

## **RESOLUTION NO. 24-131**

### **Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Execute The First Amendment To First Amended And Restated Ground Lease And Affordable Housing Agreement Between The City Of Emeryville And Emeryvilla Apartments L.P., And Other Related Documents For The Emeryvilla Senior Apartments Development At 4320 San Pablo Avenue**

**WHEREAS**, the Emeryville Redevelopment Agency ("Former Agency") acquired two (2) parcels of land commonly known as 4320 San Pablo Avenue (APN 049- 1079- 018) in 1988 and 4328 San Pablo Avenue (APN 049- 1079- 019- 02) in 1991; and

**WHEREAS**, on June 1, 1989, the Former Agency and BRIDGE Housing Corporation ("BRIDGE") entered a ground lease for the development of the 4320 San Pablo Avenue property with fifty (50) housing units affordable to low- and moderate-income seniors, and thereafter BRIDGE assigned their rights under the ground lease to Emeryville Senior Housing, Inc.; and

**WHEREAS**, after the Former Agency acquired the 4328 San Pablo Avenue parcel, the Former Agency and Emeryville Senior Housing Inc. entered a First Amended and Restated Ground Lease on August 28, 1991, that encompassed both parcels of land for redevelopment ("Original Lease"); and

**WHEREAS**, effective February 1, 2012, the Former Agency was dissolved in accordance with Assembly Bill 26 ( the " Dissolution Act") enacted by the State Legislature during the 2011 legislative session and thereafter, on January 17, 2012, the City Council adopted Resolution No. 12- 12, electing to have the City serve as Successor Agency to the Emeryville Redevelopment Agency ("Successor Agency") and Resolution No. 12- 15, electing to have the City retain the housing assets and functions previously performed by the Former Agency; and

**WHEREAS**, the Original Lease was a housing asset of the Former Agency, and on March 6, 2012, the Successor Agency adopted Resolution No. SA 03- 12, to provide for the transfer of the housing assets and functions, including the Original Lease, previously held by the Former Agency to the City; on April 10, 2012, the Emeryville Oversight Board adopted Resolution No. OB 01- 12, approving and ratifying the transfer of the affordable housing assets and functions, including the Original Lease, by the Successor Agency to the City; and finally on May 1, 2012, the City Council adopted Resolution No. 12- 75, accepting the transfer of the housing assets and functions, including the Original Lease, from the Successor Agency, and;

**WHEREAS**, BRIDGE seeks to refinance their existing loan and the new lender has reviewed the terms of the Original Lease and requested that the Original Lease be modified to provide the lender with certain desired protections as a condition of the refinancing; and

**WHEREAS**, the City has determined that an Affordable Housing Agreement had not previously been executed or recorded outlining the rent, income, marketing, reporting,

Resolution No. 24-131  
Emery Villa Senior Housing Ground Lease Amendment  
City Council Meeting | November 5, 2024  
Page 2 of 2

management, and maintenance requirements of the City as is the City’s typical practice;  
and

**WHEREAS**, the City and BRIDGE have negotiated the terms and conditions of a lease amendment and affordable housing agreement as necessary to the refinancing of BRIDGE’s existing loan, now, therefore be it


**RESOLVED**, that the City Council of the City of Emeryville hereby approves and authorizes the City Manager to execute the First Amendment to the First Amended and Restated Ground Lease, attached hereto as Exhibit “A”, in substantial form with such minor changes as may hereafter become necessary, provided such changes do not materially increase the obligations f the Agency thereunder; and be it further


**RESOLVED**, that the City Council of the City of Emeryville hereby authorizes the City Manager to execute all associated documents necessary to effectuate the refinancing transaction, including the Affordable Housing Agreement attached as Exhibit A to the First Amendment to the First Amended and Restated Ground Lease.

