

SPECIAL EL CERRITO MUNICIPAL SERVICES CORPORATION MEETING

AGENDA

Tuesday, February 6, 2018

**Immediately Following Adjournment of the 7:00 p.m. Regular City Council Meeting
City Council Chambers**

Meeting Location

El Cerrito City Hall
10890 San Pablo Avenue, El Cerrito

Gabriel Quinto – Chairperson

Vice Chairperson Rochelle Pardue-Okimoto
Boardmember Greg Lyman
Boardmember Scott Hanin

Boardmember Janet Abelson
Boardmember Paul Fadelli
Boardmember Karen Pinkos

ROLL CALL

CONVENE SPECIAL MUNICIPAL SERVICES CORPORATION MEETING

1. BOARD / STAFF COMMUNICATIONS

2. ORAL COMMUNICATIONS FROM THE PUBLIC

All persons wishing to speak should sign up with the Board Secretary. Remarks are limited to 3 minutes per person and are limited to items listed on this special Municipal Services Corporation meeting agenda only.

3. PRESENTATIONS – None

4. ADOPTION OF THE CONSENT CALENDAR – Item No. 4

Approve the September 20, 2016 Special Municipal Services Corporation meeting minutes.

5. POLICY MATTERS

A. Approval and authorization to assume the rights and obligations of the City related to the Disposition and Development Agreement for the Mayfair Block

Adopt a Resolution authorizing execution of an assignment and assumption agreement with the City of El Cerrito assuming the Disposition and Development Agreement with HD Mayfair LLC and Mayfair Affordable LLC should the property located at 11600 and 11690 San Pablo Avenue and 1925 Kearney revert to the MSC.

ADJOURN SPECIAL MUNICIPAL SERVICES CORPORATION 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).

SPECIAL EL CERRITO MUNICIPAL SERVICES CORPORATION MEETING

MINUTES

Tuesday, September 20, 2016 – 6:45 p.m.
City Council Chambers

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

Greg Lyman – Chairperson

Vice Chairperson Janet Abelson
Boardmember Mark Friedman
Boardmember Scott Hanin

Boardmember Jan Bridges
Boardmember Gabriel Quinto
Boardmember Karen Pinkos

ROLL CALL

Directors Abelson, Bridges, Friedman, Quinto, Hanin, Pinkos and Chair Lyman all present.

CONVENE SPECIAL MUNICIPAL SERVICES CORPORATION MEETING

Chair Lyman convened the special Municipal Services Corporation meeting at 6:45 p.m.

1. **BOARD / STAFF COMMUNICATIONS** – *None*
2. **ORAL COMMUNICATIONS FROM THE PUBLIC**

Cordell Hindler, Richmond, asked the Board to support the items.

3. **PRESENTATIONS** – *None*
4. **ADOPTION OF THE CONSENT CALENDAR** – **Item No. 4**

Approve the May 17, 2016 Special Municipal Services Corporation meeting minutes.

Action: Moved, seconded (Abelson/Friedman) and carried unanimously to approve the minutes.

5. **POLICY MATTERS**

A. Conveyance of Certain Redevelopment Agency Properties to the Successor Agency to the El Cerrito Redevelopment Agency

Adopt a resolution approving the conveyance of the following former Redevelopment properties to the Successor Agency to the El Cerrito Redevelopment Agency: 1) Mayfair Block – 1925 Kearney Street, 11690 San Pablo Avenue; 11600 San Pablo Avenue; 2) Eastshore Block – 11335-41 San Pablo Avenue, 6111 Potrero Avenue, 1718 Eastshore Boulevard; and 3) Government Purpose Property – Civic Center 10930/10940 San Pablo Avenue. *Exempt from CEQA.*

Presenter: Melanie Mintz, Community Development Director.

Action: Moved, seconded (Friedman/Abelson) to adopt Municipal Services Corporation Resolution No. 2016–03.

ADJOURNED SPECIAL MUNICIPAL SERVICES CORPORATION MEETING at 6:54 p.m.

This meeting was not televised.

El Cerrito Municipal Services Corporation

Agenda Item No. 5

Date: February 6, 2018
To: Board of Directors, El Cerrito Municipal Services Corporation
From: Melanie Mintz, Community Development Director
Subject: Approval and authorization for the Executive Director to assume the rights and obligation of the City of El Cerrito related to the Disposition and Development Agreement with HD Mayfair LLC and Mayfair Affordable LLC for the Property located at 11600 and 11690 San Pablo Avenue and 1925 Kearney Street if such property reverts to the Municipal Services Corporation

ACTION REQUESTED

Adopt a Municipal Services Corporation resolution authorizing execution of an Assignment and Assumption Agreement with the City of El Cerrito assuming the Disposition and Development Agreement with HD Mayfair LLC and Mayfair Affordable LLC should the property located at 11600 and 11690 San Pablo Avenue and 1925 Kearney revert to the MSC.

