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ORDINANCE NO. 22-007

An Ordinance Of The City Council Of The City Of Emeryville Approving And Authorizing The City Manager To Enter Into And Execute A Lease Disposition And Development Agreement Between The City Of Emeryville And EAH, Inc. And Related Ground Lease For The Development And Operation Of An Intergenerational Affordable Housing Project At 4300 And 4310 San Pablo Avenue, Emeryville, California (APN 049-1079-014-01 And 049-1079-017-01) And Authorizing The City Manager To Take Action To Effectuate The Lease Disposition and Development Agreement And Related Ground Lease (CEQA Status: Exempt Pursuant To State CEQA Guidelines Sections 15194 and 15332)

WHEREAS, the City owns the property located at 4300 and 4310 San Pablo Avenue ("Site"); and

WHEREAS, on September 24, 2019, the City issued a Request for Qualifications and Proposals ("RFQ/P") for the development of an affordable senior or intergenerational affordable housing project at the Site; and

WHEREAS, EAH, Inc. ("Developer") submitted a timely response to the RFQ/P, which response proposed the construction of a 68-unit intergenerational affordable housing project (the "Project"); and

WHEREAS, on July 21, 2020, the City Council adopted Resolution No. 20-85 selecting Developer as the first-choice developer for the Project and authorizing the City Manager to execute an Exclusive Right to Negotiate Agreement ("ERN") with Developer; and

WHEREAS, pursuant to Resolution No. 20-85, the City and the Developer entered into an ERN on October 29, 2020, which provided for an initial negotiation period of 180 days, with a permitted extension of an additional 180 days that was utilized by the City and Developer; and

WHEREAS, on October 19, 2021 the City Council adopted Resolution No. 21-109 authorizing a further extension of the ERN for an additional 90 days with a permitted extension of an additional 180 days that was utilized by the City and Developer to allow the City and the Developer to negotiate the terms of a Lease Disposition and Development Agreement and Ground Lease for the construction and operation of the Project; and

WHEREAS, before the final approval of this Ordinance, the City Council will receive a General Plan Conformity Report for the Project from the Planning Commission; and

WHEREAS, the City and Developer desire to enter into the Lease Disposition and Development Agreement ("LDDA") and, pursuant to Government Code section 37380, the Ground Lease, attached to this Ordinance as Exhibit A, for the construction and operation of the Project.

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NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EMERYVILLE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION ONE. TITLE

This Ordinance shall be known as the "4300 San Pablo Avenue Lease Disposition and Development Agreement and Ground Lease Ordinance."

SECTION TWO. FINDINGS AND PURPOSES DECLARATION

The purpose of this ordinance is to facilitate the development of an intergenerational affordable housing project on City-owned property located at 4300 and 4310 San Pablo Avenue, Emeryville, California. The development is to provide affordable housing for transition-aged youth and senior households and space for resident services and programming. The City Council finds that, by awarding the LDDA and Ground Lease to Developer, the City will facilitate the development of an affordable housing project that furthers the City's policies relating to increasing the production of affordable housing.

SECTION THREE. APPROVAL AND AUTHORIZATION TO EXECUTE LEASE DISPOSITION AND DEVELOPMENT AGREEMENT AND GROUND LEASE

The City Council hereby approves and authorizes the City Manager to execute and enter into a LDDA that is substantially the same form as the LDDA attached hereto as Exhibit A. The City Council hereby approves and authorizes the City Manager to execute and enter into a Ground Lease for a total term of 75 years, that is in substantially the same form as the Ground Lease attached as Exhibit G to the LDDA, provided the terms and conditions precedent to execution of the Ground Lease as set forth in the LDDA executed by the parties are satisfied.

SECTION FOUR. APPROVAL AND AUTHORIZATION TO EXECUTE AGREEMENTS

The City Council hereby approves and authorizes the City Manager to execute and enter into agreements necessary to implement the LDDA and the Ground Lease with Developer.

SECTION FIVE. APPROVAL AND AUTHORIZATION TO EXECUTE AMENDMENTS

A) Minor Amendments: The City Council hereby authorizes the City Manager to execute and enter into amendments to the LDDA and Ground Lease with Developer as may be agreed to by the City Manager and approved as to form by the City Attorney that do not materially increase the obligations of the City thereunder.

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B) Major Amendments: For any amendments not characterized as Minor Amendments pursuant to Section 5(A) of this ordinance, the City Council is authorized to approve any such amendments to the LDDA and Ground Lease by a resolution of the City Council.

SECTION SIX. CEQA DETERMINATION

The City Council finds that adoption of this ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15194 of the CEQA Guidelines as an Affordable Housing Project because the Project meets the criteria of Section 15192 of the CEQA Guidelines, the Site is less than 5 acres, the Site is located within an urbanized area, the site has been previously developed for a qualified urbanized use the Project is fewer than 100 units and the Project will be subject to a recorded affordability covenant ensuring the continued availability and use of the housing as affordable housing for at least 30 years. The adoption of this ordinance is also exempt from CEQA pursuant to Section 15332 governing infill development projects because (i) the project is consistent with the Emeryville General Plan and Planning regulations, (ii) the development will be constructed on a site of no more than 5 acres (the Site is approximately .47 acres) and is surrounded by urban uses, (iii) the Site has no value as habitat for endangered, rare or threatened species, (iv) approval of the project will not result in any significant effects relating to traffic, noise, air quality or water quality, and (v) the Site is adequately served by all required utilities and public service.

SECTION SEVEN. SEVERABILITY

Every section, paragraph, clause, and phrase of this ordinance is hereby declared to be severable. If for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining section, paragraphs, clauses or phrases.

SECTION EIGHT. EFFECTIVE DATE

This Ordinance shall take effect 30 days following its final passage. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code section 33693.

SECTION NINE. CODIFICATION

This ordinance shall NOT be codified.

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This Ordinance was introduced and first read by the City Council of the City of Emeryville at a regular meeting held on Tuesday, Tuesday, July 19, 2022, and **PASSED AND ADOPTED** by the City Council at a regular meeting held on Tuesday, September 6, 2022 by the following vote:

AYES:	5	Mayor Bauters, Vice Mayor Medina and Council Members Donahue, Martinez and Welch
NOES:	0	
ABSTAIN:	0	
ABSENT:	0	

DocuSigned by:
John Bauters
C7389B49E2C9458...
MAYOR

ATTEST:
DocuSigned by:
Sheri Harty
FB7B5D8EAB6A4BE...
CITY CLERK

APPROVED AS TO FORM:
DocuSigned by:
John Kennedy
2C934D02DB55467...
CITY ATTORNEY

ATTACHMENTS

Exhibit A: Lease Disposition and Development Agreement with EAH, Inc.

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LEASE DISPOSITION AND DEVELOPMENT AGREEMENT
(4300 San Pablo Avenue)

This Lease Disposition and Development Agreement (the "Agreement") is entered into as of _____ (the "Effective Date"), by and between the City of Emeryville, a municipal corporation (the "City"), and EAH, Inc., a California nonprofit public benefit corporation (the "Developer"), with reference to the following facts, understandings and intentions of the parties:

RECITALS

A. These Recitals refer to and utilize certain capitalized terms which are defined in Article 1 of this Agreement. The Parties intend to refer to those definitions in connection with the use of capitalized terms in these Recitals.

B. The City owns the Property, which is located at 4300 and 4310 San Pablo Avenue (APN No. 049-1079-014-01; 049-1079-017-1), as more particularly described in the attached Exhibit A. The Property currently is improved with the Existing Building.

C. The City issued a Request for Qualifications and Proposals on September 24, 2019, for a developer of the Property to develop on the Property affordable housing consistent with Government Code Section 37364. The City received proposals from various developers and after a review and selection process, the City Council adopted Resolution No. 20-85, selecting the Developer and authorizing the City Manager to enter into negotiations for an ERN.

D. Pursuant to Resolution No. 20-85, the City and the Developer entered into an ERN on October 29, 2020, which provided for an initial negotiation period of 180 days, with a permitted extension of an additional 180 days that was utilized by the Parties. The City Council adopted Resolution No. 21- 109 at its October 19, 2021, regular meeting authorizing a further extension of the ERN for an additional 90 days with a permitted extension of an additional 180 days, which extension was granted, to allow the City and the Developer to negotiate the terms of this Agreement.

E. The Developer intends to form the Partnership as a single purpose entity for the purpose of entering into the Ground Lease and completing and operating the Development.

F. The City desires to lease the Property to the Developer, or the Partnership, as applicable, in accordance with the provisions of this Agreement and the Ground Lease attached hereto in order to facilitate the use of the Property for the development and operation of affordable housing benefiting the citizens of Emeryville and the general public.

G. In accordance with the ERN, the City and the Developer have established the terms and conditions for the conveyance of the leasehold interest in the Property to the Developer, and the ongoing operation of the Development upon completion of construction. The City has determined that the Developer has the necessary expertise, skill and ability to carry out the commitments set forth in this Agreement.

Exhibit A

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H. To effectuate the redevelopment of the Property, upon the Developer's satisfaction of the conditions set forth below, the City will convey the leasehold interest in the Property to the Developer pursuant to the Ground Lease.

I. The Planning Commission of the City has determined, in accordance with Government Code Section 65402 that the lease of the Property to the Developer in accordance with the terms of this Ground Lease conforms to the City's General Plan.

THEREFORE, the Parties agree as follows:

AGREEMENT

The foregoing recitals are hereby incorporated by reference and made part of this Agreement.

ARTICLE 1.
DEFINITIONS AND EXHIBITS

Section 1.1 Definitions.

In addition to the terms defined elsewhere in this Agreement, the following definitions shall apply throughout this Agreement.

(a) "Affordable Housing Covenant" or "Covenant" means the Affordable Housing Covenant between the City and the Partnership in the form attached as Exhibit F.

(b) "Building Permit" means the building permit and all other ministerial construction permits required from the City and other governmental agencies to construct the Improvements.

(c) "CEQA" means the California Environmental Quality Act (Public Resource Code 21000 et seq.), and its implementing regulations.

(d) "City" means the City of Emeryville, a municipal corporation.

(e) "City Approvals" means all discretionary approvals required to be obtained from the City for the Development, if any.

(f) "City Consultants" means, collectively, the City's third-party construction monitor, and any other third-party consultants retained by the City to monitor or otherwise provide professional services for the benefit of the City in connection with the Development.

(g) "City Contract Addendum" means the addendum to the construction contract in the form attached as Exhibit H.

(h) "City Council" means the city council of the City.

(i) "City Documents" means, collectively, this Agreement, the Ground Lease, the ERN, the Covenant, and all documents executed by the Developer in favor of the City in

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accordance with the ERN and this Agreement, and all other documents required by the City to be executed by the Developer in connection with the transaction contemplated by this Agreement. "City Document" means any of the City Documents.

(j) "Close of Escrow" means the date on which the City conveys the leasehold interest in the Property as evidenced by the Memorandum of Ground Lease.

(k) "Code" means the Internal Revenue Code of 1986, as amended.

(l) "Construction Plans" means the final construction plans for the construction of the Improvements as approved by the City in accordance with Section 2.8.

(m) "Control" means (i) direct or indirect management or control of the managing member or members in the case of a limited liability company; (ii) direct or indirect management or control of the managing general partner or general partners in the case of a partnership; and (iii) (a) boards of directors that overlap by fifty percent (50%) or more of their directors, or (b) direct or indirect control of a majority of the directors in the case of a corporation.

(n) "County" means the County of Alameda, California.

(o) "County Loan" means the loan in the approximate amount of Two Million Five Hundred Nineteen Thousand One Hundred and Ninety Eight Dollars ($2,519,198) anticipated to be made by the County to the Developer for the Project.

(p) "Default" has the meaning set forth in Section 7.3.

(q) "Developer" means EAH, Inc., a California nonprofit public benefit corporation, and its successors and assigns as permitted by this Agreement.

(r) "Developer Event of Default" has the meaning set forth in Section 7.3.

(s) "Developer Fee" has the meaning set forth in Section 5.3.

(t) "Developer Payment" means the payment in the amount of Two Hundred Fifty Thousand Dollars ($250,000) by the Developer to the City to pay for the City Consultants.

(u) "Development" means the Developer's design, planning and construction of the Improvements in accordance with the terms of this Agreement and the Ground Lease.

(v) "Development Schedule" or "Schedule of Performance" means the schedule attached as Exhibit B, as approved by the City setting forth the anticipated schedule for the Developer's acquisition of the leasehold interest in the Property and the development of the Improvements.

(w) "Effective Date" means the date this Agreement is entered into by the Parties as first written above.

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(x) "Existing Building" means the approximately eight thousand five hundred twenty (8,520) square foot building existing on the Property as of the Effective Date.

(y) "ERN" means that certain Exclusive Right to Negotiate dated as of as October 29, 2020, amended by the First Amendment to the Exclusive Right to Negotiate dated as of April 13, 2021, further amended by the Second Amendment to the Exclusive Right to Negotiate dated November 16, 2021, and further amended by the Third Amendment to the Exclusive Right to Negotiate dated April 13, 2022, by and between the City and the Developer.

(z) "Financing" means any financing received by the Developer for the Development.

(aa) "Financing Plan" means the Developer's plan for financing the design, engineering and construction of the Improvements, including a detailed development budget, construction and permanent financing commitment letters, to be approved by the City pursuant to Section 2.3, and which may be revised from time to time with the approval of the City pursuant to Section 2.3.

(bb) "Financing Proposal" means the Developer's initial financing proposal for financing the acquisition of the leasehold interest in the Property and the development of the Improvements, in the form approved by City and attached hereto as Exhibit H.

(cc) "General Partner" means the general partner of the Partnership which shall be an entity that: (i) is under the Control of the Developer; and (ii) meets the requirements necessary for the Partnership to be eligible for a property tax exemption pursuant to California Revenue & Taxation Code 214(g).

(dd) "Ground Lease" means the ground lease, substantially in the form attached as Exhibit G, to be executed by the City and the Developer at the Close of Escrow.

(ee) "Hazardous Materials" means: any "hazardous substance" as defined in Section 101(14) of CERCLA (42 U.S.C. Section 9601(14)) or Section 25281(d) or 25316 of the California Health and Safety Code as amended from time to time;

(1) any "hazardous waste," "infectious waste" or "hazardous material" as defined in Section 25117, 25117.5 or 25501(j) of the California Health and Safety Code as amended from time to time;

(2) any other waste, substance or material designated or regulated in any way as "toxic" or "hazardous" in the RCRA (42 U.S.C. Section 6901 et seq.), CERCLA (42 U.S.C. Section 9601 et seq., Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), Safe Drinking Water Act (42 U.S.C. Section 300(f) et seq.), Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), Clear Air Act (42 U.S.C. Section 7401 et seq.), California Health and Safety Code (Section 25100 et seq., Section 39000 et seq.), or California Water Code (Section 13000 et seq.) as amended from time to time; and

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(3) any additional wastes, substances or materials which at such time are classified, considered or regulated as hazardous or toxic under any other present or future environmental or other similar laws relating to the Property or the Improvements.

The term "Hazardous Materials" shall not include: (i) construction materials, gardening materials, household products, office supply products, or janitorial supply products customarily used in the construction, maintenance, construction, or management of multifamily residential buildings, or typically used in office activities, or (ii) certain substances which may contain chemicals listed by the State of California pursuant to California Health and Safety Code Sections 25249.8 et seq., which substances are commonly used by a significant portion of the population living within the region of the Property, including, but not limited to, alcoholic beverages, aspirin, tobacco products, nutrasweet and saccharine.

(ff) "Hazardous Materials Laws" means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the Property or the Improvements or any portion thereof.

(gg) "Improvements" means the approximately sixty-eight (68) unit Intergenerational Housing development, and related improvements, to be located on the Property in accordance with this Agreement and the Scope of Development attached as Exhibit C.

(hh) "Intergenerational Housing" means housing for senior citizens, caregivers, and transition age youth in accordance with California Civil Code Section 51.3.5.

(ii) "Investor" means a reputable equity investor, reasonably acceptable to the City, committed to purchasing a limited partnership interest in the Partnership.

(jj) "Management Agent" means EAH, Inc., a California nonprofit public benefit corporation, or other management agent retained by the Developer and approved by the City in accordance with the provisions of Section 2.9 to manage the Development.

(kk) "Memorandum of Ground Lease" means the memorandum of the Ground Lease to be recorded against the Property at the Close of Escrow.

(ll) "Official Records" means the official land records of the County.

(mm) "Parties" means, collectively, the City, and the Developer. "Party" shall refer to either of the Parties.

(nn) "Partnership" means the California limited partnership to be formed by the Developer for the development of the Improvements on the Property. The Partnership shall consist of, at a minimum: (i) the General Partner, and (ii) the Investor, or an entity under the Control of the Investor, as a limited partner.

(oo) "Partnership Agreement" means the partnership agreement of the Partnership, as may be amended from time to time.

(pp) "Project" means the Development.

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(qq) "Property" means the real property to be developed by the Developer pursuant to this Agreement, which real property is more particularly described in Exhibit A.

(rr) "Property Management Plan" is defined in Section 2.11.

(ss) "Scope of Development" means the description of the basic physical characteristics of the Development which, will serve as a basis for the Developer's application for the City Approvals and for the preparation of the Construction Plans. Among other things, the Scope of Development sets forth that the Development shall consist of sixty-eight(68) residential units, sixty-seven (67) of which shall be affordable to independent living seniors and former foster Transition Aged Youth, whose income are no greater than 80% of Area Median Income and one (1) unit for an on-site property manager. A minimum of eight (8) units shall be two-bedroom units. The Development shall include between one quarter (.25) and one half (.5) parking spaces per residential unit and be designed to "LEED Silver" standards, and achieve a minimum of 100 "Green Point Rated" points and be designed as an all-electric building consistent with City's applicable "REACH" codes. The Scope of Development is attached to this Agreement as Exhibit C.

(tt) "Supportive Services Plan" is defined in Section 2.10

(uu) "Residential Marketing Plan" is defined in Section 2.9.

(vv) "Tax Credit Funds" means all of the proceeds from the sale of limited partnership interests in the Partnership to the Investor in the anticipated amount set forth in the Financing Plan.

(ww) "Tax Credit Reservation" means a preliminary reservation, or allocation (as applicable), of federal and/or state low income housing tax credits from TCAC.

(xx) "TCAC" means the California Tax Credit Allocation Committee.

(yy) "Term" means the term of this Agreement, which shall consist of the period commencing as of the Effective Date and continuing until the earlier of: (i) the execution of the Ground Lease; or (ii) two (2) years after the Effective Date.

(zz) "Title Company" means Old Republic Title Company, or such other title company as the Parties may mutually select.

(aaa) "Title Report" means that certain title report dated _____, issued by the Title Company for the Property.

(bbb) "Transfer" has the meaning set forth in Section 5.4.

Section 1.2 Exhibits.

The following exhibits are attached to and incorporated in the Agreement:

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Exhibit A: Legal Description of the Property
Exhibit B: Development Schedule
Exhibit C: Scope of Development
Exhibit D: Site Map
Exhibit E: Financing Proposal
Exhibit F: Form of Affordable Housing Covenant
Exhibit G: Form of Ground Lease
Exhibit H: Form of City Contract Addendum

ARTICLE 2.
PREDISPOSITION REQUIREMENTS FOR CONVEYANCE OF THE LEASEHOLD INTEREST IN THE PROPERTY

Section 2.1 Conditions Precedent to Disposition of the Leasehold Interest in the Property.

The requirements set forth in this Article 2 are conditions precedent to the City's obligation to convey the leasehold interest in the Property to the Developer pursuant to the Ground Lease. The City shall have no obligation to convey the leasehold interest in the Property to the Developer unless the Developer has satisfied the conditions precedent set forth in this Article 2 in the manner set forth below and within the timeframe set forth in the Development Schedule. In the event of any conflict between the terms of this Section and any other provision of this Agreement, the terms of this Section shall control.

Section 2.2 City Approvals.

No later than the date set forth in the Development Schedule, the Developer shall apply for all of the City Approvals. All applications shall conform to the description of the Improvements set forth in Scope of Development, unless a variation has been previously approved by the City in writing. No later than the date set forth in the Development Schedule, the Developer shall obtain the City Approvals.

Nothing herein shall in any way limit the City's discretion in considering any applications submitted by the Developer for the City Approvals or approval of such applications. The City retains its full discretion to consider any application submitted by the Developer in accordance with its standard policies and procedures.

Section 2.3 Financing Plan.

(a) Financing Proposal. As of the Effective Date, the City has approved the preliminary Financing Proposal attached to this Agreement as Exhibit E.

(b) Financing Plan. No later than the date set forth in the Development Schedule, the Developer shall submit an updated and revised Financing Proposal, as well as commitment letters, and all other related documentation, for all Financing and from the Investor, and setting forth the Developer's revisions to the Financing Proposal based on such commitment

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letters, to the City for approval. The City shall reasonably approve or disapprove the revised Financing Proposal in writing within thirty (30) calendar days of the City's receipt of all such documentation; provided, however, in no event shall the City approve of any proposal that requires, or contemplates that: (i) the City encumber its fee interest in the Property with a Security Financing Interest; or (ii) the Affordable Housing Covenant be subordinated to a Security Financing Interest. The City shall have sole discretion to approve any Financing Plan that includes additional financing from the City. The Developer's updated Financing Proposal approved by the City (if any) shall be referred to as the "Financing Plan".

(c) City Review. The Developer shall not rely on the City's approval of the Financing Plan as a representation of any kind, including but not limited to the business advantage of the terms of any of the Financing or any documentation thereof. The City's approval shall merely constitute satisfaction of the condition set forth in this Section. If the Financing Proposal is disapproved by the City, the Developer shall have fifteen (15) calendar days from the date of the Developer's receipt of the City's notice of disapproval to submit a revised Financing Proposal. The provisions of this Section relating to time periods for approval, disapproval and resubmission of a new Financing Proposal shall continue to apply until the revised Financing Plan has been approved by the City; provided, however, that if the City's approval of the revised Financing Plan has not been obtained by the date set forth in the Development Schedule, the City may terminate this Agreement pursuant to Article 8.

Section 2.4 Construction Plans and Building Permit.

(a) Construction Plans. The Developer shall prepare construction plans for the construction of the Improvements. The final construction plans for the Improvements submitted by the Developer for City approval shall consist of all construction documentation upon which the Developer and its contractors shall rely in building the Improvements. Such construction plans shall include (without limitation) final architectural drawings, landscaping plans and specifications, final elevations, building plans and specifications, mechanical, plumbing and HVAC (also known as "working drawings"). The construction plans shall be based upon any preliminary or conceptual drawings previously approved by the City, and shall be consistent with the City Approvals and the Scope of Development, and shall not materially deviate from them without the written consent of the City.

(b) Building Permit. No later than the date set forth in the Development Schedule, the Developer shall apply for the City's regulatory final building permit plan check approval. After submitting applications for the Building Permit as set forth above, the Developer shall diligently pursue and obtain the Building Permit for the Improvements, no later than the date set forth in the Development Schedule. For the purposes of this Agreement, the Developer shall be deemed to have satisfied the condition precedent to obtain the Building Permit for the Improvements by delivering evidence to the City that the Developer has received an issue ready letter from the City's building department to demolish the Existing Building and commence construction of the Improvements. Only upon delivery to the City of such evidence in a form reasonably satisfactory to the City shall the predisposition condition of this Section be deemed met.

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(c) City Discretion. As set forth in Section 7.15, the Developer acknowledges that execution of this Agreement by the City does not constitute approval by the City of any required permits and in no way limits the discretion of the City in the permit approval process. The Developer's failure to satisfy the requirements of this Section by the specific date set forth in the Development Schedule shall constitute a Developer Event of Default pursuant to Article 8. As part of the Developer's application for a Building Permit, the City shall also have the right to review and approve the proposed construction plans for conformance with the Scope of Development, and the other commitments made by the Developer to the City. The Developer acknowledges that the City's right to review and approve the proposed construction plans as allowed by this paragraph is in addition to, and shall not be limited by, the City's regulatory obligation to review the Developer's proposed construction plans for consistency with applicable building and construction code requirements. The Developer further acknowledges that the City shall have no obligation to approve such proposed plans in the event that the Developer fails to incorporate the City's reasonably requested changes or modifications to the proposed construction plans to conform to the Scope of Development (even in the event that such requested changes or modifications exceed the minimum thresholds set forth in the applicable building code and have not been required by the City's building department).

(d) Proposed Changes. As approved, these construction plans for the Improvements shall be referred to as the "Construction Plans". Following the Close of Escrow, any proposed change to the Construction Plans shall be governed by the Ground Lease.

Section 2.5 Construction Contract.

(a) Contract Requirements. No later than the date set forth in the Development Schedule, the Developer shall submit to the City for its limited approval the proposed construction contract for the Improvements. The City's review and approval shall be limited exclusively to a determination whether: (i) the guaranteed maximum construction cost, or stipulated sum, set forth in the construction contract is consistent with the approved Financing Plan; (ii) the construction contract is with a contractor duly licensed by the State of California and reasonably acceptable to the City; (iii) the construction contract contains provisions consistent with this Agreement and the Ground Lease; (iv) the construction contract requires a retention of ten percent (10%) of hard costs until completion of the Improvements (provided, however, the construction contract may provide for the release of retention, prior to completion of the Improvements, to certain specified subcontractors that have completed all of their work on the Development as reasonably approved by the City); (v) the construction contract requires the payment of prevailing wages in accordance with the Ground Lease and Labor Code Sections 1720 et seq.; (vi) the construction contract includes the City Contract Addendum, in the form of Exhibit H; (vii) the construction contract includes language indemnifying the City for any and all claims resulting from the construction in a form to be provided by the City; and (viii) the construction contract includes the applicable insurance requirements as set forth in the Agreement and the Ground Lease.

(b) City Review. Upon receipt by the City of the proposed construction contract, the City shall promptly review same and approve it within fifteen (15) days if it satisfies the limited criteria set forth above. If the construction contract is not approved by the City, the City shall set forth in writing and notify the Developer of the City's reasons for

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withholding such approval. The Developer shall thereafter submit a revised construction contract for City approval, which approval shall be granted or denied in fifteen (15) days in accordance with the criteria and procedures set forth above. Failure of the City to respond within the fifteen (15) day period(s) set forth above shall be deemed approval by the City. Any construction contract executed by the Developer for the Improvements shall be in a form approved or deemed approved by the City. The Developer shall not rely on the City's approval of the construction contract(s) as a representation regarding the enforceability or business advantage of the construction contract(s). City approval shall merely constitute satisfaction of the condition set forth in this Section. The City's approval of the construction contract shall in no way be deemed to constitute approval of, or concurrence with, any other term or condition of the construction contract.

Section 2.6 Construction Bonds.

(a) Requirements. No later than the date set forth in the Development Schedule, the Developer shall deliver to the City forms of one (1) labor and material bond and one (1) performance bond for the Improvements issued by a reputable insurance company licensed to do business in California, and named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department, and reasonably acceptable to the City, each in a penal sum of not less than one hundred percent (100%) of the scheduled cost of construction of the Improvements as set forth in the approved construction contract, for the City's review and approval. The bonds shall name the City as co-obligee. Upon receipt by the City of the proposed payment and performance bonds, the City shall promptly review such bonds and approve them within fifteen (15) days if they satisfy the criteria set forth above, and include any other modification reasonably requested by the City. If the payment and performance bonds are not approved by the City, the City shall set forth in writing and notify the Developer of the City's reasons for withholding such approval. The Developer shall thereafter submit revised payment and performance bonds for City approval, which approval shall be granted or denied in fifteen (15) days in accordance with the criteria and procedures set forth above. Failure of the City to respond within the fifteen (15) day period(s) set forth above shall be deemed approval by the City.

(b) Delivery of Bonds. Prior to the Close of Escrow, the Developer shall deliver to the City copies of actually issued bonds substantially identical to the forms previously delivered to, and approved by, the City. The Developer may elect to satisfy the obligation set forth in this Section 2.6 by delivering bonds which name the Developer's general contractor(s), and not the Developer, as the principal. Only upon City receipt of such bonds shall the pre-disposition conditions of this Section 2.6 be deemed met. If such bonds are not received within the time set forth above, this Agreement may be terminated pursuant to Article 8.

Section 2.7 Insurance.

The Developer shall furnish to the City evidence of the insurance coverage meeting the requirements set forth in the Ground Lease including any insurance required from the Contractor and any design professionals, no later than the date set forth in the Development Schedule.

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Section 2.8 Other Governmental Approvals.

The Developer shall have obtained any other required governmental approvals and permits, if any.

Section 2.9 City Approval of Residential Marketing Plan. Within the time established in the Schedule of Performance, Developer shall submit to City an initial residential marketing plan, in a form acceptable to City and consistent with the provisions of the Affordable Housing Covenant (the "Residential Marketing Plan"). The City shall approve or disapprove the proposed Residential Marketing Plan within the time established in the Schedule of Performance. Approval shall not be unreasonably withheld. If the City disapproves the Residential Marketing Plan, the City shall do so by written notice to Developer stating the reasons for such disapproval. The City shall approve or disapprove any newly submitted Residential Marketing Plan in the same manner and within the same time established in the Schedule of Performance for the approval or disapproval of the Residential Marketing Plan initially submitted to City. Such approval by the City shall not waive, limit, or impair the City's rights under the Affordable Housing Covenant.

Section 2.10 City Approval of Supportive Services Plan. Within the time established in the Schedule of Performance, Developer shall submit to City an initial supportive services plan, in a form acceptable to City and consistent with the provisions of the Affordable Housing Covenant ("Supportive Services Plan"). The Supportive Services Plan shall include services tailored specifically to support the Transition Aged Youth and Senior households residing in the Improvements and shall be designed to purposefully integrate the Transition Aged Youth and Senior households as a cohesive community. The City shall approve or disapprove the proposed Supportive Services Plan within the time established in the Schedule of Performance. Approval shall not be unreasonably withheld. If the City disapproves the Supportive Services Plan, the City shall do so by written notice to Developer stating the reasons for such disapproval. The City shall approve or disapprove any newly submitted Supportive Services Plan in the same manner and within the same time established in the Schedule of Performance for the approval or disapproval of the Supportive Services Plan initially submitted to City. Such approval by the City shall not waive, limit, or impair the City's rights under the Affordable Housing Covenant.

Section 2.11 City Approval of Property Management Plan. Within the time established in the Schedule of Performance, Developer shall submit to the City for review and approval an initial property management plan that provides for management of the Property, including maintenance, inspection, and repair of the Improvements and landscaping on the Property ("Property Management Plan"). The Property Management Plan shall include, but is not limited to, the following: (a) a maintenance schedule which specifies maintenance work, such as roof replacement, painting, pavement replacement, fixtures replacement, including HVAC and water heaters, to be performed on a scheduled basis over five years during the term of the Ground Lease, (b) a maintenance budget identifying the amounts and scheduling of spending on items in the maintenance schedule described in (a) above; (c) semi-annual inspections of individual residential units to ensure continued compliance with state and local housing codes, (d) a maintenance fund where monies are deposited to cover the cost of scheduled spending on items in the maintenance schedule, (e) annual reporting to the City on compliance with the maintenance schedule, findings and any corrective measures taken or to be taken arising from the

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semi-annual inspections, (f) painting of the exterior of the Improvements, (g) maintenance of outdoor landscaping, outdoor lighting, parking area paving, stops, curbs, striping, laundry room facilities, garbage and recycling receptacles, and general sanitation and cleanliness of the Improvements, (h) schedule of interior renovation, including repainting, carpet cleaning and replacement, floor refinishing and replacement, and kitchen, bathroom, and laundry room facilities replacement, and (i) an assessment of the Improvements no less frequent than every five (5) years to evaluate the capital needs of the Improvements and evaluation of reserves needed to fund such capital needs. The Property Management Plan shall be attached as an exhibit to the Affordable Housing Covenant. The City's approval shall not be unreasonably withheld, conditioned or delayed. If the City disapproves the Property Management Plan, the City shall do so by written notice to Developer stating the reasons for such disapproval. The City shall approve or disapprove any newly submitted Property Management Plan in the same manner as the Property Management Plan initially submitted to City. Such approval by the City shall not waive, limit, or impair the City's rights under the Affordable Housing Covenant.

Section 2.12 No Default.

No Developer Event of Default shall exist under this Agreement.

Section 2.13 No Litigation.

There shall be no litigation challenging the City Approvals, the City's authority to enter into this Agreement or the Ground Lease or the Development.

ARTICLE 3.
CEQA PROVISIONS

Section 3.1 No City Obligation; Developer at Risk. In the event the Developer utilizes the process set forth in Government Code Section 65913.4 in connection with the Project, then the Parties agree that this Article shall not apply. In the event the Developer elects not to utilize such process, then the Developer shall notify the City, in writing, of such determination, and thereafter, the Parties shall comply with all of the applicable requirements of CEQA. Notwithstanding any provision of this Agreement to the contrary, as more particularly set forth in this Article, nothing in this Agreement, including, but not limited to the execution of this Agreement shall be construed to compel the City Council to approve or make any particular findings with respect to any CEQA approval or documentation required for the Project, or approve or make findings with respect to the applicable land use approvals, and that the Developer assumes all risks regarding CEQA, including, but not limited to, the risk that the Project may not be approved by the City Council, and that the City Council may impose mitigation measures on the Project, including but not limited, mitigation measures not contemplated by the Developer, and all risks regarding the applicable land use approvals.

Section 3.2 Developer Acknowledgement regarding City Council Discretion. The Developer acknowledges that the environmental review process under CEQA involves the preparation and consideration of certain information by the City Council, as well as consideration of input from third-parties; that approval or disapproval of the Project following

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completion of the environmental review process pursuant to CEQA is within the sole and absolute discretion of the City Council without limitation by, or consideration of, the terms of this Agreement; and that the City makes no representation regarding the ability or willingness of the City Council to approve the Project at the conclusion of the environmental review process required by CEQA, or regarding the imposition of any mitigation measures as conditions of any approval that may be imposed by the City Council. The City Council retains, to the maximum extent permitted under applicable law, its full discretion under CEQA and applicable planning and zoning laws to: (a) make such modifications to any entitlements, permits or approvals as may be reasonably necessary to impose reasonable measures to mitigate any significant environmental impacts of the proposed Project; (b) select other reasonable alternatives to avoid significant environmental impacts of the proposed Project; (c) balance the benefits of the proposed Project against any significant environmental impacts of the proposed Project (if any) prior to taking final action if such significant impacts cannot otherwise be reasonably avoided; (d) determine not to proceed with the proposed Project in the event there are substantial environmental impacts that cannot be feasibly reasonably mitigated so the proposed Project can be approved without a statement of overriding considerations; or (e) take such other actions to approve or not approve the proposed Project as determined by the City Council. In addition, any required approvals by any other local, state or federal agency (or any other required approvals under any applicable local, state, or federal law) may require additional environmental review, and that approval by the City Council pursuant to CEQA (if any) shall not bind any other local, state or federal agency to approve the Project (or otherwise satisfy any requirements of any other applicable local, state, or federal law, including, to the extent such laws may be applicable to the proposed Project), or bind any other local, state or federal agency to impose mitigation measures that are consistent with the terms of this Agreement or with the terms of any mitigation measures that may be required by the City Council pursuant to the City's environmental review in accordance with CEQA.

Section 3.3 Termination following Completion of CEQA; Developer Release. Either Party has the right to terminate this Agreement if the City Council disapproves the Project following completion of the environmental review process pursuant to CEQA. In addition, the Developer may terminate this Agreement if Developer determines that the implementation of any mitigation measures required pursuant to CEQA would cause development of the Project to become economically infeasible. To effectuate such termination of this Agreement, the terminating Party shall deliver a written notice to the other Party setting forth that this Agreement is terminated pursuant to this Section within ten (10) days following the City Council's final action under CEQA. In the event this Agreement is terminated pursuant to this Section, then the City: (a) shall have no obligation to execute the Ground Lease, or convey any other interest in the Property, to the Developer; and (b) shall have no further obligation or duty under this Agreement (except for any provision that expressly survives the termination of this Agreement). The City further acknowledges that due to the termination of this Agreement as set forth above, the City may suffer economic loss or other consequences due to the failure of the Property to be developed, including, but not limited to, economic loss or other consequences due to the City's inability to operate, or to permit the operation of, any particular form of business at the Property. In the event of such a termination of this Agreement under this Section 3.3, then the Developer shall have no further duties or obligations under this Agreement (except for any provision that expressly survives the termination of this Agreement). The Developer further

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acknowledges that due to the termination of this Agreement as set forth above, the Developer shall have no right, pursuant to this Agreement, to acquire the Property, and, therefore, may suffer economic loss or other consequences, including, but not limited to, economic loss or other consequences due to the Developer's inability to obtain any interest in the Property, develop the Property, or to operate, or to permit the operation of, any particular form of business at the Property. The City and Developer, on behalf of themselves and anyone claiming by, through or under each of them specifically releases and waives any claim against the other Party for such loss or economic consequences in connection with the termination of this Agreement following completion of all applicable requirements of CEQA, or any other failure of any, or all, of the conditions precedent set forth below. The City and Developer, on behalf of themselves and anyone claiming by, through or under the each of them, hereby assumes the above-mentioned risks and hereby expressly waives any right the Developer or City and anyone claiming by, through or under the Developer or City, may have under Section 1542 of the California Civil Code, which reads as follows:

> **"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her would have materially affected his or her settlement with the debtor or released party."**

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Developer's Initials: _____ **City Initials: _____**

Section 3.4 Conflict with other provisions. In the event of any conflict between the terms of this Article, and the terms of any other provision of this Agreement, the terms of this Article shall control; provided, however, this Article shall only apply in the event the Developer does not utilize the streamlined approval process permitted by Government Code Section 65913.4.

ARTICLE 4.
DISPOSITION OF THE LEASEHOLD INTEREST IN THE PROPERTY

Section 4.1 Opening Escrow.

To accomplish the transfer of the leasehold interest in the Property from the City to the Developer, the Parties shall, within ninety (90) days after the Effective Date, establish an escrow with the Title Company. The Parties shall execute and deliver all written instructions to the Title Company to accomplish the terms hereof, so long as such instructions are consistent with this Agreement.

Section 4.2 Close of Escrow.

The Close of Escrow shall occur within thirty (30) days after the Developer has met all of its pre-disposition conditions as set forth in Article 2 above and as set forth below, but in no event shall the Close of Escrow occur later than the time set forth in the Development Schedule, unless extended in writing by the City. At the Close of Escrow, the City shall convey the

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leasehold interest in the Property to Developer by the execution of the Ground Lease in substantially the form set forth in the attached Exhibit E, and the execution of the Memorandum of Ground Lease and the recordation of the Memorandum of Ground Lease against the Property.

Section 4.3 Conditions to Conveyance. The City's obligation to convey the leasehold interest in the Property to the Developer shall be subject to satisfaction of the following pre-conditions:

(a) Article 2 Conditions. The conditions precedent set forth in Article 2 above shall have been satisfied in accordance with the Development Schedule.

(b) Representations. The representations, warranties, and covenants of the Developer set forth in Section 7.19 shall be true and correct, and fully observed, as of the Effective Date and as of the Close of Escrow.

(c) No Developer Event of Default. There exists no Developer Event of Default nor any act, failure, omission or condition that would constitute a Developer Event of Default under this Agreement.

(d) Developer Authority. The Developer has delivered to the City a copy of the Developer's organizational documents and corporate resolution(s) authorizing the Developer's execution of this Agreement and the transactions contemplated by this Agreement.

(e) City Documents. The Developer has executed and delivered to the City: (i) the Ground Lease; (ii) the Memorandum of Ground Lease; and (iii) the Affordable Housing Covenant. In addition, the Memorandum of Ground Lease, and the Affordable Housing Covenant have been recorded against the Property, or the Developer's leasehold interest in the Property (as applicable).

(f) Developer Payment. The Developer has paid, or the Title Company is prepared to release, to the City the Developer Payment, as evidenced by the final settlement statement for the closing of the Financing approved by the City.

Section 4.4 Condition of Title. At the Close of Escrow, the City shall deliver title to the leasehold interest in the Property free and clear of all liens, encumbrances, clouds and conditions, rights of occupancy or possession, except those set forth in the Title Report.

Section 4.5 Condition of the Property.

(a) Hazardous Materials. In fulfillment of the purposes of Health and Safety Code Section 25359.7(a), to the City's Current Actual Knowledge, no release of Hazardous Materials has come to be located on or beneath the Property, except as previously disclosed by the City to the Developer (as applicable). During the negotiating period, as set forth in the ERN, the Developer completed all due diligence activities, including but not limited to the inspection of the Existing Building, and a physical adequacy determination of the Property, and may not terminate this Agreement as a result of the purported physical unsuitability of the Property or condition of the Existing Building. As used in this Agreement, the phrase "to the City's Current Actual Knowledge" and words of similar import shall mean the actual knowledge of Chadrick

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Smalley, Economic Development and Housing Manager (the "City Representative"), on behalf of the City, as of the Effective Date, without any duty of separate inquiry and investigation. The City represents and warrants that the City Representative is that person affiliated with the City most knowledgeable regarding the ownership and operation of the Property. Developer hereby agrees that the foregoing person shall not have or incur any personal liability for the breach of any representation or warranty in this Agreement, and that Developer's sole remedy for any such breach shall be against the City.

(b) **"AS IS" CONVEYANCE. EXCEPT AS SET FORTH ABOVE, THE DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE CITY IS CONVEYING AND THE DEVELOPER IS ACCEPTING THE LEASEHOLD INTEREST IN THE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS, INCLUDING, BUT NOT LIMITED TO THE, CONDITION OF THE EXISTING BUILDING, AND THAT THE DEVELOPER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS (EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT) OR IMPLIED, FROM THE CITY AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION: (A) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, TOPOGRAPHY, CLIMATE, AIR, WATER RIGHTS, WATER, GAS, ELECTRICITY, UTILITY SERVICES, GRADING, DRAINAGE, SEWERS, ACCESS TO PUBLIC ROADS AND RELATED CONDITIONS); (B) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY AND GROUNDWATER; (C) THE DEVELOPMENT POTENTIAL OF THE PROPERTY, AND THE PROPERTY'S USE, HABITABILITY, MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE PROPERTY FOR ANY PARTICULAR PURPOSE; (D) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS WITHIN THE EXISTING BUILDING OR ON, UNDER OR ABOUT THE PROPERTY; AND (E) THE CONDITION OF TITLE TO THE PROPERTY. THE DEVELOPER AFFIRMS THAT THE DEVELOPER HAS NOT RELIED ON THE SKILL OR JUDGMENT OF THE CITY OR ANY OF ITS RESPECTIVE AGENTS, EMPLOYEES OR CONTRACTORS TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT THE CITY MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE. THE DEVELOPER ACKNOWLEDGES THAT IT SHALL USE ITS INDEPENDENT JUDGMENT AND MAKE ITS OWN DETERMINATION AS TO THE SCOPE AND BREADTH OF ITS DUE DILIGENCE INVESTIGATION WHICH IT SHALL MAKE RELATIVE TO THE PROPERTY AND SHALL RELY UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, WHETHER THE PROPERTY IS LOCATED IN ANY AREA WHICH IS DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY). THE DEVELOPER UNDERTAKES AND ASSUMES ALL RISKS ASSOCIATED WITH ALL MATTERS PERTAINING TO THE PROPERTY'S**

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LOCATION IN ANY AREA DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY.

(c) Survival. The terms and conditions of this Section 4.5 shall expressly survive the Close of Escrow, shall not merge with the provisions of the Ground Lease, or any other closing documents and shall be deemed to be incorporated by reference into the Ground Lease. The City is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property furnished by any contractor, agent, employee, servant or other person. The Developer acknowledges that the lease payments reflect the "as is" nature of this transaction and any faults, liabilities, defects or other adverse matters that may be associated with the Property. The Developer has fully reviewed the disclaimers and waivers set forth in this Agreement with the Developer's counsel and understand the significance and effect thereof.

(d) Acknowledgment. The Developer acknowledges and agrees that (i) to the extent required to be operative, the disclaimers of warranties contained in this Section are "conspicuous" disclaimers for purposes of all applicable laws and other legal requirements, and (ii) the disclaimers and other agreements set forth in such sections are an integral part of this Agreement, that the Ground Lease has been adjusted to reflect the same and that the City would not have agreed to convey the Property to the Developer pursuant to the Ground Lease without the disclaimers and other agreements set forth in this Section.

(e) Developer's Release of the City. The Developer, on behalf of itself and anyone claiming by, through or under the Developer hereby waives its right to recover from and fully and irrevocably releases the City and its council members, employees, and agents (the "Released Parties") from any and all claims, responsibility and/or liability that the Developer may have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to: (i) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Property, or its suitability for any purpose whatsoever, (ii) any presence of Hazardous Materials, and (iii) any information furnished by the Released Parties under or in connection with this Agreement.

(f) Scope of Release. The release set forth in Section 3.3hereof includes claims of which the Developer is presently unaware or which the Developer does not presently suspect to exist which, if known by the Developer, would materially affect the Developer's release of the Released Parties. The Developer specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, the Developer agrees, represents and warrants that the Developer realizes and acknowledges that factual matters now unknown to the Developer may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and the Developer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Developer nevertheless hereby intends to release, discharge and acquit the City from any such unknown causes of action, claims, demands, debts,

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controversies, damages, costs, losses and expenses. Accordingly, the Developer, on behalf of itself and anyone claiming by, through or under the Developer, hereby assumes the above-mentioned risks and hereby expressly waives any right the Developer and anyone claiming by, through or under the Developer, may have under Section 1542 of the California Civil Code, which reads as follows:

> **"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her would have materially affected his or her settlement with the debtor or released party."**
>
> **Developer's Initials: _____**

Notwithstanding the foregoing, this release shall not apply to, nor shall the City be released from, the City's actual fraud or intentional misrepresentation.

Section 4.6 Costs of Escrow and Close of Escrow. Ad valorem taxes, if any, shall be prorated as of the Close of Escrow. The lien of any bond or assessment shall be assumed by the Developer and assessments payable thereon shall be prorated as of the Closing Date. The City shall pay any delinquent ad valorem taxes and any amounts owning for delinquent bonds and assessments as of the date of conveyance. The Developer shall bear the costs of title insurance for any owner's title insurance policy desired by the Developer, all other title insurance policies, and all other costs of escrow (including the Title Company's fee). The costs borne by the Developer shall be in addition to the rent paid by the Developer to the City pursuant to the Ground Lease, or any other amounts owed by the Developer to the City.

ARTICLE 5.
ASSIGNMENT AND TRANSFERS

Section 5.1 Definitions.

As used in this Article , the term "Transfer" means:

(a) Property. Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to this Agreement or of the Developer's interest in the Property or the Improvements or any part thereof or any interest therein or any contract or agreement to do any of the same; or

(b) Developer. Any total or partial sale, assignment or conveyance, of any trust or power, or any transfer in any other mode or form, of or with respect to any ownership interest in Developer, or

(c) Merger. Any merger, consolidation, sale or lease of all or substantially all of the assets of Developer.

Section 5.2 Purpose of Restrictions on Transfer.

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This Agreement is entered into solely for the purpose of the development and operation of the Development and its subsequent use in accordance with the terms hereof and the terms of the City Documents. The Developer recognizes that the qualifications and identity of Developer are of particular concern to the City, in view of: (i) The importance of the redevelopment of the Property to the general welfare of the community; (ii) The public assistance and other public aids that have been made available by law and by the government for the purpose of making such redevelopment possible; (iii) The reliance by the City upon the unique qualifications and ability of the Developer to serve as the catalyst for development of the Property and upon the continuing interest which the Developer will have in the Property to assure the quality of the use, operation and maintenance deemed critical by the City in the development of the Property; (iv) The fact that the Property is not to be leased or used for speculation, but only for development and operation by the Developer in accordance with the Agreement; and (v) The importance to the City and the community of the standards of use, operation and maintenance of the Property. The Developer further recognizes that it is because of such qualifications and identity that the City are entering into this Agreement with the Developer and that Transfers are permitted only as provided in this Agreement.

Section 5.3 Prohibited Transfers.

The limitations on Transfers set forth in this Article shall apply throughout the Term. Except as expressly permitted in this Agreement, the Developer represents and agrees that the Developer has not made or created, and will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law without the prior written approval of the City. Any Transfer made in contravention of this Section 5.3 shall be void and shall be deemed to be a Developer Event of Default under this Agreement whether or not the Developer knew of or participated in such Transfer.

Section 5.4 Permitted Transfers; Process.

(a) Permitted Transfers. Notwithstanding the provisions of Section 5.3, the following Transfers shall be permitted and are hereby approved by the City, subject to satisfaction of the requirements of Section 5.5:

(1) The Transfer of the Developer's leasehold interest in the Property and the assumption of the Developer's duties and obligations under the City Documents by the Partnership; provided that the Developer, or an entity under the Control of the Developer, remains the General Partner throughout the Term, and the Partnership will be eligible for a property tax exemption in accordance with California Revenue and Taxation Code Section 214(g);

(2) The admission of the Investor as a limited partner of the Partnership for the purposes of syndicating the Tax Credit Reservation to the Investor to obtain the Tax Credit Funds. The City hereby approves the sale of limited partnership interests in the Partnership to the Investor, provided that: (i) the amended Partnership Agreement of the Partnership is first approved by the City; and (ii) all documents associated with the admission of the Investor as a limited partner of the Partnership are submitted to the City for approval prior to execution, which approval (with respect to (i) and (ii) above) shall not be unreasonably withheld.

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In the event the Developer desires to consummate the assignment and assumption described in Section 5.4(a)(2), and admit the Investor to the Partnership, as set forth in this subsection, in conjunction with the Close of Escrow, then the Developer shall submit to the City all required documentation required for approval by the City no less than thirty (30) days prior to the Close of Escrow.

(3) If the general partner of the Partnership is removed by the Investor for cause following default under the Partnership Agreement, the transfer of the general partner interest in the Partnership provided that the replacement general partner is reasonably approved by the City.

(4) The Transfer of the Developer's leasehold interest in the Property from the Partnership to the Developer, or a nonprofit affiliate of the Developer at the end of the fifteen (15) year compliance period as described in Section 42(i)(l) of the Internal Revenue Code of 1986.

(b) Process. No Transfer of this Agreement permitted pursuant to Section shall be effective unless, at the time of the Transfer, the person or entity to which such Transfer is made, by an instrument in writing approved as to form by the City Attorney and in form recordable among the Official Records, shall expressly assume the obligations of the Developer under the City Documents and agree to be subject to the conditions and restrictions to which the Developer is subject arising under the City Documents, to the fullest extent that such obligations are applicable to the particular portion of or interest in the Property and Improvements conveyed in such Transfer. In the absence of specific written agreement by the City, no such Transfer, assignment or approval by the City shall be deemed to relieve the Developer or any other party from any obligations under this Agreement.

Section 5.5 Other Transfers with City Consent.

The City may, in its sole discretion, approve in writing other Transfers as requested by the Developer. In connection with such request, the Developer shall submit to the City for review all instruments and other legal documents proposed to effect any such Transfer and all other documents as reasonably requested by the City to determine the qualifications and identity of the proposed transferee. If a requested Transfer is approved by the City such approval shall be indicated to the Developer in writing. Such approval shall be granted or denied by the City within thirty (30) days of receipt by the City of all materials required by this Section.

ARTICLE 6.
DEFAULT AND REMEDIES

Section 6.1 General Applicability.

The provisions of this Article shall govern the Parties' remedies for breach or Default under this Agreement.

Section 6.2 No Fault of Parties.

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(a) Events. The following events constitute a basis for a Party to terminate this Agreement without the fault of the other Party:

(1) The City, despite good faith and diligent efforts, is unable to convey the leasehold interest in the Property to the Developer and the Developer is otherwise entitled to such conveyance.

(2) Any of the conditions precedent to the conveyance of the leasehold interest in the Property proves to be impossible to meet despite the Developer's good faith and diligent efforts and the City is otherwise ready and able to convey the leasehold interest in the Property to the Developer.

(b) Right to Terminate. Upon the happening of the above-described event and at the election of either Party, this Agreement may be terminated by written notice to the other Party. After such termination of this Agreement, no Party shall have any rights against or liability to the others under this Agreement, except that the indemnification provisions of this Agreement shall survive such termination and remain in full force and effect.

Section 6.3 Developer Event of Default.

(a) Events. The following shall constitute a Developer Event of Default:

(1) A Transfer occurs, either voluntarily or involuntarily, in violation of Article 5; or

(2) Any representation or warranty contained in this Agreement or in any application, financial statement, certificate or report submitted to the City in connection with this Agreement proves to have been incorrect in any material and adverse respect when made; or

(3) A court having jurisdiction shall have made or entered any decree or order (i) adjudging the Developer, to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of the Developer, or seeking any arrangement for the Developer, under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of the Developer, in bankruptcy or insolvency or for any of their properties, or (iv) directing the winding up or liquidation of the Developer, if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period will apply under this subsection as well; or the Developer, shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive; or

(4) The Developer shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time

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period shall apply under this subsection as well) or prior to sooner sale pursuant to such sequestration, attachment, or execution. In the event that the Developer, is diligently working to obtain a return or release of the property and the City's interests under the City Documents are not immediately threatened, in the City's reasonable business judgment, the City may elect not to declare a Default under this subsection; or

(5) The Developer shall have voluntarily suspended its business or, the Developer shall have been dissolved or terminated.

(b) Cure Period. Upon the happening of any of the above-described events, the City shall first notify the Developer in writing of the purported breach, failure, or act above described, giving the Developer sixty (60) days from receipt of such notice to cure or, if such cure cannot be accomplished within sixty (60) days, to commence to cure such breach, failure, or act. In the event the Developer fails to cure within said sixty (60) days, or, if the breach or failure is of such a nature that it cannot be cured within sixty (60) days, the Developer fails to commence to cure within such sixty (60) days and thereafter diligently complete such cure within a reasonable time thereafter but in no event later than one hundred twenty (120) days, then the City shall be afforded the remedies described in Section 6.4 below.

(c) City Documents. Notwithstanding the notice and cure periods set forth above, if a lesser cure period or notice requirement is allowed before a default occurs under any other City Document (as applicable), such periods shall control in this Agreement as well.

(d) Copies. Copies of any notices delivered to the Developer under this Section shall be concurrently delivered to the Investor and the Security Financing Interest Holders (provided that the City shall have no liability for the failure to give notice to the Investor or any Security Financing Interest Holder, nor shall such failure impair the City's rights in any manner).

(e) Investor Right to Cure. The Investor shall have the right, but not the obligation, within sixty (60) days after receipt of the notice, to cure or commence to cure any Developer Event of Default set forth in such notice and the City will accept tender of such cure as if delivered by Developer.

Section 6.4 Remedies for Default.

City and Developer agree that, in the event of a Developer Event of Default or breach under this Agreement, following the expiration of the notice and cure periods described in Section 6.3, the only remedies available to the City shall be those listed in this Section 6.4, as follows:

(a) Action for Specific Performance. The City may prosecute an action for specific performance.

(b) Action for Damages. The City may prosecute an action for damages.

