the Owner with a reasonably similar method of calculation of adjusted income as provided in said Section 6914.

(c) "Agreement" shall mean this Regulatory Agreement and Declaration of Restrictive Covenants.

(d) "Assumed Household Size" shall have the meaning set forth in Section 2.2(c). The definition is utilized to calculate affordable Rent and is not intended to be a limit on the number of persons occupying a unit.

(e) "City" shall mean the City of El Cerrito.

(f) "DDA" shall mean the Disposition and Development Agreement entered into by and among the City, Owner and HD Mayfair LLC, dated _____.

(g) "Development" shall mean the Affordable Development and the Market Rate Development, as well as all landscaping, roads and parking spaces existing thereon, as the same may from time to time exist.

(h) "HCD" shall mean the California Department of Housing and Community Development.

(i) "Low Income Household" means a household with an Adjusted Income that does not exceed sixty percent (60%) of Median Income.

(j) "Low Income Rent" means the Rent allowed to be charged on the Low Income Units pursuant to Section 2.2(b) below.

(k) "Low Income Units" shall mean the Units that, pursuant to Section 2.1 below, are required to be occupied by Low Income Households.

(l) "Median Income" shall mean the median gross yearly income adjusted for Actual Household Size (to qualify residents) or Assumed Household Size (to calculate rents), as applicable, in the County of Contra Costa, California, as published from time to time by the State of California Department of Housing and Community Development. In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, the City shall provide the Owner with other income determinations which are reasonably similar with respect to methods of calculation to those previously published by the State of California Department of Housing and Community Development.

(m) "Owner" shall mean Mayfair Affordable LLC, a limited liability company, and its successors and assigns to the Affordable Development.

(n) "Property" shall mean the real property described in Exhibit A attached hereto and incorporated herein.

(o) "Rent" shall mean the total of monthly payments by the residents of a Unit (other than the manager's Unit) for the following: use and occupancy of the Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed by Owner which are required of all residents, other than security deposits; the cost of an adequate level of service for utilities paid by the Resident, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not cable or telephone service; any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than Owner, and paid by the Resident.

(p) "Resident" shall mean an individual or household occupying a Unit.

(q) "Term" shall mean the term of this Agreement, which shall commence on the date of recordation of this Agreement, and shall continue for a period of fifty-five (55) years from the date a certificate of occupancy is issued for the Affordable Development.

(r) "Units" shall mean the individual dwelling units to be constructed on the Property as part of the Development.

ARTICLE 3. AFFORDABILITY COVENANTS

Section 3.1 Occupancy Requirements.

No fewer than sixty six (66) of the Units shall be rented to and occupied by or, if vacant, available for occupancy by Low Income Households.

Section 3.2 Allowable Rent.

(a) Low Income Rent. Subject to Section 2.3(a) below, the Rent charged to Residents of the Low Income Units shall not exceed one-twelfth ($1/12^{\text{th}}$) of thirty percent (30%) of sixty percent (60%) of Median Income, adjusted for Assumed Household Size.

(b) In calculating the allowable Rent for the Units, the following Assumed Household Sizes shall be utilized:

<u>Number of Bedrooms</u>	<u>Assumed Household Size</u>
One	2
Two	3
Three	4

(c) No later than May 1st of each calendar year, the City shall provide the Owner with a schedule of permissible maximum Low Income Rents. Under no circumstance may Owner raise rents above the permissible maximum rents as allowed under the annual Rent schedule provided by the City.

(d) In the event that the Rent to be charged under Section 2.2(a) through (c) is less than the rent allowed by the Tax Credit Allocation Committee ("TCAC") for a 60% Income Household unit of the same size in Contra Costa County (the "TCAC 60% Rent"), then the Owner may charge the TCAC 60% Rent. In the event that the income limits for a Low Income Household are less than those published by TCAC for 60% Income Households in Contra Costa County, the TCAC income limits shall control.

Section 3.3 Increased Income of Residents.

(a) Non-Qualifying Household. If, upon recertification of the income of a Resident of a Unit, the Owner determines that a former Low Income Household has an Adjusted Income exceeding the maximum qualifying income for a Low Income Household, such Resident shall be permitted to continue occupying the Unit and upon expiration of the Resident's lease and upon sixty (60) days written notice, the Rent may be increased to the fair market Rent, and the Owner shall rent the next available Unit to a Low Income Household, as applicable, to meet the requirements of Section 2.1 above.

(b) Termination of Occupancy. Upon termination of occupancy of a Unit by a Resident, such Unit shall be deemed to be continuously occupied by a Low Income Household, until such Unit is reoccupied by a new low Income Household. In any event, Owner shall maintain the occupancy requirements set forth in section 2.1 above.

Section 3.4 Resident Selection.

(a) No later than six (6) months prior to the projected date of the completion of the Affordable Development, Owner shall submit to the City for approval its plan for marketing the Affordable Development to income-eligible Households.

(b) The Owner shall not discriminate against any applicants for tenancy on the basis of source of income or rent payment (for example, without limitation, Temporary Assistance for Needy Families (TANF) or Section 8), and Owner shall consider a prospective Resident's previous rent history of at least one (1) year, or such other time period the Owner deems reasonable, as evidence of the prospective Resident's ability to pay the applicable Rent.

Section 3.5 Lease Provisions. Owner shall include in leases for all Units provisions which authorize Owner to immediately terminate the tenancy of any household one or more of whose members misrepresented any fact material to the household's qualification as a Low Income Household. Each lease or rental agreement shall also provide that the household is subject to annual certification in accordance with Section 3.1 below, and that, if the household's income increases above the applicable limits for a Low Income Household, such household's Rent may be subject to increase.

Section 3.6 Condominium Conversion. The Owner shall not convert Affordable Development Units to condominium or cooperative ownership or sell condominium or cooperative conversion rights to the Property during the Term of this Agreement.

ARTICLE 4. INCOME CERTIFICATION AND REPORTING

Section 4.1 Income Certification. With respect to new Residents, the Owner will obtain, and complete, as a condition to initial occupancy and with respect to new Residents, obtain and maintain on file annually thereafter, income certifications from each Resident renting any of the Units. The Owner shall make a good faith effort to verify that the income provided by an applicant or occupying household in an income certification is accurate by taking two or more of the following steps as a part of the verification process: (1) obtain a minimum of the three (3) most current pay stubs for all adults age eighteen (18) or older; (2) obtain an income tax return for the most recent tax year; (3) conduct a credit agency or similar search; (4) obtain the three (3) most current savings and checking account bank statements; (5) obtain an income verification form from the applicant's current employer; (6) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (7) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. Copies of Resident income certifications shall be available to the City upon request.

Section 4.2 Annual Report to City. Owner shall submit to the City (a) not later than the forty-fifth (45th) day after the close of each calendar year, or such other date as may be requested by the City, a statistical report, including income and rent data for all Units, setting forth the information called for therein, and (b) within fifteen (15) days after receipt of a written request, any other information or completed forms reasonably requested by the City.

Section 4.3 Additional Information. Owner shall provide any additional information reasonably requested by the City. The City shall have the right to examine and make copies of all books, records or other documents of Owner which pertain to any Unit.

Section 4.4 Records. Owner shall maintain complete, accurate and current records pertaining to the Affordable Development, and shall permit any duly authorized representative of the City to inspect records, including records pertaining to income and household size of Residents, during regular business hours and upon at least one (1) business day's prior notice. All Resident lists, applications and waiting lists relating to the Affordable Development shall at all times be kept separate and identifiable from any other business of the Owner and shall be maintained as required by the City, in a reasonable condition for proper audit and subject to

examination during business hours by representatives of the City. The Owner shall retain copies of all materials obtained or produced with respect to occupancy of the Units for a period of at least five (5) years.

Section 4.5 On-site Inspection. The City shall have the right to perform an on-site inspection of the Affordable Development at least one (1) time per year during regular business hours upon at least five (5) business days' prior notice, and without interfering with the rights of Residents in the Affordable Development. The Owner agrees to cooperate in such inspection.

ARTICLE 5. OPERATION OF THE AFFORDABLE DEVELOPMENT

Section 5.1 Operation.

The Units, shall be operated only for residential use as permanent multifamily rental housing.

Section 5.2 Taxes and Assessments. Owner shall pay all real and personal property taxes, assessments, if any, and charges and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any line or charge from attaching to the Property; provided, however, that Owner shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event Owner exercises its right to contest any tax, assessment, or charge against it, Owner, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

Section 5.3 Nondiscrimination. All of the Units shall be available for occupancy on a continuous basis to members of the general public who are income eligible. Owner shall not give preference to any particular class or group of persons in renting the Units, except to the extent that the Units are required to be leased to Residents who qualify as Low Income Households or as required by other financing for the Development. There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, age, source of income, disability, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit, nor shall Owner or any person claiming under or through the Owner, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of residents, lessees, sublessees, subtenants, or vendees of any Unit or in connection with the employment of persons for the operation and management of the Affordable Development. All deeds, leases or contracts made or entered into by Owner as to the Units or the Affordable Development or portion thereof, shall contain covenants concerning discrimination as prescribed by the DDA.

Section 5.4 Section 8 Certificate Holders. The Owner will accept as residents, on the same basis as all other prospective residents, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor. The Owner shall not apply selection criteria to

Section 8 certificate or voucher holders that are more burdensome than criteria applied to all other prospective residents, nor shall the Owner apply or permit the application of management policies or lease provisions with respect to the Affordable Development which have the effect of precluding occupancy of Units by such prospective Residents.

Section 5.5 Preference to Displacees. Owner shall give a preference in the rental of any Units to eligible households displaced by activity of the City or the former El Cerrito Redevelopment Agency, as provided in Health and Safety Code Section 33411.3. The preferences stated in this section apply to the rentals of Units throughout the Term.

ARTICLE 6. PROPERTY MANAGEMENT AND MAINTENANCE

Section 6.1 Management Responsibilities. The Owner is responsible for all management functions with respect to the Affordable Development, including without limitation the selection of residents, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The City shall have no responsibility over management of the Affordable Development. The Owner shall retain a professional property management company, approved by the City in its reasonable discretion, to perform its management duties hereunder. A resident manager shall also be required. At least six (6) months prior to completion of construction of the Affordable Development Owner shall submit a proposed management plan to the City for approval by the City. The City shall approve or disapprove (with written explanation for disapproval) of the proposed management plan by notifying the Owner in writing within sixty (60) days of the date of submission to the City.

Section 6.2 Management Agent; Periodic Reports. The Affordable Development shall at all times be managed by an experienced management agent reasonably acceptable to the City, with demonstrated ability to operate residential facilities like the Affordable Development in a manner that will provide decent, safe, and sanitary housing (as approved, the "Management Agent"). The City approves BRIDGE Property Management, Inc. as the initial Management Agent. The Owner shall submit for the City's approval the identity of any proposed Management Agent and on-site resident manager. The Owner shall also submit such additional information about the background, experience and financial condition of any proposed Management Agent and on-site resident manager as is reasonably necessary for the City to determine whether the proposed Management Agent or on-site resident manager meets the standard for a qualified Management Agent or on-site resident manager set forth above. If the proposed Management Agent or on-site resident manager meets the standard for a qualified Management Agent or on-site resident manager set forth above, the City shall approve the proposed Management Agent or on-site resident manager by notifying the Owner in writing. Unless the proposed Management Agent or on-site resident manager is disapproved by the City within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved.

Section 6.3 Performance Review. The City reserves the right to conduct an annual (or more frequently, if deemed reasonably necessary by the City) review of the management practices of the Affordable Development. The purpose of each periodic review will be to enable

the City to determine if the Affordable Development is being operated and managed in accordance with the requirements and standards of this Agreement. The Owner shall cooperate with the City in such reviews.