BACKGROUND

Prior to the dissolution of the El Cerrito Redevelopment Agency, the Redevelopment Agency entered into conveyance agreements with the El Cerrito Municipal Services Corporation (MSC) whereby the former Redevelopment Agency agreed to convey to the MSC properties owned by the former Redevelopment Agency and the MSC agreed to accept the properties and to use the properties in a manner consistent with the Redevelopment Plan. (Resolutions 2011-03 and Redevelopment Resolution 612.) The properties conveyed to the MSC were the Mayfair Block properties (11600 and 11690 San Pablo Avenue and 1925 Kearney), the Eastshore Block Properties (1133-041 San Pablo Avenue, 6111 Potrero, and 1718 Eastshore), the Civic Center Property (10930-10940 San Pablo Avenue) and the Cerrito Theater property (10066-72 San Pablo Avenue). Subsequent to the dissolution of the Redevelopment Agency, the State Controller's Office and the California Department of Finance ordered the reversal of the transfer of the properties to the MSC, claiming that the transfers violated the Redevelopment Dissolution Laws. The City, the MSC and the Successor Agency to the former Redevelopment Agency dispute the State's determination regarding the validity of the transfers of the property and currently have pending an appeal with the California Court of Appeal on this matter.

In an effort to move forward with the potential development of the former Redevelopment Agency properties, the Successor Agency in December prepared and the Department of Finance approved a Long Range Property Management Plan (LRPMP) related to the former Redevelopment Agency properties (SA Resolution 2015-03 and Oversight Board Resolution 2015-04 and 2015-06). The LRPMP calls for the Mayfair Block and the Eastshore Block to be transferred to the City for future development. The MSC, in September 2016, agreed to convey the Properties back to the Successor Agency but

made such conveyance without waiving any rights it may have pursuant to the pending litigation. Subsequent to conveyance of the Property to the Successor Agency, the Successor Agency transferred the Mayfair Block and the Eastshore Block to the City in accordance with the LRPMP.

The City is preparing to enter into a Disposition and Development Agreement for the Mayfair Block with HD Mayfair LLC and Mayfair Affordable LLC (Developer) for the development of a mixed income mixed use property consisting of 156 market rate residential units, 67 affordable residential units, 8,893 square feet of commercial space, vehicle and bicycle parking spaces, open space including public open space and related landscaping ("Project"). The DDA requires the Developer to expend funds related to development of the Property prior to conveyance of the Property.

The current litigation with the Department of Finance has been pending with the Court of Appeals since 2016. The Court has not set oral argument. The outcome of the litigation is not certain, but if the City and the MSC were to prevail the Property could revert to the MSC pursuant to a court order. The Developer has requested assurances that in the event that the Property were to revert to the MSC before the Property is conveyed to the Developer, the MSC would assume the City's rights and obligations under the DDA and honor the DDA. If the litigation is not resolved before the Property is conveyed to the Developer, the MSC will not be entitled to set aside that sale, but may be entitled to recover the purchase price received for the Property that is distributed to the taxing entities.

The development of the Project on the Property would be in the best interests of the MSC. The MSC's purposes are to (1) use private and public funding sources to combat community blight and deterioration in the City and to contribute to the physical improvement of the City; (2) provide and expand economic opportunities for low and moderate income households in the City; (3) encourage and stimulate economic development within the City by assisting the former Redevelopment Agency in eliminating blight within the Redevelopment Project area and (4) implementing and assisting the former Redevelopment Agency in redevelopment activities and programs that lessen neighborhood tensions and combat community deterioration.

The development of the Property with the Project will further the goals and purposes of the MSC by redeveloping a currently underutilized site with market rate and affordable housing thereby stimulating economic development within the City and providing economic opportunities for low and moderate income households. The Mayfair Block was designated as a target development site in the Redevelopment Plan and was the subject of various attempts by the former Redevelopment Agency to develop the Property for uses consistent with the Redevelopment Plan. The assumption of the DDA by the MSC in the event the Property were to revert to the MSC would further these goals.

