

RESOLUTION NO. 17-138

Resolution Of The City Council Of The City Of Emeryville Approving The Agreement On Affordable Units With ASN Emeryville LLC, And Authorizing The City Manager To Enter Into Said Agreement On Behalf Of The City Of Emeryville, For The Incorporation Of One Below Market Rate Unit For Very Low Income Households Within The Artistry Rental Project At 6401 Shellmound Street

WHEREAS, ASN Emeryville LLC (the “Developer”) is adding six residential units to an existing 261-unit rental residential building at 6401 Shellmound Street (the “Project” or “Artistry Apartments Addition”) and said project is required to comply with the provisions of the Regulatory Agreement and Declaration of Restrictive Covenants (the “Regulatory Agreement”) entered into as of October 1, 1998; and

WHEREAS, Section 4.A.i of the Regulatory Agreement requires that twenty percent of all project units be set-aside for, and affordable to, very low income households; and

WHEREAS, the Project is also required to comply with the provisions of the City of Emeryville’s Affordable Housing Program, as set forth in Article 4 of Chapter 5 of Title 9 of the Emeryville Municipal Code; and

WHEREAS, the existing development was originally approved in 1991 when a conditional use permit (UP91-13) and design review approval (DR91-13) were granted by the Planning Commission, and a General Plan Amendment (Resolution No. 91-131) and Rezoning (Ordinance No. 91-11) were approved by the City Council; and

WHEREAS, the Artistry Apartments Addition project was approved by Resolution No. UPDR17-002, adopted by the Planning Commission of the City of Emeryville on February 23, 2017; and

WHEREAS, the Developer has agreed to provide one unit at a rent affordable to very low income households, for a total of twenty percent affordable units of the total units in Artistry Apartments; and

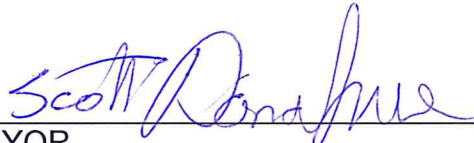
WHEREAS, in consideration of the provision of an affordable unit in the Artistry Apartments Addition project, an Agreement on Affordable Units, set forth in Exhibit A attached to this Resolution, has been proposed for the Council’s approval through which the requirements of the Affordable Housing Program are set forth; now, therefore, be it

RESOLVED, that the City Council of the City of Emeryville hereby approves and authorizes execution of the Agreement on Affordable Units and accompanying exhibits by the City Manager in the form attached hereto as Exhibit A, and lodged with the City

Clerk, together with such minor changes as may hereafter become necessary, provided they do not materially increase the obligations of the City.


ADOPTED by the City Council of the City of Emeryville at a regular meeting held Tuesday, September 5, 2017 by the following votes:

AYES:	<u>5</u>	Mayor Donahue, Vice Mayor Bauters and Council Members Martinez, Medina and Patz
NOES:	<u>0</u>	
ABSTAIN:	<u>0</u>	
ABSENT:	<u>0</u>	


MAYOR

ATTEST:

APPROVED AS TO FORM:


CITY CLERK


CITY ATTORNEY

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 _____, 2017, is entered into by and between EQR-Emeryville LP, a Delaware limited partnership ("**Owner**"), and the CITY OF EMERYVILLE, a municipal corporation ("**City**"), and is made with reference to the following facts:

RECITALS

A. Owner owns that certain real property described on Exhibit A attached hereto (the "**Property**") which currently consists of 261 residential units ("**Existing Project**"). Owner has applied to the City for permits to convert existing unutilized ground floor space into six additional one-bedroom residential units ("**New Units**").

B. The construction of the New Units, as approved by Resolution No. UPDR17-002, adopted by the Planning Commission of the City of Emeryville on February 23, 2017, will modify an existing development which was originally approved by the Planning Commission and City Council in 1991.

C. The Property is subject to an Amended and Restated Regulatory Agreement and Declaration of Restrictive Covenants, entered into as of October 1, 1998 and amended pursuant to that certain First Amendment to Amended and Restated Regulatory Agreement and Declaration of Restrictive Covenants dated April 16, 2007 (collectively the "Regulatory Agreement") that requires that twenty percent (20%) or 53 of the residential units to be rented to and affordable to Very Low Income Households (Section 4.A.i). In order for the Property to continue to comply with the Regulatory Agreement, one of the six New Units will therefore need to be rented to and affordable to a Very Low Income Household, as specified by the Condition of Approval Number II.B.3 resulting in a total of 54 units rented to and affordable to Very Low Income Households.

D. The New Units are also subject to the requirements of the City of Emeryville's Affordable Housing Program, as set forth in Article 4 of Chapter 5 of Title 9 of the Emeryville Municipal Code.

E. The purpose of this Agreement is to acknowledge the agreement between Owner and City for the inclusion of an additional affordable rental unit in the Property and the rental restrictions affecting the additional affordable rental unit.

F. Owner and City agree that the Property shall be subject to the conditions and restrictions, and the rights of City, set forth in this Agreement.

AGREEMENT

1. USE OF THE PROPERTY. 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 Property in compliance with all of the following:

A. Rent and Income Restrictions.

(1) In addition to the requirements set forth in the Regulatory Agreement, One (1) of the New Units shall be rented to and occupied by very low income households, as defined in California Health and Safety Code section 50105 ("**Very Low Income Households**"), at an Affordable Rent (defined below) ("**Very Low Income Unit**"). The Very Low Income Unit shall consist of a (1) one-bedroom unit.

(2) The Very Low Income Unit shall only be rented to a Very Low Income Household, qualified in accordance with the terms of this Agreement and Applicable Laws ("**Eligible Households**"). The Very Low Income Unit shall be rented at rental rates no greater than that considered as affordable rent for Very Low Income Households, adjusted for family size appropriate to the Very Low Income Unit, pursuant to California Health and Safety Code section 50053, as amended, or any successor statute thereto, which rental rate shall include a reasonable allowance for utilities (i.e. gas, electricity, water, sewer and garbage) ("**Affordable Rent**"). "**Area Median Income**," as referenced in California Health and Safety Code section 50053, means the median household income (adjusted for family size appropriate to the unit) of the Metropolitan Statistical Area in which Alameda County is located, as established pursuant to California Health and Safety Code section 50093. "**Adjusted for family size appropriate to the unit**" shall have the meaning set forth in California Health and Safety Code section 50052.5. To the extent that the provisions of this Agreement differ from the provisions of the Regulatory Agreement, the most stringent income and rent requirements shall control. "**Applicable Laws**" means all applicable laws, ordinances, statutes, codes, orders, decrees, rules, regulations, official policies, standards and specifications (including any ordinance, resolution, rule, regulation, standard, official policy, condition, or other measure) of the United States, the State of California, the County of Alameda, City of Emeryville, or any other political subdivision in which the Project is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over City, Owner, or the Project.

(3) Not more than once per year, Owner may adjust rents in occupied Very Low Income Unit to the level allowed for the family size appropriate to the unit in accordance with Health and Safety Code section 50052.5 (h), as amended or any successor statute thereto. Owner may adjust the rent upon vacancy of a the Very Low Income Unit to the level allowed for the family size appropriate to the unit. City shall annually publish a list of all rent ceilings reflecting the annual adjustments in the income limits for Eligible Households provided by the U.S. Department of Housing and Urban Development and State of California Housing and Community Development Department. Owner must notify each tenant and City in writing of any increase in monthly rent for the Very Low Income Unit at least sixty (60) days in advance of the effective rent adjustment date. The written notice of rent increase provided to City shall indicate: (1) the rent adjustment for the Very Low Income Unit; (2) the new rental amount for the Very Low Income Unit; and (3) the effective date of the adjustment for the Very Low Income Unit. Failure to provide the notice required shall be considered a default by Owner under this Agreement.

(4) The determination of a status as an Eligible Household shall be made by Owner prior to initial occupancy of the Very Low Income Unit by such household and shall be subject to review and approval by City. City shall advise Owner of City's approval or disapproval of a determination of status as an Eligible Household within 30 days after Owner gives City written notice of Owner's determination. The income of all persons residing in the Very Low Income 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 who are otherwise qualified. Owner shall notify City in writing whenever the tenant in the Very Low Income Unit changes. The notice shall indicate the name and household size of the tenant vacating the Very Low Income Unit. Once the Very Low Income Unit is reoccupied, Owner shall notify City in writing of the new tenant's name and household size and income occupying the Affordable Project Unit.

(5) Owner shall not enter into a lease for the Very Low Income Unit having a term longer than one year. Immediately prior to the first anniversary date of the occupancy of the Very Low Income Unit by a Very Low Income Household, and on each anniversary date thereafter, Owner shall re-certify the income of the occupants of the Very Low Income Unit by obtaining a completed Tenant Income Certification based upon the current income of each occupant of the Very Low Income Unit. The Tenant Income Certification shall be in the form attached hereto as Exhibit B or the form attached to the Regulatory Agreement.

In the event the recertification of the Very Low Income Tenant's income demonstrates that such household's income exceeds 140% of the income at which such household would qualify as Very Low Income, such household will no longer qualify as a Very Low Income Household and the Owner will rent the next available unit of comparable size to a Very Low Income Household at an Affordable Rent until at least twenty percent (20%) of the units located on the Property are again occupied by Very Low Income Households. No tenant occupying the Property shall be denied continued occupancy in the Project because, after occupancy such tenant's household income increases such

that the income for such household will no longer qualify such household as a Very low Income Household.

Owner shall send written notice to City with the address and bedroom/bathroom mix of the Very Low Income Unit designated by Owner as the replacement Very Low Income Unit as appropriate.

(6) In lieu of designating another comparable unit as the replacement Very Low Income Unit to meet the requirement of Subsections 1.A(2) and 1.A(5) above, Owner may designate an occupied unit as a Very Low Income Unit if the unit is then occupied by a tenant meeting the income requirements for Very Low Income Households set forth in Subsection 1.A(2) above. In the event Owner makes such a substitution, Owner shall send written notice to City with the address and bedroom/bathroom mix of the substituted Very Low Income Unit, along with the name of the occupant and size and income of the household occupying the unit.

B. Designation of Affordable Units. The initial designation and location of the Very Low Income Unit is set forth in the Site Plan attached hereto as Exhibit C. The appearance, materials, finished quality and amenities of the Very Low Income Unit shall be comparable to the market rate New Units. Attached hereto as Exhibit D is a list of the amenities and finishes that will be featured in each of the New Units, including the Very low Income Unit.

C. Marketing and Leasing Program.

(1) Owner shall actively market the Very Low Income Unit. No less than one hundred twenty (120) calendar days prior to lease-up of the New Units, Owner shall provide City with a copy of its marketing program for the New Units, which shall include a marketing program for the Very Low Income Unit ("**Affordable Units Marketing Program**") that is in conformance with the City's Affordable Units Marketing Program Procedures. City shall review the Affordable Units Marketing Program and either approve or request modifications to the Affordable Units Marketing Program within thirty (30) days after receipt. To the extent that Owner maintains a wait list for the Very low Income Units in the Existing Project, Owner may use the existing wait list to select a tenant for the new Very Low Income Unit. Owner shall provide monthly updates to the Affordable Units Marketing Program commencing thirty (30) days after the date the Affordable Units Marketing Program is initially approved by City.

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

D. Reporting Requirements. Owner shall submit to City annual reports and income certifications or re-certifications, including a Certificate of Continuing Program Compliance in the form attached hereto as Exhibit E, in a format and

containing the information reasonably required by City, and at a minimum, shall include the following:

1. The number of persons per unit and their age(s);
2. Tenant's name and unit occupied;
3. Initial occupancy date;
4. Rent payable per month;
5. Gross income per year;
6. Percent of rent paid in relation to income;
7. Sources of income;
8. Method of verification of income;
9. Address prior to moving into the Project;
10. Address of affordable unit and unit type;
11. Status of program, including any problems experienced during the reporting period.

The first report, including Certificate of Continuing Program Compliance, shall be due on January 31 of the year following issuance of the initial Certificate of Occupancy for the New Units. Upon request by City, the annual income certifications shall be accompanied by the copies of the documents used to certify eligibility. Subsequent annual reports, including the Certificate of Continuing Program Compliance and annual income certification shall be submitted to City on or before January 31 of each year. In the event City requests additional or different information, Owner shall promptly supply such information to City in the format requested by City. Owner shall maintain all necessary books and records, including property and financial records, in accordance with requirements prescribed by City with respect to all matters covered by this Agreement. Upon request for examination by City, Owner, at any time during normal business hours, shall make available at the Property or at another location in Emeryville all of its records with respect to all matters covered by the Agreement. Owner shall permit City to audit, examine and make excerpts or transcripts from such records. Notwithstanding the above, submission by Owner of the Certificate of Continuing Program Compliance required by the Regulatory Agreement at the time required by the Regulatory Agreement that includes the required information for the new Very Low Income Unit shall satisfy the requirements of this Section 1(D).

E. City Approval of Lease Forms. City shall have the right to review and approve Owner's form of lease for the Very Low Income Unit, including disclosures of the affordability restrictions on the Very Low Income Unit, prior to Owner's use of such form.

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

G. No less than one (1) person per bedroom shall be allowed. No more than two (2) persons shall be permitted to occupy a studio Very Low Income Unit, no more than two (2) persons shall be permitted to occupy a one (1) bedroom Very low

Income Unit, no fewer than three (3) and no more than four (4) persons shall be permitted to occupy a two (2) bedroom Very Low Income Unit, and no fewer than five (5) and no more than six (6) persons shall be permitted to occupy a three (3) bedroom Very low Income Unit. City may make exceptions to the foregoing occupancy standards to the extent such exceptions are required by Applicable Laws, and do not increase City's obligations or liabilities under this Agreement, or diminish or impair City's rights and remedies under this Agreement.

2. MAINTENANCE AND MANAGEMENT.

A. Maintenance of Project. Owner shall maintain the Project and the Property (such maintenance to include buildings, sidewalks, pedestrian lighting, landscaping, irrigation of landscaping, architectural elements identifying the Project and the Property and any and all other improvements on the Property and in the public right-of-way to the nearest curbline(s) abutting the Property) 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 the Agreement. The maintenance covenants and obligations set forth in this Section 2 shall remain in effect for the period of time specified in Section 4, 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 matter which is 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 Project and the Property 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 Property shall be maintained as required by Subsection 2.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 the Project and the Property and all other private and public improvements (if any) on the Property to the curblin(e)s on and abutting the Property 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 30 days within which to correct, remedy or cure the deficiency. If the written notification states that the problem is urgent and relates to the public health and safety, then Owner shall have 24 hours to rectify the problem. 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 charges and costs incurred by City for such maintenance. Until so paid, City shall have a lien on the Property for the amount of such charges or costs, which lien shall be perfected by the recordation of a **"Notice of Claim of Lien"** against the Property. Any lien in favor of City created or claimed under this Subsection 2.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 his 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 7, below.

B. Management of Property. Owner shall enter into a separate property management agreement ("**Management Agreement**") with a property management company or other organization ("**Property Manager**") acceptable to City in order to operate the Property (including leasing, property management, and maintenance and repair services) and ensure that Owner's obligations under this Agreement with respect to the Property are satisfied. Property Manager shall have at

least five (5) years' experience in the ownership, operation and management of similar size rental housing projects, and at least two (2) years' experience in the ownership, 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. Owner shall provide documentation to the City as is reasonably necessary to evaluate the proposed Property Manager's experience and qualifications. No Property Manager shall be hired, or Management Agreement signed, without City's prior approval thereof, which shall not be unreasonably withheld. For the term of this Agreement, any change in Property Manager or amendment to the Management Agreement shall comply with the requirements of this Section and shall require the prior written approval of City, which shall not be unreasonably withheld or delayed. Notwithstanding the foregoing provisions of this Subsection 2.B, Owner may hire Archstone Property Management (California) Inc. or an affiliated property manager and enter into a Management Agreement with one of them without the City's prior written approval, or API Emeryville Parkside LLC may, as Owner, manage the Property on its own behalf without hiring a property manager.

3. 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 Property shall be bound by such covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

4. DURATION. The covenants and restrictions in this Agreement shall remain in effect until the date which is fifty-five (55) years following the date of recording of this Agreement or the issuance of a certificate of occupancy for the New Units, whichever occurs later.

5. PRIORITY OF DOCUMENTS; SUBORDINATION AGREEMENT. Owner's covenants with respect to the use, maintenance, and operation of the Property 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. This Agreement shall have priority over the liens of all mortgages, deeds of trust and other liens (other than the lien for current, unpaid property taxes) and Owner shall cause all such mortgagees, deed of trust beneficiaries and other lien holders to execute and deliver to City for recordation in the Official Records of Alameda County, a subordination agreement, in a form reasonably acceptable to City, subordinating such mortgages, deeds of trust and other liens to this Agreement thereby ensuring the priority of this Agreement over all such mortgages, deeds of trust and other liens.

6. SUCCESSORS AND ASSIGNS. The covenants contained herein shall inure to the benefit of City and shall be binding upon Owner and any successor in interest to the Property. The covenants shall run in favor of City 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 shall have the right to exercise all of the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach. The covenants contained herein shall be for the benefit of and shall be enforceable only by City.

7. DEFAULT. Any failure by Owner to perform any term or provision of this Agreement shall constitute a "Default" hereunder (1) if Owner does not cure such failure within thirty (30) days following written notice of default from City, or (2) if such failure is not of a nature which can be cured within such thirty (30) day period, Owner does not commence substantial efforts to cure the failure within thirty (30) days and thereafter prosecute to completion with diligence and continuity the curing of such failure. Any notice of default given under this Agreement shall identify the nature of the failure in performance which City claims constitutes the Default and the manner in which such Default may be satisfactorily cured. Any failure or delay by City in asserting any of its rights or remedies, including specific performance, as to any Default shall not operate as a waiver of any Default or of any such rights or remedies or deprive City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

8. REMEDIES. If a Default occurs under this Agreement, City may exercise any right or remedy which it has under this Agreement, or which is otherwise available at law or in equity or by statute, and all of its rights and remedies shall be cumulative.

9. 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 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.

10. EXPENSES. At City's request, which may be made at any time during the term of this Agreement, Owner shall deposit with City Five Thousand Dollars (\$5,000.00) for payment of City's costs and expenses incurred in connection with the monitoring and/or enforcement by City of any of Owner's obligations under this Agreement. 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.

11. 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 deliver as provided hereinabove; (b) on the third (3rd) day from the date it is postmarked if delivered by first-class mail, postage prepaid, return receipt requested; and (c) on the next business day if sent via nationally recognized overnight courier and marked for next day business delivery. Notices sent by a party's attorney on behalf of such party shall be deemed delivered by such party.

To City: City of 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
Telephone: (510) 596-4380

To Owner EQR-Emeryville LP, a Delaware limited
partnership
c/o Equity Residential
333 3rd Street, Suite 210
San Francisco CA 94107
Attn: Vice President - Investments

With a copy to: EQR-Emeryville LP, a Delaware limited
partnership
c/o Equity Residential
Two North Riverside Plaza, Suite 400
Chicago, IL 60606
Attn: General Counsel

12. ATTORNEYS' FEES. In any action or proceeding which either party brings against the other to enforce its rights hereunder, the unsuccessful party shall pay

all costs incurred by the prevailing party, including reasonable attorneys' fees, which amounts shall be a part of the judgment in any action or proceeding.

13. 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. 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 condition 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.

[Signatures on following pages]

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

"OWNER"

EQR-EMERYVILLE LP,
a Delaware limited partnership

By: EQR-Emeryville GP LLC,
a Delaware limited liability company,
its general partner

By: Grove Operating, L.P.,
a Delaware limited partnership,
its member

By: EQR-New LLC3,
a Maryland limited liability company,
its general partner

By: EQR-Holding, LLC2,
a Delaware limited liability company,
its member

By: ERP Operating Limited Partnership,
an Illinois limited partnership,
its member

By: Equity Residential,
a Maryland real estate investment trust,
its general partner

Dated: 8/7/2017

By: 

[Signature must be notarized]

Name: Nazar Elwazir

Its: Vice President - Investments

"CITY"

CITY OF EMERYVILLE, a municipal corporation

Dated: _____

By: _____

Carolyn Lehr, City Manager
[Signature must be notarized]

Approved As To Form



City Attorney's Office

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California)

County of SAN FRANCISCO)

On 8/7/2017 before me, Sherri C. Harrington, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared NAZAR ELWAZIR
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Signature Sherri C. Harrington
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: AFFORDABLE HOUSING AGREEMENT - City of Emeryville

Document Date: 8/7/2017 Number of Pages: 23

Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: ELWAZIR, NAZAR

☒ Corporate Officer — Title(s): VP - INVESTMENTS

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: Himself

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

EXHIBIT A

Legal Description

TRACT A:

PARCEL 1-A:

FEE SIMPLE TITLE TO COMMERCIAL UNIT LOT 4, AS SUCH LOT IS SHOWN ON THAT CERTAIN "CONDOMINIUM PLAN FOR EMERY BAY CLUB & CONDOMINIUMS" ("CONDOMINIUM PLAN") RECORDED NOVEMBER 02, 2005, INSTRUMENT NO. 2005473299, OFFICIAL RECORDS, BEING (I) LOT 4 AS SHOWN ON THE MAP OF TRACT 5781, FILED SEPTEMBER 18, 1987 IN MAP BOOK 171, PAGES 65 THROUGH 79, ALAMEDA COUNTY RECORDS (THE "MAP"), AND (IF) THAT PORTION OF BAY STREET SHOWN AS "BAY STREET DEDICATION" ON THE MAP LYING AT OR ABOVE THE VERTICAL PLANE OF LOT 4, AND AS FURTHER DEFINED IN THAT CERTAIN "SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS (EMERYBAY)" ("DECLARATION"), EXECUTED BY BAY CENTER APARTMENTS OWNER LLC, A DELAWARE LIMITED LIABILITY COMPANY, ET AL., RECORDED NOVEMBER 02, 2005, INSTRUMENT NO. 2005473300, OFFICIAL RECORDS.

PARCEL 1-B:

AN UNDIVIDED 116TH INTEREST IN COMMON IN AND TO THE COMMON PROPERTY, AS DEFINED IN THE DECLARATION AND THE CONDOMINIUM PLAN, BEING PORTIONS OF LOT 1 AND THAT PORTION OF BAY STREET SHOWN AS "BAY STREET DEDICATION" ON THE MAP.

PARCEL 2:

FEE SIMPLE TITLE TO PARCEL A, PARCEL MAP 6722, FILED AUGUST 17, 1995 IN MAP BOOK 218 AT PAGES 88 AND 89, ALAMEDA COUNTY RECORDS.

TRACT B:

THE FOLLOWING EASEMENTS, DESCRIBED AS PARCELS 3, 4, 5 AND 6, BELOW, AS

APPURTENANCES TO TRACT A ABOVE:

PURSUANT TO SECTION 2.2(C)(3) OF THE DECLARATION AND AS THE CAPITALIZED TERMS

HEREIN ARE DEFINED IN THE DECLARATION, (I) AN EXCLUSIVE EASEMENT FOR PARKING OUTSIDE NORMAL BUSINESS HOURS IN THE JOINT PARKING AREA, (II) AN EXCLUSIVE

EASEMENT FOR PARKING DURING NORMAL BUSINESS HOURS IN SEVEN (7) PARKING SPACES

LYING IN WHOLE OR IN PART (THE BALANCE OF ANY PARTIAL SPACES LYING WITHIN THE LOT

4 ADJACENT PROPERTY) IN THE JOINT PARKING AREA, AS REASONABLY DESIGNATED BY THE

MANAGER PURSUANT TO THE OFFICE CC&RS, AND (III) A NONEXCLUSIVE EASEMENT ACROSS

THE JOINT PARKING AREA FOR THE PURPOSE OF ACCESS, INGRESS AND EGRESS AS

NECESSARY TO USE AND ENJOY THE PARKING EASEMENTS DESCRIBED IN CLAUSES (I) AND

(II) ABOVE.

PARCEL 4:

PURSUANT TO SECTION 2.2(D) OF THE DECLARATION AND AS THE CAPITALIZED TERMS

HEREIN ARE DEFINED IN THE DECLARATION, NON-EXCLUSIVE EASEMENTS ON, OVER, UNDER

AND ACROSS THE PROPERTY (EXCEPT LOT 4 OF THE PROPERTY) AND ALL AREAS THEREOF

FOR (A) THE LOCATION, CONSTRUCTION, RECONSTRUCTION, USE, INSTALLATION, REPAIR

AND MAINTENANCE OF (I) ELECTRIC, TELEPHONE, WATER, GAS AND SANITARY SEWER LINES

AND RELATED FACILITIES AND EQUIPMENT (INCLUDING, WITHOUT LIMITATION, LOCKED

MECHANICAL ROOMS, LOCKED PUMP MOMS, ELECTRICAL TRANSFORMERS, SWITCH GEARS,

GENERATORS AND WATER PUMPS), EXHAUST, HEATING AND AIR-CONDITIONING FACILITIES,

PLUMBING VENT PIPES, CABLE AND MASTER TELEVISION ANTENNA LINES AND DRAINAGE

FACILITIES, (II) STAIRS, ELEVATORS, ELEVATOR SHAFTS AND WALKWAYS, (III)
FOUNDATIONS, COLUMNS, PIERS AND BASEMENTS, AND (IV) LANDSCAPING AS BUILT AND AS
MAY BE HEREAFTER REQUIRED OR NEEDED TO SERVICE THE LOT 4 IMPROVEMENTS, (B) THE
SUPPORT (WHETHER VERTICAL, SUBADJACENT OR LATERAL) OF THE LOT 4 IMPROVEMENTS.

PARCEL 5:

PURSUANT TO SECTION 2.2(D) OF THE DECLARATION AND AS THE CAPITALIZED TERMS
HEREIN ARE DEFINED IN THE DECLARATION, NON-EXCLUSIVE EASEMENTS THROUGH LOT 1
FOR THE ELEVATOR SHAFTS AND PISTONS OF THE ELEVATORS IN THE LOT 4 IMPROVEMENTS.

PARCEL 6:

PURSUANT TO SECTION 2.5(A) OF THE DECLARATION AND AS THE CAPITALIZED TERMS
HEREIN ARE DEFINED IN THE DECLARATION, A NON-EXCLUSIVE EASEMENT FOR THE
CONSTRUCTION, REPAIR, REPLACEMENT, MAINTENANCE AND USE OF THE RAMPS IN THE
RAMPS EASEMENT AREA AND FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS TO
AND FROM THE PUBLIC STREET UPON, ALONG AND ACROSS THE RAMPS LOCATED IN THE
RAMPS EASEMENT AREA.

APN(s): 049-1534-001 and 049-1491-013

EXHIBIT B

TENANT INCOME CERTIFICATION FORM

OCCUPANT INCOME CERTIFICATION

☐ Initial Certification
 ☐ Recertification
 ☐ Other _____

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.
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 If over \$5000		\$ _____ X	Passbook Rate 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) _____

PART V. DETERMINATION OF INCOME ELIGIBILITY

TOTAL ANNUAL HOUSEHOLD
INCOME
FROM ALL SOURCES:
From item (L) on page I

\$ _____

Current Income Limit per Family Size: _____

\$ _____

Household Income at Move-in: _____

\$ _____

Household Size at Move-in: _____

PART VI. RENT

Tenant Paid Rent

\$ _____

Rent Assistance: _____

\$ _____

Utility Allowance

\$ _____

Other non-optional charges: _____

\$ _____

GROSS RENT FOR UNIT:
(Tenant paid rent plus Utility
Allowance &
Other non-optional charges)

\$ _____

Unit Meets Rent Restriction at:

☐ 60% ☐ 50% ☐ 40% ☐ 30% ☐ _____%

Maximum Rent Limit for this Unit: _____

\$ _____

SIGNATURE OF DEVELOPER/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 Project.

SIGNATURE OF DEVELOPER/REPRESENTATIVE

DATE

8/7/27

EXHIBIT C

Site Plan

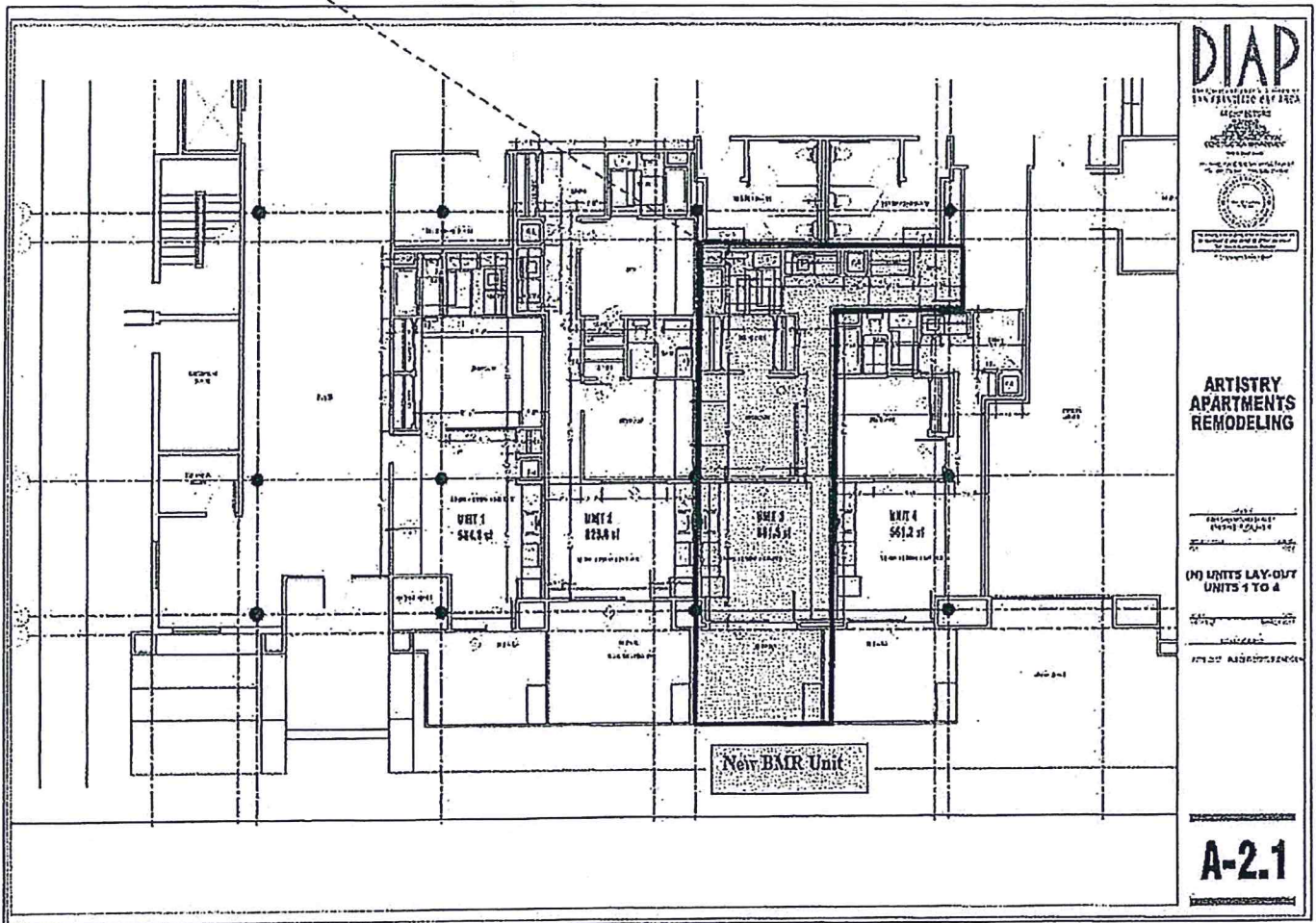
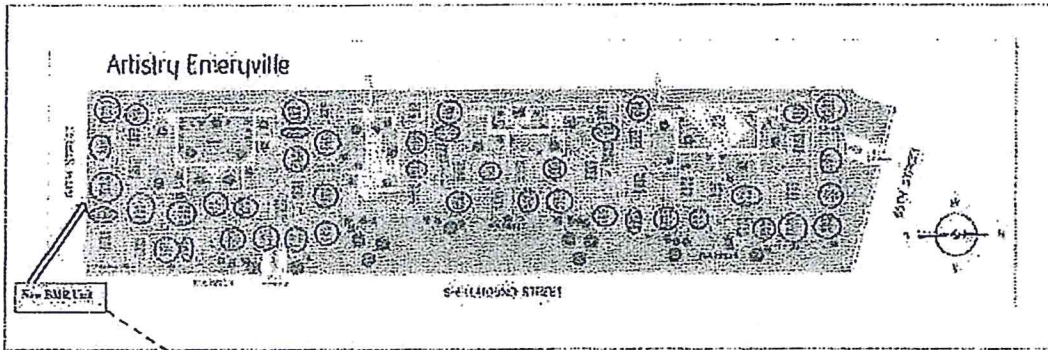


EXHIBIT D

List of Amenities

Project Amenities

- Secured entry lobbies
- On-site leasing office
- Mail Room on street level
- Elevators from the garage to upper residential floors
- Secured on-site parking within garage with access into main building
- Unsecured on-site guest parking
- Secured bike storage
- Trash chutes on every floor
- Three podium-level courtyard areas
- Centrally-located Fitness Center
- Hot tub/spa located on podium-level courtyard
- Podium level BBQ and seating areas
- Podium level dog wash
- Drought-tolerant plantings at landscaped podium-level courtyard with seating areas

Unit Amenities

- New units to have stackable washer/dryer
- Units to have fresh air intakes to ensure adequate ventilation
- White cabinets in kitchens and bathrooms
- Quartz or like-product hard surface countertops in kitchen and bath
- Vinyl plank flooring in kitchens, living rooms, bedrooms and bathrooms
- Units to have refrigerators, ranges, microwaves, and dishwashers. All appliances are to be of same quality stainless steel (and Energy-Star where applicable)
- Low-VOC paints
- Blinds at all units windows

EXHIBIT E

CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE
CITY OF EMERYVILLE

[CHECK WITH CITY STAFF FOR UPDATED FORM PRIOR TO EXECUTING]

Artistry Project

Period through _____

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 twenty percent (20%) of the Base Project Units (i.e. fifty four (54) units) has been continuously occupied by or held vacant and available for occupancy by qualified very low income households.

Total Very Low Income Units occupied: _____ (# Units)
A. As percent of total Base Project Units: _____ %

Total Very Low Income Units vacant: _____ (# Units)
B. As percent of total Base Project Units: _____ %

(**A. and B. should add to 20%)

Attached is a separate sheet listing all information required by the Affordable Housing Agreement Section 1.D.

EQR-Emeryville LP,
a Delaware limited liability company

By:  _____
Authorized Owner Representative