(c) Termination of this Agreement. The City terminate this Agreement by written notice to the Developer, provided, however, that the remedies pursuant to this Article or

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any other City Document and the indemnification provisions of this Agreement shall survive such termination.

Section 6.5 Waiver of Lis Pendens.

It is expressly understood and agreed by the Parties that no lis pendens shall be filed against any portion of the Property with respect to this Agreement or any dispute or act arising from it.

Section 6.6 Remedies Cumulative.

No right, power, or remedy given by the terms of this Agreement or the City Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given by the terms of any such instrument, or by any statute or otherwise. Neither the failure nor any delay to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

Section 6.7 Waiver of Terms and Conditions.

No waiver of any default or breach by the Developer hereunder shall be implied from any omission by the City to take action on account of such default if such Default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver, and such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. The consent or approval by the City to, or of, any act by the Developer requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act. The exercise of any right, power, or remedy shall in no event constitute a cure or a waiver of any default under this Agreement or the applicable City Documents, nor shall it invalidate any act done pursuant to notice of Default, or prejudice the City in the exercise of any right, power, or remedy hereunder or under the applicable City Documents, unless in the exercise of any such right, power, or remedy all obligations of the Developer to the City under the applicable City Documents are paid and discharged in full.

ARTICLE 7.
GENERAL PROVISIONS

Section 7.1 Notices, Demands and Communications.

Formal notices, demands, and communications between the City and the Developer shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by facsimile with a copy delivered the following day by reputable overnight delivery service, or delivered personally, to the principal office of the Parties as follows:

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City:	Christine Daniel, City Manager City of Emeryville 1333 Park Avenue Emeryville, CA 94608 Phone: Fax:
With copy to:	Office of City Attorney City of Emeryville 1333 Park Avenue Emeryville, CA 94608 Phone: Fax:
Developer:	EAH, Inc. 22 Pelican Way San Rafael, CA 94901 Attention: President

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this Section 7. Telephone numbers are only provided for the Parties' convenience, and formal notices may not be transmitted by telephone. In addition, any notice or demand from the City to the Developer may be delivered by e-mail to the Developer's e-mail set forth above; provided, however, in no event shall the Developer deliver any formal notice or demand to the City by e-mail.

Section 7.2 Non-Liability of City Officials, Employees and Agents.

No member, official, employee or agent of the City shall be personally liable to the Developer, or any successor in interest, in the event of any Default or breach by the City for any amount which may become due to the Developer or successor or on any obligation under the terms of this Agreement.

Section 7.3 Forced Delay.

In addition to specific provisions of this Agreement, performance by either Party shall not be deemed to be in Default only if such delay or Default is due solely to: war; insurrection; riots; floods; earthquakes; fires; casualties; acts of terrorism or the public enemy; severe and unanticipated weather conditions; litigation (including suits filed by third parties concerning or arising out of this Agreement); or court order. An extension of time for cause will be deemed granted if notice by the Party claiming such extension is sent to the other Party within ten (10) days from the date the Party seeking the extension first discovered the cause and such extension of time is not rejected in writing by the other Party within ten (10) days after receipt of the

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notice. In no event shall the cumulative delays exceed one hundred twenty (120) days, unless otherwise agreed to by the Parties in writing.

Section 7.4 Inspection of Books and Records.

Upon request, the Developer shall permit the City to inspect at reasonable times and on a confidential basis those books, records and all other documents of the Developer necessary to determine Developer's compliance with the terms of this Agreement.

Section 7.5 Provision Not Merged with Ground Lease.

None of the provisions of this Agreement are intended to or shall be merged by the Ground Lease transferring title to any interest in the real property which is the subject of this Agreement from City to Developer or any successor in interest, and any such Ground Lease shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 7.6 Title of Parts and Sections.

Any titles of the articles, sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any part of its provision.

Section 7.7 General Indemnification.

The Developer agrees to indemnify, protect, hold harmless and defend (with counsel reasonably selected by the City) the City, and its council members, employees, agents, and volunteers from any and all suits, actions, claims, losses, liabilities, damages, injuries, causes of action, costs, and expenses of any kind, whether actual or alleged, including without limitation, court costs, reasonable attorneys' fees, and other litigation expenses, demands, judgments and liens arising out of, pertaining to, or relating to, directly or indirectly, in whole or in part, the Developer's performance or non-performance under any of the City Documents, or any other agreement executed pursuant to the City Documents, or arising out of acts or omissions of any of Developer's contractors, subcontractors, or persons claiming under any of the aforesaid, except as directly caused by the City's willful misconduct or gross negligence. The Developer's obligation to indemnify, as set forth in this Section, are in addition to, and shall not be limited by, any additional obligation to indemnify the City pursuant to any other agreement between the Parties, or any approval provided by the City to the Developer in connection with the Development. The provisions of this section shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect and are not limited by the amount of insurance as may be required.

Section 7.8 Applicable Law.

This Agreement shall be interpreted under and pursuant to the laws of the State of California without regard to choice of law principles.

Section 7.9 No Commissions.

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The City shall not be liable for any real estate commissions or brokerage fees that may arise from this Agreement. The City represents that it has engaged no broker, agent or finder in connection with this transaction, and the Developer shall defend and hold the City harmless from any claims by any broker, agent or finder retained by the Developer. The provisions of this section shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

Section 7.10 Severability.

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 7.11 Legal Actions.

Any legal action commenced to interpret or to enforce the terms of this Agreement shall be filed in the Superior Court of the County.

Section 7.12 Binding Upon Successors.

This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the Parties hereto except that there shall be no Transfer of any interest by any of the Parties hereto except pursuant to the terms of this Agreement. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor or assign of such Party who has acquired an interest in compliance with the terms of this Agreement, or under law.

The covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property. Each and every contract, deed, or other instrument hereafter executed covering or conveying any interest in the Property shall be held conclusively to have been executed, delivered, and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed, or other instrument, unless the City expressly releases the leasehold interest in the Property from the requirements of this Agreement.

Section 7.13 Parties Not Co-Venturers.

Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.

Section 7.14 No Third Party Beneficiaries.

This Agreement and the City Documents are made and entered into solely for the benefit of the City and the Developer and no other person shall have any right of action under or by reason of this Agreement or the City Documents.

Section 7.15 Discretion Retained by City.

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Neither the execution of this Agreement by the City, nor any approval by the City Manager pursuant to this Agreement, constitutes approval by the City acting in its capacity as a municipal government, and in no way limits the discretion of the City in the permit and approval process in connection with development of the Improvements, or any proposed subsequent development of the Property. The Developer acknowledges that nothing in this Agreement (including any approval by the City Manager in accordance with this Agreement) shall limit, waive, or otherwise impair the authority and discretion of: (i) the City's building division, in connection with the review and approval of the proposed construction plans for the Development (or any change to such plans), or any use, or proposed use, of the Property, (ii) the City's issuance of a Building Permit, or (iii) any other office or department of the City acting in its capacity as a governmental regulatory authority with jurisdiction over the development, use, or operation of the Property and Improvements during the Term.

Section 7.16 Time of the Essence.

In all matters under this Agreement, the Parties agree that time is of the essence.

Section 7.17 Action by the City.

Except as may be otherwise specifically provided in this Agreement or another applicable City Document, whenever any approval, notice, direction, finding, consent, request, or other action by the City is required or permitted under this Agreement or another applicable City Document that is in substantial compliance with the terms of this Agreement, including, but not limited to, any approval of a proposed Transfer pursuant to Article 5, such action may be given, made, or taken by the City Manager, or by any person who shall have been designated in writing to the Developer by the City Manager, without further approval by the City Council. Any such action shall be in writing.

Section 7.18 Operating Memoranda; Implementation Agreements.

The Parties acknowledge that the provisions of this Agreement require a close degree of cooperation and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the Parties under this Agreement. The Parties desire, therefore, to retain a certain degree of flexibility with respect to the details of performance for those items covered in general terms under this Agreement. If and when, from time to time during the Term of this Agreement, the Parties find that refinements or adjustments are necessary, such refinements or adjustments shall be made through Operating Memoranda or Implementation Agreements approved by the Parties which, after execution, shall be attached to this Agreement as addenda and become a part hereof. Operating Memoranda or Implementation Agreements may be executed on the City's behalf by the City Manager. In the event a particular subject requires notice or hearing or any significant modification is proposed to the terms of this Agreement, the matter shall be processed as an amendment to this Agreement and must be approved by the City Council.

Section 7.19 Representation and Warranties of Developer.

The Developer hereby represents and warrants to the City as follows:

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(a) Organization. The Developer is a duly organized, validly existing California nonprofit public benefit corporation, and is in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted.

(b) Authority of Developer. The Developer has full power and authority to execute and deliver this Agreement, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Authority of Persons Executing Documents. This Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Developer, and all actions required under the Developer's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

(d) Valid Binding Agreements. This Agreement and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of the Developer enforceable against it in accordance with their respective terms.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on the Developer, or any provision of the organizational documents of the Developer, or will conflict with or constitute a breach of or a default under any agreement to which the Developer is a party, or will result in the creation or imposition of any lien upon any assets or property of the Developer, other than liens established pursuant hereto.

(f) Compliance With Laws; Consents and Approvals. The construction of the Improvements will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency.

(g) Pending Proceedings. The Developer is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of the Developer, threatened against or affecting the Developer, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to the Developer, materially affect the Developer's ability to develop the Improvements.

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(h) Title to Property. Upon the recordation of the Ground Lease, the Developer will have good and marketable title to the leasehold interest in the Property and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than those liens approved by the City, liens for current real property taxes and assessments not yet due and payable, and liens in favor of the City or approved in writing by the City.

(i) Financial Statements. The financial statements of the Developer, and other financial data and information furnished by, or on behalf of the Developer, to the City Parties fairly present the information contained therein. As of the Effective Date, there has not been any adverse, material change in the financial condition of the Developer from that shown by such financial statements and other data and information.

(j) Sufficient Funds. Upon the acquisition of the leasehold interest in the Property the Developer will hold sufficient funds or binding commitments for sufficient funds to obtain the leasehold interest in the Property, and complete the construction of the Improvements in accordance with this Agreement.

Section 7.20 Conflict Among City Documents.

Unless otherwise provided in a particular City Document, in the event of a conflict between the terms of this Agreement and any other City Document, the terms of this Agreement shall control to the extent of such conflict until such time as the Ground Lease is effective, after which the Ground Lease shall control.

Section 7.21 Entire Understanding of the Parties.

This Agreement, in conjunction with the City Documents, constitutes the entire understanding and agreement of the Parties with respect to the conveyance of the leasehold interest in the Property, and the development of the Improvements. The Parties further intend that this Agreement constitute the final and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial proceedings involving this Agreement. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it. The Parties to this Agreement and their counsel have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party (including but not limited to Civil Code Section 1654 as may be amended from time to time) shall not apply to the interpretation of this Agreement.

Section 7.22 Mandatory Language in All Subsequent Deeds, Leases and Contracts. All deeds, leases or contracts entered into by Developer as to any portion of the Property shall contain the following language:

(a) In Deeds:

"(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination

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against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed, nor shall the grantee or any person claiming under or through the grantee, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(b) <u>In Leases</u>:

"(1) Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee or any person claiming under or through the lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(c) <u>In Contracts</u>:

"(1) There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference

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to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

Section 7.23 Counterparts; Multiple Originals.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

DEVELOPER:

EAH, INC., a California nonprofit public benefit corporation

By: DocuSigned by: Welton Jordan III E41E09E7D40B4AD...

Name: Welton Jordan III

Its: Assistant Secretary

CITY:

CITY OF EMERYVILLE, a municipal corporation

By: _____
Christine Daniel, City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

DocuSigned by: John Kennedy 23934D02DB55467...
City Attorney

Note: Section 3.5 requires the Developer's initials and the City's initials
Section 4.5 require the Developer's initials

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EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Land situated in the state of California, County of Alameda, described as follows:

The westerly 100 feet of Lot 1, and a portion of the westerly 100 feet of Lot 2, Block 1, Map of Subdivisions of a portion of Plot #6 as per Kellersberger's survey of the Ranchos of V. & D. Peralta, filed December 16, 1876, Map Book 2, Page 6, Alameda County Records described as follows:

Commencing at the point of intersection of the northerly line of 43rd Street with the easterly line of San Pablo Avenue, as said Street and Avenue are shown on said map; thence easterly along said Northerly line of said 43rd Street, 100 feet; thence at right angles northerly 104.25 feet; thence at a right angles westerly 100 feet to said easterly line of San Pablo Avenue 104.25 feet to the point of commencement.

Assessor's Parcel No. 049-1079-014-01

Land situated in the state of California, County of Alameda, described as follows:

Parcel 1:
Being portions of Lots 2 and 3, Block 1, "Map of the Subdivision of A Portion of Plot 6, as shown on Kellersberger's Survey of the Ranchos of V. & D. Peralta," filed December 16, 1876, Map Book 2, Page 6, Alameda County Records, described as follows:

Beginning at a point on the easterly line of San Pablo Avenue distant thereon northerly 104.25 feet from the intersection thereof with the northerly line of 43rd Street, as said Avenue and Street are shown on the maps herein referred to; thence northerly along said easterly line of said San Pablo avenue, 51.75 feet to the southern line of the parcel of land described in the deed by M. Down to Albert Hammarberg and Gertrude Hammarberg dated July 16, 1945, recorded July 19, 1945, under Recorders' Series #SS/45761; thence along the last mentioned line easterly 100 feet, thence southerly parallel with said eastern line of San Pablo Avenue 51.75 feet; thence westerly parallel with said northern line of 43rd Street 100 feet to point of beginning.

Parcel 2:
The western 100 feet of Lot 4, Block 1, "Map of the Subdivision of a Portion of Plot 6, as shown on Kellersberger's survey of the Ranchos of V. & D. Peralta," filed December 16, 1876, Alameda County Records, Map Book 2, Page 6.

Assessor's Parcel No. 049-1079-017-01

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EXHIBIT B

DEVELOPMENT SCHEDULE

This Development Schedule summarizes the schedule for various activities under the Lease Disposition and Development Agreement (the "Agreement" or the "LDDA") to which this exhibit is attached. Times for performance set forth in this Development Schedule are subject to Section 7.3 of the LDDA, and may be amended or otherwise revised in accordance with Section 7.16 and Section 7.18 of the LDDA. The description of items in this Development Schedule is meant to be descriptive only, and shall not be deemed to modify in any way the provisions of the LDDA to which such items relate. Section references herein to the LDDA are intended merely as an aid in relating this Development Schedule to other provisions of the LDDA and shall not be deemed to have any substantive effect.

Whenever this Development Schedule requires the submission of plans or other documents at a specific time, such plans or other documents, as submitted, shall be complete and adequate for review by the City, within the time set forth herein. Prior to the time set forth for each particular submission, the Developer shall consult with City staff, informally as necessary concerning such submission in order to assure that such submission will be complete and in a proper form within the time for submission set forth herein.

Action	**Date**
1. Effective Date. The LDDA is executed by the Parties.	_____ (the "Effective Date").
2. Developer Obtains City Approvals. The Developer shall obtain all City Approvals. [LDDA § 2.2]	90 days after the Effective Date
3. Submittal of Financing Plan. The Developer shall submit the proposed financing plan. [LDDA § 2.3]	20 days prior to any application submitted to the Tax Credit Allocation Committee but in no event later than March 31, 2024
4. Submittal of Construction Plans. Developer shall submit the proposed construction plans [LDDA § 2.4]	30 days after receipt of award from California Tax Credit Allocation Committee
5. City Approval of the Construction Plans. The City shall either approve or disapprove of the Construction Plans. [LDDA § 2.4]	Concurrent with Developer's receipt of approved Building Permit
6. Approval of Financing Plan. The Developer shall obtain City approval of the Financing Plan. [LDDA § 2.4]	30 days after submittal of Financing Plan to City.

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Action	**Date**
7. Application for Building Permit. The Developer shall apply for building permit for the Improvements. [LDDA § 2.4]	30 days after receipt of award from California Tax Credit Allocation Committee
8. Residential Marketing Plan. The Developer shall submit, and obtain City approval of, the initial Residential Marketing Plan. [LDDA § 2.9]	60 days after award from California Tax Credit Allocation Committee
9. Supportive Services Plan. The Developer shall submit, and obtain City approval of, the initial Supportive Services Plan. [LDDA§ 2.10]	60 days after award from California Tax Credit Allocation Committee
10. Property Management Plan. The Developer shall submit, and obtain City approval of, the initial Property Management Plan. [LDDA § 2.11]	60 days after award from California Tax Credit Allocation Committee
11. Construction Contract. The Developer shall submit, and obtain City approval of, the proposed construction contract. [LDDA § 2.5]	60 days from submittal of Construction Plans
12. Construction Bonds. The Developer shall deliver the construction bonds to the City. [LDDA § 2.6]	60 days from submittal of Construction Plans
13. Building Permit. The Developer shall have received an issue ready letter for the Improvements. [LDDA § 2.4]	No later than the Closing.
14. Closing of all Financing. The Developer shall close on all Financing as set forth in the Financing Plan. [LDDA § 2.3]	No later than the Closing.
15. Developer Insurance. The Developer shall provide the City all applicable insurance policies required by LDDA and Ground Lease. [LDDA § 2.11]	No later than the Closing.
16. Closing. The closing for the recordation of the Memorandum of Ground Lease shall occur upon the satisfaction of the predisposition requirements in accordance with the LDDA. [LDDA § 4.2]	2 years after the Effective Date

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EXHIBIT C

SCOPE OF DEVELOPMENT

APNs 049-1079-014-01 and 049-1079-17-01, commonly known as 4300 San Pablo Avenue in Emeryville, California, is a +/- .47 acre development site (the "Site"). The Site currently contains temporary buildings that has previously served as office space and a temporary homeless shelter and will be relocated by Developer prior to the start of construction.

The Development is a 5-story, Type IIIA building with an outdoor courtyard on Level 2. Along the San Pablo Avenue frontage are residential services and amenities with a single level of parking behind. The Development will contain 68 affordable apartment units and residential amenities serving space on both the ground floor and podium levels. The units will be a mix of studios, one-bedroom and two-bedroom units, with no fewer than eight two-bedroom units. There will be no less than 7,000 square feet of residential amenities serving space, and no fewer than 17 (a .25 per-unit parking ratio) and no more than 34 parking spaces (a .5 per-unit parking ratio). The building will be built to meet a minimum of LEED Silver standards or a minimum of 100 "Green Point Rated" points. The building will be designed as an all-electric building and consistent with the City of Emeryville's REACH Codes. The Site will be developed making every effort to include utilization of mass timber in the construction of the ground floor to minimize embodied carbon. If mass timber proves financially infeasible, Developer will make best efforts to include the use of low carbon concrete mixes, limiting carbon-intensive materials, and prioritizing lower carbon alternatives.

The Development will serve Transitional Age Youth (TAY) and Senior populations, with a maximum of 20% of the units (13 units) set-aside for TAY, 80% for Seniors (54 units), and one manager unit. The units will serve households between 20% and 60% of Area Median Income (AMI), with no less than 51% of the units (35 units) serving Extremely Low-Income (ELI) households.

The Development includes the installation of publicly accessible art at a cost of at least one half of one percent (0.5%) of the project development costs.

The attached plans dated _____, 20__, are hereby incorporated into this Scope of Development by this reference

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EXHIBIT D

SITE MAP

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CIVIL

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TR1.1	Trash Chute Core Vestibule Layout (3-Chute Option)

PROJECT LOCATION

VICINITY MAP (NTS)

PROJECT TEAM

APPLICANT

EAH Housing
A: 22 Pelican Way,
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C: Welton Jordan
T: 415.295.8876
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4300 SAN PABLO

Site Area 0.47 Acres
FAR 3.07

UNIT MIX

5 LEVEL TYPE III

Unit Description			TYPE III					Unit Mix						
Unit	Description	NRSF	Level 1	Level 2	Level 3	Level 4	Level 5	Studio	1Bd	2Bd	% of Mix	Total % of Mix	Total Unit Area (*NRSF)
P0-1	Studio / 1Ba	460	0	6	11	7	5	29			43%	65%	13,340
P0-1 Alt.	Studio / 1Ba	440	0	2	0	4	6	12			18%		5,280
P0-2	Studio / 1Ba	662	0	0	1	1	1	3			4%		1,986
P1-0	1Bd / 1Ba	750	0	4	4	4	4		16		24%	26%	12,000
P2-0	2Bd / 1Ba	954	0	0	0	1	1			2	3%	9%	1,908
P2-0 Alt.	1Bd / 1Ba + Den	917	0	1	1	0	0			2	0%		1,834
P2-1	2Bd / 2Ba	1,117	0	1	1	1	1			4	6%		4,468
			0	14	18	18	18	44	16	8	97%	100%	40,816 SF
										68	Total Units		600 Avg. sf

*NRSF: To outside face of stud + 1" air gap

54 Senior Units (80% of total units)
14 TAY Unit (20% of total units)

Building Amenity	
Level 1: Ground Level Amenity	7,820 SF
Level 2: Amenity at Podium Level	1,540 SF
Total	9,360 SF*

* Indicates net square footage, to inside face of stud, includes amenity, operations, laundry, bike kitchen

*Gross Floor / Building Area	Residential	Amenity	Garage	Total
Level 1	0	7,820	8,620	16,440
Level 2	12,240	1,540		13,780
Level 3	13,950			13,950
Level 4	13,900			13,900
Level 5	13,860			13,860
Total	53,950	9,360	8,620	71,930 SF

"**Floor area, gross**" means the total horizontal enclosed area of all floors of a building within the surrounding exterior finish wall surfaces including mezzanines and interior balconies, but excluding the area of spaces having a height of less than seven feet (7'), nonhabitable basements, and the area used exclusively for vehicle parking and loading. "Gross floor area" includes residential uses except for projects approved prior to the adoption of these planning regulations.
"**Floor area ratio (FAR)**" means a measure of building intensity equal to the ratio of the total gross floor area of all buildings on a lot or building site to the area of the lot or building site.
City of Emeryville Municipal Code. Title 9, Chapter 8, Article 2 - Definitions.

Parking

Parking Required	*Estimated Parking Demand	**Min. Parking	***Max. Parking
Senior Units (.25 stall/d.u.)	17	11.0	15.0
TAY Units (.125 stall/d.u.)	1.8	1.0	2.0
Guest (.1 stall/d.u.)	6.8	5.0	7.0
	26	17	24

*Within the Transit Hub Overlay, all parking requirements are reduced by 50% (Section 9-3.406). Therefore, for the project site, parking demand will be 0.25 parking spaces per unit and 0.1 guest parking spaces per unit (Section 9-4.404).
**The minimum number of parking spaces shall be 33% less than the estimated parking demand as indicated in Table 9-4.404
***The maximum number of parking spaces allowed shall be 10% more than the estimated parking demand as indicated in Table 9-4.404

Parking Provided	Stalls
Surface Stall	16
EVR Stall	3
EVR Accessible Stall	1
Van Accessible Stall	1
	21 TOTAL STALLS PROVIDED
	0.31 STALLS/UNIT

Bicycle Parking Required	Stalls
Long-term (1 stall/du)	68 BICYCLE STALLS REQUIRED
Short-term	3 BICYCLE STALLS REQUIRED
	71 TOTAL STALLS REQUIRED

Bicycle Parking Provided	Stalls
Long-term	68 BICYCLE STALLS PROVIDED
Short-term	4 BICYCLE STALLS PROVIDED
	72 TOTAL STALLS PROVIDED

Open Space

Private Open Space Required	SF
40sf (units w/ balconies)	960

Common Open Space Required	SF
20sf (units w/ balconies)	480
80sf (units w/out balconies)	3,520
Total (Private and Common)	4,960

*Per EMC 9-4.303 Open Space

Open Space Provided	SF
*Common Open Space (Courtyard Podium)	4,165
Required Dimension: 25' x 25'	
Private open space	960
Total	5,125 sf

*Per EMC 9-4.303 Open Space

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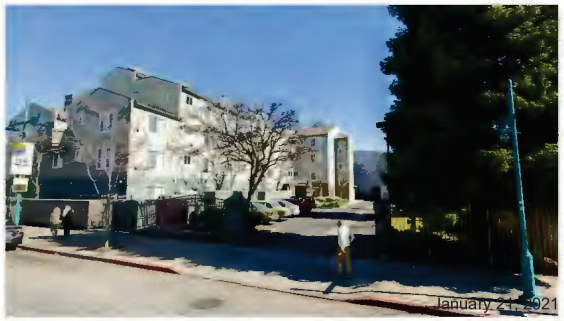
1. View from intersection of San Pablo Ave and 43rd St, looking towards project site

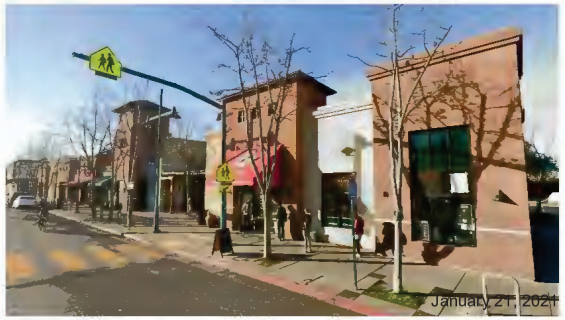


2. View from San Pablo Ave looking North towards adjacent Emeryvilla Apartments

7. View from 43rd St looking North towards existing dwellings adjacent to project site

6. View from 43rd St looking South towards existing dwellings

3. View from San Pablo Ave looking South towards existing CVS Pharmacy



4. View from San Pablo Ave looking West towards existing restaurants

5. View from intersection of San Pablo Ave and 43rd St looking South towards existing Bank of America building

SYMBOLS LEGEND

PROJECT SITE

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EXISTING CONTEXT

A0-3

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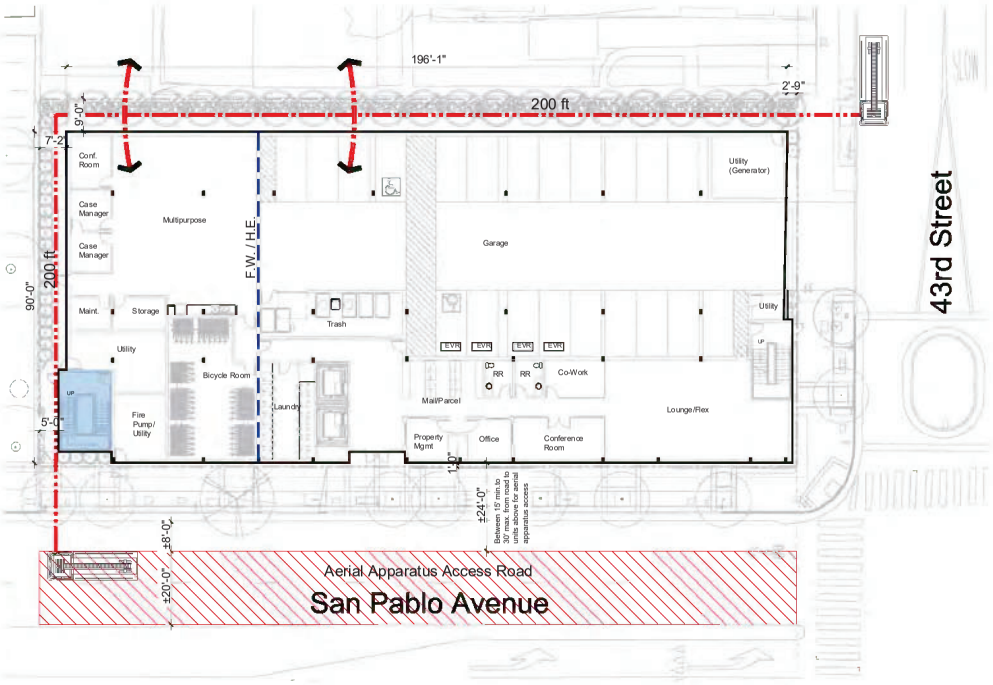
Project Summary

