

AMENDED AND RESTATED

AFFORDABLE HOUSING AGREEMENT

RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO:)
))
City of Emeryville)
1333 Park Avenue)
Emeryville, CA 94608-3517)
Attention: City Attorney)
))

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

AFFORDABLE HOUSING AGREEMENT

THIS AFFORDABLE HOUSING AGREEMENT ("**Agreement**"), dated_____, 2024 ("**Effective Date**"), is entered into by and between EMERYVILLA APARTMENTS LP, a California limited partnership ("**Owner**"), and the CITY OF EMERYVILLE, a municipal corporation ("**City**"), and is made with reference to the following facts:

RECITALS

A. The Redevelopment Agency of the City of Emeryville ("**Former Agency**") and BRIDGE Housing Corporation, a California nonprofit public benefit corporation (the "**Sponsor**") entered into that certain Ground Lease dated as of June 1, 1989, which was amended and restated by that certain First Amended and Restated Ground Lease by and between the Former Agency and Emeryville Senior Housing, Inc., a California nonprofit public benefit corporation, as successor in interest to the Sponsor (the "**Previous Tenant**") entered into as of August 28, 1991 (collectively, the "**Lease**"), as evidenced by that certain Memorandum of Lease entered into as of August 28, 1991, recorded as Document No. 291258136 in the Alameda County Official Records (the "**Memorandum**") pursuant to which Previous Tenant leased that certain property from the Former Agency as more particularly described in Exhibit A attached hereto (the "**Land**") The City is the successor in interest to the Former Agency with respect to the Lease and the Land.

B. Previous Tenant has assigned the Lease to the Owner pursuant to that certain Assignment and Assumption Agreement dated _____ and transferred the improvements located on the Land to the Owner. Owner has requested that the City enter into certain amendments the Lease to satisfy requirements of Owner’s lender.

C. The Previous Tenant constructed fifty (50) units of rental housing (each, "**Unit**"); on the Land (the "**Development**").

D. The Lease requires the Owner to lease the units to tenants whose incomes do not exceed Low Income and Moderate Income as those terms are defined in the Lease. .

E. The city council for City ("**City Council**") adopted Resolution No. _____ authorizing City's city manager ("**City Manager**") to execute this Agreement.

AGREEMENT

1. USE OF THE DEVELOPMENT. The foregoing recitals are incorporated by reference into this Agreement. Owner covenants and agrees on behalf of itself and its heirs, executors, successors and assigns that Owner shall operate, use and maintain the Land and the Development in compliance with all of the following:

A. Rent and Income Restrictions.

(1) At all times, forty-nine (49) of the Units ("**Affordable Units**") shall be rented to and occupied by Low Income Households in accordance with the terms of this Agreement and Applicable Laws as those terms are defined in Health and Safety Code Sections 50079.5, and 50093 respectively ("**Eligible Households**"). Preference for renting the Affordable Units shall be given to persons who are elderly, as defined by the U.S. Department of Housing and Urban Development ("**HUD**") and California Civil Code Section 51.3.

(2) Affordable Units shall be rented to Eligible Households at affordable rents as that term is defined in California Health and Safety Code Section 50053, as amended, or any successor statute thereto for the applicable income level ("**Affordable Rent**"). The monthly Affordable Rent for each Affordable Unit shall be calculated pursuant to City's then-current Affordable Rent and Income Levels Table (the "**Table**"). City's current Table is attached hereto for illustrative purposes as Exhibit B.

(3) In the Affordable Units, no less than one (1) occupant shall be allowed per bedroom and no more than two (2) occupants shall be allowed per bedroom. A studio shall count as a one-bedroom for the purposes of these occupancy requirements. No more than three persons shall be permitted to occupy a one-bedroom unit. If no Eligible Households apply within sixty (60) days of a Unit being available that meet these occupancy standards, City shall, upon request of Owner, grant exceptions to the occupancy standards, but only to the extent such exceptions are consistent with applicable laws, and do not increase City's obligations or liabilities under this Agreement, or diminish or impair City's rights and remedies under this Agreement.

(4) Not more than once per year, Owner may adjust rents in occupied Affordable Units in accordance with City's published rent ceilings for the applicable unit size and income level. Owner may adjust rent upon vacancy of an Affordable Unit to the then current Affordable Rent determined in accordance with the provisions of this Agreement. City shall annually publish a list of all rent ceilings reflecting the annual adjustments in the income limits for households provided by HUD and State of California Housing and Community Development Department. Owner must notify a tenant in Affordable Unit in writing of any increase in such tenant's monthly rent for a Affordable Unit at least sixty (60) days in advance of the effective rent adjustment date, and a copy of any such notification shall be sent to City simultaneously. Owner shall report any rent increase(s) to City in the Annual Report, including: (1) the rent adjustment for each Affordable Unit; (2) the new rental amount for each Affordable Unit; and (3) the

effective date of the adjustment for each Affordable Unit. Failure to provide the notice and reporting required shall be considered a default by Owner under this Agreement.