Section 6.4 Replacement of Management Agent or On-Site Resident Manager. If, as a result of a periodic review, the City determines, in its reasonable judgment, that the Affordable Development is not being operated and managed in accordance with any of the material requirements and standards of this Agreement, the City shall deliver notice to Owner of its intention to cause replacement of the Management Agent or on-site resident manager, including the reasons therefore. Within fifteen (15) days of receipt by Owner of such written notice, City staff and the Owner shall meet in good faith to consider methods for improving the operating status of the Affordable Development. If, after a reasonable period as determined by the City (not to exceed sixty (60) days), the City determines that the Owner is not operating and managing the Affordable Development in accordance with the material requirements and standards of this Agreement, the City may require replacement of the Management Agent or on-site resident manager.

If, after the above procedure, the City requires in writing the replacement of the Management Agent or on-site resident manager, Owner shall promptly dismiss the then Management Agent or on-site resident manager, and shall appoint as the Management Agent or on-site resident manager a person or entity meeting the standards for a Management Agent or on-site resident manager set forth in Section 5.2 above and approved by the City pursuant to Section 5.2 above.

Any contract for the operation or management of the Affordable Development entered into by Owner shall provide that the contract can be terminated as set forth above. Failure to remove the Management Agent or on-site resident manager in accordance with the provisions of this Section shall constitute default under this Agreement, and the City may enforce this provision through legal proceedings as specified in Section 6.4.

Section 6.5 Approval of Management Policies. The Owner shall submit its written management policies with respect to the Affordable Development to the City for its review, and shall amend such policies in any way necessary to ensure that such policies comply with the provisions of this Agreement.

Section 6.6 Property Maintenance. The Owner agrees, for the entire Term of this Agreement, to maintain all interior and exterior improvements, including landscaping, on the Property in good condition and repair (and, as to landscaping, in a healthy condition) and in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials.

The City places prime importance on quality maintenance to protect its investment and to ensure that all affordable housing projects within the City are not allowed to deteriorate due to below-average maintenance. Normal wear and tear of the Affordable Development will be acceptable to the City assuming the Owner agrees to provide all necessary improvements to assure the Affordable Development is maintained in good condition. The Owner shall make all repairs and replacements necessary to keep the improvements in good condition and repair.

In the event that the Owner breaches any of the covenants contained in this section and such default continues for a period of ten (10) days after written notice from the City with respect to graffiti, debris, waste material, and general maintenance or thirty (30) days after written notice from the City with respect to landscaping and building improvements, then the City, in addition to whatever other remedy it may have at law or in equity, shall have the right to enter upon the Property and perform or cause to be performed all such acts and work necessary to cure the default unless the Owner has commenced to cure such breach within the applicable cure period and is diligently pursuing such cure. Pursuant to such right of entry, the City shall be permitted (but is not required) to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas on the Property, and to attach a lien on the Property, or to assess the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by the City and/or costs of such cure, including a fifteen percent (15%) administrative charge, which amount shall be promptly paid by the Owner to the City upon demand.

ARTICLE 7. MISCELLANEOUS

Section 7.1 Term. The provisions of this Agreement shall apply to the Property for the entire Term. This Agreement shall bind any successor, heir or assign of Owner, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by the City. The City conveyed the Property to the Owner on the condition, and in consideration of, this provision, and would not do so otherwise.

Section 7.2 Covenants to Run With the Land. The City and Owner hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property, provided, however, that on the expiration of the Term of this Agreement said covenants and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the City expressly releases such conveyed portion of the Property from the requirements of this Agreement.

Section 7.3 Enforcement by the City. It shall be an "Event of Default" under this Agreement if Owner fails to perform any obligation under this Agreement, and fails to cure the default within forty-five (45) days after receipt of written notice thereof from the City to Owner, (or if the failure is of such a nature that it cannot be cured within forty-five (45) days, the Developer fails to commence to cure within such forty-five (45) days and thereafter diligently complete such cure within a reasonable time thereafter). Following an Event of Default, the City shall have the right to enforce this Agreement by any or all of the following actions, or any other remedy provided by law:

(a) Action to Compel Performance or for Damages. The City may bring an action at law or in equity to compel Owner's performance of its obligations under this Agreement, and/or for damages.

(b) Remedies Provided Under DDA. The City may exercise any other remedy provided under the DDA if the DDA is still in effect.

Section 7.4 Rights of Third Parties to Enforce Covenants. The covenants and restrictions contained herein which implement Health and Safety Code Sections 33334.3 and/or 33413(b)(4), or successor provisions, shall run with the land and shall be enforceable by the City.

Section 7.5 Listing of Property in Database. Owner hereby acknowledges and agrees that Health and Safety Code Section 33418(c) requires that the Property be listed in a database that shall be made available to the public on the internet and which will include the street address, assessor's parcel number, and other information about the Property. The Owner must disclose this requirement to all Residents and prospective Residents.

Section 7.6 Attorney's Fees and Costs. In any action brought to enforce this Agreement, the prevailing party shall be entitled to all costs and expenses of suit, including attorneys' fees. This section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

Section 7.7 Recording and Filing. The City and Owner shall cause this Agreement, and all amendments and supplements to it, to be recorded against the Property in the Official Records of the County of Contra Costa.

Section 7.8 Governing Law. This Agreement shall be governed by the laws of the State of California.

Section 7.9 Amendments. This Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the real property records of the County of Contra Costa, California.

Section 7.10 Notice. All notices given or certificates delivered under this Agreement shall be in writing and be deemed received on the delivery or refusal date shown on the delivery receipt, if: (i) personally delivered by a commercial service which furnishes signed receipts of delivery or (ii) mailed by certified mail, return receipt requested, postage prepaid, addressed as shown on the signature page. Any of the parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or communications shall be sent.

Section 7.11 Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.

[Signatures on following Page]

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

Address:

City of El Cerrito
10890 San Pablo Avenue
El Cerrito, CA 94530
Attn: City Manager

CITY:

CITY OF EL CERRITO, a California municipal corporation

By: _____
Scott Hanin, City Manager

Address:

Mayfair Affordable, LLC
C/o BRIDGE Housing Corp
600 California Street
San Francisco, CA 94108
Attn; _____

OWNER:

Mayfair Affordable, LLC, a California limited liability company

By: _____

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

ATTACHMENT A

PROPERTY DESCRIPTION

The land referred to is situated in the County of Contra Costa, City of El Cerrito, State of California, and is described as follows:

EXHIBIT G

FORM OF MEMORANDUM OF DDA

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of El Cerrito
10890 San Pablo Avenue
El Cerrito, Ca 94530
Attn: City Manager

No fee for recording pursuant
to Government Code Section 27383

APN:

MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT

THIS MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT (the "Memorandum of DDA") is made as of _____, 201_, by and among the City of El Cerrito, a municipal corporation ("City"), HD Mayfair LLC, a California limited liability company ("Holliday") and Mayfair Affordable LLC, a California limited liability company ("Mayfair Affordable" and collectively with Holliday, the "Developer") to confirm that the City and the Developer have entered into that certain Disposition and Development Agreement dated as of _____, (the "DDA"). The DDA imposes certain conditions (including but not limited to, construction requirements, and transfer restrictions) on the real property described in Exhibit A attached hereto and incorporated herein (the "Property"). The DDA is a public document and may be reviewed at the principal office of the City.

[REST OF PAGE LEFT INTENTIONALLY BLANK]

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

CITY OF EL CERRITO, a municipal corporation

By: _____
Scott Hanin
City Manager

DEVELOPER:

HD MAYFAIR LLC, a California limited liability company

BY: _____

Name: _____

Its: _____

MAYFAIR AFFORDABLE LLC, a California limited liability company

By: _____

Name: _____

Its: _____

[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

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 H

FORM OF GRANT DEED

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of El Cerrito
10890 San Pablo Avenue
El Cerrito, CA 94530
Attention: City Manager

No fee for recording pursuant to
Government Code Section 27383

APN: _____

The undersigned grantor declares:

Documentary transfer tax is \$ _____, property being transferred for _____ pursuant to that Memorandum of Disposition and Development Agreement recorded concurrently herewith.
County of Contra Costa

GRANT DEED

THE CITY OF EL CERRITO, a municipal corporation, herein called "Grantor", hereby grants to _____, herein called "Grantee" all of Grantor's right, interest title and claim to, the real property situated in the City of El Cerrito, County of Contra Costa, State of California, more particularly described in Exhibit A attached hereto (the "Property").

Section 1. Mandatory Language in All Subsequent Deeds and Leases.

The Grantee covenants and agrees, for itself and its successors and assigns, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Grantee itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property and the Improvements thereon.

All deeds, leases or contracts made relative to the Property and the Improvements thereon or any part thereof, shall contain or be subject to substantially the following non-discrimination clauses:

(a) In deeds:

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

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(b) In leases:

"(1) Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee or any person claiming under or through the lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision

(d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(c) In contracts:

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

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

Section 2. Enforcement.

The covenants contained in section 1 of this Grant Deed shall, without regard to technical classification or designation, legal or otherwise specifically provided in this Grant Deed, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of and enforceable by the Grantor, its successor and assigns, and any successor in interest to the Grantor the Property and improvements or any part thereof, and such covenants shall run in favor of the Grantor and such aforementioned parties for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. In the event of any breach of any of such covenants, the Grantor and such aforementioned parties shall have the right to exercise all of the rights and remedies, after any applicable notice and cure periods have expired, and to maintain any actions at law or suits in equity or other property proceedings to enforce the curing of such breach. The covenants in section 1 shall remain in effect in perpetuity

Section 4. Counterparts.

This Grant Deed may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same Grant Deed.

IN WITNESS WHEREOF, the parties hereto have executed this Grant Deed this ____ day of _____.

GRANTOR:

CITY OF EL CERRITO, a municipal corporation

By: _____
Scott Hanin, City Manager

GRANTEE:

By: _____

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

Attachment A

The land referred to is situated in the County of Contra Costa, City of El Cerrito, State of California, and is described as follows:

EXHIBIT I

FORM OF DDA ASSIGNMENT AND ASSUMPTION AGREEMENT

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of El Cerrito
10890 San Pablo Avenue
El Cerrito, CA 94530
Attn: City Manager

No Fee for Recording pursuant to Government Code Section 27383

ASSIGNMENT AND ASSUMPTION AGREEMENT
(Mayfair Disposition and Development Agreement)

This Assignment and Assumption Agreement (the "Agreement") is entered into as of _____, 20____, by and among the City of El Cerrito, a municipal corporation, (the "City"), _____ ("Developer"), and _____, a _____ ("Assignee").

RECITALS

A. The City, HD Mayfair LLC, a California limited liability company ("Holliday") and Mayfair Affordable LLC, a California limited liability company ("Mayfair Affordable") entered into that certain Disposition and Development Agreement, dated as of _____, 2018 (the "DDA"). Pursuant to the DDA, the City has agreed to convey certain property described more particularly in the attached and incorporated Exhibit A (the "Property") to Holliday and Mayfair Affordable, and Holliday and Mayfair Affordable have agreed to construct on the Property the project as fully set forth in the DDA. Capitalized terms used but not defined in this Agreement have the meanings set forth in the DDA.

B. As permitted by Section Article 9 of the DDA, _____ **[insert names of applicable developer]** desires to assign its right, title and interest in, and obligations and covenants under the DDA (the "Developer Rights and Obligations") to Assignee, and Assignee desires to assume the Developer Rights and Obligations from _____. The City desires to consent to the assignment of the Developer Rights and Obligations from _____ to Assignee.

NOW THEREFORE, in consideration of the foregoing, of the mutual promises of the parties hereto and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the City, _____ and Assignee mutually agree as follows:

Section 1. Assignment by _____. _____ hereby assigns to Assignee the Developer Rights and Obligations.

Section 2. Acceptance of Assignment and Assumption by Assignee. Assignee accepts the above assignment, and assumes the Developer Rights and Obligations. In so doing, Assignee expressly agrees for the benefit of the City to perform and observe all obligations and covenants of _____ set forth in the DDA with respect to the Project to be constructed on the Property.

Section 3. Representations. _____ represents and warrants that it has not previously assigned, pledged, hypothecated or otherwise transferred any of the Developer Rights and Obligations.

Section 4. City Consent. The City hereby consents to the assignment to and assumption of the Developer Rights and Obligations by Assignee.

Section 5. Effective Date. This Agreement and the assignment and assumption described in this Agreement shall be effective as of the date first written above.

Section 6. Attorney's Fees' Enforcement. If any attorney is engaged by any party hereto to enforce or defend any provision of this Agreement, the prevailing party or parties shall be entitled to costs and reasonable attorneys' fees.

Section 7. California Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California.

Section 8. Invalidity. Any provision of the Agreement which is determined by a court to be invalid or unenforceable shall be deemed severed here from, and the remaining provisions shall remain in full force and effect as if the invalid or unenforceable provision had not been a part hereof.

Section 9. Headings. The headings used in this Agreement are for convenience only and shall be disregarded in interpreting the substantive provisions of this Agreement.

Section 10. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute one and the same instrument.

Section 11. Recordation. Promptly following the approval by City of the Transfer contemplated by this Agreement in accordance with Article 9 of the DDA, the City shall cause this Agreement to be recorded in the official records of the County of Contra Costa against the Property. After the date of recording of this Agreement, _____ shall have no further obligation under the DDA with respect to the Property and shall not be liable for

any Developer Event of Default, as defined in the DDA, caused by Assignee with respect to the Property.

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

DEVELOPER:

By: _____
Name: _____
Its: _____

ASSIGNEE:

_____, a

By: _____
Name: _____
Its: _____

CITY:

CITY OF EL CERRITO, a municipal corporation

APPROVED AS TO FORM:

By: _____
Scott Hanin, City Manager

By: _____
City Attorney

[NOTE: SIGNATURES TO 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

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

The Property referred to in the Agreement to which this Exhibit A is attached is situated in the State of California, County of Contra Costa, City of El Cerrito and is described as follows:

APN: _____

EXHIBIT J

INSURANCE REQUIREMENTS

Insurance Requirements.

(a) Required Coverage. Each Developer shall maintain and keep in force during the Term, at the Developer's sole cost and expense, the following insurance applicable to the Development:

(1) Worker's Compensation insurance, including Employer's Liability coverage, with limits not less than One Million Dollars (\$1,000,000) each accident.

(2) Comprehensive General Liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations.

(3) Comprehensive Automobile Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable; provided, however, that if the Developer does not own or lease vehicles for purposes of this Agreement, then no automobile insurance shall be required and both parties to this Agreement shall initial this provision signifying same.

(4) Builders' risk insurance during the course of construction covering the applicable Development Improvements covering all risks of loss, excluding earthquake and flood perils, for one hundred percent (100%) of the replacement value, with deductible up to Fifty Thousand (\$50,000) per occurrence naming the City as a Loss Payee, as its interests may appear.

(5) Contractor's Insurance. Each Developer shall cause any general contractor or agent working on the Development under direct contract with such Developer to maintain insurance of the types and in at least the minimum amounts described in subsections (a)(1), (a)(2), and (a)(3) above, and shall require that such insurance shall meet all of the general requirements of subsection (c) below. Subcontractors working on the Project under indirect contract with the Developer shall be required to maintain the insurance described in subsections (a)(1), (a)(2) and (a)(3) above, except that the Comprehensive General Liability insurance limits shall not be less than One Million Dollars (\$1,000,000) each occurrence combined single limit. On a case by case basis, the Developer may request the City's approval of lower minimum insurance coverage amounts for specific subcontractors, which approval shall be within the City's sole discretion. Liability and Comprehensive Automobile Liability insurance to be maintained by such contractors and agents pursuant to this subsection shall name as additional insured the City and its council members, directors, officers, agents, and employees.

(b) General Requirements.

(1) The required insurance shall be provided under an occurrence form or other form acceptable to the City, and each Developer shall maintain such coverage continuously throughout the Term. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be two times the occurrence limits specified above.

(2) Comprehensive General Liability and Comprehensive Automobile Liability insurance policies shall be endorsed to name as additional insured the City and its council members, directors, officers, agents, and employees.

(3) All policies and bonds shall be endorsed to provide thirty (30) days prior written notice of cancellation, reduction in coverage, or intent not to renew to the address established for notices to the City pursuant to Section 13.1 of the Agreement. Should the insurance carrier not be able to provide such notice, then the responsibility to provide the notice to the City shall be borne by the policyholder.

(c) Certificates of Insurance. Upon the City's request at any time during the term of this Agreement, each Developer shall provide certificates of insurance, in form and with insurers reasonable acceptable to the City, evidencing compliance with the requirements of this Exhibit J, and shall provide a separate endorsement naming the City as additional insured.

EXHIBIT K

FORM OF CERTIFICATE OF COMPLETION

Recording Requested By
And When Recorded Mail To:

Attention:

CERTIFICATE OF COMPLETION

Pursuant to Section 7.11 of the Disposition and Development Agreement ("Agreement") by and among the City of El Cerrito, a municipal corporation (the "City"), HD Mayfair LLC, a California limited liability company ("Holliday") and Mayfair Affordable LLC, a California limited liability company ("Mayfair Affordable"), dated as of _____, 2018, the City certifies that _____ **[insert name of applicable Developer]** has met its obligations under Article 7 of the Agreement with respect to construction of the Improvements. This Certificate of Completion: (1) shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a deed of trust securing money loaned to finance the Development (as defined in the Agreement) or any part thereof, (2) shall not constitute evidence of compliance with the prevailing wage requirements of the City's local prevailing wage requirements, California Labor Code Sections 1720 *et seq.*, or the federal Davis-Bacon Act wage requirements, if applicable, and (3) shall not be deemed either a notice of completion under the California Civil Code or a certificate of occupancy.

THE CITY OF EL CERRITO,
a municipal corporation

Date: _____

By: _____
Scott Hanin
City Manager

SIGNATURE 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

ATTACHMENT A

LEGAL DESCRIPTION OF THE PROPERTY

The land referred to is situated in the County of Contra Costa, City of El Cerrito, State of California, and is described as follows:



AGENDA BILL

Agenda Item No. 7

Date: February 6, 2018
To: El Cerrito City Council
From: Yvetteh Ortiz, Public Works Director/City Engineer
Chris Jones, Recreation Director
Subject: Temporary Modular Buildings for Senior Services – Lease Agreement with Mobile Modular

ACTION REQUESTED

Adopt a resolution for the following actions:

1. Authorize the City Manager to execute an agreement with Mobile Modular for leasing of temporary modular buildings for senior services with one-time charges of \$103,800 and monthly rent charges of up to \$10,000 for a 60-month term;
2. Approve a contingency amount of \$10,000 for delivery and installation charges by Mobile Modular; and
3. Waive all City-related fees for Planning Approvals and Building Permits.

BACKGROUND

On May 24, 2017, without notice, the West Contra Costa Unified School District (WCCUSD) Board of Education, in closed session, gave District staff direction to terminate the lease of the El Cerrito Open House Senior Center located at 6500 Stockton Avenue. The El Cerrito Open House Senior Center has been at its current location for over fifty years. City representatives requested that the District allow the City more time so that a comparable or better location could be identified in a reasonable timeframe. The District did not respond to these requests. As a result, the City must vacate the current location on Stockton Avenue by June 30, 2018. City staff diligently worked to investigate various options for a temporary or permanent facility and location to maintain the City's senior services. Options to relocate senior services, given the minimal amount of time provided by WCCUSD, are very limited since the City does not have the funding necessary to construct a new building or renovate an existing one.

On October 3, 2017, the City Council directed City staff to proceed with accommodating senior services at two facilities:

- A temporary modular facility at 10940 San Pablo Avenue, the site of the temporary City Hall facility between 2006 and 2008, north of the Public Safety Building and Assembly of God Church; and
- A permanent facility on the ground floor of the Hana Gardens senior affordable housing development under construction next to City Hall, at 10860 San Pablo Avenue.

The modular buildings would provide space similar in size to the current senior center. The Hana Gardens space, consisting of 2,000 square feet, would provide the City an opportunity to expand current programming. Eden Housing, the owner of Hana Gardens, generously offered to lease this facility to the City at a cost of \$1.00 per year for five years, as well as, to provide funding and implementation for tenant improvements.

ANALYSIS

City staff researched modular building companies in the nine-county Bay Area that would be able to provide adequate facilities for existing senior services, including offices, dining room, and flexible programming spaces, within a very tight schedule, and would also collaboratively work with City staff to refine building layout plans. Only two modular companies were available to provide these services – Mobile Modular and Design Space Modular Buildings.

Mobile Modular, the company who provided modular buildings for the temporary City Hall, and Design Space, a General Services Administration (GSA) Vendor, were requested to assist staff in refining preliminary designs and provide preliminary estimates of schedule and costs. After various design iterations, Design Spaces informed City staff that they would not be able to honor a GSA pricing structure and provided new estimates that were significantly higher than previously provided. Mobile Modular continued to assist City staff and confirmed that they could meet the City's schedule.

Mobile Modular has submitted a proposal that is consistent with the needs for senior services including two modular buildings totaling 5,760 square feet, deck, ramps, steps and select furnishings and equipment. Based on their responsiveness, recent experience with the El Cerrito temporary City Hall, delivery schedule and comparative price as summarized below, City staff believes that Mobile Modular best meets the interests of the City.

	Mobile Modular Proposal	Design Spaces Estimate*
Delivery/Initial Set-up	\$66,700	\$100,000
Dismantle/Return	\$37,100	\$75,000
Total One-Time Charges	\$103,800	\$175,000
Monthly Rent	\$9,700	\$11,000

*Based on initial cost estimates as described above

Mobile Modular's proposal is for total one-time charges of \$103,800 including delivery and return charges, and monthly rent charges of \$9,700 for a 60-month term. City staff is requesting City Council approve a contingency amount of \$10,000 for delivery and installation charges to address adjustments related to site conditions. City staff is also requesting approval of monthly rent of up to \$10,000 to allow for changes in interior layout and windows, as well as, for potential changes in Mobile Modular's available inventory of modular buildings. City staff will investigate other options for cabinets, deck, and ramps as an opportunity to reduce the monthly rental costs.

The schedule for delivery and installation of the modular buildings is approximately nine weeks after execution of the lease agreement. Pending approval by the City Council, City staff estimates that the modular buildings would be installed in mid to late April. This will provide for approximately two months to complete site improvements and make the buildings fully operational for move-in.

STRATEGIC PLAN CONSIDERATIONS

The City's Strategic Plan articulates the mission of the City to serve, lead, and support our diverse and transit-rich community by providing exemplary and innovative services, public places and infrastructure, ensuring public safety, and creating an economically and environmentally sustainable future. Approval of the lease agreement with Mobile Modular will allow the City to continue to provide much needed senior services given extraordinary time constraints and is therefore consistent with Strategic Plan Goal A - Delivering Exemplary Government Services.

ENVIRONMENTAL CONSIDERATIONS

The project is categorically exempt from review under the California Environmental Quality Act (CEQA). More specifically, the project is exempt under Section 15303, New Construction or Conversion of Small Structures, Subsection c. This Class 3 category consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. In urbanized areas, the exemption applies to up to four such commercial buildings not exceeding 10,000 square feet in floor area on sites zoned for such use if not involving the use of significant amounts of hazardous substances where all necessary public services and facilities are available, and the surrounding area is not environmentally sensitive. The temporary modular buildings at 10940 San Pablo Avenue meet these conditions.