**ADOPTED**, by the City Council of the City of Emeryville at a special meeting held Tuesday, November 5, 2024, by the following vote:

AYES:	<u>5</u>	Mayor Welch, Vice Mayor Mourra and Council Members Bauters, Kaur and Priforce
NOES:	<u>0</u>	
ABSTAIN:	<u>0</u>	
ABSENT:	<u>0</u>	

Signed by:   
73C7D1936D4A437  
MAYOR

ATTEST:  
  
9AF9F67CE0284D8...  
CITY CLERK

APPROVED AS TO FORM:  
  
5F6E58613741458...  
SPECIAL COUNSEL

**FIRST AMENDMENT TO FIRST AMENDED AND RESTATED GROUND LEASE  
(Emeryvilla Apartments)**

**THIS FIRST AMENDMENT TO FIRST AMENDED AND RESTATED GROUND LEASE** (this “**Amendment**”) is made and entered into as of the [ ] day of [ ], 2024 (“**Effective Date**”) by and between the City of Emeryville, a municipal corporation, as successor in interest to the Redevelopment Agency of the City of Emeryville (the “**Lessor**”), and Emeryvilla Apartments LP, a California limited partnership (the “**Tenant**”). The Lessor and the Tenant are sometimes collectively referred to as the “**Parties**.”

**WITNESSETH:**

WHEREAS, Lessor and BRIDGE Housing Corporation, a California nonprofit public benefit corporation (the “**Sponsor**”) entered into that certain Ground Lease dated as of June 1, 1989, the same which was amended and restated by that certain First Amended and Restated Ground Lease by and between the Lessor 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**”), and constructive notice of the Lease was given 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**”). All capitalized terms used in this Amendment and not defined herein shall mean as defined in the Lease.

WHEREAS, Tenant and Previous Tenant have entered into that certain Option to Lease and Purchase Agreement entered into as of July 3, 2024 (the “**PSA**”) pursuant to which the Tenant intends to purchase the Improvements located on the Land and be assigned the Lease by the Previous Owner (the “**Acquisition**”);

WHEREAS, Tenant has received a loan from PGIM Real Estate Agency Financing, LLC, a Delaware limited liability company (“**Prudential**”) to finance the Acquisition in the amount of \_\_\_\_\_ (the “**Acquisition Loan**”);

WHEREAS, Prudential intends to transfer the Acquisition Loan to Fannie Mae (“**Fannie Mae**”);

WHEREAS, Fannie Mae as a condition to purchasing the Acquisition Loan from Prudential requires that the Lease be amended to reflect certain underwriting requirements (the “**Required Lease Provisions**”);

WHEREAS, Lessor has agreed to amend the Lease in order to incorporate the Required Lease Provisions and facilitate the Acquisition;

WHEREAS, Lessor and Tenant wish to amend the Initial Term of the Lease for an initial period of ninety-nine (99) years.

NOW, THEREFORE, for and in consideration of the foregoing premises, the covenants, representations, warranties and agreements set forth in the Lease, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. Fannie Mae Provisions.

- a. Conflict. In the event of any conflict between any provision contained elsewhere in the Lease and any provision contained in this Amendment, the provision contained in this Amendment shall govern and be controlling in all respects as set forth more fully herein.
- b. Non-Merger. No union of the interests of the Lessor and Lessee shall result in a merger of the Lease into any superior leasehold interest or the fee interest in the Property.
- c. Permitted Transfer for Foreclosure Events; Continuing Regulatory Restrictions. Notwithstanding anything to the contrary in the Lease, this Lease may be assigned or transferred, without the consent of the Lessor, to the purchaser at any foreclosure sale arising from or relating to a deed of trust or mortgage encumbrance on the leasehold estate approved by the Lessor (a "Permitted Encumbrance"), whether judicial or nonjudicial, or to the beneficiary or mortgagee under any Permitted Encumbrance, pursuant to foreclosure or similar proceedings, or pursuant to an assignment or other transfer of Lessee's leasehold interest in the Lease in lieu of foreclosure to the holder of a Permitted Encumbrance, or its nominee, and may thereafter be assigned by such holder of a Permitted Encumbrance or its nominee to a third party without the Lessor's consent; but any such purchaser, beneficiary, mortgagee or assignee shall be liable to perform the obligations herein imposed on Lessee for and during the period that such purchaser, beneficiary, mortgagee or assignee is in possession or ownership of the leasehold estate created hereby. In such event all provisions of this Lease regarding occupancy and rent contained in Section 2.4 of the Lease shall remain in full force and effect. Lessor's prior written consent to any encumbrance on the leasehold estate created by the Lease shall be required, which consent shall not be unreasonably withheld, conditioned or delayed. Lessor shall not withhold consent to any encumbrance that refinances a previously approved mortgage or deed of trust provided that the amount of the loan securing the deed of trust does not exceed the amount of the prior approved loan plus reasonable closing costs. Lessor hereby approves a deed of trust on the leasehold estate securing a loan in the original principal amount of \_\_\_\_\_ granted to Prudential and the assignment of such deed of trust to Fannie Mae.