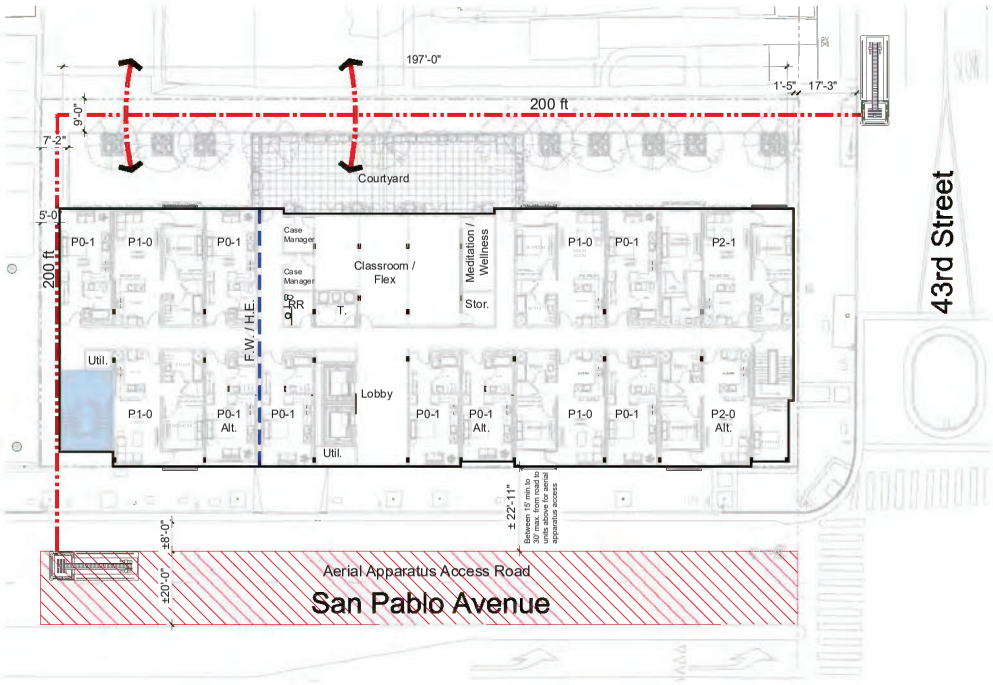
Proposed Use	Multifamily Residential
Construction Type	Type IIIA (5 stories)
Building Height	5 Stories
Fire Sprinklers	NFPA 13

Symbols Legend

- 20' aerial apparatus access road (As discussed with Emeryville Fire Department and as per CFC 2019 Section 503.2.1)
- 150' maximum hose pull. 200' acceptable as discussed with Emeryville Fire Department
- Stair with roof access
- Firewall/Horizontal Exit



LEVEL 1



LEVEL 2

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FIRE ACCESS DIAGRAM

A0-4

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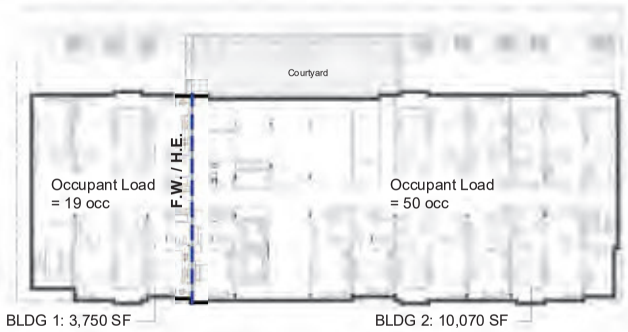
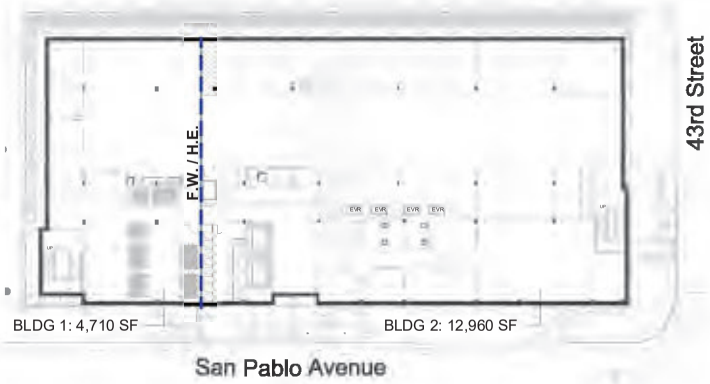
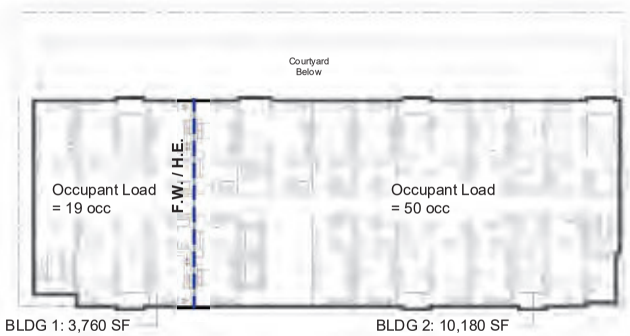


LEVEL 2

ROOF LEVEL



LEVEL 1



LEVELS 3-5

Construction Type: Type IIIA

Allowable Building Height (CBC Table 504.3)
Allowable building heights: Type IIIA R-2 = 65 feet, 4 Stories
Allowable building heights with Sprinkler Increase: Type IIIA R-2 = 85 feet, 5 Stories

Allowable Building Area (CBC Section 506.2.3)
$A_a = [A_t + (NS \times I_f)] \times S_a$
A_a = Allowable area (square feet)
A_t = Tabular allowable area factor per Table 506.2
NS=Tabular allowable area factor per Table 506.2 for a nonsprinklered building
I_f = Frontage Increase
S_a = Number of building stories above grade plane, not to exceed 2

CBC 506.3.3 Frontage Increase:
$I_f = [F/P - 0.25]\ W/30 = 0.25$

$A_a = [A_t + (NS \times I_f)] \times S_a$
$A_a = [24{,}000 + (24{,}000 \times 0.25)] \times 2$
$A_a = 60{,}000$ SF

Allowable building area = **60,000 SF per building**

Fire-Resistance Rating Requirements in Type IIIA Construction

Exterior Bearing Walls:	2 Hour (CBC Table 601)
Exterior Nonbearing Walls:	1 Hour (CBC Table 602)
Fire Walls:	3 Hour (CBC Table 706.4)
Stair Enclosure:	2 Hour (CBC Section 713.4)

Building 1 Area Calculations

Level	Area
Level 1	4,710 SF
Level 2	3,750 SF
Level 3	3,760 SF
Level 4	3,760 SF
Level 5	3,760 SF
Total	19,740 SF

19,740 SF < 60,000 SF

Building 2 Area Calculations

Level	Area
Level 1	12,960 SF
Level 2	10,070 SF
Level 3	10,180 SF
Level 4	10,180 SF
Level 5	10,180 SF
Total	53,570 SF

53,570 SF < 60,000 SF

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ALLOWABLE AREA ANALYSIS

A0-5

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Residential B1	
3,720 SF	200
19	R-2

Podium Courtyard	
1,300 SF	15
87	A-3

Classroom/Flex	
1,170 SF	15
78	A-3

Residential B2	
8,230 SF	200
42	R-2

CONSTRUCTION TYPE: IIIA

OCCUPANCY GROUP:
Residential: R-2
Podium Courtyard: A-3
Amenity: A-3

LEVEL 2

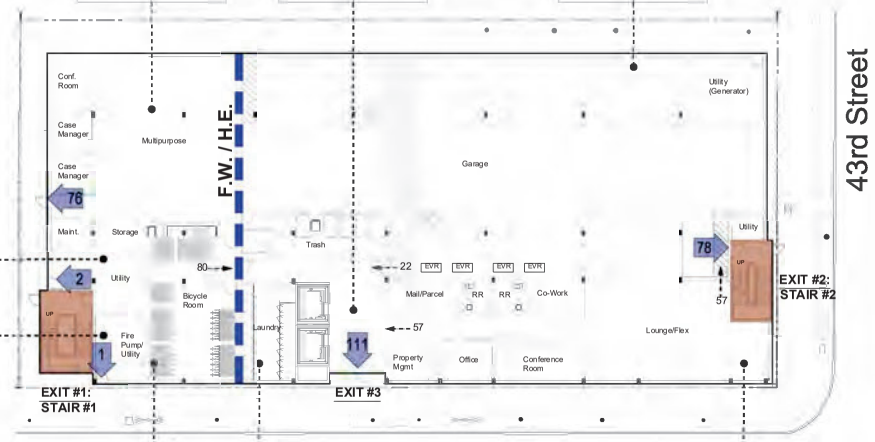
Amenity	
2,250 SF	15
152	A-3

Lobby	
440 SF	15
30	A-3

Garage	
8,620 SF	200
43	S-2

Utility 1	
410 SF	300
2	S-2

Utility 2	
290 SF	300
1	S-2



Bike Room	
918 SF	300
4	S-2

Laundry	
411 SF	300
2	S-2

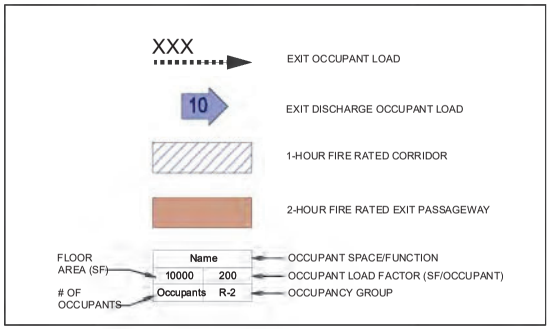
Lounge/Flex	
1,710 SF	15
114	A-3

CONSTRUCTION TYPE: IIIA

OCCUPANCY GROUP:
Garage/Storages: S-2
Leasing/Amenity: A-3

LEVEL 1

LEGEND



NOTES:

1. EGRESS WIDTH SHALL COMPLY WITH CBC SECTION 1005.1
2. REQUIRED STAIR WIDTH = OCCUPANT LOAD × 0.2" (CBC 1005.3.1 EXCEPTION 1)
3. WIDTH OF STAIR SHALL NOT BE LESS THAN 44 INCHES PER CBC 1009.4. EXCEPTION 1: STAIRWAYS SERVING AN OCCUPANT LOAD OF LESS THAN 50 SHALL HAVE A WIDTH OF NOT LESS THAN 36" INCHES
4. 44" STAIR PROVIDES CLEARANCE FOR 220 OCCUPANTS
5. REQUIRED DOOR WIDTH = OCCUPANT LOAD × 0.15" (CBC 1005.3.2 EXCEPTION 1) (36" MIN. WIDTH DOORS PROVIDED AT EXITS THROUGHOUT)
6. SEE PLAN FOR SUMMARY OF OCCUPANT LOAD AT EACH EGRESS COMPONENT
   A. TYPICAL 3'-0" DOOR PROVIDES 34.25" OF CLEARANCE FOR 228 OCCUPANTS.
7. EXTERIOR EXIT STAIRWAYS SHALL COMPLY WITH CBC SECTION 1026
8. ROOF ACCESS DOOR SHALL NOT LOCK OCCUPANTS ON ROOF.
9. EXIT ELEVATORS SHALL COMPLY WITH CBC SECTION 1009.2.1

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MEANS OF EGRESS ANALYSIS

A0-6

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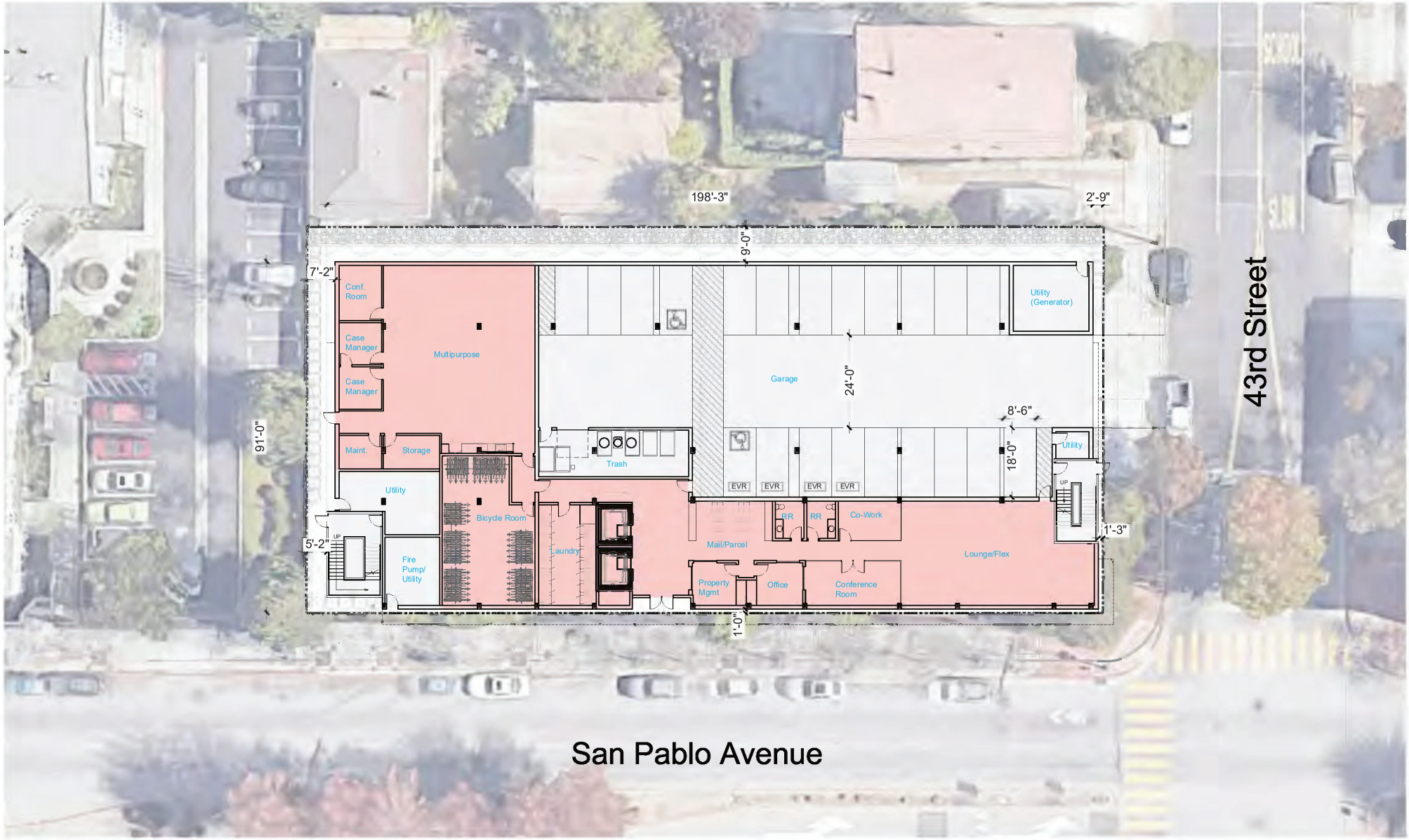

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SITE PLAN
Level 1

A1-0

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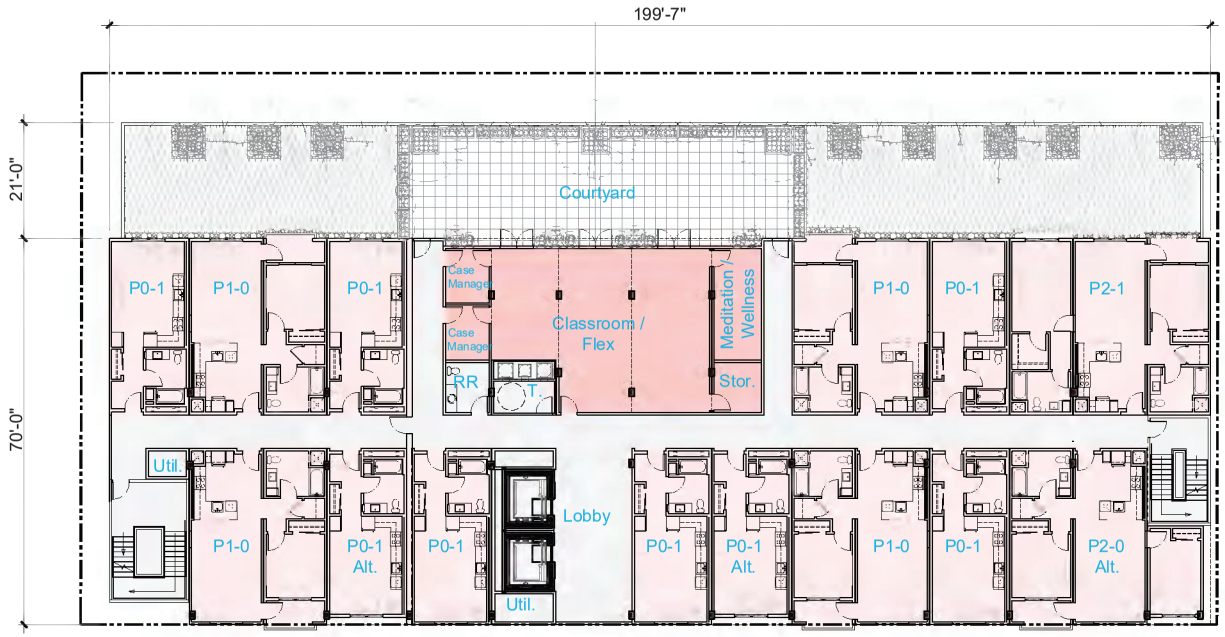

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BUILDING PLAN
Levels 2

A1-1

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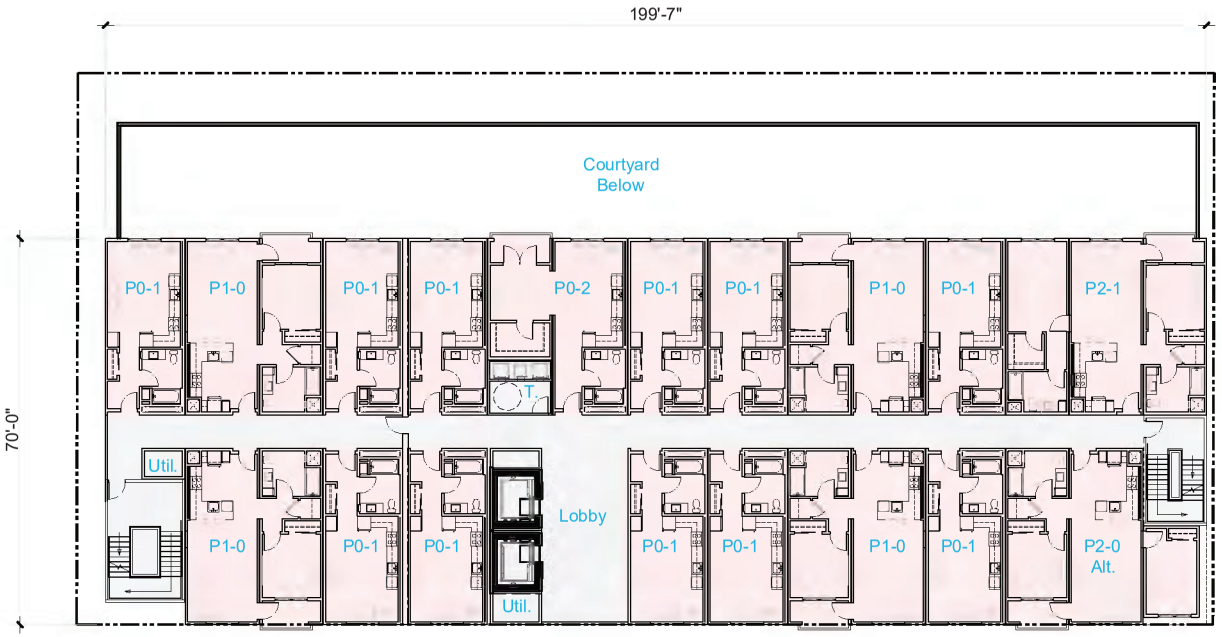

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SUBMITTAL #1
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BUILDING PLAN
Levels 3

A1-2

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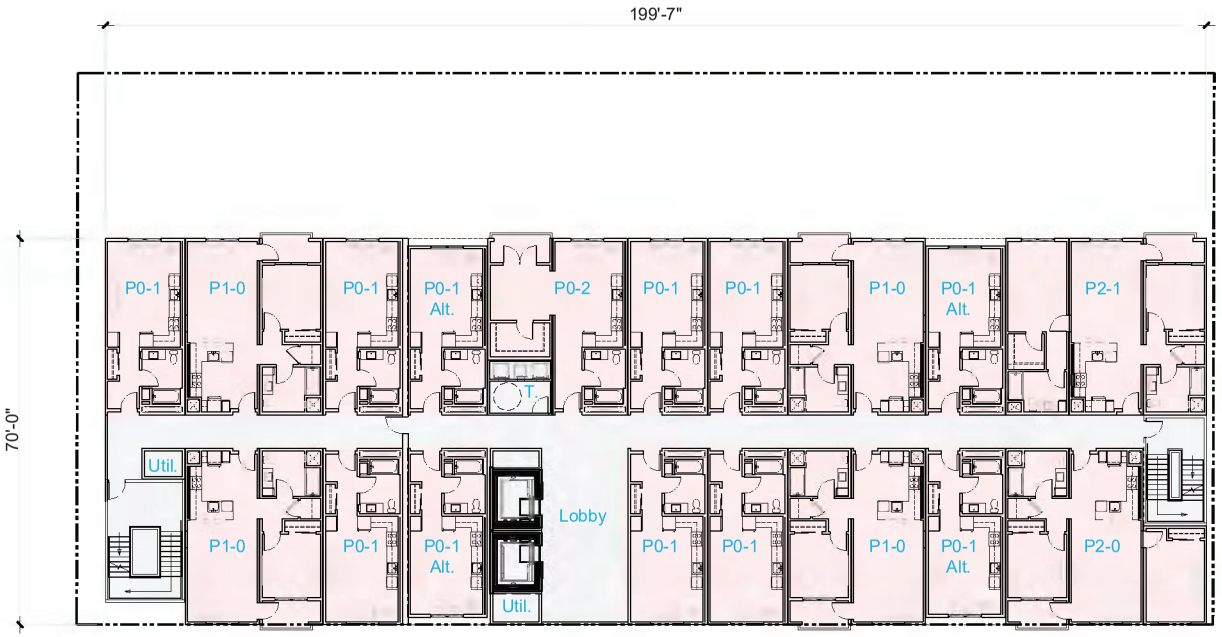

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BUILDING PLAN
Levels 4

A1-3

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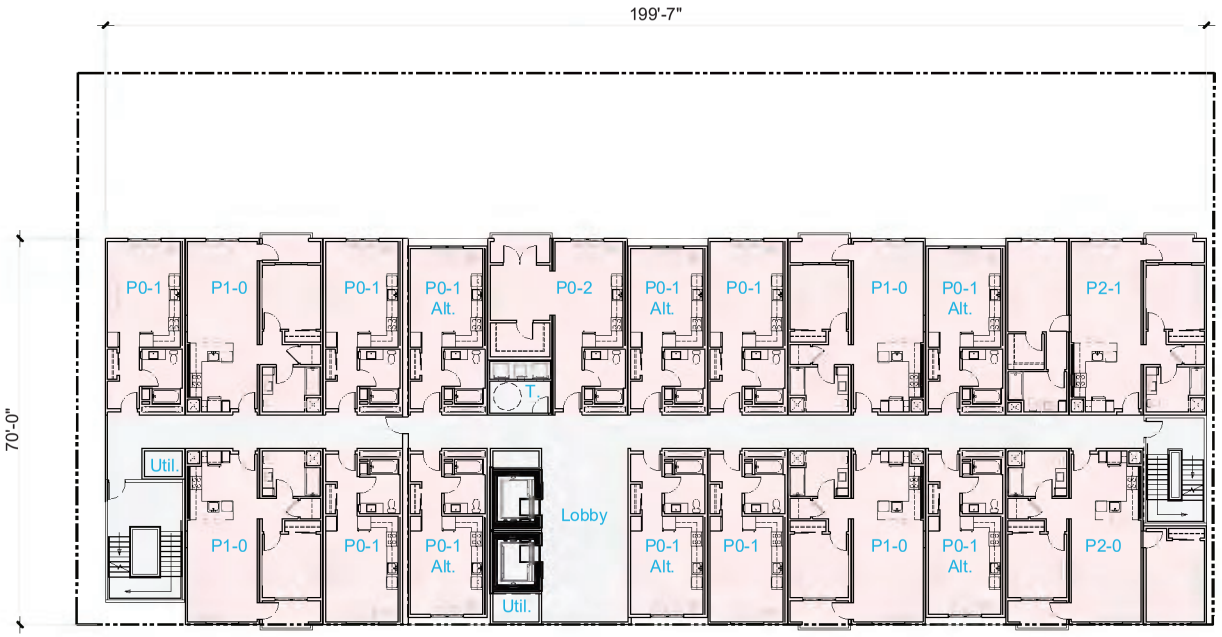

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BUILDING PLAN
Levels 5

A1-4

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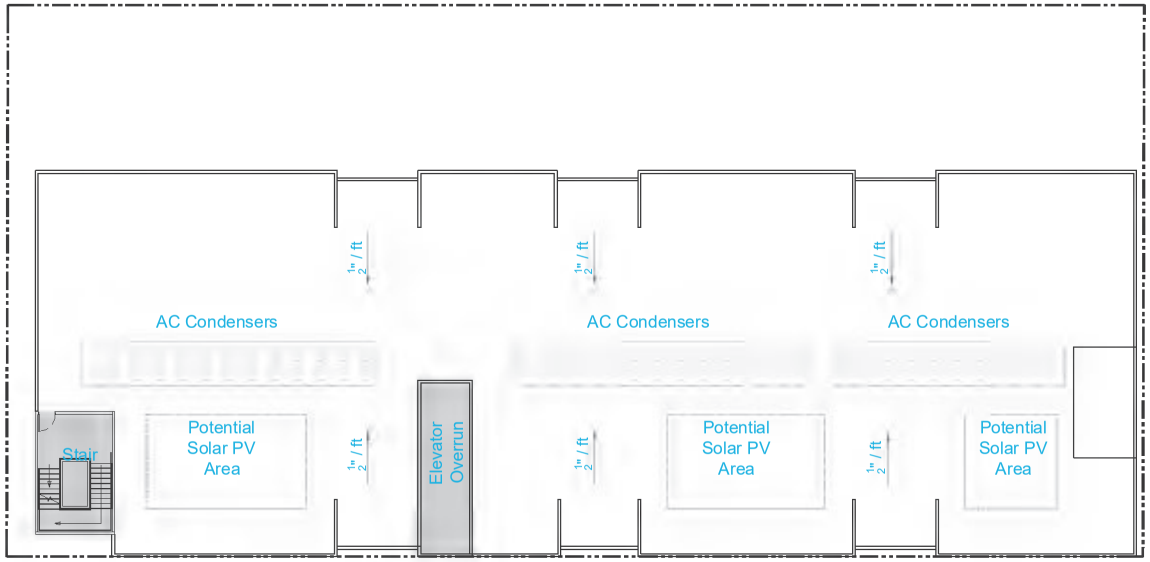