(5) The determination of a status as an Eligible Household shall be made by Owner prior to initial occupancy of the Affordable Unit by such household and shall be subject to review and approval by City. City shall review and provide Owner with approval or disapproval of the determination of a status within fifteen (15) days of the City receiving notice of determination by Owner. The income of all occupants aged 18 years or older residing in the Affordable Unit shall be considered for purposes of calculating the household income. Owner shall not discriminate against prospective tenants with qualified Public Housing Authority Section 8 certificates or vouchers or with other governmental rental subsidies who are otherwise qualified in the rental of any of the Affordable Units. In the Annual Report, Owner shall report any changes in the occupants of any Affordable Units to City that are known by Owner, including the name(s) and household size(s) of the occupant(s) vacating the Unit(s) during the reporting period, and, if the Unit(s) has/have been reoccupied, the name, household size and income of the new household occupying the Unit(s).

Immediately prior to the first anniversary of the lease commencement for each Affordable Unit, or for tenancies existing as of the Effective Date of this Agreement, no later than the anniversary date of the Effective Date of this Agreement, and on each anniversary thereafter, Owner shall re-certify the income of the occupants aged 18 years or older residing in the Unit by obtaining a completed Occupant Income Certification based upon the current income of each occupant of the Affordable Unit and Owner shall take all reasonable steps to verify with reliable documentation the income and household size of the occupant(s). The Occupant Income Certification shall be in the form attached hereto as Exhibit C or such other income certification document approved by the City; provided, however, that City reserves the right to make any updates or changes as City deems necessary or desirable. Subject to applicable law and the requirements of other sources of financing for the Development, if the household income of the occupants of an Affordable Unit exceeds the applicable income limit for such Affordable Unit but does not exceed 120% of AMI, the occupants shall be allowed to remain in the Affordable Unit, the Owner shall be allowed to increase the Affordable Rent for the Affordable Unit to an amount that does not exceed the Rent allowed for those Units rented to Eligible Households with income at or below 120% of AMI and the Owner shall rent the next available Unit to an Eligible a Low Income Household in order to maintain distribution of Affordable Units set forth in Exhibit B. Subject to applicable law and the requirements of other sources of financing for the Development, if the household income of the occupants of an Affordable Unit exceeds 120% of AMI, the occupants shall be given ninety (90 days) notice of termination of lease, promptly following each lease termination, Owner shall re-let the Affordable Unit to an Eligible Household with an income not exceeding the applicable income limit necessary to maintain the distribution of Affordable Units set forth in Exhibit B. All documentation obtained by Owner in connection with the annual Occupant Income Certification shall be retained by Owner for three (3) calendar years.

B. Parking.

(1) Development includes 18 parking spaces. Owner shall provide the City with a parking plan outlining how parking spaces will be allocated to tenants, and how the waitlist for parking spaces will be maintained.

C. Marketing and Leasing Program.

(1) Owner shall actively market any vacant Affordable Units. No less than thirty (30) days after the Effective Date of this Agreement, Owner shall provide City with a copy of its marketing program for existing vacant Affordable Units ("**Marketing Program**") that is in conformance with City's Affordable Units Marketing Program Procedures in effect at the time. City shall review the Marketing Program and either approve or request modifications or clarifications to the Marketing Program within thirty (30) days after receipt; City's approval shall not be unreasonably withheld, nor shall City's modification requests be unreasonable. Failure of City to respond within thirty (30) days shall be deemed approval. If City requests modifications or clarifications to the Marketing Program, Owner shall resubmit the Marketing Program addressing such modifications or clarifications within thirty (30) days of receipt of City's comments and City shall either approve or request further modifications or further clarifications to the Marketing Program within fifteen (15) days of receipt of the revised Program; City's approval shall not be unreasonably withheld, nor shall City's modification requests be unreasonable. Once the Marketing Plan is approved, Owner shall market all available Affordable Units in accordance with the Marketing Plan.

(2) Owner shall provide an update on the Marketing Program in the Annual Report and shall revise as may be required by City's Affordable Units Marketing Program Procedures then in effect. The Marketing Program must be revised from time to time and shall be updated at least once every five (5) years, with City's written approval. City shall review the Marketing Program and either approve or request modifications to the Marketing Program and the supportive services plan within thirty (30) days after receipt.

D. Reporting Requirements.

(1) Owner shall submit to the City annual reports ("**Annual Report**"), which shall include all reporting required under this Agreement from the date of the previous Annual Report and include the following:

- a. A cover letter to City describing the status of compliance with this Agreement, including any problems experienced during the reporting period, any recommendations to address problems and enhance compliance; any changes to the Marketing Program or Lease Agreement since the date of the previous Annual Report, a description of any additional fees charged to tenants, and the date and staff members names that participated in any Fair Housing Trainings.
- b. A signed copy of the Certificate of Continuing Program Compliance in the form attached hereto as Exhibit D; provided, however, that City reserves the right to make any updates or changes to the form as City deems necessary or desirable;
- c. A copy of the current Marketing Program;

- d. A copy of the current form of lease agreement used for Units;
- e. A copy of the then current and the previous years' Utility Allowance including method of calculation; and
- f. An Income Certification Worksheet as described below in Section D(2);

(2) Owner shall include a summary of the income certifications or re-certifications in the form of the Income Certification Worksheet in a format and containing the information reasonably required by City attached hereto as Exhibit E; provided, however, that City reserves the right to make any updates or changes to the form as City deems necessary or desirable, including all information necessary to meet reporting requirements imposed on City by applicable laws, and at a minimum, shall include the following with respect to each of the Units:

- a. Unit number;
- b. Unit square footage;
- c. Number of bedrooms and bathrooms in the unit;
- d. Head of household name(s)
- e. The number of occupant(s) in the household;
- f. The number of occupant(s) in the household between 3 and 17;
- g. Initial lease commencement date;
- h. Lease Term
- i. Household Income limit applicable to Unit at initial lease commencement date; and at recertification date (if applicable);
- j. Actual Income of household at lease commencement date; and at recertification date (if applicable);
- k. Gross Affordable Rent Limit (see Exhibit B);
- l. Utility Allowance;
- m. Amount of any other fees charged to the tenants (if applicable);
- n. Section 8 Assistance or other government rental assistance (if applicable);
- o. Current Net Rent Paid by household;
- p. Current Net Rent as a percentage of household's Income;
- q. Previous Net Rent Paid by household;
- r. Next Recertification Date;
- s. Move out date (if applicable).

Each Annual Report shall include the Certificate of Continuing Program Compliance (Exhibit D) and Income Certification Worksheet (Exhibit E) and be submitted to City annually on March 1st starting the year following the Effective Date of this Agreement. Upon request by City, the annual Occupant Income Certification Form (Exhibit C) for each occupant(s) of a Unit shall be submitted as part of the Annual Report and shall be accompanied by the copies of the documents used to certify eligibility. Upon receipt of the Annual Report, City may request additional information to confirm compliance with this Agreement. In the event City requests such information, Owner shall promptly supply such information to City in the format requested by City. Owner shall maintain all necessary documents, books and records, including property and financial records, in accordance with requirements prescribed by City with respect to all matters covered by this Agreement for a period of three (3) years following the date of submittal of the Annual Report to which such documents, books or records relate. Upon request for examination by City, Owner, at any time during normal business hours and upon reasonable notice, shall

make available at the Development (or at another location within twenty miles of Emeryville) all material records with respect to matters covered by the Agreement. Owner shall permit City to audit, examine, copy, and make excerpts or transcripts from such records. If Owner does not submit the Annual Report by March 1st, Owner has a grace period to submit the Annual Report through March 15th. Failure to timely submit the Annual Report with the required information shall be considered a default by Owner under this Agreement, subject to the provisions of Section 9. In the event that Owner fails to submit the Annual Report in a timely manner, in addition to any other rights that City may have, City may audit Owner's books and records to determine compliance, and Owner shall be responsible for all reasonable expenses incurred by City in conducting such audit. In addition to paying City's costs and expense, Owner shall pay to City one hundred dollars (\$100) as liquidated damages for the first violation of failing to submit the Annual Report for each day the Annual Report is late after March 15th, and five hundred dollars (\$500) as liquidated damages for each successive violation of failing to submit the Annual Report for each day the Annual Report is late, it being agreed that the damages to City by reason of Owner's failure to submit the Annual Report are difficult, if not impossible, to ascertain and that the amounts set forth above represent the parties' reasonable estimate of such damages.

E. **Annual Financial Report.** Owner shall annually submit to City a financial report, in a form acceptable to City, including without limitation (i) an annual income statement and balance sheet, (ii) a copy of any and all annual reports provided to Owner's Investors, and (iii) documentation demonstrating that Owner is funding an ongoing capital reserve fund for capital repair and replacement costs ("**Financial Report**"). Owner shall provide the Financial Report as part of the Annual Report.

F. **City Approval of Lease Forms.** City shall have the right to review and approve Owner's form of lease for the Affordable Units including any modifications, including disclosures of the affordability restrictions on the Affordable Units, prior to Owner's use of such form; City's approval of such forms shall not be unreasonably withheld.

G. **Compliance with All Applicable Laws.** Owner shall manage and operate all Units in compliance with all applicable federal and state laws, and City ordinances and resolutions, including but not limited to, City's Affordable Housing Rent Regulations in effect as such laws, ordinances, resolutions and Rent Regulations may be amended from time to time.

2. MANAGEMENT OF UNITS.

A. The City has approved the Owner's selection of BRIDGE Property Management as the property management agent ("**Property Manager**") in order to manage the Units (including leasing, property management, maintenance and repair services, and reporting obligations) and ensure that Owner's obligations under this Agreement with respect to the Units are satisfied and has approved the property management agreement with BRIDGE Property Management ("**Management Agreement**"). If Owner changes the Property Manager, any new property manager shall have at least five (5) years' experience in the operation and management of similar size rental housing projects, and at least three (3) years' experience in the operation and management of rental housing projects containing below-market-rate units, without any record of material violations of discrimination restrictions or other applicable laws. No less than sixty (60)

calendar days prior to hiring any property manager or executing any management agreement or material amendment to a management agreement, Owner shall provide documentation to City as is reasonably necessary to evaluate the proposed property manager's experience and qualifications as well as the management agreement. No property manager shall be hired, or management agreement signed or amended, or Management Plan amended, without City's prior approval thereof, which shall not be unreasonably withheld or delayed. For the term of this Agreement, any change in Property Manager, the Management Agreement and any amendment thereto shall comply with the requirements of this Section and any material amendment shall require the prior written approval of City, which shall not be unreasonably withheld or delayed.

B. The Property Manager's leasing staff must participate in Fair Housing Training at least once every two years. Property Manager shall notify the City of any change in the primary staff assigned to the Development within ten (10) days of such staff change and any new staff member shall attend a one-on-one training session with the City or its consultant within thirty (30) days of notification. City can waive the requirement for a one-on-one training session, at its discretion. Owner shall require as part of the Management Agreement that Property Manager provides adequate training and support for any staff assigned to the Development to properly implement the terms of this Agreement.

3. MAINTENANCE; PROPERTY DAMAGE.

A. Maintenance of Development. Owner shall maintain the Development (such maintenance to include buildings, sidewalks, pedestrian lighting, landscaping, irrigation of landscaping, architectural elements identifying the Development and any and all other improvements on the Land and in the public right-of-way to the nearest curblin(e)s abutting the Land) in accordance with the maintenance standards (as hereinafter defined). To accomplish the maintenance, Owner shall either staff or contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Agreement. The maintenance covenants and obligations set forth in this Section 3 shall remain in effect for the period of time specified in Section 6, below.

(1) The following standards (collectively, "**Maintenance Standards**") shall be complied with by Owner and its maintenance staff, contractors and subcontractors:

- (i) Landscape maintenance shall include: watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance, safe road conditions and visibility, and irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.
- (ii) Clean-up maintenance shall include: maintenance of all sidewalks, paths and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other conditions which are unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of

the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

- (iii) All maintenance work shall conform to all applicable federal and state Occupation Safety and Health Act standards and regulations for the performance of maintenance.
- (iv) Any and all chemicals, unhealthful substances, and pesticides used in and during maintenance shall be applied in strict accordance with all Applicable Laws. Precautionary measures shall be employed recognizing that all areas are open to public access.
- (v) The Development shall be maintained in accordance with the custom and practice generally applicable to comparable first-class residential developments located within Alameda County, California. Public right-of-way improvements to the curblin(e)s on and abutting the Land shall be maintained as required by Subsection 3.A in good condition and in accordance with the custom and practice generally applicable to public rights-of-way within the City of Emeryville.

(2) If Owner does not maintain or cause to be maintained the Development and all other private and public improvements (if any) on the Land to the curblin(e)s on and abutting the Land in the manner set forth herein and in accordance with the Maintenance Standards, City shall have the right to maintain such private and/or public improvements, or to contract for the correction of such deficiencies, after written notice to Owner. However, prior to taking any such action, City agrees to notify Owner in writing if the condition of said improvements does not conform to the Maintenance Standards and to specify the deficiencies and the actions required to be taken by Owner to cure the deficiencies. Upon notification of any maintenance deficiency, Owner shall have thirty (30) days within which to correct, remedy or cure the deficiency, or begin and diligently work to cure the deficiency, if the nature of the deficiency is not the type that can be cured within thirty (30) days. If the written notification states that the problem is urgent and relates to the public health and safety, then Owner shall have twenty-four (24) hours to cure the problem or begin and diligently work to cure the problem, if the nature of the problem is not the type that can reasonably be cured within twenty-four (24) hours. In the event Owner fails to correct, remedy, or cure or has not commenced correcting, remedying or curing such maintenance deficiency after notification and after expiration of any applicable cure periods, then City shall have the right to maintain such improvements at Owner's expense. Owner shall pay City upon demand all reasonable and actual charges and costs incurred by City for such maintenance. Until so paid, City shall have the right to file a lien on the Development for the amount of such charges or costs, which lien may be perfected by the recordation of a "Notice of Claim of Lien" against the Development. Any lien in favor of City created or claimed under this Subsection 3.A(2) is expressly made subject and subordinate to any mortgage or deed of trust made in good faith and for value, recorded as of the date of the recordation of the Notice of Claim of Lien, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of any such mortgage or deed of trust, unless the mortgagee or beneficiary thereunder expressly subordinates its interest, of-record, to such lien. Owner acknowledges and agrees that City may also pursue any and all other remedies available in law or equity in the event of a

breach of the maintenance obligations and covenants set forth herein, subject to the limitations set forth in Section 5, below.

B. **Damage or Destruction.** If all or any portion of the Development is damaged or destroyed, Owner shall, at its own cost and expense, repair, restore or reconstruct the Development consistent with the original Construction Drawings. Such work shall be commenced within one hundred twenty (120) calendar days after the damage or loss occurs and shall be completed within one (1) year thereafter. All insurance proceeds collected for such damage or destruction shall be applied pursuant to the terms of any existing mortgages affecting the Development.

4. TAXES. Owner shall not apply for exemption from the payment of real or personal property taxes on the Development, other than pursuant to California Revenue and Taxation Code Section 214(g).

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

6. DURATION. The covenants and restrictions in this Agreement shall remain in effect until the date which is ninety-nine (99) years following the Effective Date of this Agreement..

7. PRIORITY OF DOCUMENTS:. Owner's covenants with respect to the use, maintenance, and operation of the Land and the Development set forth herein shall run with the land and be binding on Owner and its successors and assigns for the period of time set forth herein.