- d. Notice to and Rights of Lender. When giving notice to Lessee pursuant to any provision of this Lease, with respect to any default hereunder or otherwise, the Lessor shall also serve a copy of each such notice upon each holder of a Permitted Encumbrance which shall have given Lessor a written notice specifying its communication information, if not set forth in this Lease. No notice to Lessee under this Lease shall be effective unless a copy of the same is delivered to each such holder of a Permitted Encumbrance and an Investor Partner entitled to or requesting such notice. Notwithstanding any apparent contrary provision of this Lease, the consent of the Lessor shall not be required with respect to a transfer of title to the leasehold interest in the Project, and the related transfer of the Lessee's rights under this Lease, to a foreclosing holder of a Permitted Encumbrance. If a holder of Permitted Encumbrance completes its foreclosure, such foreclosing Lender, may make one subsequent transfer of the Project and of this Lease and/or the beneficial ownership interests in Lessee (as applicable), to a third party without the Lessor's consent, if such transferee agrees in writing to assume and to perform all of the obligations under this Lease other than (i) breaches and defaults which existed prior to the transfer to such transferee and which are incurable nonmonetary breaches or defaults or (ii) are breaches or defaults that can only be cured by a previous tenant no longer in possession of the Property or (iii) monetary claims by the Lessor against the Lessee for indemnification under this Lease for claims that arose prior to the transfer. Such right to a single transfer shall apply to each foreclosure transfer in which the foreclosure transferor is the holder of a Permitted Encumbrance or an encumbrance permitted by Lessor, so there may be more than one single subsequent transfer pursuant to these provisions.
  
- e. Foreclosure by Lender; Cure of Lessee Defaults. In the event Lessee shall default in the performance of any of the terms, conditions, covenants and agreements of this Lease on Lessee's part to be performed, each holder of a Permitted Encumbrance shall have the right, but not the obligation, to cure or make good such monetary and/or nonmonetary default or cause the same to be cured or made good whether the same consists of the failure to pay rent or other amounts which may become owing hereunder or the failure to perform any other matter or thing, and Lessor shall accept such performance on the part of any such Lender as though the same had been done or performed by Lessee. In the case of a default by Lessee in the payment of money, after the expiration of all applicable grace and cure periods, Lessor will take no action to exercise any other remedy by reason thereof unless such default is not cured within 30 days after each Lender, who has given Lessor its communication information receives written notice from Lessor that such default was not timely cured, it being the intent hereof and the understanding of the Parties that each such Lender entitled to such notice shall be allowed up to but not in excess of 30 days after the service of such notice to cure any such default of or breach by Lessee in the payment of rent or in the making of