FINANCIAL CONSIDERATIONS

Fiscal Year (FY) 2017-18 expenses related to the Mobile Modular lease would total \$96,000, which includes the delivery costs and up to three months of rent. City staff is in the process of refining upfront costs for other items of work related to the relocation of senior services to the 10940 San Pablo Avenue site. These include utility connections, parking lot striping, communications, furniture, fixtures, equipment, landscaping, and moving costs among others. At this time, the estimated total cost ranges between \$400,000 and \$450,000 for upfront costs including those for the modular buildings as noted above.

The costs related to the relocation of senior services are unbudgeted expenses. Although a portion of these costs can be absorbed within current General Fund appropriations, City staff will need to obtain supplemental appropriations in the General Fund to cover these costs as part of the FY 2017-18 mid-year budget update that will be brought to City Council for review in March. The monthly rental expenses will be included in the Recreation Department operating budget beginning in FY 2018-19 as part of the City's annual budget.

LEGAL CONSIDERATIONS

The City Attorney has reviewed and provided comments on the Lease Quotation and Agreement and affirms their legality. The final version will be substantially in the form attached and subject to the approval of the City Attorney.

Reviewed by:



Scott Hanin
City Manager

Attachment:

1. Resolution
2. Mobile Modular Lease Quotation and Agreement

RESOLUTION NO. 2018-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH MOBILE MODULAR FOR LEASING OF TEMPORARY MODULAR BUILDINGS FOR SENIOR SERVICES WITH ONE-TIME CHARGES OF \$103,800 AND MONTHLY RENT CHARGES OF UP TO \$10,000 FOR A 60-MONTH TERM, APPROVING A CONTINGENCY AMOUNT OF \$10,000 FOR DELIVERY AND INSTALLATION CHARGES BY MOBILE MODULAR; AND WAIVING ALL CITY-RELATED FEES FOR PLANNING APPROVALS AND BUILDING PERMITS

WHEREAS, on May 24, 2017, without notice, the West Contra Costa Unified School District (WCCUSD) Board of Education, in closed session, gave District staff direction to terminate the lease of the El Cerrito Open House Senior Center located at 6500 Stockton Avenue; and

WHEREAS, the El Cerrito Open House Senior Center has been at its current location for over fifty years and the City must vacate this current location by June 30, 2018; and

WHEREAS, City staff investigated various options for a temporary or permanent facility and location to maintain the City's senior services; and

WHEREAS, given the minimal amount of time provided by WCCUSD, options to relocate senior services are very limited since the City does not have the funding necessary to construct a new building or renovate an existing one; and

WHEREAS, on October 3, 2017, the City Council directed City staff to proceed with accommodating senior services at two facilities: a temporary modular facility at 10940 San Pablo Avenue, the site of the temporary City Hall facility between 2006 and 2008, and a permanent facility on the ground floor of the Hana Gardens senior affordable housing development under construction at 10860 San Pablo Avenue; and

WHEREAS, City staff researched modular building companies in the nine-county Bay Area that would be able to provide adequate facilities for existing senior services, including offices, dining room, and flexible programming spaces, within a very tight schedule, and would also work collaboratively with City staff to refine building layout plans; and

WHEREAS, City staff identified only two modular companies to provide these services – Mobile Modular and Design Space Modular Buildings; and

WHEREAS, Mobile Modular has submitted a proposal that is consistent with the needs for senior services including two modular buildings totaling 5,760 square feet, deck, ramps, steps and select furnishings and equipment; and

WHEREAS, based on their responsiveness, recent experience with the El Cerrito temporary City Hall, delivery schedule and comparative price, City staff believes Mobile Modular best meets the interests of the City; and

WHEREAS, Mobile Modular's proposal is for total one-time charges of \$103,800 including delivery and return charges, and monthly rent charges of \$9,700 for a 60-month term; and

Agenda Item No. 7
Attachment 1

WHEREAS, Fiscal Year (FY) 2017-18 expenses related to the Mobile Modular lease would total \$96,100, which includes the delivery costs and up to three months of rent; and

WHEREAS, City staff will need to obtain supplemental appropriations in the General Fund to cover these costs as part of the FY 2017-18 mid-year budget update and the monthly rent charges will be included in the Recreation Department operating budget beginning in FY 2018-19 as part of the City's annual budget.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito, that it hereby authorizes the City Manager to execute an agreement with Mobile Modular for leasing of temporary modular buildings for senior services with one-time charges of \$103,800 and monthly rent charges of up to \$10,000 for a 60-month term; approves a contingency amount of \$10,000 for delivery and installation charges by Mobile Modular; and waives all City-related fees for Planning Approvals and Building Permits.

BE IT FURTHER RESOLVED that this Resolution shall become effective immediately upon passage and adoption.

I CERTIFY that at a regular meeting on February 6, 2018 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on February XX, 2018.

Cheryl Morse, City Clerk

APPROVED:

Gabriel Quinto, Mayor



Mobile Modular Management Corporation
5700 Las Positas Road
Livermore, CA 94551
Phone: (925) 606-9000
Fax: (925) 453-3201
www.mobilemodular.com

Lease Quotation and Agreement

Quotation Number: 178059

Customer PO/Ref:

Date of Quote: 01/27/2018

Term: 60 Months

Agenda Item No. 7 Attachment 2

Sign up for the Easy Lease Option (see end of document for details)

Customer Information	Site Information	Mobile Modular Contact
City of El Cerrito 10890 San Pablo Ave El Cerrito, CA 94530 Gerardo Avila GAvila@ci.el-cerrito.ca.us Phone: (510) 215-4322	City of El Cerrito 10940 San Pablo Avenue El Cerrito, CA 94530	Questions? Contact: Kevin Gibson Kevin.Gibson@mobilemodular.com Direct Phone: (925) 453-3143 Fax: (925) 453-3201

Product Information	Qty	Monthly Rent	Extended Monthly Rent	Taxable
Office, 48x60 HCD (NonStd) <i>Non-Standard Configuration. Size excludes 3' towbar.</i>	1	\$3,814.00	\$3,814.00	Y
Ramp, Custom Plan	1	\$498.00	\$498.00	Y
Ramp, Plan D-3b <i>Single Landing (32.5SQFT), Ramp Sections (120SQFT)</i>	1	\$114.00	\$114.00	Y
Office, 48x60 HCD (NonStd) <i>Non-Standard Configuration. Size excludes 3' towbar.</i>	1	\$4,096.00	\$4,096.00	Y
Ramp, Plan A-3 <i>30' Run, Single Landing (65SQ FT), Ramp Sections (120SQFT)</i>	1	\$179.00	\$179.00	Y
Charges Upon Delivery	Qty	Charge Each	Total One Time	Taxable
Office, 48x60 HCD (NonStd)				
Block and Level Building (A8) (PW) <i>Prevailing WageCert. Payroll</i>	1	\$9,639.00	\$9,639.00	N
Delivery Haulage 12 wide	4	\$483.49	\$1,933.96	N
Delivery Haulage Permit 12 wide	4	\$85.27	\$341.08	N
Delivery Haulage Pilot 12 wide	4	\$250.13	\$1,000.52	N
Drawings, Detailed Plans (Building)	1	\$3,984.00	\$3,984.00	N
Drawings, Standard Foundation	1	\$440.00	\$440.00	N
<i>Wet StampedEngineered</i>				
Install Foundation, Tiedown (Blvl) (PW) <i>Prevailing WageCert. Payroll</i>	32	\$138.00	\$4,416.00	Y
Installation, Ramp (Plan D-3b) (PW) <i>Prevailing WageCert. Payroll</i>	1	\$2,210.00	\$2,210.00	N
Installation, Ramp Custom Plan (PW) <i>Prevailing WageCert. Payroll</i>	1	\$3,444.00	\$3,444.00	N
Installation, Skirting, Wood (PW) <i>Prevailing WageCert. Payroll</i>	216	\$21.00	\$4,536.00	Y
Removal, Axle (PW) <i>Prevailing WageCert. Payroll</i>	12	\$180.00	\$2,160.00	N
			<u>\$34,104.56</u>	
Office, 48x60 HCD (NonStd)				
Block and Level Building (A8) (PW) <i>Prevailing WageCert. Payroll</i>	1	\$9,639.00	\$9,639.00	N
Delivery Haulage 12 wide	4	\$483.49	\$1,933.96	N
Delivery Haulage Permit 12 wide	4	\$85.27	\$341.08	N
Delivery Haulage Pilot 12 wide	4	\$250.13	\$1,000.52	N
Drawings, Detailed Plans (Building)	1	\$3,984.00	\$3,984.00	N

Thank you for contacting Mobile Modular.

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Lease Quotation and Agreement

Quotation Number: 178059

Customer PO/Ref:

Date of Quote: 01/27/2018

Term: 60 Months



Drawings, Standard Foundation	1	\$440.00	\$440.00	N
<i>Wet StampedEngineered</i>				
Install Foundation, Tiedown (Blvl) (PW)	32	\$138.00	\$4,416.00	Y
<i>Prevailing WageCert. Payroll</i>				
Installation, Ramp (Plan A-3) (PW)	1	\$2,380.00	\$2,380.00	N
<i>Prevailing WageCert. Payroll</i>				
Installation, Skirting, Wood (PW)	216	\$21.00	\$4,536.00	Y
<i>Prevailing WageCert. Payroll</i>				
Removal, Axle (PW)	12	\$180.00	\$2,160.00	N
<i>Prevailing WageCert. Payroll</i>				
			<u>\$30,830.56</u>	
Total			\$ 64,935.12	
Charges Upon Return	Qty	Charge Each	Total One Time	Taxable
Office, 48x60 HCD (NonStd)				
Installation, Axle (PW)	12	\$180.00	\$2,160.00	N
Prepare Equipment For Removal (A8) (PW)	1	\$6,182.00	\$6,182.00	N
<i>Prevailing WageCert. Payroll</i>				
Removal, Ramp (Plan D-3b) (PW)	1	\$1,884.00	\$1,884.00	N
<i>Prevailing WageCert. Payroll</i>				
Removal, Ramp Custom Plan (PW)	1	\$2,880.00	\$2,880.00	N
<i>Prevailing WageCert. Payroll</i>				
Removal, Skirting, Wood (Dispose) (PW)	216	\$9.00	\$1,944.00	N
<i>Prevailing WageCert. Payroll</i>				
Removal, Tiedown (PW)	32	\$51.00	\$1,632.00	N
<i>Prevailing WageCert. Payroll</i>				
Return Haulage 12 wide	4	\$483.49	\$1,933.96	N
Return Haulage Permit 12 wide	4	\$85.27	\$341.08	N
Return Haulage Pilot 12 wide	4	\$250.13	\$1,000.52	N
			<u>\$19,957.56</u>	
Office, 48x60 HCD (NonStd)				
Installation, Axle (PW)	12	\$180.00	\$2,160.00	N
Prepare Equipment For Removal (A8) (PW)	1	\$6,182.00	\$6,182.00	N
<i>Prevailing WageCert. Payroll</i>				
Removal, Ramp (Plan A-3) (PW)	1	\$1,906.00	\$1,906.00	N
<i>Prevailing WageCert. Payroll</i>				
Removal, Skirting, Wood (Dispose) (PW)	216	\$9.00	\$1,944.00	N
<i>Prevailing WageCert. Payroll</i>				
Removal, Tiedown (PW)	32	\$51.00	\$1,632.00	N
<i>Prevailing WageCert. Payroll</i>				
Return Haulage 12 wide	4	\$483.49	\$1,933.96	N
Return Haulage Permit 12 wide	4	\$85.27	\$341.08	N
Return Haulage Pilot 12 wide	4	\$250.13	\$1,000.52	N
			<u>\$17,099.56</u>	
Total			\$37,057.12	

Thank you for contacting Mobile Modular.