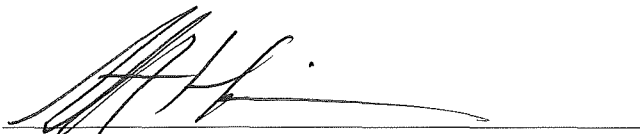
FINANCIAL CONSIDERATIONS

If the Property were to revert to the MSC and the MSC assumed the City's rights and obligations under the DDA, the MSC would be obligated to convey the Property to the Developers if all of the conditions to conveyance were satisfied. In exchange for conveyance of the Property, the MSC would receive the purchase price required to be paid by the Developers of \$3,350,000. The MSC would need to use a portion of this purchase price to pay the existing debt secured by the Property. Depending upon when the Property transferred, it is estimated that the MSC would net \$1.9 million.

LEGAL CONSIDERATIONS

These actions have been reviewed by the MSC Counsel.

Reviewed by:

A handwritten signature in black ink, appearing to read 'SH', is written over a horizontal line.

Scott Hanin
City Manager

Attachments:

1. Resolution
2. Disposition and Development Agreement

RESOLUTION NO. 2018-XX

A RESOLUTION OF THE EL CERRITO MUNICIPAL SERVICES CORPORATION (THE "MSC") AUTHORIZING EXECUTION OF AN ASSIGNMENT AND ASSUMPTION AGREEMENT WITH THE CITY OF EL CERRITO ASSUMING THE DISPOSITION AND DEVELOPMENT AGREEMENT WITH HD MAYFAIR LLC AND MAYFAIR AFFORDABLE LLC SHOULD THE PROPERTY LOCATED AT 11600 AND 11690 SAN PABLO AVENUE AND 1925 KEARNEY REVERT TO THE MSC

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") 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, prior to dissolution of the Agency, the Agency transferred the Property to the MSC pursuant to a grant deed; and

WHEREAS, subsequent to the transfer of the Property to the MSC, the California Department of Finance ("DOF") and the California State Controller ordered the MSC to return the Property to the Successor Agency to the Agency ("Successor Agency"); and

WHEREAS, the City and the MSC filed a writ of mandate challenging the DOF's and State Controller's order (*El Cerrito Redevelopment Agency Successor Agency et al v. Michael Cohen, Sacramento Superior Court Case No. 34-2013-80001671*) ("Litigation") which is currently pending in the Court of Appeal; and

WHEREAS, despite the pending challenge to the DOF and State Controller's order, the MSC, without prejudice, transferred the Property to the Successor Agency, and the Successor Agency subsequently transferred the Property to the City pursuant to the Successor Agency's approved Long Range Property Management Plan; and

WHEREAS, the City is preparing to enter into a Disposition and Development Agreement ("DDA") with HD Mayfair LLC and Mayfair Affordable LLC ("Developer"), pursuant to which the City would sell the Property to the Developer and the Developer would develop on the Property a mixed income mixed use property consisting of 156 market rate residential units, 67 affordable residential units, 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 Developer is obligated under the terms of the DDA to incur costs and expenses related to the Project and needs assurances that subject to satisfaction of the conditions in the DDA, it will be able to acquire the Property; and

WHEREAS, the MSC acquired the Property from the Agency in order to further the purposes of the Redevelopment Plan; and

WHEREAS, the MSC has determined, that the Project furthers the purposes of the Redevelopment Plan and is consistent with the purposes of the MSC to contribute to the physical improvement of the City, to provide and expand economic opportunities for low and moderate income households in the City, and to encourage economic development within the City; and

WHEREAS, the MSC has determined that should the Litigation be resolved in its favor and the Property revert to the MSC, the DDA is in the best interest of the MSC and the assumption of the City's rights and obligations under the DDA is in the best interest of the MSC; and

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

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Board of Directors of the MSC finds that the above recitals are accurate.
2. The Board of Directors of the MSC hereby approves the DDA and all ancillary documents; and approves and directs the Executive Director of the MSC to execute any necessary documents to assume all of the City's rights and obligations under the DDA in the event that the Property reverts to the MSC as a result of a court order or otherwise.

MSC Agenda Item No. 5
Attachment 1

3. The Board of Directors of the MSC hereby authorizes the Executive Director to enter into any other agreements or take any other actions necessary to effectuate the purposes of this resolution.

4. This Resolution shall take immediate effect upon its adoption.

I CERTIFY that at the regular meeting on February 6, 2018, the Board of Directors of the El Cerrito Municipal Services Corporation passed this resolution by the following vote:

AYES:	BOARD MEMBERS:
NOES:	BOARD MEMBERS:
ABSTAIN:	BOARD MEMBERS:
ABSENT:	BOARD MEMBERS:

IN WITNESS of this action, I have hereunto set my hand this ____ day of February, 2018.