any other monetary payment required under the terms of this Lease. In the case of any non-monetary default by Lessee, Lessor will take no action to exercise any remedy by reason thereof if, within 90 days after the expiration of all applicable grace and cure periods available to Lessee for curing said default and Lessor's delivery of written notice thereof to each holder of a Permitted Encumbrance who has given Lessor its communication information, such Party commences a non-monetary cure and thereafter diligently prosecutes the same to completion within a reasonable period of time. The commencement of judicial or non-judicial foreclosure proceedings by the Lender shall be deemed the commencement of such a non-monetary cure provided that: (i) the Lender thereafter diligently prosecutes the same (provided, however, that if the Lender is prevented or restrained by a court of competent jurisdiction or by reason of any law, regulation, order, stay or rule from so proceeding, the time period set forth above, and the time within when such Lender shall be required to cure such default, shall be tolled, and provided further that if the default is cured, the Lender may discontinue such proceedings and/or possession); and (ii) upon acquisition by either the Lender or any other direct purchaser or direct transferee of Lessee's interest under this Lease, whether at a judicial foreclosure, trustee's sale or by deed or assignment in lieu of foreclosure, such Lender, purchaser or transferee commences, within 90 days after acquiring such interest, and thereafter diligently prosecutes to completion the cure of all defaults hereunder reasonably capable of being cured by such Lender or transferee. Notwithstanding the generality of the foregoing, no Lender, purchaser or transferee shall be obligated to cure or remedy any breach or default of Lessee which existed prior to completion of such a foreclosure, and are (x) incurable non-monetary breaches or defaults, (y) are non-monetary breaches or defaults that can only be cured by a previous tenant no longer in possession of the Premises, or (z) are monetary claims by the Lessor against the Lessee for indemnification under this Lease for claims that arose prior to the Lender, purchaser or transferee taking title to the Project (such events shall be collectively "**Excluded Breaches or Defaults**"). The time available to any Lender to initiate foreclosure proceedings as aforesaid shall be deemed extended by the reasonable number of days of delay occasioned by circumstances beyond the Lender's reasonable control. During the period that such Lender shall be in possession of the Project during the pendency of any foreclosure proceedings instituted by any Lender, Lender shall pay or cause to be paid any rent or other charges of whatever nature payable by Lessee hereunder which accrue during such period. Any such transferee, including, without limitation, any foreclosing Lender, shall be liable to perform the obligations imposed on Lessee by this Lease incurred or accrued only during the period such person or entity has ownership of said leasehold estate of Lessee. Notwithstanding anything set forth above, the Lessor shall be entitled to enforce the provisions of Section 2.4 of the Lease and the Affordable Housing Agreement after providing notice and cure rights as set forth in the Lease and the Affordable Housing Agreement.

- f. Obligation to Enter into New Lease. In the event that this Lease is terminated by reason of bankruptcy, assignment for the benefit of creditors, insolvency or any similar proceedings, by operation of law or for any other reason, Lessor shall, upon the written request of the senior-most Lender holding a Permitted Encumbrance, enter into a new lease (which shall be effective as of the date of termination of this Lease) with the Lender that (i) is designated in the written request of the senior-most Lender that has a collateral interest in this Lease, and (ii) provides written notice of its desire to enter into a new lease, providing that such designated encumbrance holder makes its request for a new lease within 60 days after the date it receives written notice of termination of this Lease and either promptly cures all then-existing monetary breaches and defaults other than those Excluded Breaches or Defaults or agrees to cure all then-existing non-monetary breaches and defaults other than those Excluded Breaches or Defaults within the time periods permitted for the same under this Lease and thereafter diligently pursues such cure until completion and agrees to diligently cure any default pursuant to Section 2.4 of the Lease. Such a new lease (“**New Lease**”) shall be on all the same terms and conditions as are then contained in this Lease but shall be for the then-remaining Term of this Lease. The Lessor shall give written notice of any lease termination event to all Lenders which have provided their notice addresses to and have requested such notice from the Lessor, in writing, holding an encumbrance on either Lessee’s entire leasehold estate under this Lease or all of the beneficial ownership interests in Lessee within 30 days after the occurrence of such event which notice shall state (x) that this Lease has terminated in accordance with this Section, and (y) that such Lenders or holders of other encumbrances have 60 days following receipt of such notice in which to exercise their rights to a New Lease under this Section or else they will lose such right. Should more than one Lender make such a demand, only the demand of the senior-most in lien priority Lender will be honored. Such New Lease shall be executed and delivered by the Lessor and by the entity requesting the New Lease within a reasonable period after the request therefore, not to exceed 120 days. After such termination and cancellation of this Lease and prior to the expiration of the period within which any Lender may elect to request such New Lease from Lessor, except in the ordinary course of business for a residential tenant, the Lessor shall refrain from terminating any existing sublease and from executing any new subleases except subleases that are compliant with Section 2.4 of the Lease and the Affordable Housing Agreement or otherwise encumbering the Premises without the prior written consent of each Lender and Lessor shall account to each Lender for all rent collected from subtenants during such period. Any New Lease shall enjoy the same priority in time and in right as this Lease over any lien, encumbrance or other interest created by Lessor before or after the date of such New Lease and shall have the benefit of and vest in such Lender all right, title, interest, power and privileges of Lessor hereunder in and to the