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ROOF PLAN

A1-5

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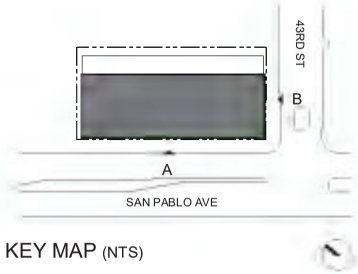
ELEVATION B



KEY MAP (NTS)

ELEVATION A

LEGEND

01	STUCCO
02	COMPOSITE WOOD PANEL
03	VINYL WINDOW
04	STOREFRONT
05	DECORATIVE METAL RAILING
06	DECORATIVE METAL PANEL
07	METAL AWNING
08	GARAGE SCREENING

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BUILDING ELEVATIONS

A2-0

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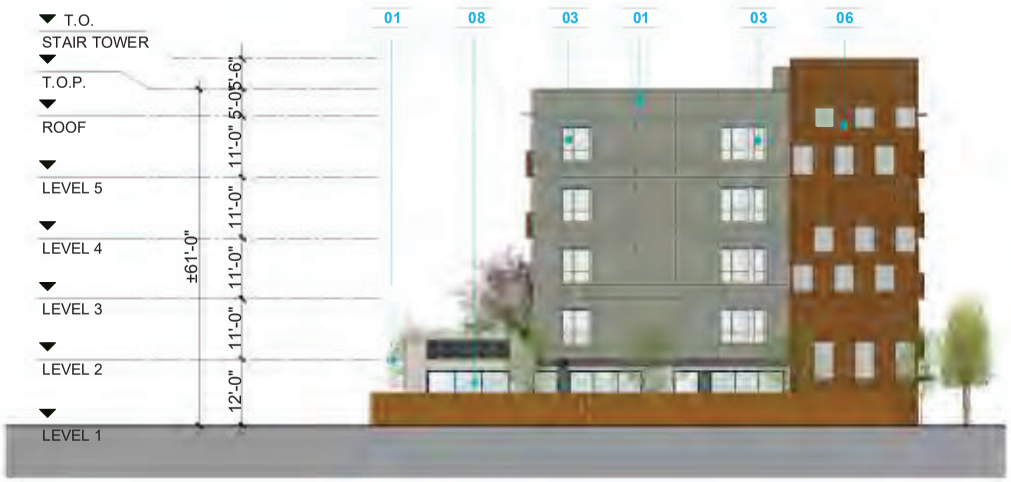
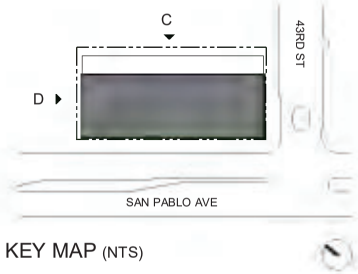


ELEVATION D

ELEVATION C



KEY MAP (NTS)

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02	COMPOSITE WOOD PANEL
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BUILDING ELEVATIONS

A2-1

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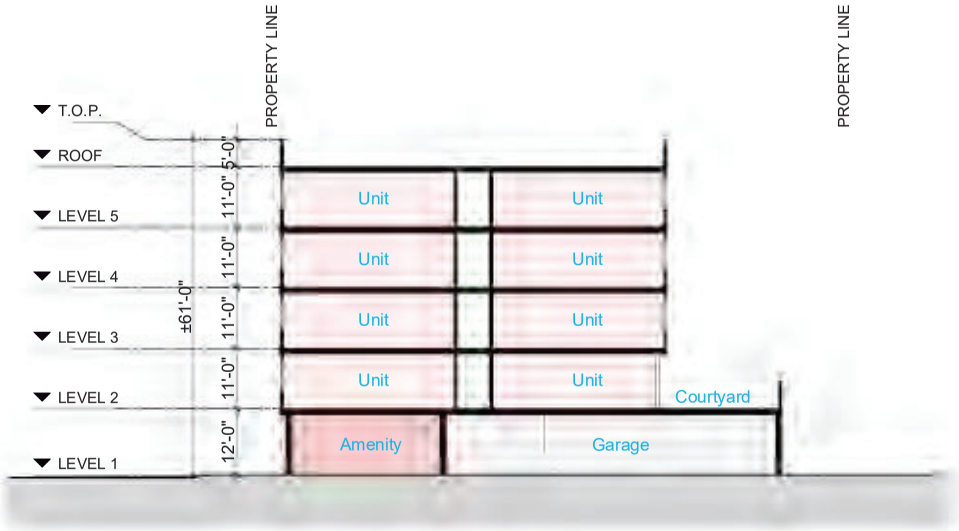
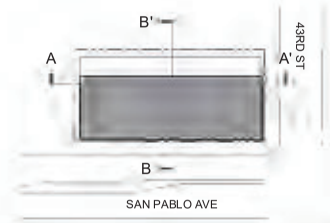


SECTION B-B'

SECTION A-A'



KEY MAP (NTS)

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BUILDING SECTIONS

A3-0

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RENDERINGS

A4-0

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RENDERINGS

A4-1

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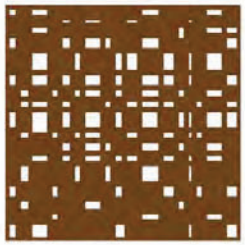
01 STUCCO 1

02 STUCCO 2

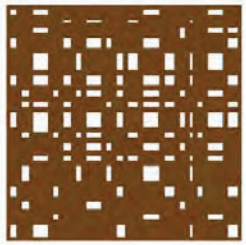
03 COMPOSITE WOOD PANEL

04 VINYL WINDOW

05 STOREFRONT



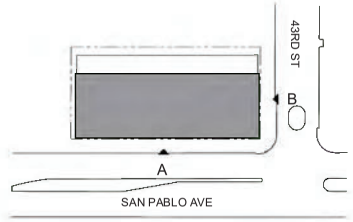
06 DECORATIVE METAL RAILING



07 DECORATIVE METAL PANEL

08 METAL AWNING

09 GARAGE SCREENING



KEY MAP (NTS)

ELEVATION A

ELEVATION B

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0 8 16 32

MATERIAL BOARD

A5-0

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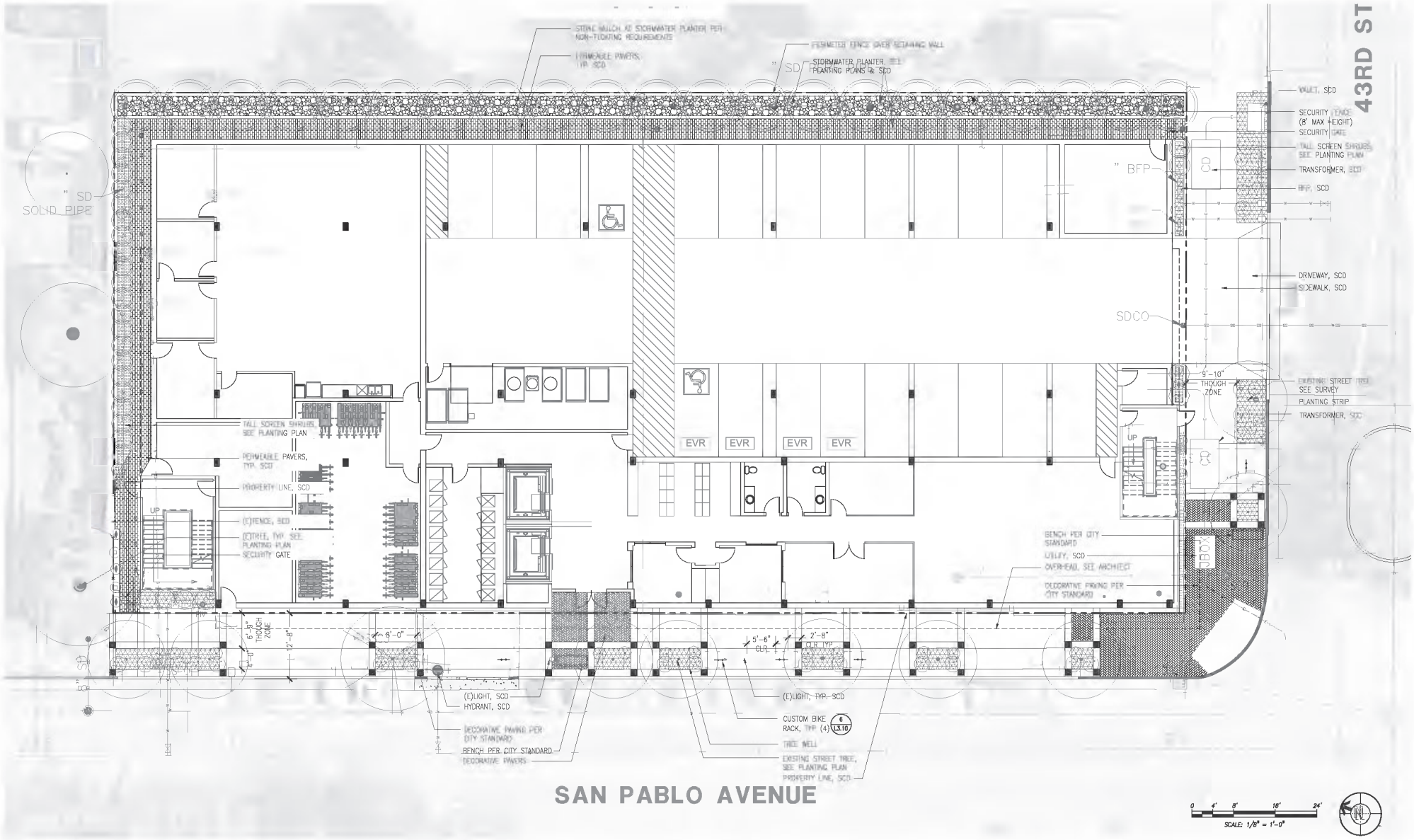

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LANDSCAPE PLAN - GROUND FLOOR

L1.01

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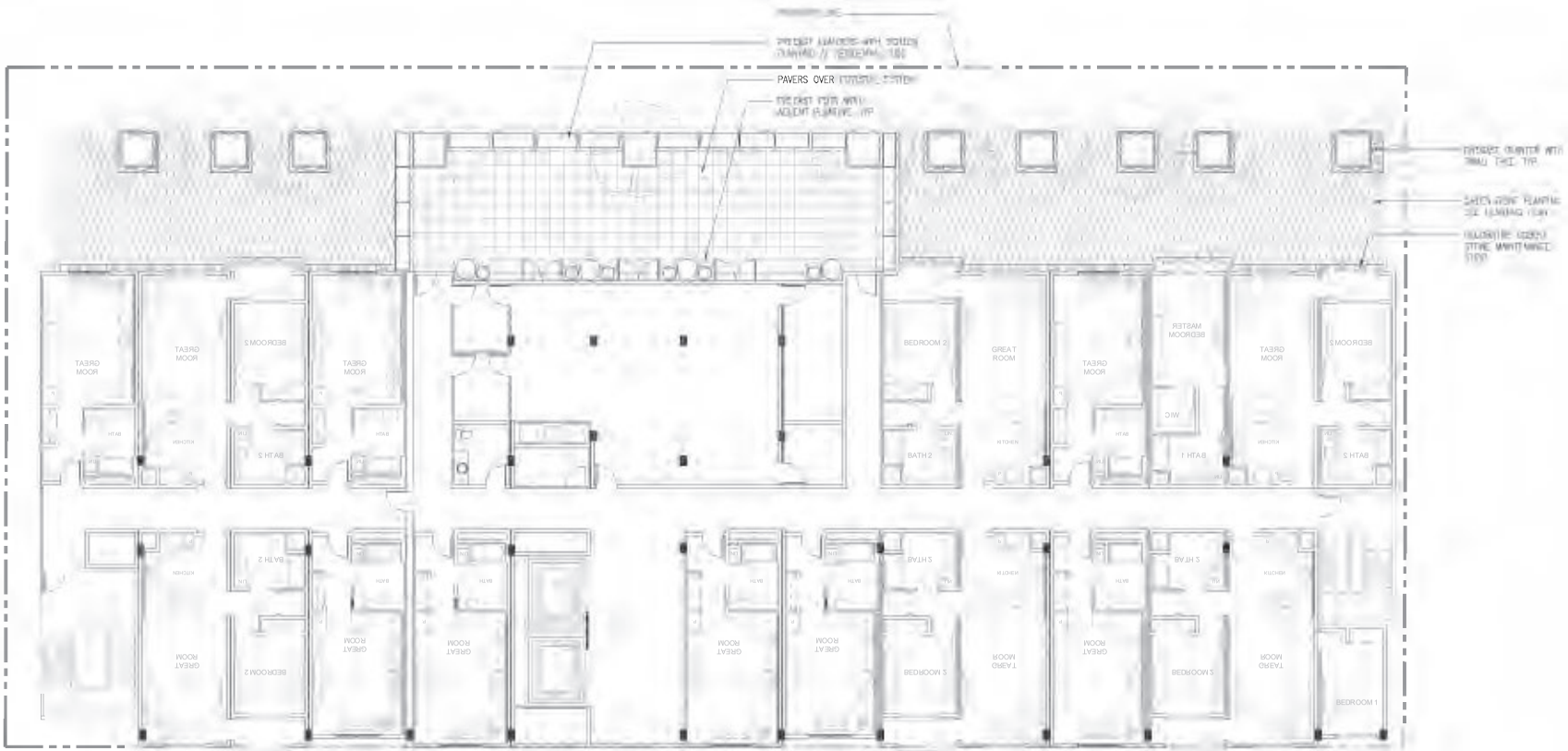

0 4' 8' 16' 24'
SCALE: 1/8" = 1'-0"

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SUBMITTAL #1
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LANDSCAPE PLAN - PODIUM FLOOR

L1.02

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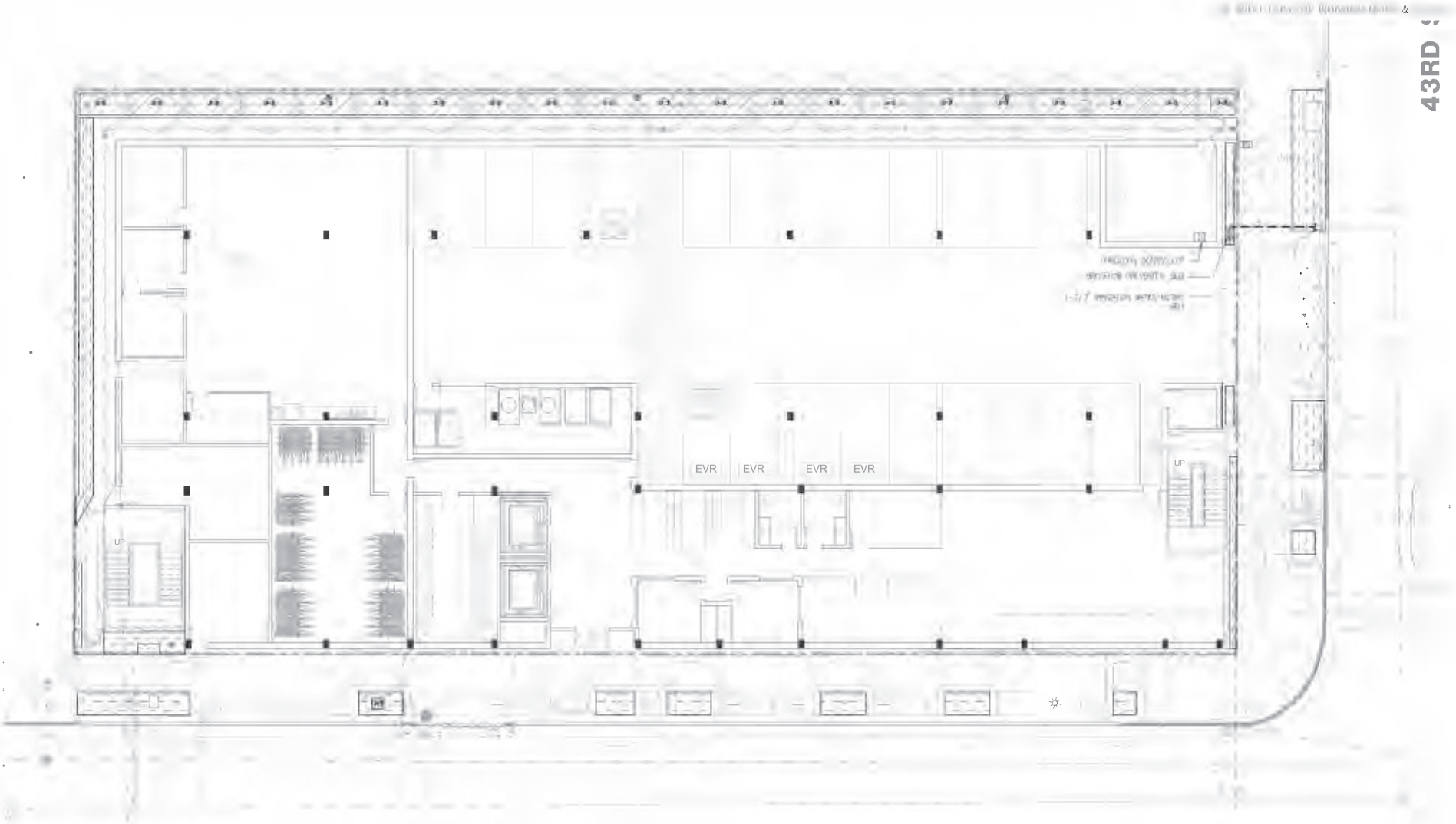

TITLE 23 MUNICIPAL WATER EFFICIENT LANDSCAPE ORDINANCE (MWELO)
I HAVE COMPLIED WITH THE CRITERIA OF THE ORDINANCE AND APPLIED THEM ACCORDINGLY FOR THE EFFICIENT USE OF WATER IN THE LANDSCAPE DESIGN PLAN AND IRRIGATION DESIGN PLAN.

0 4' 8' 16' 24'
SCALE: 1/8" = 1'-0"

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IRRIGATION PLAN - GROUND FLOOR

L2.01

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IRRIGATION PLAN - PODIUM FLOOR

L2.02

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IRRIGATION DESIGN INTENT

1. THIS PLAN SHALL COMPLY WITH THE REQUIREMENTS OF THE STATE OF CALIFORNIA'S MODEL WATER EFFICIENT LANDSCAPE ORDINANCE (MWELO), CITY OF EMERYVILLE, AND EAST BAY MUNICIPAL UTILITIES DISTRICT (EBMUD).
2. THE IRRIGATION SYSTEM SHALL BE DESIGNED TO PROVIDE THE MINIMUM AMOUNT OF WATER NECESSARY TO SUSTAIN GOOD PLANT HEALTH.
3. THE IRRIGATION SYSTEM IS TO BE A FULLY AUTOMATIC, WEATHER-BASED SYSTEM USING RAIN SENSOR, LOW FLOW DRIP, BUBBLER DISTRIBUTION, AND ROTOR WITH MATCHED PRECIPITATION RATE NOZZLES DESIGNED FOR HEAD-TO-HEAD COVERAGE.
4. ALL SELECTED COMPONENTS SHALL BE PERMANENT, COMMERCIAL GRADE, SELECTED FOR DURABILITY, VANDAL RESISTANCE AND MINIMUM MAINTENANCE REQUIREMENT, INSTALLED BELOW-GRADE, AND DESIGNED FOR 100% COVERAGE.
5. THE SYSTEM SHALL INCLUDE A MASTER CONTROL VALVE AND FLOW SENSING CAPABILITY WHICH WILL SHUT DOWN ALL OR PART OF THE SYSTEM IF LEAKS ARE DETECTED.
6. THE IRRIGATION SYSTEM SHALL BE DESIGNED TO DELIVER WATER TO HYDROZONES BASED ON MOISTURE REQUIREMENTS OF THE PLANT GROUPING.

HYDROZONE LEGEND

SYMBOL	ZONE	HYDROZONE	PLANT TYPE	IRRIGATION TYPE	AREA (SF)	TOTAL (SF)
	1	LOW WATER USE	SHRUB/G.COVER	DRIP	1,203	4,144.0
	2	LOW WATER USE	BIORETENTION	DRIP	785	
	3	LOW WATER USE	TREES	BUBBLER	128	
	4	LOW WATER USE	G.COVER	SPRAY	2,028	
	4	MODERATE WATER USE	TREES	BUBBLER	4	4
					TOTAL	4,148.0

INFORMATION TABLE

ANNUAL ET_0 BASED ON CITY OF OAKLAND	
ANNUAL ET_0	**41.8**
CONVERSION FACTOR	**0.55**
IRRIGATION EFFICIENCY	**0.81**

KEY	IRRI METHOD		PLANT TYPE (PT) WUCOLS	
B	BUBBLER	0.81	H: HIGH WATER USE	0.7-1.0
D	DRIP	0.81	M: MEDIUM WATER USE	0.4-0.6
S	SPRAY	0.75	L: LOW WATER USE	0.2-0.3
R	ROTOR	0.75	VL: VERY LOW WATER USE	0.1

* SPECIAL LANDSCAPE AREA (0.3)
RECYCLED WATER, EDIBLE PLANTS, ACTIVE PLAY AREA, SPORTS FIELDS, AND GOLF COURSES

WATER EFFICIENT LANDSCAPE WORKSHEET

REFERENCE ANNUAL ET_0 FOR:	OAKLAND (NEATEST LOCATION, WUCOLS)	41.8

ET ADJUSTMENT FACTOR	.55	ET ADJ FACTOR PER MWELO & CALGREEN: 0.80= EXISTING NON-REHABILITATED LANDSCAPE, 0.65= SCHOOL 0.55= RESIDENTAL, 0.45= NON-RESIDENTIAL	SLA ADDITIONAL WATER ALLOWANCE (1.0-ETAF)	0.45

HYDROZONE	WUCOLS IV PLANT FACTOR (PF)	IRR METHOD DRIP/BUBB.: 0.81 SPRAY/ROTOR: 0.75	IRRIGATION EFFICIENCY (IE)	$ETAF_2$ (PF/IE)	LANDSCAPE AREA (SQ FT)	$ETAF_2$ X AREA	ESTIMATED TOTAL WATER USE (ETWU)
1	0.3	D	0.81	0.37	1203	445.58	11547.02
2	0.3	D	0.81	0.37	785	290.74	7534.84
3	0.3	B	0.75	0.40	128	51.20	1326.90
4	0.3	S	0.75	0.40	2028	811.20	21033.06
5	0.6	B	0.75	0.80	4	3.20	82.93
--	0	--	0.00	0.00	0	0.00	0.00
				TOTAL	4144.00	1598.70	41,431.81
SPECIAL LANDSCAPE AREAS							
--				1	0	0.00	0.00
--				0	0	0.00	0.00
				TOTAL	0	0.00	0.00
	TOTAL LANDSCAPE AREA (LA + SLA)				4,144.00		

TOTAL ETWU	TOTAL ETWU ALL AREAS (SLA AND REGULAR LA)	TOTAL ETWU	41,431.81
MAWA	(ANNUAL ETO)(0.62 CONVERSION FACTOR) [(ET ADJUSTMENT FACTOR)(TOTAL LANDSCAPE AREA) + (1-ETAF)*SLA)]]	MAWA	59,067.75

AVERAGE ETAF	SUM($ETAF_2$ X AREA) / TOTAL AREA (AVERAGE ETAF AS DESIGNED, EXCLUSIVE OF SLA_2)	0.39
SITEWIDE ETAF	TOTAL ETAF X AREA / TOTAL LANDSCAPE AREA (INCLUDES SLA_2)	0.39

I HAVE COMPLIED WITH THE CRITERIA OF THE WATER EFFICIENT LANDSCAPE ORDINANCE AND APPLIED THEM FOR THE EFFICIENT USE OF WATER IN THE LANDSCAPE DESIGN PLAN.

BRUCE JETT

IRRIGATION SCHEDULE

KEY		MODEL NUMBER	DETAIL
POINT OF CONNECTION & IRRIGATION CONTROLLER			
		POINT OF CONNECTION	SCD & SEE MEP
BFP		BACKFLOW PREVENTER ASSEMBLY	SCD
C		EPA CERTIFIED SMART CONTROLLER	–
RS		WIRELESS RAIN & FREEZE SENSOR	–
VALVE			
	VALVE BOX LAYOUT ALSO SEE PLANTING PLAN TO AVOID TREE LOCATION	REMOTE CONTROL VALVE	–
		BALL VALVE (LINE SIZE TYP)	–
PB		PULL BOX	–
PRV		*MODEL 500XLYSBR, PRESSURE REGULATOR WITH REDUCER, INSTALL ONLY WHEN PRESSURE > 80 PSI	–
FS		FLOW SENSOR – SUBMETER	–
MV		MASTER VALVE	
IRRIGATION LINES			
C	ALSO SEE MEP	COPPER K, LATERAL	SPD
X		COPPER K, MAINLINE	
		NON-PRESSURE LATERAL IRRIGATION PIPE IN PLANTING AREA. PVC: SCHEDULE 40	–
		IRRIGATION MAINLINE PVC: CLASS 315 SCHEDULE 40	
		SLEEVE, PVC: CLASS 315	
¾", 1", 1¼", 1½"		LATERAL SIZE	
1", 1½", 2"		MAINLINE SIZE	
# / SIZE / GPM		STATION NUMBER / VALVE SIZE / GALLONS PER MINUTE	
BUBBLER (TWO/TREE, ONE/VINE OR SHRUB TYPICAL)			
		BUBBLER	–
		DEEP WATERING BUBBLER	–
DRIP IRRIGATION			
		DRIP ZONE KIT	–
		PVC TO DRIPPERLINE CONNECTION	–
# / 1" / 1.0 / HOWR 5-18 / 18"		VALVE CALLOUT W/ DRIP VALVE INFO: DRIP LINE MODEL # (GPH AND EMITTER SPACING) DRIP LINE SPACING (MAX)	
		DRIPPER LINE, PRESSURE REGULATED	–
		MINI DRIPLINE FOR PRECAST PLANTER 1/4" TUBING	–
SPRAY IRRIGATION			
		ROTARY SPRAY HIGH EFFICIENCY, LOW PRECIPITATION	–

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IRRIGATION NOTES, LEGEND, & CALCULATION

L2.03

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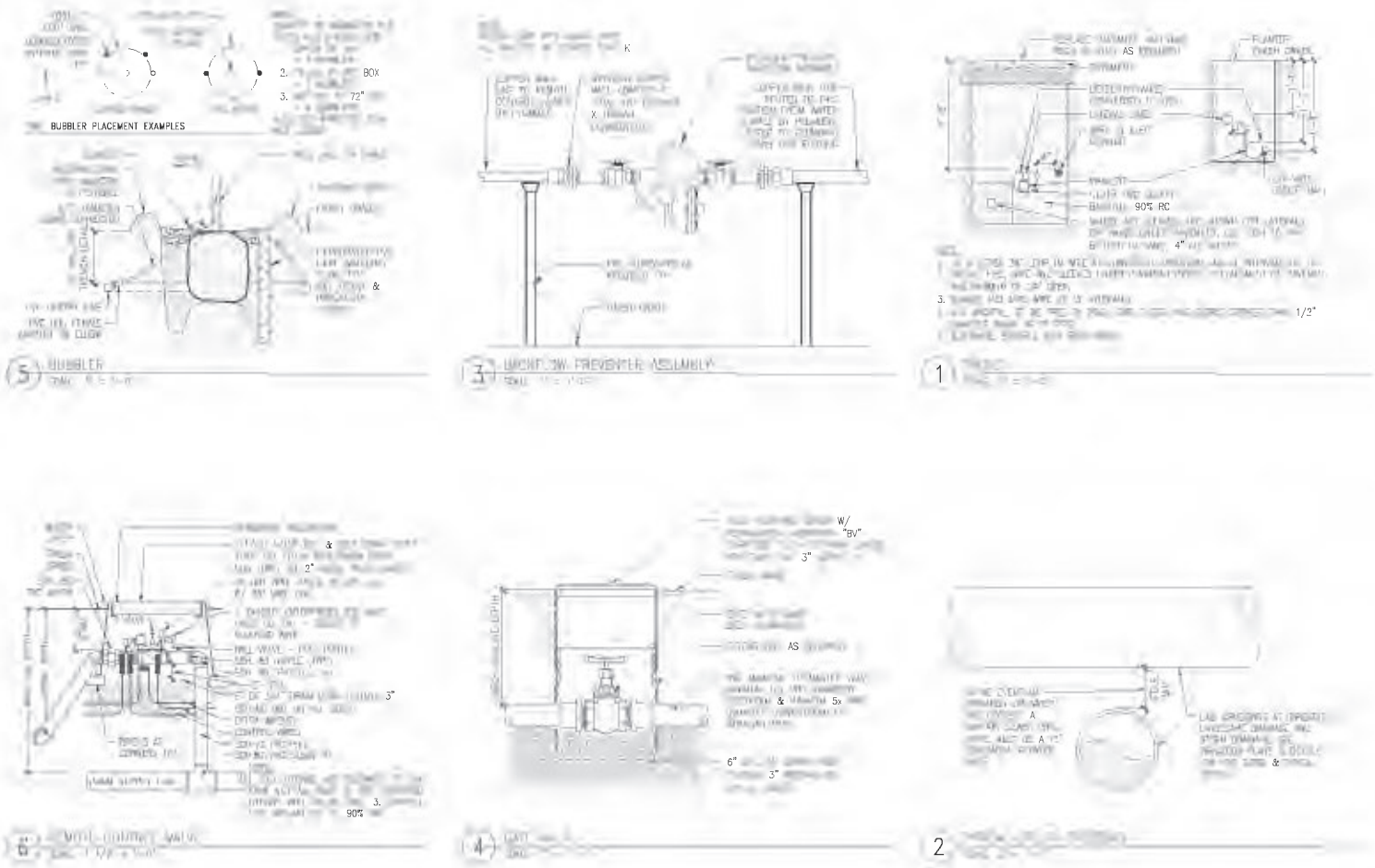

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IRRIGATION DETAILS

L2.04

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PLANT LIST

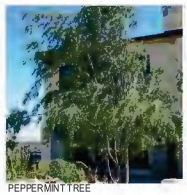
KEY	SYMBOL	QTY	BOTANICAL NAME	COMMON NAME	SIZE	SPACING	WUCOLS	COMMENTS
TREES								
		SEE PLAN	EXISTING STREET TREE (SEE ARBORIST REPORT)	EXISTING STREET TREE	VARIES	AS SHOWN		
T-1		6	ARBUTUS MARINA	STRAWBERRY TREE	24" BOX	AS SHOWN	VL	
T-2		21	CERCIS OCCIDENTALIS	WESTERN REDBUD	24" BOX	AS SHOWN	VL	NATURAL LOW BRANCHING MULTI-TRUNK
T-3		5	AGONIS FLEXUOSA	PEPPERMINT TREE	24" BOX	AS SHOWN	L	
T-4		1	ACER RUBRUM	RED OAK	36" BOX	AS SHOWN	M	
KEY	SYMBOL	QTY	BOTANICAL NAME	COMMON NAME	SIZE	SPACING	WUCOLS	COMMENTS
SHRUBS								
S-1		3	WESTRINGIA FRUTICOSA 'MORNING LIGHT'	VARIEGATED COAST ROSEMARY	5 GAL	3'-0" OC	L	
S-2		20	AGAVE ATTENUATA 'VARIEGATA'	VARIEGATED FOX TAIL AGAVE	5 GAL	3'-0" OC	L	
S-3		10	LAVANDULA ANGUSTIFOLIA 'MUNSTEAD'	ENGLISH LAVENDER	5 GAL	2'-0" OC	L	
S-4		4	PITTOSPORUM TOBIRA 'VARIEGATA'	JAPANESE MOCK ORANGE	5 GAL	4'-0" OC	L	
S-5		28	PITTOSPORUM TENUIFOLIUM 'SILVER SHEEN'	SILVER SHEEN KOHUHU	5 GAL	6'-0" OC	M	
S-6		20	MAHONIA AQUIFOLIUM	OREGON GRAPE	5 GAL	AS SHOWN	L	

KEY	SYMBOL	QTY	BOTANICAL NAME	COMMON NAME	SIZE	SPACING	WUCOLS	COMMENTS
GRASS & GRASS LIKE								
GG-1		55	LOMANDRA LONGIFOLIA 'BREEZE'	SPINY HEADED MAT RUSH	5 GAL	AS SHOWN	L	
KEY	SYMBOL	QTY	BOTANICAL NAME	COMMON NAME	SIZE	SPACING	WUCOLS	COMMENTS
ACCENT								
A-1		5	DAPHNE ODORA VARIEGATA	VARIEGATED DAPHNE	5 GAL	3'-0" OC	M	
A-2		65	IRIS DOUGLASIANA	DOUGLAS IRIS	5 GAL	2'-0" OC	L	
KEY	SYMBOL	QTY	BOTANICAL NAME	COMMON NAME	SIZE	SPACING	WUCOLS	COMMENTS
VINES								
V-1		14	JASMINUM POLYANTHUM	PINK JASMINE	5 GAL	AS SHOWN	M	
V-2		25	PARTHENOCISSUS QUINQUEFOLIA	VIRGINIA CREEPER	5 GAL	AS SHOWN	M	
KEY	SYMBOL	QTY	BOTANICAL NAME	COMMON NAME	SIZE	SPACING	WUCOLS	COMMENTS
GROUNDCOVERS								
GC-1		548 SF	GREVILLEA LANIGERA 'COASTAL GEM'	COASTAL GEM GREVILLEA	1 GAL	3'-6" OC	L	50%/50% MIX PER HATCHED AREA
			CEANOTHUS HEARSTIORUM	CALIFORNIA LILAC	1 GAL	3'-6" OC	L	
GC-2		283 SF	GRAPTOPETALUM PARAGUAYENSE 'PINK'	GHOST PLANT	1 GAL	2'-0" OC	VL	50%/50% MIX PER HATCHED AREA
			DISCULARIA DELTOIDES	PINK ICEPLANT	1 GAL	2'-0" OC	L	
GC-3		65 SF	TRACHELOSPERMUM JASMINOIDES	STAR JASMINE	1 GAL	2'-0" OC	M	
GC-4		785 SF	SALVIA SONOMENSIS	CREEPING SAGE	1 GAL	2'-0" OC	L	50%/50% MIX PER HATCHED AREA
			MIMULUS BIFIDUS	MONKEY FLOWER	1 GAL	2'-0" OC	L	
GC-5		1,985 SF	SEDUM GREEN ROOF MIX	SEDUM GREEN ROOF MIX	TILE CARPET		L	

SEE IRRIGATION CALCULATIONS SHEET L2.03 FOR TOTAL SQUARE FOOTAGE OF PLANTING AREAS

STRAWBERRY TREE

WESTERN REDBUD


PEPPERMINT TREE

RED OAK

COAST ROSEMARY

FOX TAIL AGAVE

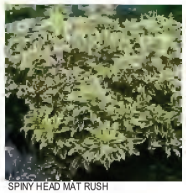
ENGLISH LAVENDER

JAPANESE MOCK ORANGE

SILVER SHEEN KOHUHU

OREGON GRAPE

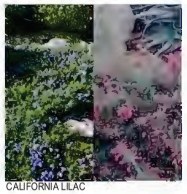
SPINY HEAD MAT RUSH


SPINY HEAD MAT RUSH

SPINY HEAD MAT RUSH

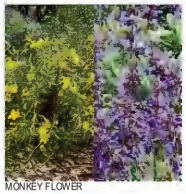
SPINY HEAD MAT RUSH

SPINY HEAD MAT RUSH


CALIFORNIA LILAC
COASTAL GEM GRIVELLIA

GHOST PLANT
PINK ICEPLANT

STAR JASMINE


MONKEY FLOWER
CREEPING SAGE

SEDUM MIX

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925.254.5422
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4300 SAN PABLO
EMERYVILLE #2019-0958

SUBMITTAL #1
JULY 1, 2022

PLANT SCHEDULE

L3.00

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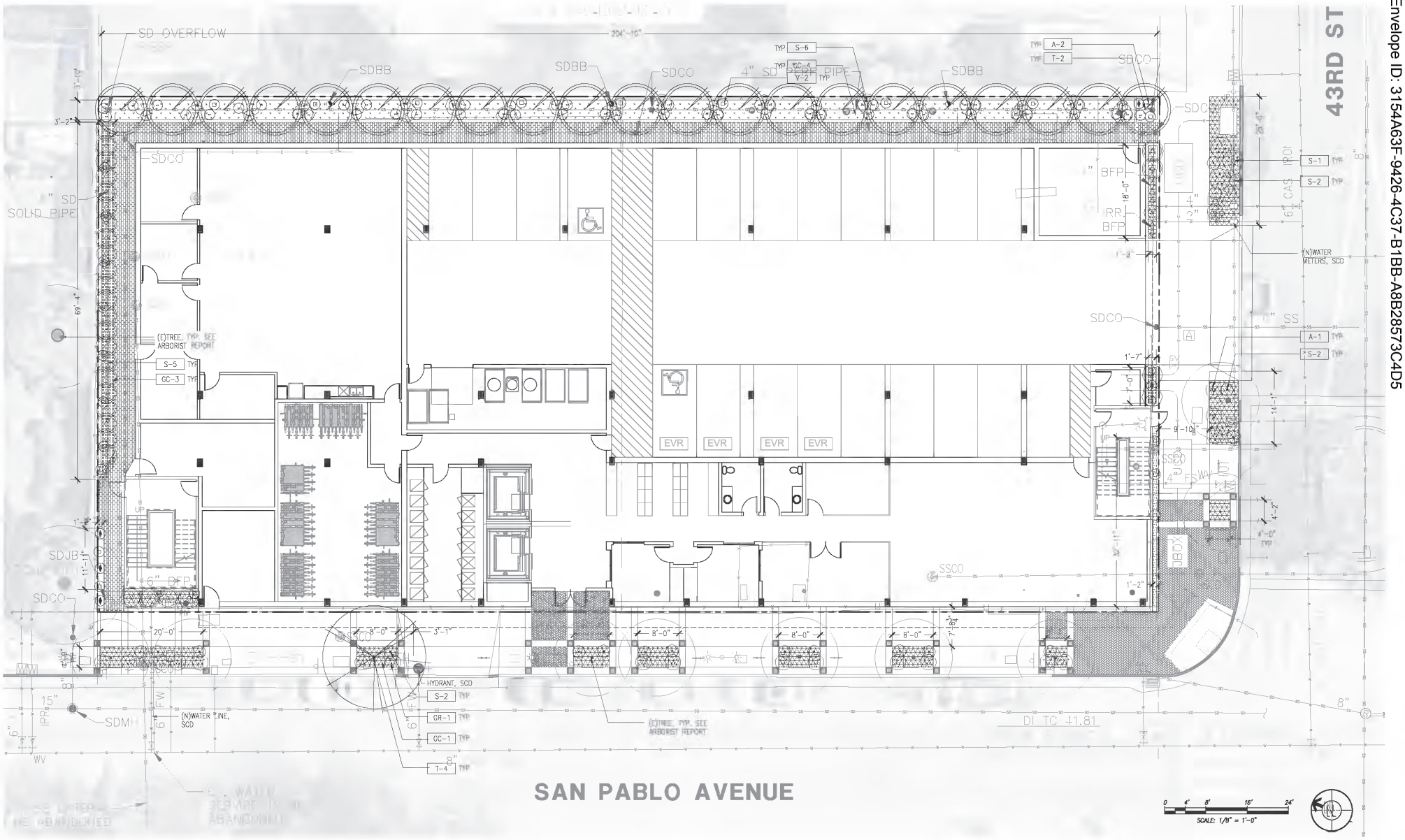

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PLANTING PLAN - GROUND FLOOR

L3.01

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0 4' 8' 16' 24'
SCALE: 1/8" = 1'-0"

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SUBMITTAL #1
JULY 1, 2022

PLANTING PLAN - PODIUM FLOOR

L3.02

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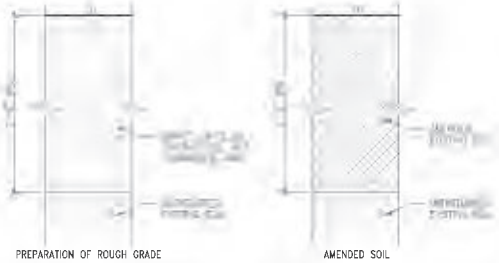
PLANTING AND SOIL PREPARATION NOTES

1. [illegible] A [illegible]
2. [illegible] A MINIMUM OF 5% [illegible] A MINIMUM OF 6 [illegible]
3. [illegible] AS [illegible]
4. [illegible]
5. [illegible] C.3 [illegible] C.
6. [illegible]
7. [illegible] AS [illegible]
8. [illegible] AS [illegible] A [illegible]
9. [illegible] A [illegible]
10. [illegible]
11. [illegible] A 3" [illegible]
12. [illegible]

GRADING NOTES

1. [illegible]
2. [illegible]
3. [illegible]
4. [illegible] A [illegible]
5. [illegible]
6. [illegible] A [illegible] 2% [illegible] A [illegible] 1% [illegible]

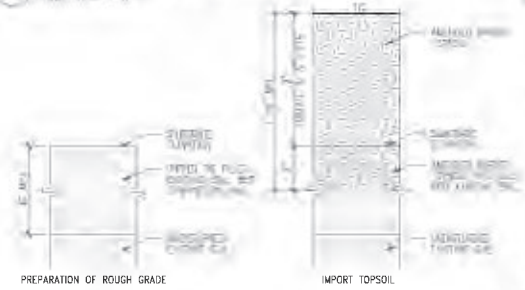


NOTE

[illegible]

4 SOIL AMEND. - FOSTINE

1 TYPICAL SHRUB PLANTING



NOTES

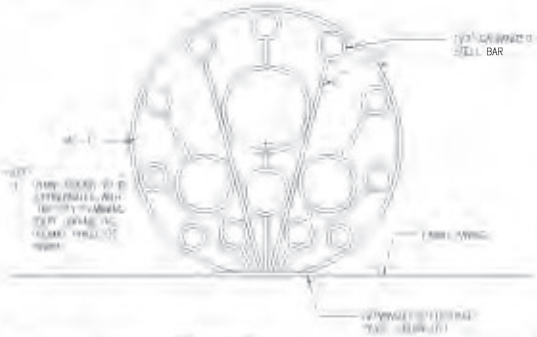
[illegible]

5 SOIL AMEND. - IMPORTED

NOTE

[illegible] 2x [illegible]

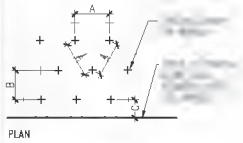
2 TYPICAL TREE PLANTING AT GRADE



6 TREE WELL - CONCRETE DESIGN

PLANT SPACING & QUANTITIES CHART

[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]



NOTES

1. [illegible] AS [illegible]
2. [illegible] OCCURS [illegible]

3 TYPICAL SHRUB & GROUNDCOVER SPACING

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DETAILS AND NOTES

L3.10

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4300 SAN PABLO AVE
EMERYVILLE, CA

SITE INFORMATION

OWNER:	EAH HOUSING
CONTACT:	STEVE PRATT
ADDRESS:	4300 & 4310 SAN PABLO AVENUE
ASSESSORS PARCEL NO:	49–1079–17–1 & 49–1079–14–1
NUMBER OF LOTS:	EXISTING – TWO PROPOSED – ONE
GROSS AREA:	20,600 SQUARE FEET
NET AREA:	20,600 SQUARE FEET
CIVIL ENGINEER:	BKF ENGINEERS 1730 N. FIRST STREET, SUITE 600 SAN JOSE, CA 95112 CONTACT: SCOTT SCHORK (408) 467–9126
EXISTING ZONING:	MIXED USE WITH RESIDENTIAL
PROPOSED USE:	AFFORDABLE MULTI–FAMILY
FLOOD ZONE:	N.A.
WATER:	EAST BAY MUNICIPAL UTILITY DISTRICT
SANITARY SEWER:	CITY OF EMERYVILLE
STORM DRAIN:	CITY OF EMERYVILLE
GAS/ELECTRIC:	PACIFIC GAS & ELECTRIC
TELEPHONE:	AT&T
CABLE TV:	COMCAST

VICINITY MAP
N.T.S.

BENCHMARK

CITY OF EMERYVILLE BENCHMARK EBM NO. 2

STANDARD OAKLAND DISC, WEST OF THE WEST CURB OF ADELINE STREET AT THE INTERSECTION OF SAN PABLO AVENUE AND ADELINE STREET AND 38TH STREET

ELEVATION = 34.72 FEET (NGVD29 DATUM)

BASIS OF BEARINGS

THE BEARING OF S14°30'13"E OF THE CENTERLINE OF SAN PABLO AVENUE AS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP 7698" RECORDED ON NOVEMBER 16, 2001 IN BOOK 262 OF MAPS AT PAGES 1–2, ALAMEDA COUNTY RECORDS, WAS TAKEN AS THE BASIS OF BEARINGS FOR THIS SURVEY.

SHEET INDEX

C1.0	TITLE SHEET
C2.0	EXISTING CONDITIONS
C3.0	PRELIMINARY GRADING PLAN
C4.0	PRELIMINARY UTILITY PLAN
C5.0	PRELIMINARY STORM WATER CONTROL PLAN

ABBREVIATIONS

AC	ASPHALT CONCRETE
AD	AREA DRAIN
BFP	BACK FLOW PREVENTER
BW	BACK OF WALK
DCDA	DOUBLE CHECK DETECTOR ASSEMBLY
DW	DOMESTIC WATER
EX	EXISTING
FDC	FIRE DEPARTMENT CONTROL
FF	FINISHED FLOOR
FG	FINISHED GRADE
FH	FIRE HYDRANT
FL	FLOW LINE
FW	FIRE WATER
PIV	POST INDICATOR VALVE
PUE	PUBLIC UTILITY EASEMENT
PV	PAVEMENT
RWL	RAIN WATER LEADER
SD	STORM DRAIN
SDBB	STORM DRAIN BUBBLER BOX
SDDI	STORM DRAIN DRAINAGE INLET
SDJB	STORM DRAIN JUNCTION BOX
SDMH	STORM DRAIN MANHOLE
SLD	SEE LANDSCAPE DRAWINGS
SS	SANITARY SEWER
SSCO	SANITARY SEWER CLEANOUT
SSMH	SANITARY SEWER MANHOLE
TC	TOP OF CURB
TW	TOP OF WALL
W	WATER
WH	WHARF HYDRANT
WM	WATER METER
WV	WATER VALVE

LEGEND

	PROPERTY LINE
	EASEMENT
	CURB & GUTTER
SS	SANITARY SEWER LINE
SD	STORM DRAIN LINE
	GAS LINE
	COMMUNICATIONS LINE
W	WATER LINE
E	ELECTRICAL LINE
	MANHOLE
WV	WATER VALVE
SSCO	SANITARY SEWER CLEANOUT
SDCO	STORM DRAIN CLEANOUT
BFP	BACKFLOW PREVENTER
WM	WATER METER
	STORM DRAIN JUNCTION BOX
	STORM DRAIN AREA DRAIN
	STORM DRAIN BUBBLER BOX
PIV	POST INDICATOR VALVE
FH	FIRE HYDRANT
	STORM DRAIN DRAINAGE INLET
(XX.XX)	EXISTING GRADE
	PERMEABLE PATH (S.L.D.)
	BIORETENTION PLANTER
	PROPOSED TREES (S.L.D.)
	EXISTING TREES (S.L.D.)

BKF ENGINEERS
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EAH HOUSING 50 YEARS OF SERVICE

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EMERYVILLE # 2019-0958

SUBMITTAL #1
JULY 1, 2022

TITLE SHEET

C1.0

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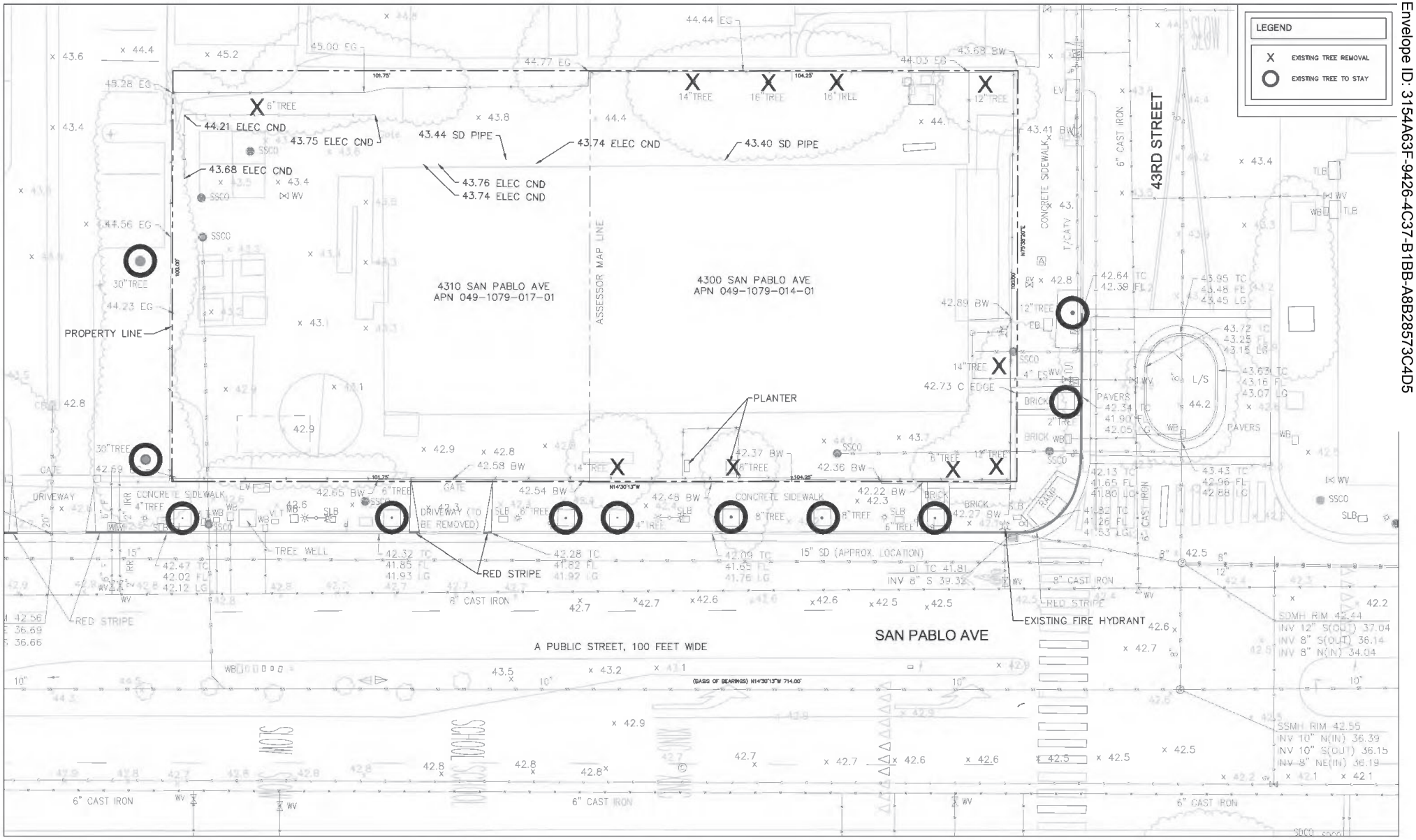

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EXISTING CONDITIONS

C2.0

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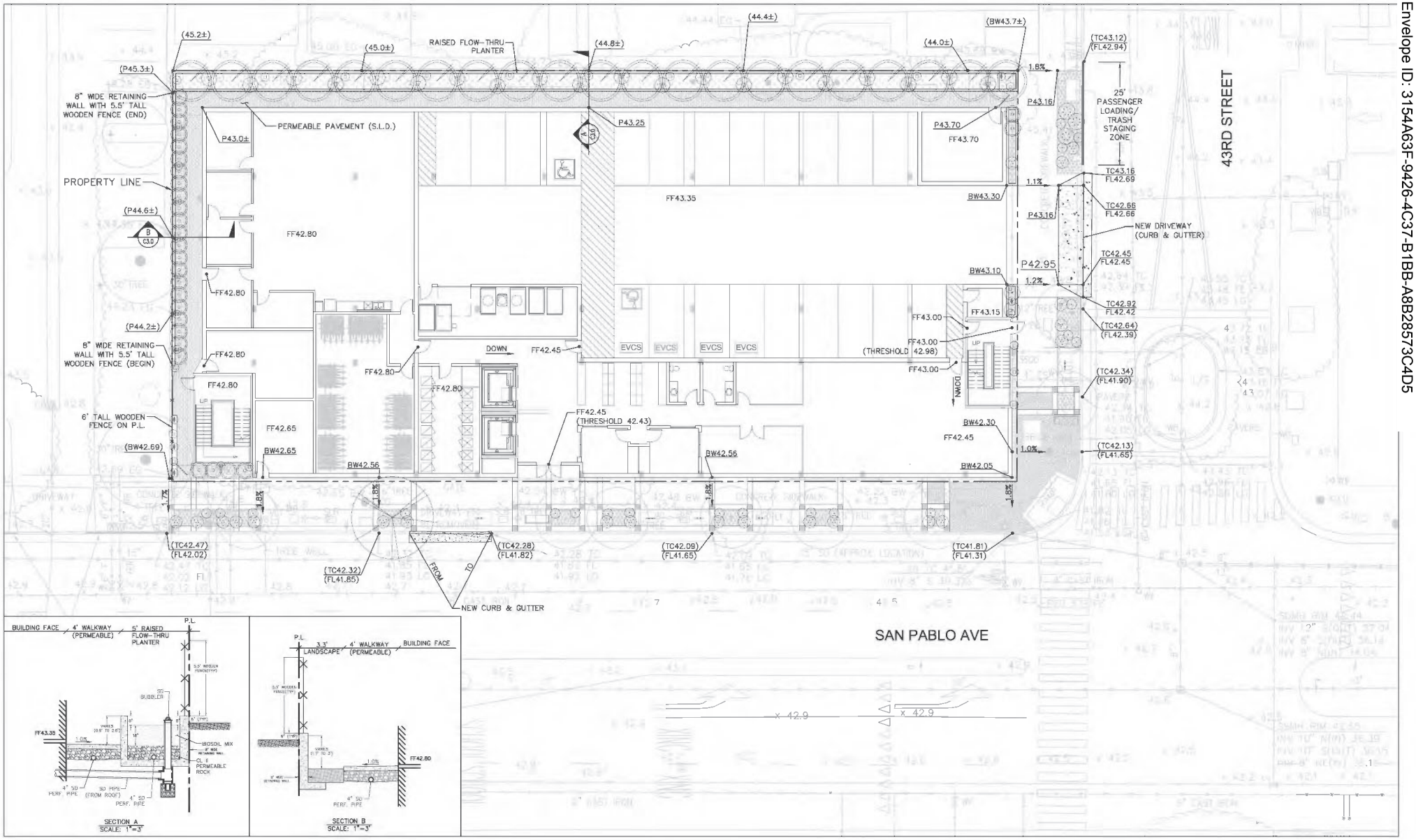

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PRELIMINARY GRADING PLAN

C3.0

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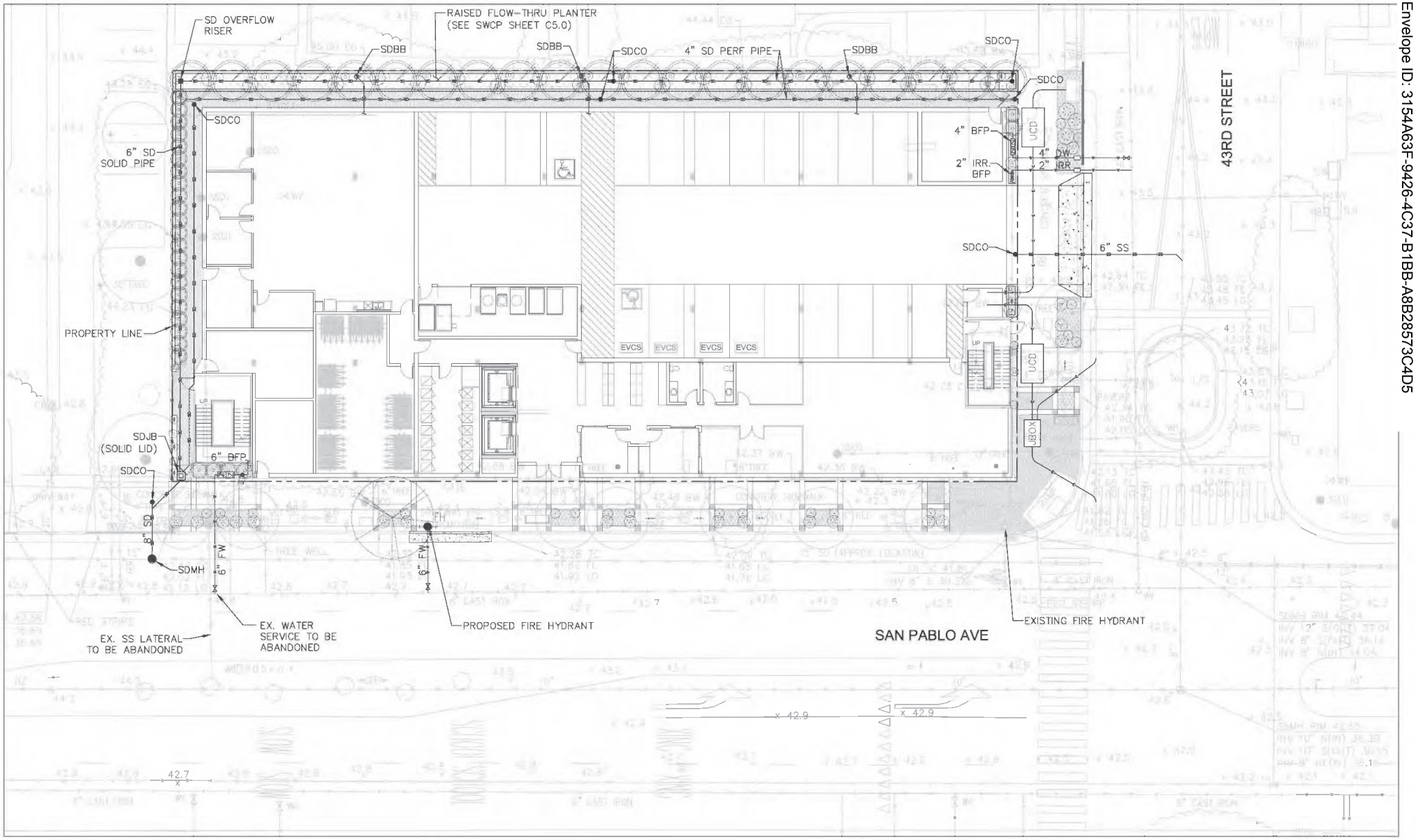

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EMERYVILLE # 2019-0958

SUBMITTAL #1
JULY 1, 2022

PRELIMINARY UTILITY PLAN

C4.0

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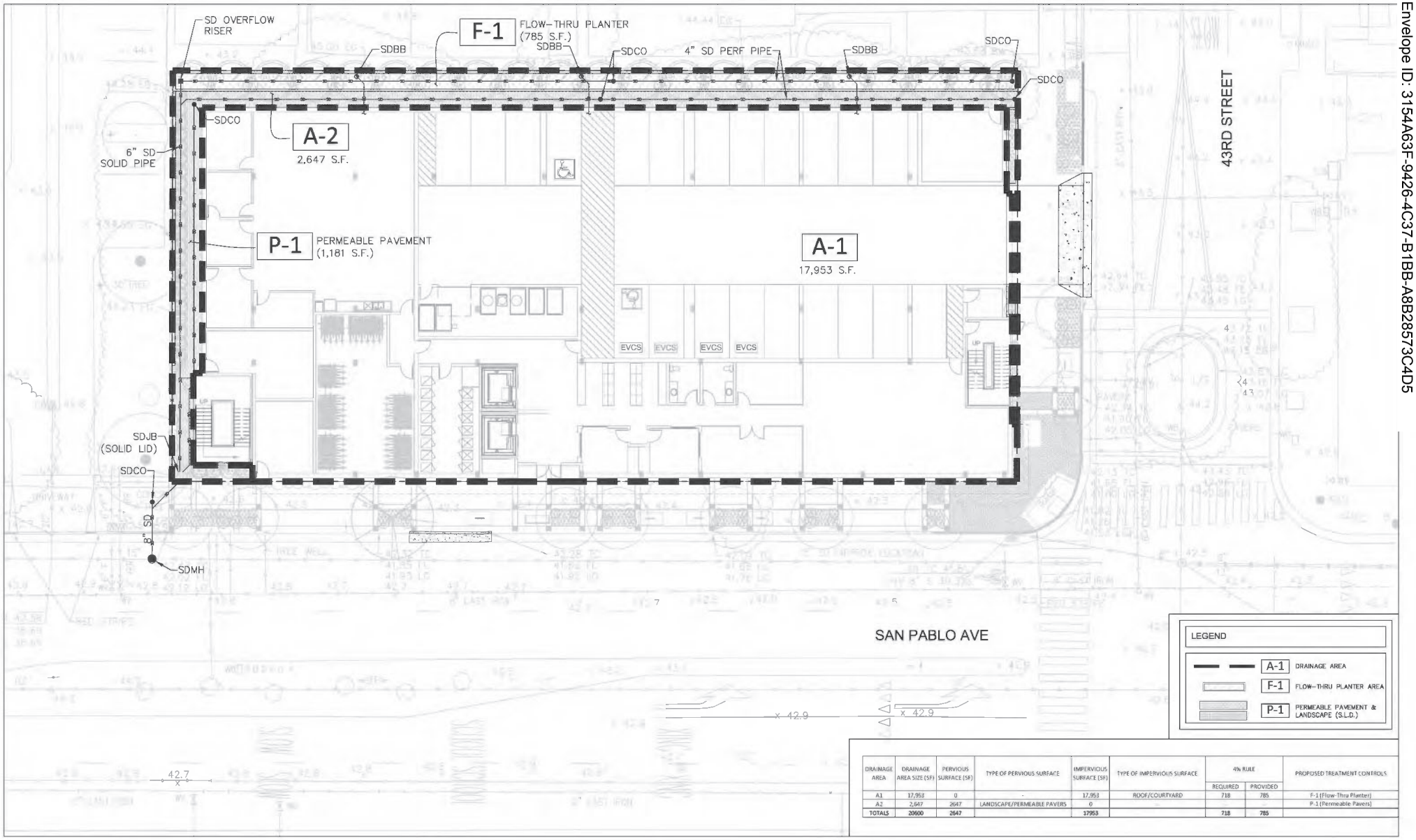

DRAINAGE AREA	DRAINAGE AREA SIZE (SF)	PERVIOUS SURFACE (SF)	TYPE OF PERVIOUS SURFACE	IMPERVIOUS SURFACE (SF)	TYPE OF IMPERVIOUS SURFACE	4% RULE		PROPOSED TREATMENT CONTROLS
						REQUIRED	PROVIDED	
A1	17,953	0	-	17,953	ROOF/COURTYARD	718	785	F-1 (Flow-Thru Planter)
A2	2,647	2647	LANDSCAPE/PERMEABLE PAVERS	0				P-1 (Permeable Pavers)
TOTALS	20600	2647		17953		718	785	

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EMERYVILLE # 2019-0958

SUBMITTAL #1
JULY 1, 2022

0 5 10 20
(IN FEET)
1 INCH = 10 FEET

PRELIMINARY STORM WATER CONTROL PLAN

C5.0

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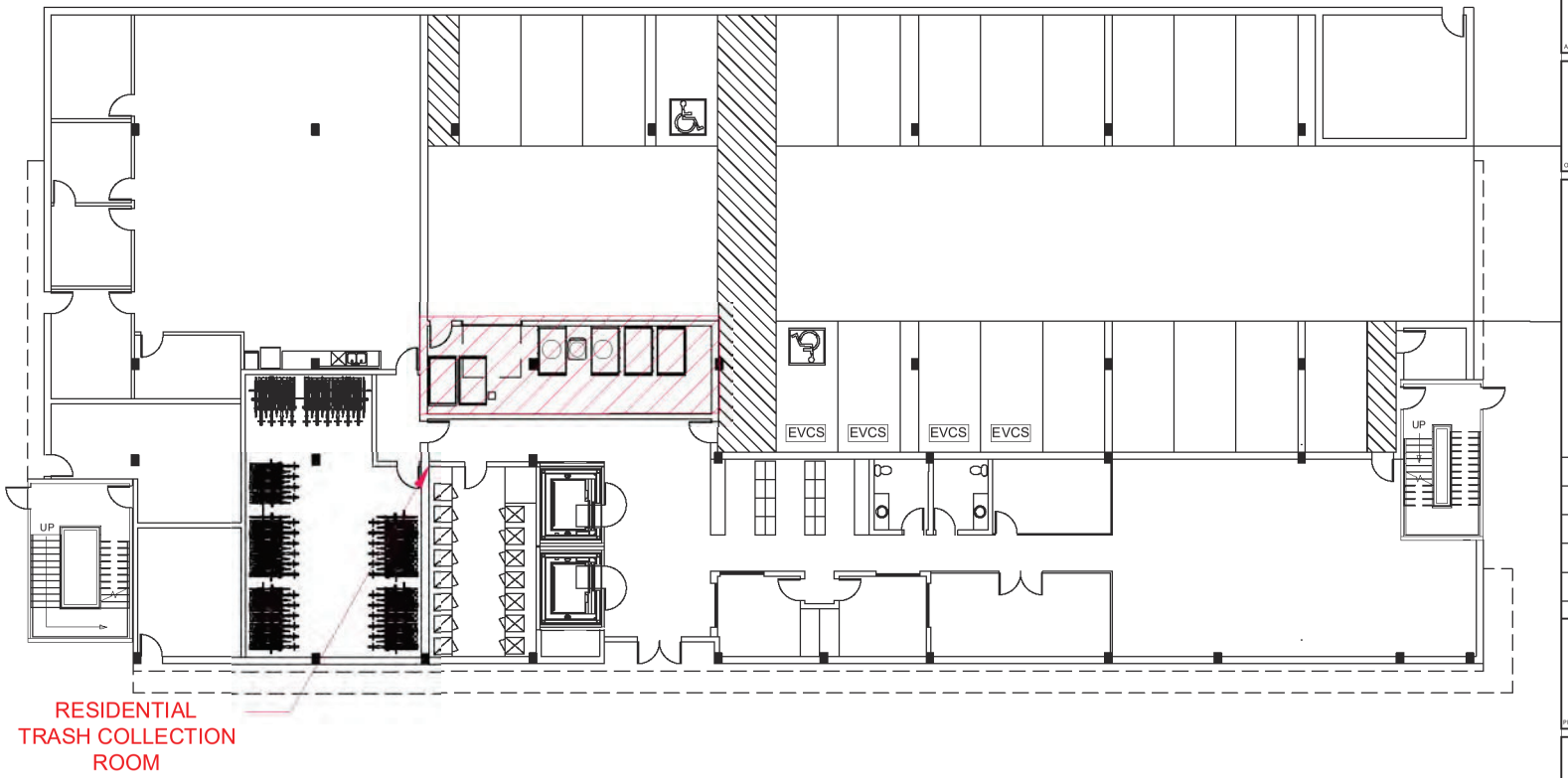

AMERICAN
TRASH MANAGEMENT

AMERICAN TRASH MANAGEMENT
1900 POWELL STREET, SUITE 220
EMERYVILLE, CALIFORNIA 94608
P: 415.292.5400
F: 415.292.5410
SBROWN@TRASHMANAGE.COM

CONSULTANT

KTGY

ARCHITECT

EAH HOUSING

OWNER / DEVELOPER

NO.	DATE	ISSUE / REVISION	ISSUED BY

4300 SAN PABLO
EMERYVILLE, CA

PROJECT

SITE PLAN

DRAWING TITLE

PROJECT NO.	
DRAWN	CS
APPROVED	SB
DATE	07/01/22
SCALE	AS SHOWN

DRAWING NO.

TR0.0

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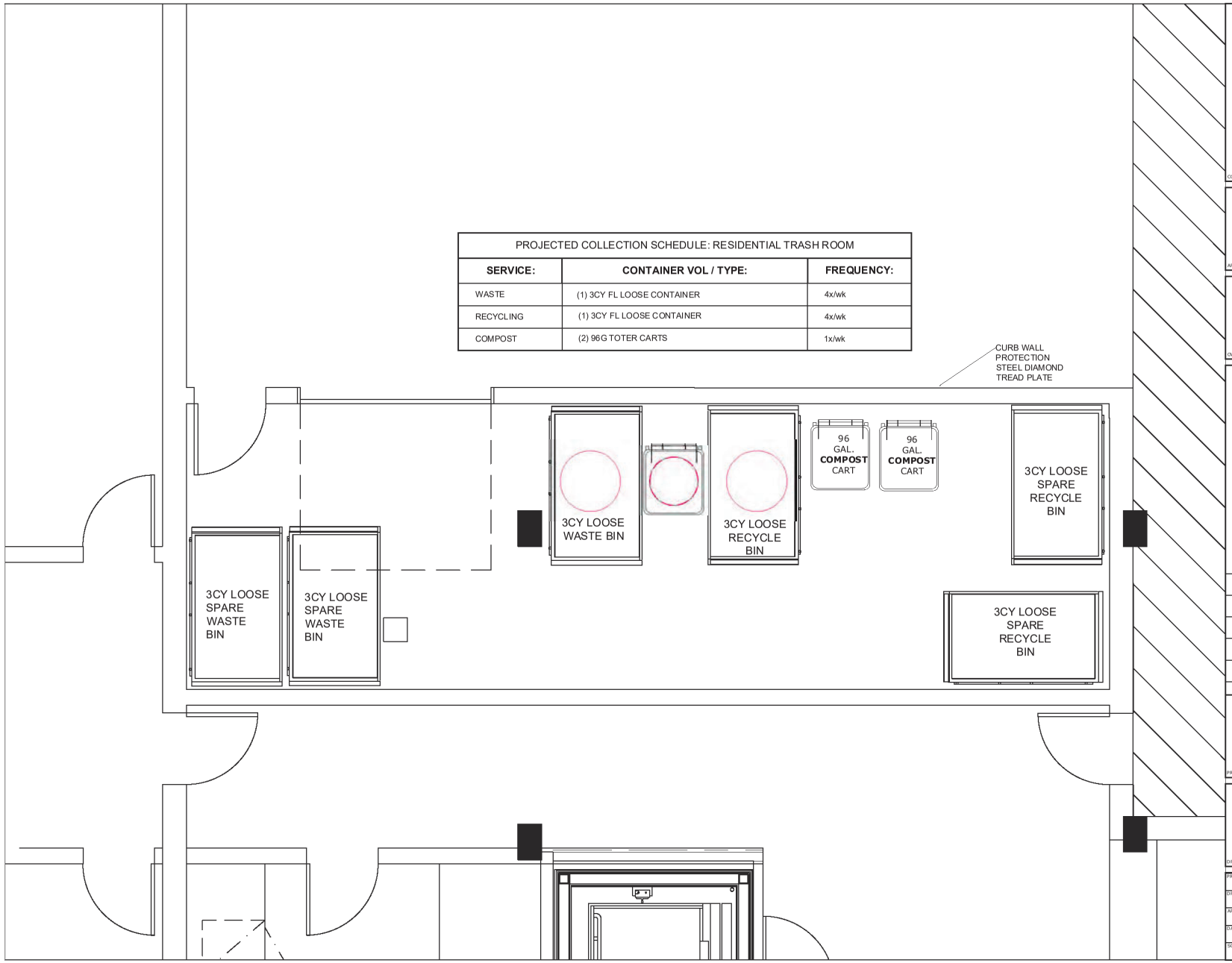
PROJECTED COLLECTION SCHEDULE: RESIDENTIAL TRASH ROOM		
SERVICE:	**CONTAINER VOL / TYPE:**	**FREQUENCY:**
WASTE	(1) 3CY FL LOOSE CONTAINER	4x/wk
RECYCLING	(1) 3CY FL LOOSE CONTAINER	4x/wk
COMPOST	(2) 96G TOTER CARTS	1x/wk



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CONSULTANT

KTGY

ARCHITECT

EAH HOUSING

OWNER / DEVELOPER

NO.	DATE	ISSUE / REVISION	ISSUED BY

4300 SAN PABLO
EMERYVILLE, CA

PROJECT

TRASH COLLECTION ROOM LAYOUT
(3-CHUTE OPTION)

DRAWING TITLE

PROJECT NO.	
DRAWN	CS
APPROVED	SB
DATE	07/01/22
SCALE	AS SHOWN
DRAWING NO.	TR1.0

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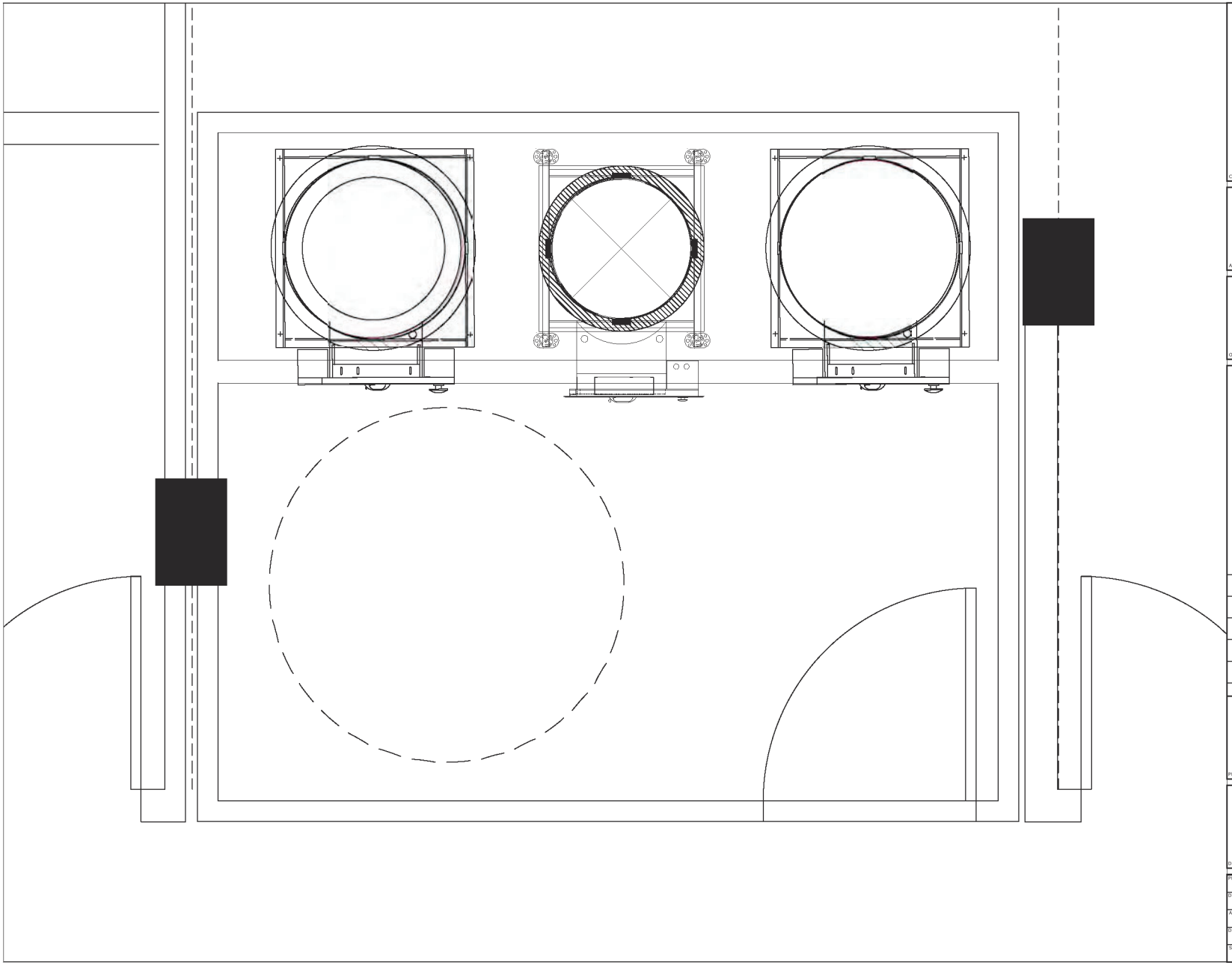

AMERICAN TRASH MANAGEMENT

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CONSULTANT

KTGY

ARCHITECT

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PROJECT

TRASH CHUTE CORE
VESTIBULE LAYOUT

DRAWING TITLE

PROJECT NO.	
DRAWN	CS
APPROVED	SB
DATE	07/01/22
SCALE	AS SHOWN

DRAWING NO.

TR1.1

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EXHIBIT E

FINANCING PROPOSAL
5/31/22

Permanent Source	Amount	Per Unit	Percentage of TDC
City of Emeryville Land Donation	$3,550,000	$52,205	7%
Alameda County – A1	$2,519,200	$37,047	5%
HCD – MHP	$17,551,748	$258,114	33%
AHP	$680,000	$10,000	1%
LP Capital – Tax Credits	$19,745,515	$290,375	38%
Tranche B Mortgage	$4,380,349	$64,417	8%
Deferred Developer Fee	$487,976	$7,176	1%
GP Equity	$3,607,886	$53,057	7%
Total	$52,522,674	$772,392	100%

This Financial Proposal reflects current Development competitiveness and funding availability. Intergenerational housing is not at present a defined Housing Type by the California Tax Credit Allocation Committee. The current assumption is that the Development will compete as a Senior Housing development with a special needs set-aside for Transitional Age Youth (TAY).

The proposed Permanent Sources of financing for the Development will include funds from the City of Emeryville in the form of a land donation valued at $3.55MM, Alameda County A1 funding of $2.52MM, Multifamily Housing Program (HCD-MHP) funding from the State of California of $17.55MM, Affordable Housing Program (AHP) funds from the Federal Home Loan Bank of $680K, Tax Credits of $19.75MM, Debt supported by Project-Based Section 8 Vouchers (PBVs) of $4.38MM, and General Partner Equity (GP Equity) and Deferred Developer Fee of $4.8MM. The projected Total Development Cost (TDC) for the housing development is $52.52MM ($48.97MM excluding land).

The funding applications and timeline for competitive sources are as follows:

Permanent Source	Application Dates
PBVs	November 2022/ November 2023
HCD- MHP	February 2023/ February 2024
Tax Credits	May 2023/ May 2024
AHP	March 2023/ March 2024

As proposed, the Development would be fully funded by the second quarter of 2024.

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EXHIBIT F

FORM OF AFFORDABLE HOUSING COVENANT

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AFFORDABLE HOUSING AGREEMENT

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

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

AFFORDABLE HOUSING AGREEMENT

THIS AFFORDABLE HOUSING AGREEMENT ("**Agreement**"), dated _____, 202_, is entered into by and between _____ ("**Developer**"), and the CITY OF EMERYVILLE , a municipal corporation ("**City**"), and is made with reference to the following facts:

RECITALS

A. As of the date first set forth above, Developer has acquired from City a ground lease to that certain approximately .47 acre real property, designated as APNs 049-1079-014-01 and 049-1079-017-01, located at 4300 and 4310 San Pablo Avenue in the City of Emeryville, County of Alameda, State of California, more particularly described on Exhibit A attached hereto ("**Property**").

B. Developer has acquired a ground lease to the Property pursuant to that certain Ground Lease Disposition and Development Agreement dated _____, 2022, between City and Developer with respect to the Property ("**DDA**"), a Memorandum of Agreement of which was recorded in the Official Records of Alameda County concurrent herewith. The DDA provides, among other things, for (i) City's ground lease of the Property to Developer, (ii) Developer's development of the Property with a new sixty-eight (68) unit affordable housing rental apartment building, approximately 7,000 square feet of amenity space, together with ancillary parking uses, (iii) Developer's use, operation and maintenance of the Project in accordance with the terms of the DDA and this Covenant and (iv) the establishment of certain covenants and restrictions to ensure development of the Property in accordance with the DDA.

C. The term "**Project**" means the Improvements to be constructed by Developer on the Property as set forth in the DDA. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the DDA.

D. Execution and recordation of this Affordable Housing Covenant against the Project is a condition of City's Conveyance of the Property under the DDA pursuant to that certain Ground Lease dated _____, 2022, between City and Developer ("**Ground Lease**").

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E. Developer and City agree that the Project shall be subject to the conditions and restrictions, and the rights of City, as set forth in this Covenant.

F. The City Council for the City of Emeryville adopted Ordinance No. 22-____ authorizing the City Manager to execute this Agreement.

AGREEMENT

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

A. Rent and Income Restrictions.

(1) All of the rental units (with the exception of one (1) unit which shall be reserved for the on-site property manager of the Project) shall be rented to and occupied by low income households, as defined in California Health and Safety Code Section 50079.5 ("**Low Income Households**"), as amended or any successor statute thereto, and by very low and extremely low income households, as defined in California Health and Safety Code section 50105, as amended or any successor statute thereto ("**Very Low Income Households**") in accordance with Exhibit B, at an Affordable Rent (defined below) (each, an "**Affordable Unit**" and collectively, the "**Affordable Units**"). The Affordable Units shall consist of forty-four (44) studios, sixteen (15) one-bedroom units, and eight (8) two-bedroom units. An additional one-bedroom unit will be occupied by the on-site project manager of the Project and shall not be an Affordable Unit. The Affordable Units shall be operated as an intergenerational housing development in accordance with Civil Code Section 51.3.5. At least eighty percent (80%) of the Affordable Units are to be occupied by at least one person who is fifty-five (55) years of age or older and no more than twenty percent (20%) of the Affordable Units are to be occupied by Transitional Aged Youth, as defined in Civil Code Section 51.3.5. The location and number of bedrooms and bathrooms of the Affordable Units shall be as set forth in Exhibit B attached hereto and incorporated herein.

(2) The Affordable Units shall only be rented to Low, Very Low and Extremely Low Income Households qualified in accordance with the terms of this Agreement and Applicable Laws ("**Eligible Households"**), at rental rates no greater than that considered as affordable rent for Low, Very Low and Extremely Low Income Households, adjusted for family size appropriate to the Affordable Unit, pursuant to California Health and Safety Code Section 50053, as amended, or any successor statute thereto (**"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, as amended or any successor statute thereto. "**Adjusted for family size appropriate to the unit**" shall have the meaning set forth in California Health and Safety Code section 50052.5, as amended or any successor statute thereto. For purposes of the calculation of Affordable Rent, "family size appropriate to the unit" shall mean a household of one person for a studio unit, 1.5 persons for a one-bedroom unit, 3 persons for a two-bedroom unit, 4.5 persons for

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a three-bedroom unit, and 6 persons for a four-bedroom unit. If the Project qualifies for federal tax credits pursuant to Section 42 of the Internal revenue Code of 1986, as amended, then those rules for affordable rent rates shall apply in lieu of the requirements of the preceding sentences. To the extent other regulatory covenants are in effect with respect to the Project (in addition to this 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, Developer, or the Project and shall include any guidelines adopted by the City related to the management and operations of affordable rental units, as such guidelines currently exist or may be amended from time to time. The monthly Affordable Rent for each Affordable Unit shall be calculated pursuant to City's then-current Affordable Rent and Income Levels Table. City's current Table is attached hereto for illustrative purposes as Exhibit C.