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Lease Quotation and Agreement

Quotation Number: 178059

Customer PO/Ref:

Date of Quote: 01/27/2018

Term: 60 Months



Total Estimated Charges

Subtotal of Monthly Rent	\$8,701.00
Personal Property Expense	\$121.20
Taxes on Monthly Charges	\$860.16
Total Monthly Charges (including tax)	\$9,682.36
Charges Upon Delivery (including tax)	\$66,680.76
Charges Upon Return (including tax)	\$37,057.12
Total One Time Charges (including tax)	\$103,737.88

Special Notes

Additional Note: This is a rental quote for (2) 48x60 modular units. Occupancy would be "A". No steps and ramps have been quoted. No cabinets, sinks, or counters have been quoted. No fire sprinklers have been quoted. If it is not on quote it is not included. Please view floor plan on this quote.

Buildings containing a restroom(s): Restrooms are not self-contained. Where applicable, manifolds are shipped loose and assembled and connected by others. Water & sewer stub-out locations may vary. Paper & soap dispensers, sanitary and trash receptacles are not provided.

Budgetary Quote: Pricing provided is for budgetary purposes only. A revised quotation will be provided once project details are clarified. If you are new to modular buildings and wondering what you need to know about them, please visit www.mobilemodularrents.com and view our FAQ worksheet "Considering Modular Buildings for Your Space Needs?". *Delivery pricing is estimated based on delivery within 50 miles of branch location. Pilots and permits not included and may be required. We look forward to working with you to refine your requirements.

Delivery Date:

Delivery Date: Delivery date will not be confirmed until Mobile Modular receives and approves the signed Agreement and all credit conditions have been met.

Fire Related Items: Unless noted, fire related items (alarms, sprinklers, smoke & heat detectors, and fire-rated walls, etc.) are not included.

General: Customer's site must be dry, compacted, level and accessible by normal truck delivery. Pricing does not include any clearing or grading of sites, obstruction removal, site or final building clean up, any asphalt transitions, dolly, crane, forklift, electrical or plumbing connections, window coverings, furniture, casework, appliances, doorstops, phone or data lines, gutters, downspouts or tie-in, temporary power, temporary fencing, traffic control, flagmen, soil and/or pull test, custom engineering, fees associated with inspections, city or county submittals and/or use permits, security screens, door bars and any item not specifically listed as being included.

HCD Building Modifications - State Inspection Required: The quoted modifications include preparation and use of plans and schematics for construction and inspection purposes as required by the Department of Housing and Community Development (HCD). Failure of any provider to comply with this inspection and approval process for building modifications may be cause for a denial of building occupancy from either the Department of Housing and Community Development (HCD) or the local jurisdiction.

Pilot Cars & Haul Permits: Pricing does not include transportation pilot cars & haul permits. Occasionally additional charges occur due to city re-routing or city/county requirements. If such requirements are applicable, Customer will be notified prior to delivery.

Site Installation Requirements: Prior to delivery, Customer shall mark the four corners where the building is to be placed on the site/pad location, and shall also mark the locations of door(s) and ramp(s). Should special handling be required to position, install, or remove the modular unit on Customer's site due to site conditions/constraints and/or obstructions, Customer will be responsible for additional charges. Additional rolling charges may be applicable as site conditions necessitate.

Site Plan Review: Mobile Modular is not responsible for review and verification of Customer's site plans, civil plans, soils tests/survey's, etc. It is the responsibility of the Customer to ensure the site plans and site conditions meet applicable codes and governing body approvals. This includes, but is not limited to, ensuring the building pad/site allows for standard delivery and installation based on the minimum foundation design tolerances as per applicable approved stockpile drawings/foundation design.

Skirting: Skirting installation & removal is not included unless otherwise noted. When included, it is non-structural, non-fire rated and cosmetic only. Skirting pricing assumes a level site.

Support post(s): Please note - this floor plan may have an exposed support post(s) placed on the modline.

Tie-downs: Quantity and price may vary based on seismic source factor and site conditions. Patch and repair of site after removal is not included and is the responsibility of the Customer. Alternative non-penetrating seismic system is available for an additional charge. Wet-stamped engineering available for an additional charge.

Used building rental: Quotation is for a used or refurbished modular building. There may be variations in wall paneling, flooring, or other exterior and interior finishes. Dimensions are nominal unless otherwise stated.

Yes - Prevailing Wage: Pricing includes prevailing wage and certified payroll for installation work performed on site.

Additional Note: REVISION #1 - Added custom ramp and

Floor Plans

Thank you for contacting Mobile Modular.

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Lease Quotation and Agreement

Quotation Number: 178059

Customer PO/Ref:

Date of Quote: 01/27/2018

Term: 60 Months

Office, 48x60 HCD (NonStd)



All drawings and specifications are nominal.

Thank you for contacting Mobile Modular.

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Lease Quotation and Agreement

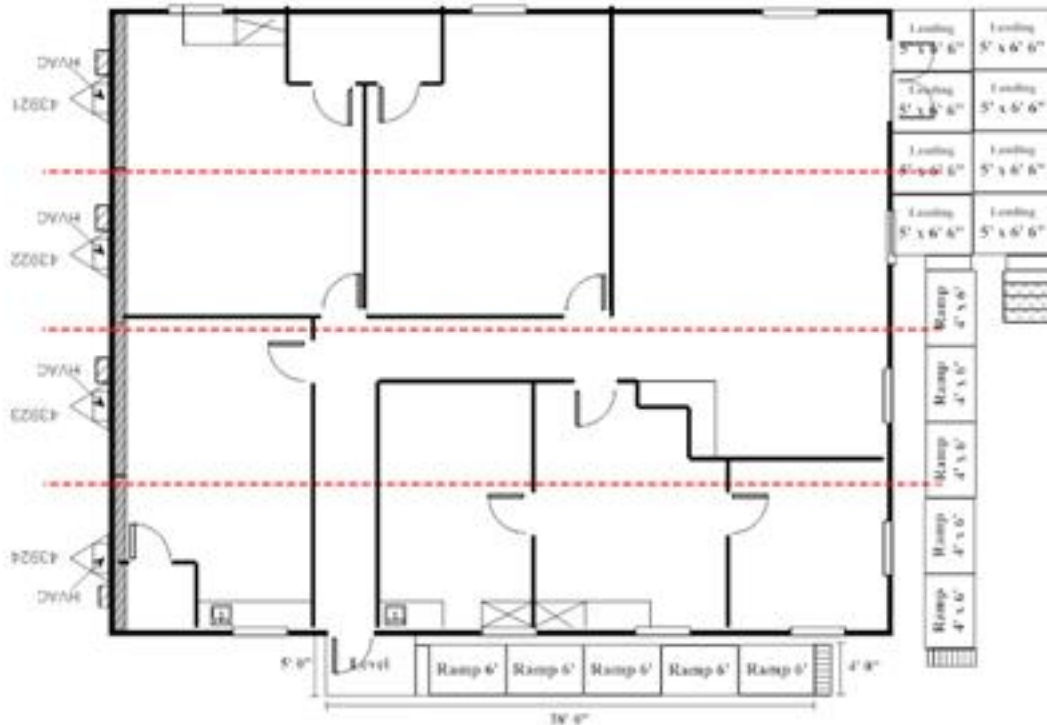
Quotation Number: 178059

Customer PO/Ref:

Date of Quote: 01/27/2018

Term: 60 Months

Office, 48x60 HCD (NonStd)



All drawings and specifications are nominal.

Additional Information

- Quote is valid for 30 days.
- A minimum cleaning charge per floor will apply for modular buildings.
- Customer's site must be dry, compacted, level and accessible by normal truck delivery. Costs to dolly, crane, forklift, etc. will be paid by customer. Unless noted, prices do not include permits, ramp removal, stairs, foundation systems, foundation system removal, temporary power, skirting, skirting removal, engineering, taxes or utility hookups.
- Subject to equipment availability. Unless noted, equipment and related furnishings, finishes, accessories and appliances provided are previously leased and materials, dimensions, and specifications vary. Detailed specifications may be available upon request. For lease transactions, Mobile Modular reserves the right to substitute equal or better equipment prior to delivery without notice.
- This transaction is subject to prior credit approval and all terms, conditions, and attachments of MMMC's standard contract.
- Security deposit and payment in advance may be required.
- Rent will be billed in advance every 30 calendar days.
- **Sales Tax will be calculated based on the tax rate at the time of invoicing.**
- **Unless otherwise noted, prices do not include prevailing wages, Davis-Bacon wages, or other special or certified wages.**

Thank you for contacting Mobile Modular.

Mobile Modular is a division of McGrath RentCorp.

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Lease Quotation and Agreement

Quotation Number: 178059

Customer PO/Ref:

Date of Quote: 01/27/2018

Term: 60 Months



Mobile Modular Easy Lease. Sign Me Up!

Getting your modular building on its way has never been easier... and faster. With Mobile Modular Easy Lease you can convert your Lease Quotation directly into a Lease Agreement by signing below. **It's as easy as 1, 2, 3, 4.** Once we receive your signed Easy Lease option, we'll finalize your building details and get your project on its way.

1. Review and acknowledge agreement.

This Quotation is subject to Mobile Modular Management Corporation, a California corporation, herein known as lessor (the "Lessor") credit approval of Customer, herein known as lessee (the "Lessee"). Lessor does not warrant that the equipment meets any local or state code not specifically listed herein. Equipment is subject to availability. By signing below, customer accepts the terms of this quotation including prices and specifications, and instructs Lessor to make appropriate arrangements for the preparation and delivery of the Equipment identified herein, and agrees that such signature constitutes customer's acceptance of and agreement to the Lessor's Lease. Such lease, and customer's agreement thereto, is subject to Lessor's standard terms and conditions located on the Lessor's web site at (www.mobilemodular.com/contractterms) which are incorporated by reference herein. Customer may request a copy of the terms and conditions from Lessor. If customer has previously executed a master agreement with Lessor, those terms and conditions shall govern the transaction. Such terms and conditions are incorporated as if fully set forth herein. No alterations, additions, exceptions, or changes to any Quotation or Agreement made by Lessee shall be effective against Lessor, whether made hereon, contained in any printed form of Lease or elsewhere, unless accepted in writing by Lessor. Any customer purchase order or other customer-provided document purporting to replace, supersede or supplement the terms and conditions of the Lessor's Lease shall carry no force or effect except as an instrument of billing.

Lessor:

Mobile Modular Management Corporation

By: _____

Name: _____

Title: _____

Date: _____

Lessee:

City of El Cerrito

Signature: _____

Print Name: _____

Title: _____

Date: _____

2. Request your delivery date.

Requested delivery date: _____

Please note: For modular buildings, as a "rule of thumb" allow one day per module to accommodate for set up after delivery. We will attempt to meet your desired date. However, the date is subject to change based on equipment availability and readiness and must be confirmed by a Mobile Modular representative.

3. Insurance value.

Prior to the scheduled delivery, please send, or have your insurance company send, a certificate of insurance referencing the Quotation number shown above. We require General Liability coverage in the amount of 1,000,000.00 per occurrence listing Mobile Modular Management Corporation as an additional insured and Property coverage for the value of the leased unit(s) listing Mobile Modular Management Corporation as loss payee.

Item & Description	Qty	Item Code	Insurance Value
Office, 48x60 HCD (NonStd)	1	1097	\$147,600.00
Office, 48x60 HCD (NonStd)	1	1097	\$147,600.00

4. Tell us how you would like to pay.

- ☐ Bill me on approved credit (you will be sent an invoice for payment as charges are incurred)
- ☐ Credit card payment (a representative will contact you to obtain the credit card information for billing)

Thank you for contacting Mobile Modular.

Mobile Modular is a division of McGrath RentCorp.
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INCORPORATION BY REFERENCE

The Lease Agreement is subject to the Supplemental Lease Terms and Conditions, which are hereby incorporated by reference in their entirety, as updated from time to time by Lessor, in its sole discretion, and can be viewed in the Resources section of Lessor's website at (<https://www.mobilemodular.com/contractterms>). The Lessee hereby affirms that he/she has read in its entirety and understands the Supplemental Lease Terms and Conditions.

Please sign below and fax or email this document to the fax number shown above or the email address you received the document from.

The parties hereto, Mobile Modular Management Corporation, a California corporation, as lessor ("**Lessor**") and lessee ("**Lessee**", as described in the Lease Agreement in the section titled "Customer Information") hereby agree to this Lease Agreement and the terms and conditions set forth in the Lease Terms and Conditions, attached hereto as Attachment A, which are hereby incorporated by reference. The individual signing this Lease Agreement affirms that he/she is duly authorized to execute and commit to this Lease Agreement for the above named Lessee.

LESSOR:	LESSEE:
Mobile Modular Management Corporation	
Signature: _____	Signature: _____
Print Name: _____	Print Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

ATTACHMENT A**LEASE TERMS AND CONDITIONS**

1. **LEASE.** Lessor leases to Lessee, and Lessee leases from Lessor, the equipment listed on the Lease Agreement hereto (the "**Equipment**") on the terms and conditions set forth herein. Each such Lease Agreement ("**Agreement**") and the lease provisions on Lessor's website at [www.MobileModular.com/ContractTerms] (the "**Incorporated Provisions**"), which are incorporated by reference into the Agreement, shall constitute a separate and independent lease (a "**Lease**") of the Equipment listed in the Agreement under "Product Information". In the event of a conflict between this Agreement and Lessee's contract, purchase order or other document, the terms of this Agreement shall prevail.

2. **LEASE TERM.** The Agreement shall be in full force and effect upon the date of execution by Lessee. The Lease Term and Monthly Rent shall commence on the Start Rent Date specified in the Agreement (which may be adjusted by mutual agreement of Lessee and Lessor), and shall continue thereafter for the number of months specified in the Agreement as the "Contract Term" (the "**Lease Term**"). Lessee is responsible for paying the Monthly Rent specified in the Agreement (as such may be adjusted pursuant to Section 4) for each month during the Lease Term. This Lease Agreement defines a month as 30 calendar days; rent will be billed monthly unless otherwise specified. In the event that Lessee terminates the Agreement prior to the expiration of the Lease Term, Lessor shall be entitled to charge an early termination fee, even if such termination occurs prior to delivery of the Equipment. Such fee shall be determined by Lessor following the receipt of the termination request. Such early termination fee may include charges related to the preparation of the Equipment for delivery and/or the rental value of the Agreement. In no event shall any such early termination fee exceed the total value of the Lease Agreement. Lessor shall not be liable to Lessee for any failure or delay in obtaining, delivering or setting up the Equipment. In the event Lessor is responsible for delay in obtaining, delivering or setting up the Equipment, the Start Rent Date shall be deemed to be revised to the date that Lessor substantially completes setting up the Equipment. If any delay in obtaining, delivering or setting up the Equipment is caused by failure of the site to be ready or for any other reason not solely the responsibility of Lessor, the Lease shall commence as of the Start Rent Date originally stated notwithstanding such delay.

3. **RETURN OF EQUIPMENT.** Regardless of the stated Lease Term, Lessee must provide a minimum of 30 days' prior notice for return delivery of Equipment. Please review the Incorporated Provisions on Lessor's website at [<https://www.mobilemodular.com/contractterms>] for the conditions under which the Equipment must be returned. Unless otherwise agreed upon by Lessor in writing, Monthly Rent shall be due until return of the Equipment to Lessor is completed and shall not be based upon the date such return is requested. Lessor prorates rent in one-half (1/2) month increments only. Lessee is responsible for paying the full month's rental payment for Equipment returned after the fifteenth (15th) day of the billing cycle.

4. **HOLDING OVER; LEASE EXTENSION.** Following the expiration of the Lease Term, the Lease and the terms and conditions set forth herein, shall be extended on a month-to-month basis until the Equipment is returned to Lessor. In this event, Lessor may establish a revised rental rate which shall constitute the Monthly Rent. The charges upon return and any other charges related to the return of the Equipment may be reasonably revised from those reflected in the Agreement, at Lessor's discretion, should the Lease be extended beyond the initial Lease Term.

5. **LESSEE AGREEMENTS.** Lessee agrees that:

(a) Lessor may insert in the applicable Agreement the serial number and other identification data relating to the Equipment when ascertained by Lessor; and

(b) Lessor (or its agents, employees or contractors) may, from time to time at any reasonable time, enter upon the premises of Lessee for the purposes of (1) inspecting the Equipment or posting "Notices of Non-Responsibility" or similar notices thereon, or (2) photographing the Equipment,

including any items or occupants within or surrounding the Equipment, for promotional or other purposes, pursuant to Section 6 of the Incorporated Provisions. If Lessor determines that repairs to the Equipment are needed, Lessee shall grant access for said repairs. Lessor shall bear the expense of any repairs that it determines are needed to ameliorate normal wear and tear; the expense of all other repairs (including any repairs requested by Lessee) shall be borne by Lessee. If Lessee does not grant access for such repairs between 8:00 a.m. and 5:00 p.m., Monday through Friday, Lessee shall bear the cost of repair rates for labor at the applicable overtime rates.

6. SECURITY DEPOSIT. Lessee shall pay to Lessor the Security Deposit specified in the Agreement, which may be due upon execution of the Agreement, if specified. The Security Deposit shall be held by Lessor (who shall have no obligation to collect or pass through to Lessee any interest thereon) as security for Lessee's faithful performance of the terms and conditions of the applicable Lease, including without limitation Lessee's indemnification obligations under Section 12. If an Event of Default occurs, Lessor may apply the Security Deposit to payment of its costs, expenses and attorney fees in enforcing the terms of the Lease and to indemnify Lessor against any costs, expenses or damages sustained by Lessor in connection with the Lease (provided, however, nothing herein contained shall be construed to mean that the recovery of damages by Lessor shall be limited to the amount of the Security Deposit). In the event all or any portion of the Security Deposit is applied as aforesaid, Lessee shall deposit additional amounts with Lessor so that the Security Deposit shall always be maintained at the amount specified in the Agreement. At the end of the Lease Term, Lessor shall apply any remaining balance of the Security Deposit to the payment of any monies owed to Lessor under the Lease. Thereafter, if no Event of Default has occurred and is continuing and Lessee has complied with Section 3, Lessor shall return to Lessee any remaining balance of the Security Deposit.

7. ASSIGNMENT. Lessee will not assign, convey, transfer, or pledge as security or collateral its interest, or any part thereof, in and to any Lease or the Equipment without the prior written consent of Lessor; and any such attempted assignment, conveyance, transfer, or pledge of security or collateral, whether voluntary or involuntary, shall be null and void, and any such attempt act may be considered an Event of Default. Lessor may, at its option and without the prior approval of Lessee, transfer, convey, assign or pledge as security or collateral its interest or any part thereof, in and to the Lease.

8. PAYMENTS. Lessee agrees to pay to Lessor (at the office of Lessor or to such other person or at such other place as Lessor may from time to time designate to Lessee in writing) each payment specified herein on a net invoice basis without demand by Lessor. Payment terms are net due upon receipt unless otherwise agreed upon in writing. All payments due from Lessee pursuant to the terms of the Lease shall be made by Lessee without any abatement or setoff of any kind whatsoever arising from any cause whatsoever.

9. TAXES AND LIENS. Lessee agrees to keep the Equipment free of all levies, liens or encumbrances. Lessee shall, in the manner directed by Lessor, (a) make and file all declarations and returns in connection with all charges, fees and taxes (local, state and federal) levied or assessed either upon Lessee or Lessor, or upon the ownership, leasing, rental, sale, possession, use, or operation of the Equipment, and (b) pay all such charges, fees and taxes. However, Lessor shall pay all local, state or federal net income taxes relating to the Lease.

10. LOSS OR DAMAGE. Until the Equipment is returned to Lessor, Lessee assumes all risk of loss or damage to the Equipment. Subject to Section 12(b), should any Equipment damaged be capable of repair, the Lease shall not terminate, but Lessee shall cause the Equipment to be repaired and restored to its condition existing prior to such damage, at Lessee's sole expense. In the event any of the Equipment is damaged beyond repair or is lost, stolen or wholly destroyed, this Agreement shall cease and terminate as to such Equipment as of the date of the event, accident or occurrence causing such loss or destruction, and Lessee shall pay Lessor within ten (10) days thereafter, an amount equal to the full replacement value of the Equipment. Lessee shall be entitled to the benefit of the proceeds from any insurance recovery received by Lessor, up to an amount equal to that which Lessee has paid to Lessor pursuant to this paragraph.

11. INSURANCE. Lessee shall provide, maintain, and pay all premiums for property insurance covering the loss, theft, destruction, or damage to the Equipment in an amount not less than the full replacement value thereof, naming Lessor as loss payee of the proceeds. Lessee shall also provide, maintain, and pay all premiums for general liability insurance (minimum of \$1,000,000 per occurrence), naming Lessor as an additional insured. All insurance shall be in a form and with a company having an A.M. Best rating of A- or better, and shall not be subject to cancellation without thirty-(30) day's prior written notice to Lessor. Lessee shall deliver to Lessor insurance certificates, or evidence of insurance related thereto, meeting the above requirements. Proceeds of such insurance shall, at Lessor's option, be applied either towards replacement, restoration or repair of the Equipment or towards payment of Lessee's obligations under the Lease. Lessor may require Lessee's insurance carrier to be licensed to do business in the state where the Equipment is being leased. Lessor will not and does not provide insurance for any of Lessee's personal property that may be in or on any Equipment.

12. WAIVER AND INDEMNIFICATION.

(a) Lessee hereby waives and releases all claims against Lessor for (i) loss of or damage to all property, goods, wares and merchandise in, upon or about the Equipment, (ii) injuries to Lessee, Lessee's agents and third persons, and (iii) the use, misuse, or malfunction of any security screens provided with the Equipment, in each case, irrespective of the cause of such loss, damage or injury. Under no circumstances shall Lessor be liable to Lessee for any special, incidental or consequential damages of any kind (including, but not limited to damages for loss of use, or profit, by Lessee or for any collateral damages), whether or not caused by Lessor's negligence or delay, resulting from the Lease or the manufacture, delivery, installation, removal or use of the Equipment, or in connection with the services rendered by Lessor hereunder, even if the parties have been advised of the possibility of such damages.

(b) Lessee agrees to indemnify and hold harmless Lessor from and against any and all losses, liabilities, costs, expenses (including attorney fees), claims, actions, demands, fines, forfeitures, seizures or penalties (collectively, "**Claims**") arising out of (i) the maintenance, possession or use of the Equipment by Lessee, its employees, agents or any person invited, suffered or permitted by Lessee to use or be in, on or about the Equipment, including to the extent arising from Lessor's negligence, (ii) Lessee's failure to comply with any of the terms of the Lease, and (iii) any theft or destruction of, or damage to, the Equipment. If the foregoing obligations are not enforceable against Lessee under applicable law, Lessee agrees to indemnify and hold harmless Lessor from and against any and all Claims to the maximum extent permitted by applicable law. Lessee shall make all payments due under this Section upon demand by Lessor.

13. EVENTS OF DEFAULT.

(a) Each of the following shall constitute an “**Event of Default**”: (1) default by Lessee in making any required payment to Lessor and the continuance of such default for ten (10) consecutive days; (2) default by Lessee in the performance of any obligation, covenant or liability contained in the Lease or any other agreement or document with Lessor and the continuance of such default for ten (10) days after written notice, thereof by Lessor to Lessee; (3) any warranty, representation or statement made or furnished to Lessor by or on behalf of Lessee proves to have been false in any material respect when made or furnished; (4) loss, theft, damage, destruction or the attempted sale or encumbrance by Lessee of any of the Equipment, or any levy, seizure or attachment thereof or thereon; or (5) Lessee’s dissolution, termination of existence, discontinuance of business, insolvency, or business failure; or the appointment of a receiver of any part of, the assignment for the benefit of creditors by, or the commencement of any proceedings under any bankruptcy, reorganization or arrangement laws by or against, Lessee. Lessee acknowledges that any Event of Default will substantially impair the lease value hereof.