Cheryl Morse, Secretary

Approved:

Gabriel Quinto, Chair

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 $\frac{1}{4}$ INCH AND SHALL BE A MINIMUM OF 48 INCHES IN WIDTH. SIDEWALK CROSS SLOPES SHALL NOT EXCEED $\frac{1}{4}$ 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:



600 SAN PABLO AVE

CONSULTANT

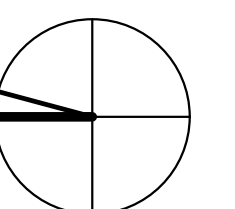
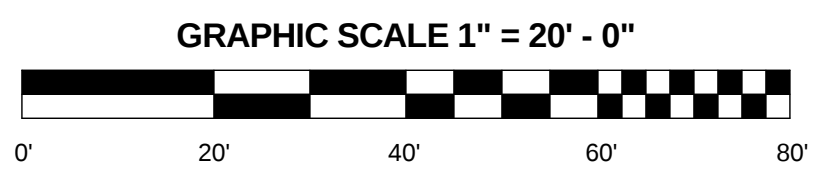
[illegible]

SITE PLAN

EET NUMBER

A1.0

DRAWINGS AND WRITTEN MATERIAL APPEARING
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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

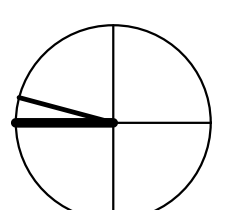
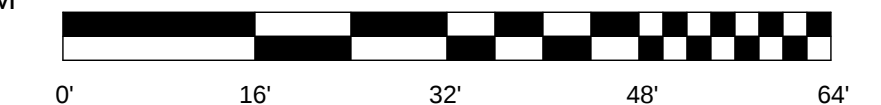
ALL DRAWINGS AND WRITTEN MATERIAL APPEARING
HEREIN CONSTITUTE ORIGINAL AND UNPUBLISHED
WORK OF THE ARCHITECT AND MAY NOT BE
REPRODUCED, COPIED, USED OR DISCLOSED WITHOUT WRITTEN
CONSENT OF THE ARCHITECT



Legend

	STUDIO		UTILITY		RETAIL
	1-BD		GARAGE		BATHROOM
	CIRCULATION		LOBBY		
	AMENITY		OFFICE		

GRAPHIC SCALE 1/16" = 1'-0"



**NOT FOR
CONSTRUCTION**

[illegible]

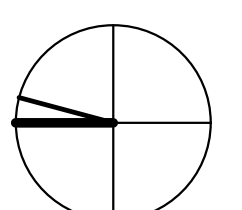
GARAGE LEVEL 1
 FLOOR PLAN -
 MARKET RATE

PROJECT NUMBER:
16-043

SHEET NUMBER

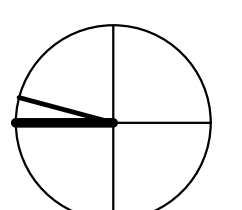
A2.7

ALL DRAWINGS AND WRITTEN MATERIAL APPEARING
HEREIN CONSTITUTE ORIGINAL AND UNPUBLISHED
WORK OF THE ARCHITECT AND MAY NOT BE
REPRODUCED, USED OR DISCLOSED WITHOUT WRITTEN
CONSENT OF THE ARCHITECT



CONSULTANT

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**NOT FOR
CONSTRUCTION**

[illegible]

ENTITLEMENT SET

LEVEL 2 FLOOR
PLAN - MARKET
RATE

PROJECT NUMBER:
16-043

EET NUMBER

A2.9

ALL DRAWINGS AND WRITTEN MATERIAL APPEARING
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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

AMENITY

UTILITY

GRAPHIC SCALE 1/8" = 1' - 0"

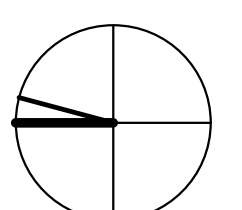
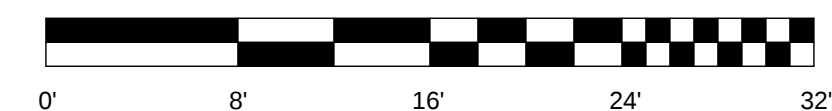


EXHIBIT C-1

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: