

**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 \_\_\_\_\_, 2019, is entered into by and between Evoy, L.P., 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. City has entered into a Predevelopment Loan Agreement (the "Loan Agreement") with Owner dated as of \_\_\_\_\_, 2019. Pursuant to the Loan Agreement, City has made a two million dollar (\$2,000,000) loan (the "Loan") to Owner to acquire those certain properties located at 3600 San Pablo Avenue, 3610 San Pablo Avenue, and 3620 San Pablo Avenue in the City of Emeryville, California and more particularly described in Exhibit A attached hereto and incorporated herein (together, the "**Project Site**").

B. Owner intends to construct (i) no less than thirty nine (39) units of rental housing (each, "**Unit**") including one (1) unrestricted manager’s Unit; and (ii) an approximately thirty-six hundred (3,600) square foot ground floor commercial space (the "**Commercial Space**") (the Units and the Commercial Space are together, the "**Development**") on the Project Site.

C. Owner received the Loan in part in exchange for providing at least thirty-eight (38) units of rental housing restricted to households earning between thirty percent (30%) and eighty percent (80%) of the area median income (the "**AMI**"). At least twenty-five percent (25%) of the Units must be permanent supportive housing units, targeted towards homeless households. The manager’s Unit need not be income restricted and will not be considered an affordable unit.

D. Owner shall make a good faith effort to lease the Commercial Space to Emeryville Citizens Assistance Program ("**ECAP**"), a community services organization that provides food to people who are experiencing homelessness or at risk of experiencing homelessness. When leasing the space, ECAP will provide food security services in the Commercial Space. The lease will be subject to the mutual approval of ECAP and Owner.

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 PROJECT SITE.** 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 Project Site in compliance with all of the following:

A. **Rent and Income Restrictions.**

(1) At all times, all of the Units shall be rented to and occupied by households earning between thirty percent (30%) and eighty percent (80%) AMI ("**Eligible Households**"), as adjusted for household size in accordance with California Health and Safety Code Section 50053, as amended or any successor statute, at an Affordable Rent (defined below). The average income of all of the households occupying the income restricted Units shall not exceed 60% AMI.

(2) Units shall be rented to Eligible Households at rental rates, including a reasonable utility allowance, no greater than thirty percent (30%) of the required AMI level, pursuant to California Health and Safety Code Section 50053, as amended, or any successor statute thereto ("**Affordable Rent**"). The monthly Affordable Rent for each 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) At least twenty-five percent (25%) of the Units must be permanent supportive housing units as defined in California Health and Safety Code Section 50675.14, as amended, or any successor statute. The target population for the permanent supportive housing units will be homeless households as defined in Title 42 of the United States Code Section 11302, as amended, or any successor statute or subject to approval of the City, as defined by any coordinated entry system to be used for selection of tenants for the supportive housing units.

(4) In the 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. 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. "**Occupant**" shall mean a person over the age of three (3) who occupies a Unit for more than fourteen (14) days or more during a one-month period. "**Tenant**" shall mean the Occupant(s) who is/are identified in the lease for a Unit.

(5) Not more than once per year, Owner may adjust rents in occupied Units in accordance with City's published rent ceilings for the applicable unit size and income level. City shall annually publish a list of all rent ceilings reflecting the annual adjustments in the income limits for households provided by the U.S. Department of Housing and Urban Development and

State of California Housing and Community Development Department. Owner must notify a Tenant in writing of any increase in such Tenant's monthly rent for a 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 Unit; (2) the new rental amount for each Unit; and (3) the effective date of the adjustment for each Unit. Failure to provide the notice and reporting required shall be considered a default by Owner under this Agreement.

(6) The determination of a status as an Eligible Household shall be made by Owner prior to initial occupancy of the 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 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 Units. In the Annual Report, Owner shall report any changes in the Occupants of any 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).

(7) Immediately prior to the first anniversary of the lease commencement for each Unit, 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 Unit. 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. If the household income of a Unit exceeds one hundred forty percent (140%) of the applicable income limit under which the household qualified for occupancy of the Unit originally, the Occupants shall be given ninety (90) days' notice of termination of lease, and promptly following each lease termination, Owner shall re-let the Unit to an Eligible Household; provided, however, that such termination shall be subject to any requirements under Section 42 of the Internal Revenue Code of 1986. All documentation obtained by Owner in connection with the annual Occupant Income Certification shall be retained by Owner for three (3) calendar years.

(8) In the event that the Development is subject to a regulatory agreement between Borrower and TCAC with respect to the low income housing tax credits (the "TCAC Regulatory Agreement"), any conflict between the TCAC Regulatory Agreement and this Agreement with respect to occupancy standards, occupancy assumptions, income limits and rent levels shall be resolved by application of the provisions of the TCAC Regulatory Agreement.

B. Leasing Commercial Space. Owner shall lease to ECAP the Commercial Space to be used to provide food security services on the Project Site. Owner shall charge ECAP rent for leasing the Commercial Space, not to exceed reasonable operating and maintenance cost incurred by Owner in operating and maintaining the Commercial Space, as well as deposits to reserves for

replacements. The lease shall be subject to the mutual approval of Owner, ECAP and the City. In the event that ECAP does not enter into a lease for the Commercial Space for any reason or if such lease is terminated, the Owner shall be make commercially reasonable efforts to lease the Commercial Space to another food security services provider on similar terms as are required to be offered to ECAP. If the Owner is unable to lease the Commercial Space to a food security services provider, Owner may, with the approval of the City, lease the Commercial Space to another community services provider on similar terms as are required to be offered to ECAP.

C. Site Plan, Amenities, and Affordability. Prior to Owner receiving the first building permit for the Development, Owner will provide City (i) a site plan illustrating the location of the permanent supportive housing units (the "**Site Plan**"); (ii) the amenities of the Units (the "**Amenities**"); (iii) and the percentage of Units reserved for each targeted income level (the "**Affordability Distribution**"). At City's discretion, Owner may submit the Site Plan, the Amenities, and/or the Affordability Distribution no later than six (6) months before receipt of the certificate of occupancy.

D. Marketing and Leasing Program.

(1) Owner shall actively market the Units. No less than one hundred and twenty (120) calendar days prior to lease-up of the Units, Owner shall provide City with a copy of its marketing program for initial lease up of the 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. Owner shall not commence marketing the Units until City has approved the Marketing Program. Owner shall provide monthly updates to the Marketing Program commencing thirty (30) days after the date the Marketing Program is initially approved by City until the Units are leased initially. Thereafter, 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.

(2) Owner shall be responsible for developing a supportive services plan and ensuring that adequate levels of supportive services are provided to the Occupants and Tenants in accordance with the supportive services plan. Owner shall submit the supportive services plan to the City for its approval not later than six months prior to the issuance of the certificate of occupancy for the Development. The supportive services plan may 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 supportive services plan and any revisions to the supportive services plan and either approve or request modifications to the supportive services plan within thirty (30) days after receipt.

(3) Owner is responsible for implementing the 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 Marketing Program as approved by City.

E. Reporting Requirements.

(1) Owner shall submit to 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 the Development and compliance with this Agreement, including any problems experienced during the reporting period, and any recommendations to address problems and enhance compliance;
- 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 Plan; and
- d. A copy of the current form of lease agreement used for Units.

(2) In addition, the Annual Report shall include income certifications or re-certifications, for each household of a Unit. The Annual Report 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 under age of 18;
- g. Initial lease commencement date;
- h. Household Income limit applicable to Unit at initial lease commencement date; and at recertification date (if applicable);
- i. Actual Income of household at lease commencement date; and at recertification date (if applicable);
- j. Gross Affordable Rent Limit (see Exhibit B);
- k. Utility Allowance and method of calculation;
- l. Any other fees charged to the tenants;
- m. Section 8 Assistance or other government rental assistance (if applicable);
- n. Net Rent Paid by household;
- o. Net Rent as a percentage of household's Income;
- p. Next Recertification Date;
- q. 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 issuance of the initial Certificate of Occupancy for the Development. 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 Property (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 8. 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 the fifteenth (15th) day after the due date, 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.

F. City Approval of Lease Forms. City shall have the right to review and approve Owner's form of lease for the Units and Commercial Space including any modifications, including disclosures of the affordability restrictions on the 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.** If Owner enters into a separate property management agreement ("**Management Agreement**") with a property management company or other organization 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 ("Property Manager"), Owner shall comply with this Section 2. 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.

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

4. **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 Project 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.

5. **DURATION.** The covenants and restrictions in this Agreement shall remain in effect until the date which is seventy-five (75) years following the date of issuance of the final Certificate of Occupancy for the Development.

6. **PRIORITY OF DOCUMENTS; SUBORDINATION AGREEMENT.** Owner's covenants with respect to the use, maintenance, and operation of the Project Site 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.

7. **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 Project Site. 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. Upon recordation of the grant deed to the Project Site, the prior Owner shall be released from all further obligations and liabilities under this Agreement arising after the date of such transfer of ownership. The covenants contained herein shall be for the benefit of and shall be enforceable only by City, and its successors and assigns. City Manager may release this covenant, wholly or in part, in connection with a sale of the Project Site approved by City Manager if the Project Site is not used for housing and City Manager determines that the development of affordable housing is infeasible and that the loan must be repaid.

8. **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 unless 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.

9. **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 Project Site; 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 Event of 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.

10. **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.

11. **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 9 shall be the sole responsibility of Owner.

12. **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 Project Site subject only to the limitation and obligations of Owners under this Agreement. 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 Project Site, 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 12, regardless of whether or not City prepared, supplied or approved plans or specifications for the Development or Project Site. This Section 12 shall survive termination of this Agreement.

**13. 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: Evoy, L.P.  
c/o Resources for Community Development  
2220 Oxford Street  
Berkeley, CA 94704  
Attention: Dan Sawislak, Executive Director

With copies to:

**14. 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.

15. **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.

*[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:

**"OWNER"**

Evoy, L.P.  
c/o Resources for Community Development  
2220 Oxford Street  
Berkeley, CA 94704  
Attn: Executive Director

EVOY, L.P., a California limited partnership

By: RCD GP III LLC, a California nonprofit public benefit corporation, its sole member/manager

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

By: \_\_\_\_\_

Dan Sawislak, Executive Director  
*[Signature must be notarized]*

Address:

**"CITY"**

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

CITY OF EMERYVILLE, a municipal corporation

By: \_\_\_\_\_

Christine S. Daniel, City Manager  
*[Signature must be notarized]*

APPROVED AS TO FORM



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:

#### PARCEL ONE:

Lot 3, Block "A", "Map of a portion of Mrs, M. J. Evoy's Property, Sub'd, Dec. 5th, 1876", filed May 2, 1887, Map Book 3, Page 18, Alameda County Records.

Assessor's Parcel No. 049-0950-001

#### PARCEL TWO:

Portion of Lot 1, Block "A", "Map of Portion of Mrs. M. J. Evoy's Property Subdivision December 5, 1876" filed May 2, 1877, Map Book 3, Page 18, Alameda County Records, described as follows:

Beginning at the intersection of the Eastern line of San Pablo Avenue with the Northern line of 36th Street, as said Avenue and Street are shown on said Map; running thence along said line of San Pablo Avenue Northerly 30.79 feet; thence Easterly parallel with the Southern line of 37th Street, as shown on said Map, 88 feet; thence at right angles Southerly 34.91 feet, more or less, to said line of 36th Street; thence along the last named line Westerly 75 feet, more or less, to the point of beginning.

#### PARCEL THREE:

Portion of Lot 1, Block "A", "Map of a Portion of Mrs. M. J. Evoy's Property Subdivided December 5, 1876", filed May 2, 1877, Map Book 3, Page 18, Alameda County Records, described as follows:

Beginning at a point on the Eastern line of San Pablo Avenue, distant thereon 30.79 feet northerly from the Northern line of 36th Street, as said Avenue and Streets are shown on said Map; running thence along said line of San Pablo Avenue Northerly 34 feet; thence Easterly parallel with the Southern line of 37th Street, as shown on said Map, 103 feet; thence a right angles Southerly 30.67 feet to a line drawn Easterly from the point of beginning parallel with said line of 37th Street; thence at right angles Westerly along the line so drawn 88 feet, more or less, to the point of beginning.

APN: 049-0950-006-01 (Affects Parcel Two and Three)

PARCEL FOUR:

Portion of Lot 2, Block "A", Map of a Portion of Mrs. M. J. Evoy's property subdivision December 5, 1876", filed May 2, 1877, Map Book 3, Page 18, Alameda County Records, described as follows:

Beginning at a point on the Eastern line of San Pablo Avenue distant thereon 64.79 feet Northerly from the Northern line of 36th Street, as said Avenue and Street are shown on said Map.

Running thence along said line of San Pablo Avenue Northerly 26.69 feet; thence Easterly parallel with the Southern line of 37th Street, as shown on said Map; 96.937 feet; thence at right angles Southerly 25 feet; thence at right angles Westerly 85 feet to the point of beginning.

PARCEL FIVE:

Beginning at a point on the Eastern line of San Pablo Avenue, distant thereon Southerly 55.39 feet from the intersection thereof with the Southern line of 37th Street, as said Avenue and Street are shown on the Map hereinafter referred to; running thence Easterly parallel with said line of 37th Street, 108.87 feet; thence at right angles Southerly 25 feet; thence at right angles Westerly 96.93 feet, more or less, to the said Easterly line of San Pablo Avenue; thence Northerly along said last named line 27.695 feet to the point of beginning. Being the Northern 25 feet of Lot 2, Block "A", "Map of a Portion of Mrs. M. J. Evoy's property", filed May 2, 1877, Map Book 3, Page 18, Alameda County Records.

APN: 049-0950-008-01 (Affects Parcel Four and Five)

## EXHIBIT B

### Project Affordable Rent and Income Levels

<b>AGREEMENT ON AFFORDABLE UNITS</b>			
<b>2019 Rent Calculation for Below Market Rate Set-Aside Units</b>			
<b>Unit size</b>	<b>Number of units</b>	<b>2019 Monthly Rents</b>	<b>Income Limit</b>
Studio	TBD	\$978 *	Very Low
1 Bdrm	TBD	\$1,117*	Very Low
2 Bdrm	TBD	\$1,257*	Very Low
3 Bdrm	TBD	\$1,396*	Very Low
Studio	TBD	\$1,173**	Low
1 Bdrm	TBD	\$1,340**	Low
2 Bdrm	TBD	\$1,508**	Low
3 Bdrm	TBD	\$1,676**	Low
<p>*Very Low-Income rents are based on 30% of 50% of Year 2019 area gross median income for Alameda County, adjusted for household size. Affordable rent shall mean the total of monthly payments for a rental including a reasonable allowance for utilities and any service charges or fees required of tenants. Utility allowance and charges/fees must be deducted from rents shown above.</p>			
<p>** Low Income rents are based on 30% of 60% of Year 2019 area gross median income for Alameda County, adjusted for household size. Affordable rent shall mean the total of monthly payments for a rental including a reasonable allowance for utilities and any service charges or fees required of tenants. Utility allowance and charges/fees must be deducted from rents shown above.</p>			
<p>Note: Initial rents shown in this table will be adjusted by City to reflect annual income and/or rent limits available on date that Certificate of Occupancy is received.</p>			

## EXHIBIT C

### OCCUPANT INCOME CERTIFICATION FORM

#### OCCUPANT INCOME CERTIFICATION

Initial   
  Recertification   
  Other \_\_\_\_\_  
 Certification

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

#### PART I. DEVELOPMENT DATA

Property Name: _____	County: _____	# Bedrooms: _____
Address: _____	Unit Number: _____	

#### PART II. HOUSEHOLD COMPOSITION

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

#### PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)

HH Mbr #	(A) Employment or Wages	(B) Soc. Security/Pensions	(C) Public Assistance	(D) Other Income
<b>TOTALS</b>	\$ _____	\$ _____	\$ _____	\$ _____
Add totals from (A) through (D), above				<b>TOTAL INCOME</b> \$ _____

#### PART IV. INCOME FROM ASSETS

HH Mbr #	(F) Type of Asset	(G) C/I	(H) Cash Value of Asset	(I) Annual Income from Asset
<b>TOTALS:</b>			\$ _____	\$ _____
Enter Column (H) Total		Passbook Rate		\$ _____
If over \$5000    \$ _____ X		2.00%	=	(J) Imp    \$ _____
Enter the greater of the total of column I or J: imputed income			<b>TOTAL INCOME FROM ASSETS</b>	\$ _____
(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: 100px; height: 40px; 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)	<input type="checkbox"/> Heating Electric <input type="checkbox"/> Cooking Electric <input type="checkbox"/> Hot Water Electric <input type="checkbox"/> Water <input type="checkbox"/> Trash	<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	
GROSS RENT FOR UNIT: (Tenant paid rent plus Utility Allowance & Other non-optional charges)	<div style="border: 2px solid black; width: 100px; height: 40px; 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:	\$ _____		

**SIGNATURE OF OWNER/REPRESENTATIVE**

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

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. Since the beginning of the Agreement term, not less [\_\_] of the Property Units has been continuously occupied by or held vacant and available for occupancy by qualified **moderate-income** tenants.

**As of the date of the Certificate:**

Total Very Low-Income Units occupied: \_\_\_\_\_ (# Units)

Total Very Low-Income Units vacant: \_\_\_\_\_ (#Units)

Total Low-Income Units occupied: \_\_\_\_\_ (# Units)

Total Low-Income Units vacant: \_\_\_\_\_ (#Units)

Total Moderate-Income Units occupied: \_\_\_\_\_ (# Units)

Total Moderate-Income Units vacant: \_\_\_\_\_ (#Units)

[OWNER]

By: \_\_\_\_\_

Authorized Owner Representative

Date: \_\_\_\_\_

## EXHIBIT E

[Project Name] Apartments

Period through \_\_\_\_\_

### INCOME CERTIFICATION WORKSHEET CITY OF EMERYVILLE

	INITIAL CERTIFICATION													RECERTIFICATION INCOME AND RENTS PER TIC FORM																	
	UNIT #	UNIT TYPE	SQ. FT.	INCOME LEVEL OF UNIT	RESIDENT NAME	CURRENT STATUS	HOUSE HOLD SIZE	MOVE-IN DATE	INCOME LIMIT @ MOVE-IN	HOUSEHOLD INCOME @ MOVE-IN	MAX RENT LIMIT	UTILITY ALLOW + FEES	NET RENT	SEC. 8 ASSIST	TENANT PAID RENT	RENT as % OF INCOME	RECERT EFF DATE PER TIC	HOUSE HOLD SIZE	# MINOR CHILD	INCOME LIMIT	HOUSEHOLD INCOME PER RECERT TIC	MAX RENT LIMIT	UTILITY ALLOW + FEES	NET RENT	SEC. 8 ASSIST	TENANT PAID RENT	RENT as % OF INCOME	MOVE-OUT DATE			
1												\$0				#DIV/0!								\$0					#DIV/0!		
2												\$0				#DIV/0!								\$0					#DIV/0!		
3												\$0				#DIV/0!								\$0					#DIV/0!		
4												\$0				#DIV/0!								\$0					#DIV/0!		
5												\$0				#DIV/0!								\$0					#DIV/0!		
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Completed By:														Title:														Date:			