8. SUCCESSORS AND ASSIGNS. The covenants contained herein shall inure to the benefit of City and its successors and assigns and shall be binding upon Owner and any successor in interest to the Land or the Development. The covenants shall run in favor of City and its successors and assigns for the entire period during which such covenants shall be in force and effect, without regard to whether City is an owner of any land or interest therein to which such covenants relate. In the event of any breach of any such covenants, or breach of any of Owner's obligations under this Agreement, City and its successors and assigns shall have the right to exercise all of the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach.

9. DEFAULT. Any failure by Owner to perform any term or provision of this Agreement shall constitute a "Default" hereunder if Owner does not cure such failure within thirty (30) days following written notice of default from City, unless such failure is not of a nature which can be cured within such thirty (30) day period. If such failure is not of a nature which can be cured within such thirty (30) day period, Owner's failure to commence substantial efforts to cure the failure within thirty (30) days and thereafter prosecute to completion with diligence and continuity the curing of such failure shall constitute a Default. Any notice of default given under this Agreement shall identify the nature of the failure in performance which City claims

constitutes the Default and the manner in which such Default may be satisfactorily cured. Any failure or delay by City in asserting any of its rights or remedies, including specific performance, as to any Default shall not operate as a waiver of any Default or of any such rights or remedies or deprive City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

Upon notice of default, Owner shall promptly supply information to City in the format requested by City.

10. REMEDIES. Following the declaration of an event of Default hereunder, City may take any one or more of the following steps, in addition to all other remedies provided by law or equity;

A. By mandamus or other suit, action or proceeding at law or in equity, including injunctive relief, require Owner to perform its obligations and covenants hereunder or enjoin any acts or things that may be unlawful or in violation of the rights of City hereunder;

B. Have access to and inspect, examine and make copies of all of the books and records of Owner pertaining to the Land and the Development; and

C. Take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of Owner hereunder.

Owner hereby agrees that specific enforcement of Owner's agreements contained herein is the only means by which City may fully obtain the benefits of such Agreement made by Owner herein, and Owner therefore agrees to the imposition of the remedy of specific performance against it in the case of any Default by Owner hereunder.

In addition to any other right or remedy that City may have, in the event that Owner fails to rent the Affordable Units to Eligible Households at an Affordable Rent, Owner shall pay to City the amount of any rent collected by Owner in excess of the Affordable Rent.

11. ESTOPPEL CERTIFICATE. Either party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the current, actual knowledge of the certifying party, (a) this Agreement is in full force and effect and a binding obligation of the parties; (b) this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments or modifications; and (c) the requesting party is not in Default in the performance of its obligations under the Agreement, or if in Default, to describe therein the nature and extent of any such defaults. The party receiving a request hereunder shall execute and return a certificate in reasonable form, or give a written, detailed response explaining why it will not do so, within forty-five (45) days following the receipt of the request. City's City Manager or City Attorney shall be authorized to execute any certificate requested by Owner hereunder. Owner and City acknowledge that a certificate hereunder may be relied upon by those tenants, transferees, investors, partners, bond counsel, underwriters, bond holders and mortgagees identified therein.

12. EXPENSES. Owner shall annually pay to City City's monitoring and enforcement fees for the Affordable Units in accordance with City's Master Fee Schedule. The monitoring or

enforcement fee shall be either City's actual expenses incurred for monitoring or enforcing the terms of this Agreement, including staff time and third party costs or the amount set forth in the Master Fee Schedule, as determined by City. City may expend such sums to reimburse itself for City's actual out-of-pocket expenses incurred in connection with such monitoring and/or enforcement activities. All reasonable fees, costs and expenses of City incurred in taking action pursuant to Section 10 shall be the sole responsibility of Owner.

13. INDEMNIFICATION AND RELEASE. It is specifically understood and agreed by the Parties that the Development contemplated by this Agreement is a private development, that City has no interest in or responsibility for or duty to third persons concerning any of said improvements, and that Owners shall have full power over and the exclusive control of the Land and the Development subject only to the limitation and obligations of Owners under this Agreement and the Lease. Owner hereby agrees to and shall indemnify, defend with counsel reasonably acceptable to City and hold City and its elected and appointed representatives, officers, agents and employees harmless from any and all claims arising out of this Agreement and related to any portion of the Development or use, operation or maintenance of the Land, including claims for bodily injury, including death, and property damage, which may arise directly or indirectly from the acts, omissions, negligence or willful misconduct of Owner or its shareholders, partners, members, principals, officers, employees, representatives, agents, contractors or subcontractors, excepting suits and actions arising from the active negligence or willful misconduct of City, or any of its officials, elected or otherwise, officers, employees, representatives, agents, contractors or subcontractors ("**Claim**"). This indemnification and hold harmless agreement applies to all damages and claims for damages (including attorneys' fees and costs) suffered or alleged to have been suffered by reason of the acts, omissions, negligence or willful misconduct referred to in this Section 13, regardless of whether or not City prepared, supplied or approved plans or specifications for the Development or Land. This Section 13 shall survive termination of this Agreement.

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

To City: City of Emeryville
1333 Park Avenue
Emeryville, CA 94608
Attention: City Manager
Telephone: (510) 596-4300

With a copy to: City of Emeryville
1333 Park Avenue
Emeryville, CA 94608
Attention: City Attorney

To Owner: Emeryvilla Apartments LP
c/o BRIDGE Housing Corporation
350 California Street, 16th Floor
San Francisco, California 94104
Attn: Jim Mather

With copies to: Klein Hornig LLP
1325 G St NW, Suite 770
Washington, DC 20005
Attn: Jed D'Abrevanel

15. ATTORNEYS' FEES. In the event that either Party fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the non-prevailing party in such dispute, as the case may be, shall pay the prevailing party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For purposes of this Agreement, reasonable attorneys' fees of City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which City Attorney's services were rendered who practice in the San Francisco Bay Area. The term "attorneys' fees" shall also include, without limitation, all such fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees were incurred. The term "costs" shall mean the costs and expenses of counsel to the parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

16. MISCELLANEOUS. Each party agrees to cooperate with the other in the implementation and administration of this Agreement and, in that regard, shall execute any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of the Agreement. This Agreement may be signed in multiple counterparts which, when signed

by all parties, shall constitute a binding agreement. The words "include" and "including" shall be construed as if followed by the words "without limitation." All exhibits and attachments hereto are incorporated by reference as though fully restated herein. This Agreement shall be interpreted as though prepared jointly by both parties, and shall be construed in accordance with and be governed by the laws of the State of California. Venue shall be in Alameda County. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby. A waiver by either party of a breach of any of the covenants, conditions or agreements hereunder to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions hereof. No waiver by City of any of the conditions hereof shall be effective unless in a writing expressly identifying the scope of the waiver and signed on behalf of an authorized official of City. Any alteration, change or modification of or to the Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party hereto.

17. SUBORDINATION. City agrees and otherwise consents to subordination of this Agreement to the first lien deed of trust securing the loan by PGIM Real Estate Agency Financing, LLC, a Delaware limited liability company in the approximate amount of **[\$10,033,000.00]** on even date herewith (jointly or individually, the "Senior Deed of Trust", and such lenders for each such Senior Deed of Trust and any other senior lender, each a "Senior Lender"), or any other deed of trust that replaced the Senior Deed of Trust provided such replacement deed of trust does not increase the amount of the Senior Lender loan or extend the term of the Senior Lender Loan after providing written notice to City. City agrees to cooperate with Owner to document the subordination of this Agreement to the Senior Deed of Trust, including the execution and delivery to Owner from time to time of such other instruments as Owner may request declaring the subordination of this Agreement to the Senior Deed of Trust. Senior Lender shall give notice to City, of any sale or other foreclosure action under the Senior Deed of Trust."

[Signatures on following page]

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

Address:

Emeryvilla Apartments LP
c/o BRIDGE Housing Corporation
350 California Street, 16th Floor
San Francisco, California 94104
Attn: Jim Mather

"OWNER"

EMERYVILLA APARTMENTS LP,
a California limited partnership

By: Emeryvilla Apartments LLC,
a California limited liability company
its general partner

By: MCB Family Housing, Inc.,
a California nonprofit public benefit
corporation, its sole member and
manager

Dated: 10/11/2024 | 2:52 PM PDT

By: Natalia Williams

Name: Natalia Williams

Title: Vice President

[Signature must be notarized]

Address:

City of Emeryville
1333 Park Avenue
Emeryville, CA 94608
Attn: City Manager

"CITY"

CITY OF EMERYVILLE, a municipal corporation

Dated: _____

By: _____

Paul Buddenhagen, City Manager

[Signature must be notarized]

APPROVED AS TO FORM

DocuSigned by:

John Kennedy

2C934D02DB55467

John Kennedy, City Attorney

EXHIBIT A

Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF EMERYVILLE, IN THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

EXHIBIT B

Development Affordable Rent and Income Levels

AGREEMENT ON AFFORDABLE UNITS			
2024 Rent Calculation for Below Market Rate Set-Aside Units			
Unit size	Number of units	2024 Monthly Rents	Income Limit
Studio	13	\$1,635	Low Income
1 Bedroom	36	\$1,868	Low Income
<p>***Rents for units rented to households with incomes at or below 80% of AMI shall be based on 30% of 60% of the area gross median income for Alameda County, adjusted for household size. Affordable rent shall mean the total of monthly payments for a rental including a reasonable allowance for utilities and any service charges or fees required of tenants. Utility allowance and charges/fees must be deducted from rents shown above.</p>			

EXHIBIT C

OCCUPANT INCOME CERTIFICATION FORM

OCCUPANT INCOME CERTIFICATION

Initial
 Recertification
 Other _____
 Certification

Effective Date: _____
Move-in Date: _____ (MM/DD/YYYY)

PART I. DEVELOPMENT DATA		
Property Name: _____	County: _____	# Bedrooms: _____
Address: _____	Unit Number: _____	

PART II. HOUSEHOLD COMPOSITION						
HH Mbr #	Last Name	First Name & Middle Initial	Relationship to Head of Household	Date of Birth (MM/DD/YYYY)	F/T Student (Y or N)	Social Security or Alien Reg. No. (last 4 digits)
1			HEAD			
2						
3						
4						
5						
6						
7						

PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)				
HH Mbr #	(A) Employment or Wages	(B) Soc. Security/Pensions	(C) Public Assistance	(D) Other Income
TOTALS	\$	\$	\$	\$
Add totals from (A) through (D), above			TOTAL INCOME (E):	\$

PART IV. INCOME FROM ASSETS				
HH Mbr #	(F) Type of Asset	(G) C/I	(H) Cash Value of Asset	(I) Annual Income from Asset
TOTALS:			\$	\$
Enter Column (H) Total		Passbook Rate		\$
If over \$5000		2.00%		= (J)
Imputed Income				\$
Enter the greater of the total of column I or J: imputed income			TOTAL INCOME FROM ASSETS (K)	
(L) Total Annual Household Income from all Sources [Add (E) + (K)]				\$

HOUSEHOLD CERTIFICATION & SIGNATURES

The information on this form will be used to determine maximum income eligibility. I/we have provided for each person(s) set forth in Part II acceptable verification of current anticipated annual income. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any member becoming a full time student.

Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.

_____ Signature	_____ (Date)	_____ Signature	_____ (Date)
_____ Signature	_____ (Date)	_____ Signature	_____ (Date)

Sections Below To Be Completed by Owner/Representative

PART V. DETERMINATION OF INCOME ELIGIBILITY	
TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES: From item (L) on page I	<div style="border: 2px solid black; width: 150px; height: 40px; margin: 0 auto;"></div> <p style="text-align: center;">\$ _____</p>
Current Income Limit per Family Size:	\$ _____
Household Income at Move-in:	\$ _____
Household Size at Move-in:	_____
Method of Income Verification	

PART VI. RENT													
Tenant Paid Rent	\$ _____	Rent Assistance:	\$ _____										
Utility Allowance	\$ _____	Other non-optional charges:	\$ _____										
Utility Paid by Tenant (Check all that apply)	<table border="0" style="width: 100%;"> <tr> <td><input type="checkbox"/> Heating Electric</td> <td><input type="checkbox"/> Heating Gas</td> </tr> <tr> <td><input type="checkbox"/> Cooking Electric</td> <td><input type="checkbox"/> Cooking Gas</td> </tr> <tr> <td><input type="checkbox"/> Hot Water Electric</td> <td><input type="checkbox"/> Hot Water Gas</td> </tr> <tr> <td><input type="checkbox"/> Water</td> <td><input type="checkbox"/> Sewer</td> </tr> <tr> <td><input type="checkbox"/> Trash</td> <td><input type="checkbox"/> Electrical Other</td> </tr> </table>			<input type="checkbox"/> Heating Electric	<input type="checkbox"/> Heating Gas	<input type="checkbox"/> Cooking Electric	<input type="checkbox"/> Cooking Gas	<input type="checkbox"/> Hot Water Electric	<input type="checkbox"/> Hot Water Gas	<input type="checkbox"/> Water	<input type="checkbox"/> Sewer	<input type="checkbox"/> Trash	<input type="checkbox"/> Electrical Other
<input type="checkbox"/> Heating Electric	<input type="checkbox"/> Heating Gas												
<input type="checkbox"/> Cooking Electric	<input type="checkbox"/> Cooking Gas												
<input type="checkbox"/> Hot Water Electric	<input type="checkbox"/> Hot Water Gas												
<input type="checkbox"/> Water	<input type="checkbox"/> Sewer												
<input type="checkbox"/> Trash	<input type="checkbox"/> Electrical Other												
GROSS RENT FOR UNIT: (Tenant paid rent plus Utility Allowance & Other non-optional charges)	<div style="border: 2px solid black; width: 150px; height: 40px; margin: 0 auto;"></div> <p style="text-align: center;">\$ _____</p>	Unit Meets Rent Restriction at:											
		<input type="checkbox"/> 60% <input type="checkbox"/> 50% <input type="checkbox"/> 40% <input type="checkbox"/> 30% <input type="checkbox"/> ____%											
Maximum Rent Limit for this Unit:	\$ _____												

SIGNATURE OF OWNER/REPRESENTATIVE

Based on the representations herein and upon the proofs and documentation required to be submitted, the individual(s) named in Part II of this Occupant Income Certification is/are eligible under the provisions of California Health and Safety Code Section 50053 as amended, and the Affordable Housing Covenant, to live in a unit in this Development.

SIGNATURE OF OWNER/REPRESENTATIVE

DATE

NAME

EMAIL

EXHIBIT D

[Project Name] Apartments

Period through _____

**CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE
CITY OF EMERYVILLE**

The undersigned does hereby certify that it is in continuing compliance with the Affordable Housing Agreement executed by the undersigned and recorded in the records of the County of Alameda, California, and that to the knowledge of the undersigned no default exists under said Agreement. Specifically, it is hereby confirmed that each qualified tenant currently residing in the Affordable Unit as defined by said Agreement has completed an Occupant Income Certification in the form approved by the City of Emeryville and that:

Since the beginning of the Agreement term, not less than [] of the Property Units have been continuously occupied by or held vacant and available for occupancy by qualified very **low-income** tenants. Since the beginning of this Agreement term, not less than [] of the Property Units have been continuously occupied by or held vacant and available for occupancy by qualified **low-income** tenants.

As of the date of the Certificate:

Total 80% Units occupied: _____ (# Units)
Total 80% Units vacant: _____ (#Units)

[OWNER]
By: _____
Authorized Owner Representative

Date: _____

EXHIBIT E

[Project Name] Apartments

Period through _____

INCOME CERTIFICATION WORKSHEET CITY OF EMERYVILLE

CITY OF EMERYVILLE BMR RENTAL COMPLIANCE REPORT
PROPERTY: _____

REPORT PERIOD: _____ TO _____ DATE OF REPORT _____

GENERAL INFORMATION							INITIAL CERTIFICATION											RECERTIFICATION INCOME AND RENTS PER TIC FORM																		
UNIT #	UNIT TYPE	SQ. FT.	INCOME CATEGORY	HEAD OF HOUSEHOLD LAST NAME	HEAD OF HOUSEHOLD FIRST NAME	RESIDENT EMAIL ADDRESS	CURRENT STATUS	HOUSE HOLD SIZE	# MINOR CHLD	SPECIAL NEEDS	INITIAL MOVE-IN DATE	INCOME LIMIT @ MOVE-IN	HOUSEHOLD INCOME @ MOVE-IN	INITIAL RENT LIMIT	UTILITY ALLOWANCE	OTHER REQUIRED FEES	NET RENT per TIC	SEC. # ASSIST	TENANT PAYS	RENT % OF INCOME	RECERT EFF DATE PER TIC	HOUSE HOLD SIZE	# MINOR CHLD	INCOME LIMIT @ RECERT	HOUSEHOLD INCOME PER RECERT TIC	RENT LIMIT @ RECERT	UTILITY ALLOWANCE	OTHER REQUIRED FEES	NET RENT per TIC	SEC. # ASSIST	TENANT PAYS	RENT % OF INCOME	DATE LAST RENT INCREASE	MOVE-OUT DATE		
1																				#DIV/0!															#DIV/0!	
2																					#DIV/0!														#DIV/0!	
3																					#DIV/0!														#DIV/0!	
4																					#DIV/0!														#DIV/0!	
5																					#DIV/0!														#DIV/0!	
6																					#DIV/0!														#DIV/0!	
7																					#DIV/0!														#DIV/0!	
8																					#DIV/0!														#DIV/0!	
9																					#DIV/0!														#DIV/0!	
10																					#DIV/0!														#DIV/0!	
11																					#DIV/0!														#DIV/0!	
12																					#DIV/0!														#DIV/0!	
13																					#DIV/0!														#DIV/0!	
14																					#DIV/0!														#DIV/0!	
15																					#DIV/0!														#DIV/0!	
16																					#DIV/0!														#DIV/0!	
17																					#DIV/0!														#DIV/0!	
18																					#DIV/0!														#DIV/0!	
19																					#DIV/0!														#DIV/0!	
20																					#DIV/0!														#DIV/0!	
21																					#DIV/0!														#DIV/0!	
22																					#DIV/0!														#DIV/0!	
23																					#DIV/0!														#DIV/0!	
24																					#DIV/0!														#DIV/0!	
25																					#DIV/0!														#DIV/0!	
26																					#DIV/0!														#DIV/0!	
27																					#DIV/0!														#DIV/0!	
28																					#DIV/0!														#DIV/0!	
29																					#DIV/0!														#DIV/0!	
30																					#DIV/0!														#DIV/0!	
31																					#DIV/0!														#DIV/0!	
32																					#DIV/0!														#DIV/0!	
33																					#DIV/0!														#DIV/0!	
34																					#DIV/0!														#DIV/0!	
35																					#DIV/0!														#DIV/0!	
36																					#DIV/0!														#DIV/0!	
37																					#DIV/0!														#DIV/0!	
38																					#DIV/0!														#DIV/0!	
39																					#DIV/0!														#DIV/0!	
40																					#DIV/0!														#DIV/0!	

Apartment Transfers

GENERAL INFORMATION							INITIAL CERTIFICATION											RECERTIFICATION INCOME AND RENTS PER TIC FORM																		
INITIAL UNIT #	TRANSFER UNIT #	TRANSFER UNIT TYPE	TRANSFER INCOME CATEGORY	RESIDENT LAST NAME	RESIDENT FIRST NAME	RESIDENT EMAIL ADDRESS	TRANSFER UNIT DATE	HOUSE HOLD SIZE	# MINOR CHLD	SPECIAL NEEDS	INITIAL MOVE-IN DATE	INCOME LIMIT @ MOVE-IN	HOUSEHOLD INCOME @ MOVE-IN	INITIAL RENT LIMIT	UTILITY ALLOWANCE	OTHER REQUIRED FEES	NET RENT per TIC	SEC. # ASSIST	TENANT PAYS	RENT % OF INCOME	RECERT EFF DATE PER TIC	HOUSE HOLD SIZE	# MINOR CHLD	INCOME LIMIT @ RECERT	HOUSEHOLD INCOME PER RECERT TIC	RENT LIMIT @ RECERT	UTILITY ALLOWANCE	OTHER REQUIRED FEES	NET RENT per TIC	SEC. # ASSIST	TENANT PAYS	RENT % OF INCOME	TRANSFER REASON			
1																					#DIV/0!															
2																					#DIV/0!															
3																					#DIV/0!															
4																					#DIV/0!															
5																					#DIV/0!															

Completed By: _____

Title: _____

Date: _____