Project, including specifically, without limitation, the assignment of Lessee's interest in and to all then existing subleases and sublease rentals and, the automatic vesting of title to all buildings, Improvements, and appurtenances, as well as to all equipment, fixtures and machinery therein until the expiration or termination of the Term of this Lease. The holder of such New lease shall have the rights provided to a foreclosure transferee, including any subsequent transfer, subject to the City's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed. If there are multiple Lenders, then, upon execution of the New Lease, the lien priority of each of them, shall be maintained in accordance with all terms and conditions of such encumbrances.

- g. Consent of Lender. Without the prior consent of each Lender entitled to notice pursuant to this Section, neither this Lease nor the leasehold estate created by this Lease shall be surrendered, canceled, terminated or amended and no agreement purporting to surrender, cancel, terminate, or amend this Lease without the consent of each Lender entitled to receive notice of default under applicable provisions of this Lease shall be valid or effective, except Lessor may terminate this Lease in accordance with the terms hereof after providing notice of default to Lessee and Lenders entitled to notice as set forth in this Section and expiration of any applicable cure periods if such default is not cured. In order to facilitate any financing or refinancing by Lessee which involves the hypothecation of Lessee's leasehold estate and rights hereunder, Lessor, if requested so to do by Lessee, agrees to join in executing any and all instruments which legal counsel for any lender which is or may become a Lender, may reasonably require in order to grant to the Lender, or prospective Lender, the right to act for Lessee in enforcing or exercising any of Lessee's rights, options, or remedies under this Lease.
- h. Non-Encumbrance; Subordination. Lessor shall not encumber Lessor's fee interest in the Property by a deed of trust and/or mortgage ("**Lessor Encumbrance**") without the prior written consent of the Lenders and Lessee, and provided such Lessor Encumbrance must be subordinated to the Permitted Encumbrance of any Lender that requires such subordination.
- i. Estoppel Certificate. Each of the parties shall at any time and from time to time upon not less than 30 days prior written notice from the other, execute, acknowledge and deliver to such other Party a statement in writing certifying that this Lease is unmodified and is in full force and effect (or if there shall have been modifications that this Lease is in full force and effect as modified and stating the modifications), and the dates to which the rent has been paid, and stating whether or not to the best knowledge of the signer of such certificate such other Party is in default in performing or observing any provision of this Lease, and, if in default, specifying each such default of which the signer may have knowledge, and such other matters as such other Party may reasonably request, it being intended that



any such statement delivered by the Lessee may be relied upon by the Lessor or any successor in interest to the Lessor, and it being further intended that any such statement delivered by the Lessor may be relied upon by any prospective assignee of the Lessee's interest in this Lease or any prospective Lender or encumbrancer thereof. Reliance on any such certificate may not extend to any default as to which the signer of the certificate shall have had no actual knowledge.

- j. Damage, Destruction or Condemnation. Notwithstanding any other provision of the Lease to the contrary, in the event of destruction of any of the Improvements constituting the Project, or any partial or total condemnation of the Project, neither Lessee nor Lessor shall terminate the Lease, and any proceeds of insurance or any condemnation award shall be applied in accordance with the Lender's loan documents, provided, that Lessor will be entitled to any casualty or condemnation proceeds equal to the remainder interest in the Project considered as unimproved.
- k. Lender Non-Responsibility for Performance. Notwithstanding any other provision of the Lease to the contrary, a Lender shall not have any responsibility, liability or obligation to perform any obligation of Lessee under the Lease on behalf of Lessee unless and until Lender has acquired Lessee's leasehold interest thereunder by or through the exercise of Lender's rights under its Permitted Encumbrance. Should it acquire Lessee's leasehold interest, Lender shall be liable to perform the obligations imposed on Lessee by the Lease incurred or accrued only during the period that Lender has ownership of such leasehold interest. The provisions of the Lease enforceable against the Lessee shall likewise be enforceable against Lender only when, and then only for so long as, Lender owns or has title to Lessee's leasehold interest, and then only in compliance with the applicable terms of the Lease and the Affordable Housing Agreement. Lender shall not be liable for the performance of any Lease obligations accruing prior to its ownership of Lessee's leasehold interest or for any such obligations accruing at any point following Lender's assignment, sale or transfer of Lender's leasehold interest thereunder to any third person or entity. In any event, Lender's personal liability shall be limited to its interest in the leasehold interest.
- l. Notice of Proceedings and Right to Participate. If either Lessor or Lessee shall initiate any proceedings affecting the Lease, Lessor and Lessee agree to notify Lender of such proceedings, and Lessor acknowledges and agrees that Lender shall have the right to participate in such proceedings on Lessee's behalf, and to the exclusion of Lessee.

2. Section 2.2 of the Lease is deleted in its entirety and replaced with the following:

**“2.2 Term.** The term of this Lease shall commence on the date of this Lease as set forth above and shall continue from such date until the expiration of ninety-nine (99) years.”

3. Section 2.4 of the Lease is deleted in its entirety and replaced with the following:  
**2.4 Use of Project and Assurances of the Lessee.** The Lessee shall operate the Project in compliance with the Affordable Housing Agreement, a copy of which is attached hereto as Exhibit A and incorporated herein, including making forty-nine of the Dwelling Units in the Project available to Tenants whose incomes do not exceed Low Income at rents that do not exceed the Affordable Rents as set forth in the Affordable Housing Agreement.
4. Except as amended herein, the Lease and Memorandum shall otherwise remain in full force and effect. The parties hereby agree that this Amendment shall not constitute a novation of the Lease.
5. This Amendment may be executed in one or more counterparts and as so executed shall constitute a single instrument.


[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their lawfully authorized officers.

Dated: \_\_\_\_\_

**LESSOR:**  
CITY OF EMERYVILLE,  
a municipal corporation  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

*[notary acknowledgment required]*

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
City Attorney

Dated: 10/16/2024 \_\_\_\_\_

*[Signature Pages continue on Next Page]*

**TENANT:**

**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

By: Natalia Williams  
Name: Natalia Williams  
Title: Vice President

***[notary acknowledgment required]***

***[End of Signature Pages]***

**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 )  
 )

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*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(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 (3<sup>rd</sup>) 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, 16<sup>th</sup> 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'Abravanel

**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, 16<sup>th</sup> 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  
Dated: \_\_\_\_\_

"CITY"

CITY OF EMERYVILLE, a municipal corporation

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
***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.			

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 \$_____ X		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**

<b>PART V. DETERMINATION OF INCOME ELIGIBILITY</b>	
TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES: From item (L) on page I	<div style="border: 2px solid black; width: 150px; height: 50px; margin: 0 auto;"></div>
Current Income Limit per Family Size:	\$ _____
Household Income at Move-in:	\$ _____ Household Size at Move-in: _____
Method of Income Verification	

<b>PART VI. RENT</b>	
Tenant Paid Rent	\$ _____ Rent Assistance: \$ _____
Utility Allowance	\$ _____ Other non-optional charges: \$ _____
Utility Paid by Tenant (Check all that apply)	<div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Heating Electric  <input type="checkbox"/> Cooking Electric  <input type="checkbox"/> Hot Water Electric  <input type="checkbox"/> Water  <input type="checkbox"/> Trash </div> <div> <input type="checkbox"/> Heating Gas  <input type="checkbox"/> Cooking Gas  <input type="checkbox"/> Hot Water Gas  <input type="checkbox"/> Sewer  <input type="checkbox"/> Electrical Other </div> </div>
GROSS RENT FOR UNIT: (Tenant paid rent plus Utility Allowance & Other non-optional charges)	<div style="border: 2px solid black; width: 150px; height: 50px; margin: 0 auto;"></div>
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:	\$ _____

<b>SIGNATURE OF OWNER/REPRESENTATIVE</b>
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: \_\_\_\_\_