(b) **REMEDIES OF LESSOR:** Upon the occurrence of any Event of Default and any time thereafter, Lessor may, without notice, exercise one or more of the following remedies, as Lessor, in its sole discretion shall elect: (1) declare all unpaid lease payments under the Lease to be immediately due and payable; (2) terminate the Lease as to any or all items of the Equipment; (3) take possession of the Equipment wherever found, and for this purpose enter upon any premises of Lessee and remove the Equipment, without any liability for suit, action or other proceedings by Lessee; (4) direct Lessee at its expense to promptly prepare the Equipment for pickup by Lessor; (5) use, hold, sell, lease or otherwise dispose of the Equipment or any item thereof on the site specified on the applicable Agreement or any other location without affecting the obligations of Lessee as provided in the Lease; (6) proceed by appropriate action either in law or in equity to enforce performance by Lessee of the terms of the Lease or to recover damages for the breach hereof; (7) apply the Security Deposit to payment of Lessor’s costs, expenses and attorney fees in enforcing the terms of the Lease and to indemnify Lessor against any damages sustained by Lessor (provided, however, nothing herein shall be construed to mean that the recovery of damages by Lessor shall be limited to the amount of the Security Deposit); (8) exercise any and all rights accruing to Lessor under any applicable law upon an Event of Default. In addition, Lessor shall be entitled to recover immediately as damages, and not as a penalty, a sum equal to the aggregate of the following: (i) all unpaid payments as are due and payable for any items of Equipment up to the date of repossession by Lessor; (ii) any expenses paid or incurred by Lessor in connection with the repossession, holding, repair and subsequent sale, lease or other disposition of the Equipment, including attorney’s fees and other reasonable costs and expenses; (iii) an amount equal to the excess of (a) all unpaid payments for any item of Equipment repossessed by Lessor from the date thereof to the end of the term of the Lease over (b) the fair market lease value of such item or items of Equipment for such unexpired lease period (provided however, that the fair market lease value shall be deemed to not exceed the proceeds of any sale of the Equipment or lease thereof by Lessor for a period substantially similar to the unexpired lease period); and (iv) the replacement cost of any item of Equipment which Lessee fails to prepare for return to Lessor as provided above or converts or is destroyed, or which Lessor is unable to repossess.

14. OWNERSHIP AND MARKING OF EQUIPMENT. Title to the Equipment shall remain with Lessor (or its Principal). Unless otherwise specified in writing by Lessor, no option or other right to purchase the Equipment is granted or implied by the Lease to Lessee or any other person. The Equipment shall remain and be deemed to be personal property of Lessor, whether attached to realty or not, and upon termination of the Lease or the occurrence of an Event of Default, Lessee shall have the duty and Lessor shall have the right to remove the Equipment whether or not affixed to any realty or building without any liability to Lessor for damage to the realty or building caused by the removal of the Equipment. Any replacement, substitutes, accessories or parts, whether placed in or upon the Equipment or not, whether made a component part thereof or not, shall be the property of Lessor and shall be included under the terms of the Lease.

15. COMPLIANCE WITH LAW. Lessee assumes all responsibility for any and all licenses, clearances, permits and other certificates as may be required for Lessee’s lawful operation, use, possession and occupancy of the Equipment. Lessee agrees to fully comply with all laws, rules, regulations and orders of all local, state and federal governmental authorities which in any way relate to the Equipment. Lessee shall pay the cost of all license and registration fees and renewals thereof.

16. GOVERNING LAW. Lessee and Lessor agree that the Lease shall be governed in all respects by, and interpreted in accordance with the laws of, the State of California, without regard to its conflicts of laws provisions.

17. JURISDICTION.

(a) In any case where the Equipment is located in the State of Maryland or the State of Virginia, it is agreed that the venue for a legal action relating to the Lease shall be proper if brought in Alameda County, State of California. Subject to Section 12, the prevailing party shall be entitled to recover reasonable attorneys’ fees and court costs, whether or not the action proceeds to judgment.

(b) In all other cases, the Federal District Courts located within the State of California shall have non-exclusive jurisdiction over any lawsuit brought by Lessee or Lessor as a result of any dispute regarding matters arising in connection with the Lease. Further, it is agreed that the venue for a legal action relating to the Lease shall be proper if brought in Alameda County, State of California. Subject to Section 12, the prevailing party shall be entitled to recover reasonable attorneys’ fees and court costs, whether or not the action proceeds to judgment.

18. MEDIATION; ARBITRATION. Lessee agrees to abide by Lessor’s option (if Lessor shall so choose) to have any claims, disputes, or controversies arising out of or in relation to the performance, interpretation, application, or enforcement of the Lease, including but not limited to breach thereof, referred to mediation before, and as a condition precedent to, the initiation of any adjudicative action or proceeding, including arbitration. If mediation fails to resolve the claims, disputes or controversies between Lessor and Lessee, Lessee agrees to abide by Lessor’s option (if Lessor shall so choose) to have the claims, disputes or controversies referred to binding arbitration. The parties hereto acknowledge that the subject matter of the Lease is a matter of interstate commerce.

19. CREDIT CARD AUTHORIZATION. Lessee hereby gives authorization to Lessor to charge against credit card provided all amounts billed for this transaction including applicable taxes, shipping and handling charges. For a rental/lease transaction, charges may be recurring and additional billing and charges will occur until such time as all Equipment and respective accessories are returned and the rental is terminated.

20. HAZARDOUS MATERIALS. Lessee agrees that no water, paint or chemicals, and no illegal, hazardous, controlled, toxic, explosive, flammable, restricted, contaminated or other dangerous materials, shall be maintained or stored in or on the Equipment.

21. **FEDERAL CONTRACTOR.** As a federal contractor, Lessor's contracts are subject to the provisions of (i) Executive Order 11246, (41 CFR 60-1.4); (ii) section 503 of the Rehabilitation Act of 1973, (41 CFR 60-741.5(a); and (iii) section 4212 of the Vietnam Era Veterans Readjustment Act of 1974, (41 CFR 60-300.5(a). **Lessor shall abide by the requirements of 41 CFR 60-741.5(a) and 41 CFR 60-300.5(a). These regulations prohibit discrimination against qualified individuals on the basis of disability, and qualified protected veterans, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities, and qualified protected veterans.**

22. **MISCELLANEOUS.** Time is of the essence of each and every provision of the Lease. Failure of Lessor to enforce any term or condition of the Lease shall not constitute a waiver of subsequent defaults by Lessee, nor shall it, in any manner, affect the rights of Lessor to enforce any of the provisions hereunder. The invalidity or unenforceability of any provision of the Lease shall not affect the validity or enforceability of any other provision.

23. **ENTIRE AGREEMENT.** The Lease constitutes the entire agreement between Lessor and Lessee with respect to the subject matter hereof and, except for the Incorporated Provisions that may be updated by Lessor from time to time in its sole discretion, may not be amended, altered or modified except by a writing signed by both Lessor and Lessee.

SUPPLEMENTAL LEASE TERMS AND CONDITIONS

The provisions below (the “**Incorporated Provisions**”) shall be incorporated by reference into all Lease Agreements (each “**Agreement**”) entered into on or after October 1st, 2008, between Mobile Modular Management Corporation, a California Corporation, as lessor (“**Lessor**”) and any customer of Lessor, as lessee (“**Lessee**”). These provisions are subject to change in Lessor’s sole discretion. Capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Agreement or the Master Lease Agreement.

WITNESSETH

1. **WARRANTIES; DISCLAIMER.** Lessor warrants to Lessee that the Equipment, when delivered and set up, will be in good condition and repair, be properly set up (subject to any site limitations), and, subject to Section 5 below, comply with all applicable regulations. Lessee acknowledges and agrees that, with the exception of the foregoing warranties, **LESSOR HAS MADE NO OTHER WARRANTIES OR REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, RELATING TO ANY OF THE MATTERS CONTAINED IN THE AGREEMENT OR THE MASTER LEASE AGREEMENT, INCLUDING WITHOUT LIMITATION, THE CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, ANY WARRANTY AGAINST INFRINGEMENT OR AS TO TITLE OR OTHERWISE.**

2. **EQUIPMENT CONDITION.** Lessee shall maintain all Equipment in good condition and repair (normal wear and tear excluded) as set forth in the applicable region-specific Service Guide (“**Service Guide**”), which can be viewed on Lessor’s website (<http://www.mobilemodular.com/resources/product-guides.aspx>). Lessee shall not make any alterations, modifications, additions, or improvements to the Equipment without Lessor’s prior written consent. Lessor shall provide maintenance and service to the Equipment as set forth in the applicable Service Guide.

3. **DELIVERY AND PLACEMENT OF EQUIPMENT.** Lessor shall deliver and set up the Equipment at the site specified in the applicable Agreement (the “**Site**”). Lessee warrants and represents that it has exercised due diligence and care in selecting a suitable site for the Equipment, shall clearly mark the site of placement and shall direct Lessor on exact placement and orientation of the Equipment. Equipment should be placed in areas with adequate drainage to avoid flooding. Upon request from Lessee and for an additional fee, Lessor will perform a site visit and make recommendations on placement as it relates to site accessibility and layout. In the State of Florida, Lessee is notified that Equipment is not to be placed closer than two feet to another structure without advance written approval from Lessor.

- a. **ACCESS.** Lessee shall provide clear access to the set up site for delivery of the Equipment by standard delivery methods and set up of same by standard set up methods. The Site must be dry, compacted, level and accessible by normal truck delivery. A level site is hereby defined as follows: Length – no greater than a 4-inch drop in 40 feet; Width – no greater than a 1-inch drop in 8 feet. Additional charges may apply for dry-runs, additional labor, or wait-time incurred due to lack of site access or adequate preparation.
- b. **LOCATION.**
 - i. **UNDERGROUND ELEMENTS.** Lessee is responsible for the identification of underground elements on site. Identification services can be procured from third party vendors, however, Lessee retains responsibility and liability for the designation of such elements should there be any ground penetrating activities performed in relation to the performance of the Lease by Lessor.
 - ii. **RELOCATION OF EQUIPMENT.** Once Lessor has completed the delivery and set up of the Equipment in the location specified by Lessee, should the Equipment require relocation for any reason, Lessee shall be responsible for all charges associated with such relocation. Lessee shall not move the Equipment without the prior written consent of Lessor.
 - iii. **RE-LEVELING EQUIPMENT.** Should the Equipment require re-leveling due to adverse site or weather conditions (wetness, settling, unstable ground, etc.), or adjustment due to personal property (such as furniture, files or equipment) inside the Equipment, Lessee shall be responsible for all related charges.
- c. **PIT, GROUND LEVEL OR DEEP SET.** When backfilling soil and concrete in the front of the building, Lessee is instructed to use a waterproof barrier to protect the Equipment.

4. RETURN OF EQUIPMENT.

- a. **PREPARATION FOR EQUIPMENT REMOVAL.** Upon conclusion of the Lease and prior to the scheduled removal of the Equipment, Lessee shall complete the necessary actions to ensure Equipment may be removed by Lessor. Additional charges may apply for any additional labor, waiting time, or dry-runs incurred if the necessary actions are not be completed by Lessee prior to the scheduled time of removal. Such actions include but may not be limited to:
 - i. Disconnection of all utilities and removal of any items that may hinder the removal of the Equipment by standard methods;
 - ii. Removal of all personal property of Lessee from the Equipment. Should any personal property remain in the Equipment upon removal, Lessee consents to Lessor’s possession and disposal or destruction of such personal

property without notice or accounting to Lessee, the costs and expenses of which, including reasonable attorney's fees, shall be the responsibility of the Lessee.

iii. In the case of any Equipment that includes plumbing:

1. The plumbing lines must be flushed clean and Lessee shall ensure that there is no foreign matter in any of the fixtures;
2. Connections of the plumbing to the site shall be properly disconnected and, if applicable, the plumbing manifold should be placed inside the Equipment. Where "no hub fittings" are provided, there should be no need for gluing or cutting of pipe at either the time of connection or disconnection. Lessee will be charged for damages to plumbing due to improper disconnection or failure to return plumbing manifolds.

iv. Clear access shall be provided for preparation of the Equipment, and its removal from the site, by standard methods.

- v. Lessee shall notify Lessor at the time return request is made if wheels, axles, towbar or other items have been removed from the Equipment and require re-attachment to the Equipment to facilitate the return. Additionally, Lessee is to advise Lessor if skirting, seismic restraints, or other items have been attached to the Equipment and require removal.

- b. **INSPECTION OF EQUIPMENT ON RETURN.** Upon return of any Lessor-owned Equipment, an inspection of the Equipment will be performed by Lessor. If such inspection shows the Equipment not to be in the condition required by Section 2 of the Incorporated Provisions, Lessor will bill Lessee for related costs, which costs Lessee promptly shall reimburse to Lessor. Upon request by Lessee and for an additional fee, a preliminary inspection for damages can be performed at the site prior to removal of the Equipment. Unless otherwise noted in the Lease Agreement, Lessor charges a cleaning fee of \$125.00 per module for Equipment consisting of modular buildings. If assessed, cleaning charges will be based on the condition of the Equipment when returned. If keys are not returned with the Equipment, a charge will be assessed for re-keying. If locksets are altered and not returned to their original condition, charges may be assessed.

5. **PARTICULAR TYPES OF EQUIPMENT.** Some of the terms and conditions herein may not be applicable to the particular Equipment subject to the Lease. The following terms relate to Equipment of the following types:

- a. **STAIRS.** (1) In the case of Equipment located in the State of Florida, if any Equipment includes stairs (which shall be prefabricated metal stairs with landings), Lessor shall install such stairs following delivery thereof. Stairs shall not be altered in any form from the delivered state. (2) In the case of Equipment located in the State of Texas, Lessor's sole responsibility with respect to any Equipment that includes stairs is to ship the stairs inside the applicable modular building. Lessee shall be responsible for unloading the stairs upon delivery and installing the handrails (as well as disassembling the handrails and loading the stairs for return). (3) In all other states, Lessor's sole responsibility with respect to any Equipment consisting of stairs is to deliver the stairs to the Site and place them next to the exit ways specified by Lessee with handrails in place. Stairs shall not be altered in any form from the delivered state. Any modification to or failure of Lessee to properly maintain the stairs may result in failure to comply with applicable code.
- i. **SECURING.** Securing the stairs to the other Equipment, adjusting the stairs to the threshold of the doorway, adjustment of the treads, landing, or handrails to meet local, state or federal requirements, maintenance of the stairs or any other item not specifically indicated above is solely the responsibility of the Lessee. Attaching steps and ramps directly to the doorjamb will result in an inoperable door.
- ii. **CODE AND EGRESS REQUIREMENTS.** Lessor hereby advises the Lessee of the need to meet applicable code requirements, adjust and secure the stairs to the exit way upon completion of the installation of the Equipment and to maintain the stairs such that the safety of all users is ensured. It is the Lessee's responsibility to ensure that steps or a ramp are provided for each building egress. Lessee is responsible for the provision of level landing sufficient per any applicable code. Lessee must make the transition from wherever the stairs end to the existing grade. This transition may require grading, paving or other work by the Lessee to ensure that the finished stairs comply with all applicable codes.
- iii. **SITE CONDITIONS.** Lessee should be aware that certain site conditions may impact the use of Equipment consisting of stairs. Standard threshold heights on properly prepared sites vary based on Equipment, Equipment or sites not meeting this threshold height may result in additional charges for special Equipment.
- b. **RAMPS.** Lessor recommends that Lessee looks closely at all conditions of impact. Any Equipment consisting of ramps are not to be altered in any form from the installed state. Any modifications may result in failure to comply with applicable code. Additionally, any modification or change to handicap ramp, including cosmetic changes, may result in additional fees to the Lessee for up to the replacement cost of the ramp.
- i. **SITE CONDITIONS.** Sloping site or other conditions may impact the use of a prefabricated ramp and require longer ramps or alternate configurations. This may result in additional charges to Lessee. After installation of the Equipment, the landing for any ramp will be set up such that it is in conformance with door threshold

requirements (provided that Lessee's site will allow such). The ramp will then be affixed to the landing. It will be the responsibility of the Lessee to make the transition from wherever the ramp ends to the existing grade. This transition may require grading, paving or other work by the Lessee to ensure that the finished ramp complies with all applicable codes. Adjacent buildings may require additional ramping or render the standard prefabricated ramps unusable.

- c. **RESTROOM/PLUMBING.** If any Equipment consists of restrooms or plumbing, the Lessee is responsible for making both waste and water connections to the building stub outs. If a plumbing manifold is provided with the Equipment, Lessee is responsible for assembly of the manifold and for final on-site connections. Lessor makes no guarantees that the stub out locations or set height of the building will coincide with existing stub outs, holding tanks, or other connection-related items.
 - i. **MALFUNCTIONS.** Lessee is responsible for any malfunction of lines, valves, piping, etc., related to foreign matter, improper connection of waste/water lines or misuse, or for any other malfunction not directly attributable to a defect in the plumbing systems contained within the Equipment as provided by Lessor.
 - ii. **TEMPORARY/PORTABLE HOLDING TANKS.** Lessor shall not be liable for loss or damage as a result of holding tanks that fill up more quickly than expected, or that overflow. For Lessee's comfort and convenience, Lessor strongly recommends that the Equipment be connected directly to sanitary sewer lines.
 - iii. **CONNECTION TESTING AND VERIFICATION.** Testing of water for chlorination, pressure, or other items/issues is the responsibility of the Lessee.
- d. **BUILDINGS.** Equipment consisting of buildings may be used only for office space, light storage or classroom facilities and for no other purpose without the prior written consent of Lessor.
 - i. **SITE INSTALLATION REQUIREMENTS FOR DSA CLASSROOM BUILDINGS.** In the case of Equipment located in the State of California, the Lessee is responsible for the site being cleared (free of grass, shrubs, trees, etc.) and graded to within 4 1/2" of level grade for each building. If the site exceeds the 4 1/2" requirement additional costs may be charged to Lessee. Under no circumstances should the site be greater than 9" from level grade or have less than a 1000 psf minimum soil bearing pressure. PRIOR TO DELIVERY, the Lessee shall mark the four corners of the building on the site, including the door location. Should special handling be required to place, install or remove the classroom on the Lessee's site due to site obstructions such as fencing, landscaping, other classrooms, etc., Lessee may be responsible for additional charges.
 - ii. **EQUIPMENT LOCATED IN THE STATE OF FLORIDA.** Hybrid Campus Maker and Type IIB Side Stackable classrooms have a one-hour firewall rating on the long side walls. Penetration of these walls may cause the Equipment to lose its one-hour fire rating and the Equipment will not be code compliant.
- e. **SEISMIC/WIND.** Equipment consisting of either friction based or earth anchor seismic/wind restraint systems are rated for exposure C wind loads as defined on plans provided to Lessee and are designed to be used on sites with a minimum soil bearing pressure as specified on such engineered plans. Lessor recommends that Lessee verify with the local governing authority that these systems are appropriate for the site. In some cases, additional charges may be incurred by Lessee for custom foundation engineering and additional foundation work.
 - i. **FRICTION BASED SYSTEM.** The price quoted is for the rental, installation and removal of the system and is valid for the initial Lease Term specified in the Agreement. The system can be provided with wet stamped engineered plans and calculations for an additional charge. Lessor does not warrant that the Lessee's site conditions will be adequate for the seismic/wind support system. Any testing required by any agency of the soil or the product, is the responsibility of the Lessee.
 - ii. **EARTH ANCHORS.** Any earth anchors and strapping to be used are designed to meet specific pullout capabilities when suitable soil conditions are provided. The Lessee is responsible for providing soil conditions that will allow for achievement of a pullout capacity of the rated number of pounds shown on the applicable engineered plans for each earth anchor. If applicable, Lessor will install a specific number of earth anchors and strapping, based upon the above pullout capacities. Lessor recommends, and local governing authorities may require, that the Lessee have a pullout test performed to insure that the soil is adequate to achieve the required pullout capacities mentioned above. All costs associated with such testing and its results are the responsibility of the Lessee. These costs include, but are not limited to: testing, an increase in the number of earth anchors to be provided to meet the required loads, any re-testing and engineering time. Lessor will not warrant that the number of earth anchors installed will meet the required pullout capacities, unless the Lessee provides pullout test results and verification that the completion of any resulting corrective action has taken place.
 - iii. **DAMAGE AND ADDITIONAL COSTS.** At the time of installation of earth anchors, should ground penetration be hindered by elements such as large rocks, lime, cement, utility lines, etc., Lessee will be responsible for all additional costs, including replacement of broken earth anchors provided that such damage is incurred while properly completing the installation. Further, should damage to any underground utility lines occur, the cost of repair will be borne entirely by Lessee. At the time of dismantle, Lessor will cut the straps of the earth anchors in order to remove the Equipment. Lessee is then responsible for the removal of the earth anchors from the site.

iv. **WARRANTY.** The warranty set forth in Section 1 does not apply to any seismic/wind restraints in the event that the Lessee has elected not to contract for a wet stamped engineered foundation plan. Lessor will not inspect the installation of the foundation system.

v. **APPROVAL.** Lessee is responsible for obtaining site inspection and approval of the foundation system by the appropriate local jurisdiction.

f. **MISCELLANEOUS.** The Equipment is not pre-wired for features such as telephones, data lines, fire alarms, intercoms, lightning suppression; it is Lessee's responsibility to wire these items for individual preference and usage. Lessee shall also have the sole responsibility for any utility or other connections to the Equipment.

g. **CABINETRY.** The Equipment may include cabinetry that is fabricated with particleboard. Particleboard is known to emit certain levels of formaldehyde. Lessee acknowledges that it has been made aware that lower emission and formaldehyde free options are available.

h. **CARPET.** The Equipment may include new carpeting. Most of the carpeting products provided by Lessor meet the Carpet and Rug Institute's Green Label testing standards for indoor air quality. Nonetheless, it is recommended that new carpeting receive a minimum of 72 hours airing-out time, under well-ventilated conditions, prior to occupancy.

6. **PHOTOGRAPHY RELEASE.** Lessee agrees to grant Lessor, and any person acting on behalf of Lessor, the right to use Lessee's photography for any of Lessor's company business or for marketing purposes. Lessee understands that Lessee's purposes may include, but are not limited to, use in marketing collateral, digital content (websites, email campaigns), publicity, advertising and any internal or external company communications. Lessee further understands the photography will become the property of Lessor and that Lessee will not be compensated for provided permission to photograph. Lessee hereby irrevocably authorizes Lessor, or any person acting on its behalf, to edit, alter, copy, exhibit, publish or distribute any photograph for the purposes described above. In addition, Lessee consents to such use or disclosure without Lessee's prior inspection or approval of the finished product, including written or electronic copy, wherein such photography may appear. Lessee understands that Lessor is not responsible for any use or disclosure of any photography not authorized by Lessor. Lessee holds Lessor harmless from any loss, damage or injury resulting from any such unauthorized use or disclosure.