(3) In the Affordable Units, no less than one Occupant shall be allowed per bedroom and no more than two 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 an Affordable Unit being available that meet these occupancy standards, the City shall, upon request of the Developer, 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 an Affordable Unit for more than fourteen (14) days or more during a one-month period month. "**Tenant**" shall mean the Occupant(s) who is/are identified in the lease for an Affordable Unit.

(4) Not more than once per year, Developer may adjust rents in occupied Affordable Units in accordance with the 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 Eligible Households provided by the U.S. Department of Housing and Urban Development and State of California Housing and Community Development Department. Developer must notify a tenant in writing of any increase in such tenant's monthly rent for an Affordable Unit at least sixty (60) days in advance of the effective rent adjustment date, and a copy of any such notification shall be sent to City simultaneously. The Developer shall report any rent increase(s) to the City in the Annual Report, including: (1) the rent adjustment for each Affordable Unit; (2) the new rental amount for each Affordable Unit; and (3) the effective date of the adjustment for each Affordable Unit. Failure to provide the notice and reporting required shall be considered a default by Developer under this Agreement.

(5) The determination of a status as an Eligible Household shall be made by Developer prior to initial occupancy of the Affordable Unit by such household and shall be subject to review and approval by City. The income of all Occupants aged 18 years or older residing in the Affordable Unit shall be considered for purposes of calculating the household income. Developer shall not discriminate against prospective tenants with qualified Public Housing Authority Section 8 certificates or vouchers who are otherwise qualified in the rental of

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any of the Property Units. In the Annual Report, the Developer shall report any changes in the Occupants of any Affordable Units to the City that are known by the Developer, including the name(s) and household size(s) of the Occupant(s) vacating the Affordable Unit(s) during the reporting period, and, if the Affordable Unit(s) has/have been reoccupied, the name, household size and income of the new Occupant(s) occupying the Affordable Unit(s).

(6) Immediately prior to the first anniversary date of the lease commencement of an Affordable Unit by an Eligible Household, and on each anniversary date thereafter, Developer shall re-certify the income of the Occupant(s) of such Affordable Unit by obtaining a completed Occupant Income Certification based upon the current income of each occupant of the Affordable Unit and Developer shall take all reasonable steps to verify with reliable documentation the income and household size of the Occupant(s). The Occupant Income Certification shall be in the form attached hereto as Exhibit D; provided, however, that City reserves the right to make any updates or changes as City deems necessary or desirable. All documentation obtained by Developer in connection with the annual Occupant Income Certification shall be retained by Developer for three (3) calendar years. If the household income of an Affordable Unit exceeds one hundred forty percent(140%) of the applicable income limit under which the household qualified for occupancy of the Affordable Unit originally, the Occupants shall be given ninety (90 days) notice of termination of lease, promptly following each lease termination, Developer shall re-let the Affordable Unit to an Eligible Household with the appropriate income to keep the income mix consistent with Exhibit B, provided however, that such termination shall be subject to any requirement under Section 42 of the Internal Revenue Code of 1986.

(7) Notwithstanding anything set forth in this Section 1(A), Affordable Units that are subject to Project-Based Rental Assistance from the Housing Authority of the County of Alameda shall be governed by the requirements of the Housing Authority of the County of Alameda related to occupancy, Affordable Rents and tenant selection. .

B. Marketing and Leasing Program.

(1) Developer shall actively market the Affordable Units in accordance with the "Residential Marketing Plan" attached hereto as Exhibit I. Developer shall provide City with evidence of marketing of Affordable Units at least one hundred and twenty (120) calendar days prior to lease-up of the Affordable Units, The Residential Marketing Plan may be revised from time to time, and shall be updated at least once every five (5) years, with City's written approval, so long as it remains in conformance with the City's Affordable Units Marketing Program Procedures in effect and consistent with the terms of this covenant. City shall review the Residential Marketing Plan within thirty (30) days after receipt thereof. Failure of the City to respond within thirty (30) days shall be deemed approval. If the City requests modifications or clarifications to the Residential Marketing Plan, the Developer shall resubmit the Residential Marketing Plan addressing such modifications or clarifications within thirty (30) days of receipt of the City's comments and the City shall either approve or request modifications or further clarifications to the Residential Marketing Plan within fifteen (15) days of receipt of the revised Program. To the extent permitted by applicable law and funding sources, the Residential Marketing Plan must include a preference for (i) households being displaced from City regulated inclusionary rental units for Very Low-Income Households as a result of the unit being converted

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to a for-sale condominium and (ii) eligible households that include at least one member who lives or works in the City of Emeryville, or has one or more children attending a public school within the Emery Unified School District. Developer shall provide monthly updates to the Residential Marketing Plan commencing thirty (30) days after the initial Certificate of Occupancy is issued and continuing until the Affordable Units are all initially leased. Thereafter, Developer shall provide an update on the Residential Marketing Plan in the Annual Report.

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

C. Reporting Requirements.

(1) Developer 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 the City describing the status of the Project 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 G; provided, however, that City reserves the right to make any updates or changes as City deems necessary or desirable;

c. A copy of the current Residential Marketing Plan;

d. A copy of the current form of lease agreement used for Affordable Units.

(2) In addition, the Annual Report shall include a financial report, in a form acceptable to the City, including without limitation (i) an annual income statement and balance sheet, (ii) a copy of any and all annual reports provided to Developer's investors, and (iii) documentation demonstrating that Developer is funding an ongoing replacement reserve fund for capital repair and replacement costs ("Financial Report").

(3) In addition, the Annual Report shall include income certifications or re-certifications, for each Eligible Household of an Affordable 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 H; provided, however, that City reserves the right to make any updates or changes 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 Affordable Units:

a. Unit number;
b. Unit square footage;
c. Number of bedrooms and bathrooms in the unit;

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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 the age of 18;
g. Initial lease commencement date;
h. Household Income limit applicable to Affordable 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 C);
k. Utility Allowance Calculation;
l. Utility Allowance;
m. Section 8 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 G) and Income Certification Worksheet (Exhibit H) and be submitted to the City annually on March 1st starting the year following issuance of the initial Certificate of Occupancy for the Project. Upon request by City, the annual Occupant Income Certification Form (Exhibit D) for each Occupant(s) of an Affordable Unit shall be accompanied by the copies of the documents used to certify eligibility. Upon receipt of the Annual Report, the City may request additional information to confirm compliance with this Agreement. In the event the City requests such information, the Developer shall promptly supply such information to City in the format requested by City. Developer 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, Developer, 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. Developer shall permit City, to audit, examine, copy, and make excerpts or transcripts from such records. Failure to timely submit the Annual Report with the required information shall be considered a default by Developer under this Agreement, subject to the provisions of Section 9. In the event that Developer fails to submit the Annual Report in a timely manner, in addition to any other rights that the City may have, City may audit Developer's books and records to determine compliance, and Developer shall be responsible for all reasonable expenses incurred by the City in conducting such audit. In addition to paying the City's costs and expense, Developer shall pay to the 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, 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 the City by reason of the Developer'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.

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D. Annual Operating Budget. At least 90 calendar days prior to the commencement of the Project's calendar year, Developer shall submit to City an operating budget for the coming year for the City's review and approval. The proposed operating budget shall include projected income from all sources, projected expenses, including salaries and operating expenses, debt service and deposits to reserves, and projected distributions, including, without limitation, partnership management fees, asset management fees, deferred developer fees, and any other distributions to Developer or other parties. If City has not responded to any submission of the proposed operating budget by Developer within 30 calendar days of receipt of such operating budget by City, the operating budget shall be deemed approved.

E. City Approval of Lease Forms. City shall have the right to review and approve, which may be reasonably withheld, Developer's form of lease for the Affordable Units including any modifications, including disclosures of the affordability restrictions on the Affordable Units, prior to Developer's use of such form.

F. Supportive Services. Developer shall be responsible for ensuring that adequate levels of supportive services, for both Seniors and Transitional Aged Youth, jointly and separately, are provided to the Project residents in accordance with the "**Supportive Services Plan**" attached hereto as Exhibit J and incorporated herein. 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 any revisions to the Supportive Services Plan and either approve or request modifications to the Supportive Services Plan within thirty (30) days after receipt.

G. Parking. Developer shall comply with Emeryville Municipal Code section 9-4.403(e), unless the Director grants an exception from the requirements for affordable units which include financing for affordable housing that requires that costs for parking and housing be bundled together.

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

2. **NON DISCRIMINATION**

A. Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of section 12955 of the Government Code, as those bases are defined in sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of section 12955, and section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of Occupants, tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed.

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B. All deeds, leases or contracts made relative to the Project shall contain or be subject to substantially the following nondiscrimination clauses:

(1) In deeds the following language shall appear: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there will be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of section 12955 of the Government Code, as those bases are defined in sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of section 12955, and section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

(2) In leases the following language shall appear: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and the lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of section 12955 of the Government Code, as those bases are defined in sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of section 12955, and section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, .or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

C. All deeds, leases or contracts made relative to the Project, shall contain or be subject to substantially the nondiscrimination clauses as set forth in California Health and Safety Code section 33436, as amended, and successor statutes thereto. The provisions of this Section 4 shall run with the land and shall be contained in each subsequent grant deed conveying title to the Project to any subsequent owner.

3. MANAGEMENT AND MAINTENANCE; PROPERTY DAMAGE.

A. Management of Project. In order to ensure that Developer's obligations under this Covenant with respect to the Project are satisfied, Developer shall operate the Project (including leasing, property management, and maintenance and repair services) in accordance with the **"Property Management Plan"** attached hereto as Exhibit K and incorporated herein. The Property Management Plan may be revised from time to time and shall be updated at least once every five (5) years, with City's written approval, so long as it remains consistent with the terms of this Covenant. City shall review any modifications to the Property Management Plan and either approve or request modifications to the Property Management Plan within thirty (30)days after receipt. The Property Management Plan shall at all times provide that the Project shall be managed by a property manager reasonably acceptable to City ("Property Manager").

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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 Property Manager shall be hired, or Management Agreement signed or amended, without City's prior approval thereof, which shall not be unreasonably withheld or delayed. No less than sixty (60) calendar days prior to hiring any Property Manager or executing any amendment to a Management Agreement, Developer shall provide documentation to the City as is reasonably necessary to evaluate the proposed Property Manager's experience and qualifications or revisions to a Management Agreement. 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 any material amendment shall require the prior written approval of City, which shall not be unreasonably withheld or delayed. The City hereby approves EAH, Inc., as the initial Property Manager.

B. Maintenance of Project. Developer shall maintain the Project (such maintenance to include buildings, sidewalks, pedestrian lighting, landscaping, irrigation of landscaping, architectural elements identifying the Project 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, Developer shall either staff or contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Covenant. The maintenance covenants and obligations set forth in this Section 3 shall remain in effect for the period of time specified in Section 7, below.

(1) The following standards (collectively, **"Maintenance Standards")** shall be complied with by Developer 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 condition 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.

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(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 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 curbline(s) on and abutting the Property shall be maintained as required by Subsection 3.B 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 Developer does not maintain the Project and all other private and public improvements (if any) on the Property to the curbline(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 Developer. However, prior to taking any such action, City agrees to notify Developer 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 Developer to cure the deficiencies. Upon notification of any maintenance deficiency, Developer shall have 30 days within which to correct, remedy or cure the deficiency, or begin and diligently work to cure the deficiency, if the nature of the deficiency is not the type that can be cured within 30 days. If the written notification states that the problem is urgent and relates to the public health and safety, then Developer shall have 24 hours to cure the problem or begin and diligently work to cure the problem, if the nature of the problem.is not the type that can reasonably be cured within 24 hours. In the event Developer 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 Developer's expense. Developer shall pay City upon demand all reasonable and actual charges and costs incurred by City for such maintenance. Until so paid, City shall have the right to file a lien on the Project for the amount of such charges or costs, which lien may be perfected by the recordation of a "Notice of Claim of Lien" against the Project. Any lien in favor of City created or claimed under this Subsection 3.B(2) is expressly made subject and subordinate to any leasehold 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 leasehold mortgage or deed of trust, unless the leasehold mortgagee or beneficiary thereunder expressly subordinates its interest,

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of-record, to such lien. Developer 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 11 below.

4. **TAXES.** Developer shall not apply for exemption from the payment of real or personal property taxes on the Project except pursuant to Revenue and Taxation Code Section 214(g).The Developer shall have all rights under Applicable Law to appeal the valuation of the Project (including but not limited to the Property, any improvements, fixtures or appurtenances, and any personal property) for tax purposes.

5. **INSPECTION AND RECORDS.** Developer shall maintain records which clearly document Developer's performance of its obligations to operate the Project under the terms of this Covenant, and shall submit any and all relevant records to City within ten (l0) business days of a request therefor. Developer shall also permit representatives of City to enter and inspect any and all records and the Property for compliance with the obligations under this Covenant upon no less than 48 hours advance notice of such inspection or visit to Developer or Developer's management agent.

6. **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.

7. **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 recording of the Certificate of Completion (as defined in Section 6.2 of the Ground Lease), except that non-discrimination covenants set forth in Section 2 shall remain in effect in perpetuity.

8. **PRIORITY OF DOCUMENTS; SUBORDINATION AGREEMENT.** Developer's covenants with respect to the use, maintenance, and operation of the Project set forth herein shall run with the land and be binding on Developer 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 Developer 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.

9. **SUCCESSORS AND ASSIGNS.** The covenants contained herein shall inure to the benefit of City and its successors and assigns and shall be binding upon Developer and any successor in interest to the Project. 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

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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 Developer'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. The covenants contained herein shall be for the benefit of and shall be enforceable only by City, and its successors and assigns.

10. **DEFAULT.** Any failure by Developer to perform any term or provision of this Agreement shall constitute a "Default" hereunder if Developer 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, Developer 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. Developer's limited partner shall have the right but not the obligation to cure any Defaults under this Covenant and the City shall accept such cure as if tendered by the Developer.

11. **REMEDIES.** Following the declaration of an Event of Default hereunder, in addition to any other remedies that the City may have under the Ground Lease or the DDA, the 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 the Developer to perform its obligations and covenants hereunder or enjoin any acts or things that may be unlawful or in violation of the rights of the City hereunder;

B. have access to and inspect, examine and make copies of all of the books and records of the Developer pertaining to the Project Site;

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

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

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

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12. **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 Developer hereunder. Developer 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.

13. **EXPENSES.** Developer shall annually pay to the City the City's monitoring and enforcement fees for the Affordable Units in accordance with the City's Master Fee Schedule. The monitoring fee shall be either the City's actual expenses incurred for monitoring including staff time and third party costs or the amount set forth in the Master Fee Schedule. 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 the City incurred in taking action pursuant to Section 10 shall be the sole responsibility of the Developer.

14. **INDEMNIFICATION AND RELEASE.** It is specifically understood and agreed by the Parties that the Project 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 Developers shall have full power over and the exclusive control of the Property subject only to the limitation and obligations of the Developers under this Agreement and the Conditions of Approval. The Developer 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 Project, 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 Developer or its shareholders, partners, members, principals, officers, employees, representatives, agents, contractors or subcontractors, excepting suits and actions arising from the sole negligence or willful misconduct of City ("Claim"). This indemnification and hold harmless agreement applies to all damages and claims for damages (including attorneys' fees and costs) suffered or alleged to have been suffered by reason of the acts, omissions, negligence or willful misconduct referred to in this Section 13, regardless of whether or not City prepared, supplied or approved plans or specifications for the Project. This Section 14 shall survive termination of this Agreement.

15. **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

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marked for next day business delivery. All notices shall be addressed to the party to whom such notice is to be given at the property address stated herein or to such other address as a party may designate by written notice to the other. Any written notice, demand or communication shall be deemed received (a) immediately if delivered by personal delivery as provided hereinabove; (b) on the third (3rd) day from the date it is postmarked if delivered by first-class mail, postage prepaid, return receipt requested; and (c) on the next business day if sent via nationally recognized overnight courier and marked for next day business delivery. Notices sent by a party's attorney on behalf of such party shall be deemed sent by such party.

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

With a copy to: City of Emeryville
1333 Park Avenue
Emeryville, CA 94608
Attention: City Attorney
Telephone: (510) 596-4370

To Developer: EAH, Inc.

22 Pelican Way

San Rafael, CA 94901

Attention: President

With copies to: Bocarsly Emden Cowan Esmail & Arndt LLP
633 W. Fifth Street, 64h Floor
Los Angeles, CA 90071
Attn: Nicole Deddens, Esq.
Telephone: (213) 239-8029
Facsimile: (213) 559-0765

16. **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 pa1ty 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 the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject

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matter area of the law for which the 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 included. 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.

17. **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 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]

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

"**DEVELOPER**"

Dated:_____

By:_____
[Signature must be notarized]

Name:_____

Its:_____

"CITY"

CITY OF EMERYVILLE, a municipal corporation

Dated:_____

By: _____
City Manager
[Signature must be notarized]

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EXHIBIT A

Legal Description

Land situated in the state of California, County of Alameda, described as follows:

The westerly 100 feet of Lot 1, and a portion of the westerly 100 feet of Lot 2, Block 1, Map of Subdivisions of a portion of Plot #6 as per Kellersberger's survey of the Ranchos of V. & D. Peralta, filed December 16, 1876, Map Book 2, Page 6, Alameda County Records described as follows:

Commencing at the point of intersection of the northerly line of 43rd Street with the easterly line of San Pablo Avenue, as said Street and Avenue are shown on said map; thence easterly along said Northerly line of said 43rd Street, 100 feet; thence at right angles northerly 104.25 feet; thence at a right angles westerly 100 feet to said easterly line of San Pablo Avenue 104.25 feet to the point of commencement.

Assessor's Parcel No. 049-1079-014-01

Land situated in the state of California, County of Alameda, described as follows:

Parcel 1:
Being portions of Lots 2 and 3, Block 1, "Map of the Subdivision of A Portion of Plot 6, as shown on Kellersberger's Survey of the Ranchos of V. & D. Peralta," filed December 16, 1876, Map Book 2, Page 6, Alameda County Records, described as follows:

Beginning at a point on the easterly line of San Pablo Avenue distant thereon northerly 104.25 feet from the intersection thereof with the northerly line of 43rd Street, as said Avenue and Street are shown on the maps herein referred to; thence northerly along said easterly line of said San Pablo avenue, 51.75 feet to the southern line of the parcel of land described in the deed by M. Down to Albert Hammarberg and Gertrude Hammarberg dated July 16, 1945, recorded July 19, 1945, under Recorders' Series #SS/45761; thence along the last mentioned line easterly 100 feet, thence southerly parallel with said eastern line of San Pablo Avenue 51.75 feet; thence westerly parallel with said northern line of 43rd Street 100 feet to point of beginning.

Parcel 2:
The western 100 feet of Lot 4, Block 1, "Map of the Subdivision of a Portion of Plot 6, as shown on Kellersberger's survey of the Ranchos of V. & D. Peralta," filed December 16, 1876, Alameda County Records, Map Book 2, Page 6.

Assessor's Parcel No. 049-1079-017-01

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EXHIBIT B

Project Affordable Rent and Income Levels

CITY OF EMERYVILLE AFFORDABLE HOUSING PROGRAM
AGREEMENT ON AFFORDABLE UNITS

4300 San Pablo Avenue

2022 Rent Calculation for Affordable Units

Number	Project Unit #	Unit Type	Unit Sq Ft	# Beds/ Baths	Income Level	Gross Monthly Rent*
1			.			
2						
3						
4						
5						
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* Very Low Income rents are based on 30% of 50% of Year 2022 area gross median income for Alameda County, adjusted for household size. Low Income rents are based on 30% of 60% of Year 2022 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, such as for on-site parking. Utility allowance and charges/fees must be deducted from rents shown above.

Note: Initial rents shown in this table will be adjusted by City to reflect annual income and/or rent limits available on date that each Certificate of Occupancy is received.

EXHIBIT C

CITY OF EMERYVILLE
HOUSING AFFORDABILITY TABLE: MAXIMUM SALES PRICES AND RENTS**
2022 Program Year (Effective July 1, 2022)

Pursuant to the City of Emeryville
Affordable Housing Program Ordinance

Requires Ownership projects of 10+ units to include 20% of project units at moderate income. Requires Rental Projects who opt for in lieu production to include 5% at the units to low income and 4% at very low income.

ASSUMPTIONS:

Interest Rate	4.25% Annual		
Monthly Interest rate	0.35% Monthly		
Mortgage Term	360 months		
Downpayment	5%	PMI rate:	0.52%

Area Median Income (AMI)	1 person	2 person	3 person	4 person
	$99,950	$114,250	$128,500	$142,800

MODERATE INCOME HOUSEHOLDS: 120% Area Median Income

HOUSEHOLD SIZE		1 person	2 person	3 person	4 person
Max Annual Income		$119,950	$137,100	$154,200	$171,360
Amount Available for Housing=					
35% of 110% of AMI*		$3,207	$3,666	$4,123	$4,580
Mortgage		$1,966	$2,249	$2,536	$2,799
Prop.Tax	0.001	$421	$486	$543	$599
HOA Dues		$435	$470	$505	$540
Utilities		$170	$200	$275	$357
Homeowner's Insurance		$45	$45	$45	$45
PMI	0.005094	$170	$196	$219	$242
MORTGAGE		$399,706	$461,269	$515,546	$568,930
UNIT SIZE		Studio	1 Bedroom	2 Bedroom	3 Bedroom
AFFORDABLE SALES PRICE		**$420,743**	**$486,546**	**$542,680**	**$599,927**

UNIT SIZE	Studio	1 Bedroom	2 Bedroom	3 Bedroom
GROSS AFFORDABLE RENT	**$2,749**	**$3,142**	**$3,534**	**$3,927**

NOTE: Gross affordable rent is equal to 30% of 100% of AMI and includes the total of monthly payments for a rental unit including a reasonable allowance for utilities and any required service charges or fees charged to tenants. Utility allowance and required charges/fees must be deducted from rents shown above.

MEDIAN INCOME HOUSEHOLDS: 100% Area Median Income

HOUSEHOLD SIZE		1 person	2 person	3 person	4 person
Max Annual Income		$99,950	$114,250	$128,500	$142,800
Amount Available for Housing=					
30% of 100% of AMI*		$2,499	$2,856	$3,213	$3,570
Mortgage		$1,553	$1,810	$2,063	$2,199
Prop.Tax	0.001	$332	$367.91	$426	$471
HOA Dues		$400	$435	$475	$500
Utilities		$170	$200	$275	$357
Homeowner's Insurance		$43	$43	$43	$43
PMI	0	$0	$0	$0	$0
MORTGAGE		$315,685	$367,906	$405,060	$447,005
UNIT SIZE		Studio	1 bedroom	2 Bedroom	3 Bedroom
AFFORDABLE SALES PRICE		**$332,300**	**$387,288**	**$426,379**	**$470,532**

LOWER INCOME HOUSEHOLDS: 80% Area Median Income

HOUSEHOLD SIZE		1 person	2 person	3 person	4 person
Max Annual Income		$79,750	$87,700	$98,650	$109,600
Amount Available for Housing=					
30% of 70% of AMI*		$1,749	$1,999	$2,249	$2,499
Mortgage		$935	$1,088	$1,199	$1,317
Prop.Tax	0.001	$200	$219	$257	$282
HOA Dues		$400	$435	$475	$500
Utilities		$170	$200	$275	$357
Homeowner's Insurance		$43	$43	$43	$43
PMI	0	$0	$0	$0	$0
MORTGAGE		$190,162	$221,162	$243,683	$267,669
UNIT SIZE		Studio	1 bedroom	2 Bedroom	3 Bedroom
AFFORDABLE SALES PRICE		**$200,171**	**$232,823**	**$256,608**	**$281,767**

UNIT SIZE	Studio	1 bedroom	2 Bedroom	3 Bedroom
GROSS AFFORDABLE RENT	**$1,499**	**$1,714**	**$1,928**	**$2,142**

NOTE: Gross affordable rent is equal to 30% of 60% of AMI and includes the total of monthly payments for a rental including a reasonable allowance for utilities and any required service charges or fees charged to tenants. Utility allowance and required charges/fees must be deducted from rents shown above.

VERY LOW INCOME HOUSEHOLDS: 50% Area Median Income

HOUSEHOLD SIZE	1 person	2 person	3 person	4 person
Max Annual Income	$49,900	$57,150	$64,300	$71,400
UNIT SIZE	Studio	1 Bedroom	2 Bedroom	3 Bedroom
GROSS AFFORDABLE RENT	**$1,249**	**$1,428**	**$1,606**	**$1,786**

NOTE: Gross affordable rent is equal to 30% of 50% of AMI and includes the total of monthly payments for a rental including a reasonable allowance for utilities and any required service charges or fees charged to tenants. Utility allowance and required charges/fees must be deducted from rents shown above.

** The maximum sales prices and rents allowed pursuant to the City's Affordable Housing Program are based on the housing affordability definitions found in the California Health and Safety Code at Section 50052.5 and 50053. These are to be considered maximum amounts and do not take into account market conditions that may limit actual sales and rent values.

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EXHIBIT D

OCCUPANT 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. (last 4 digits)
1			HEAD			
2						
3						
4						
5						
6						
7						

PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)

HH Mbr #	(A) Employment or Wages	(B) Soc. Security/Pensions	(C) Public Assistance	(D) Other Income
TOTALS	$	$	$	$

Add totals from (A) through (D), above TOTAL INCOME (E): $

PART IV. INCOME FROM ASSETS

HH Mbr #	(F) Type of Asset	(G) C/I	(H) Cash Value of Asset	(I) Annual Income from Asset
		TOTALS:	$	$

Enter Column (H) Total 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)] $

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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 Developer/Representative

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:

Method of Income Verification

PART VI. RENT

Tenant Paid Rent $ Rent Assistance: $

Utility Allowance $ Other non-optional charges: $

Utility Paid by Tenant (Check all that apply)

__Heating Electric
__Cooking Electric
__Hot Water Electric
__Water
__Trash
__Heating Gas
__Cooking Gas
__Hot Water Gas
__Sewer
__Electrical Other

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

NAME EMAIL

Exhibit D

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EXHIBIT E

Site Plan

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EXHIBIT F

List of Amenities

This exhibit should relates to appearance, materials, finished quality, and amenities of the units in the project

Project Amenities

-

Unit Amenities

-

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EXHIBIT G

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

[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 XX 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 XX 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 Extremely Low Income Units occupied: _____(# Units)

Total Extremely Low Income Units vacant: _____(#Units)

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)

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

[DEVELOPER]

By:_____
Authorized Developer Representative

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EXHIBIT H

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

[Project Name] Apartments Period through _____

INCOME CERTIFICATION WORKSHEET

CITY OF EMERYVILLE BMR RENTAL COMPLIANCE REPORT

PROPERTY: _____ REPORT PERIOD: _____ TO _____ DATE OF REPORT _____

GENERAL INFORMATION								INITIAL CERTIFICATION								RECERTIFICATION INCOME AND RENTS PER TIC FORM													
UNIT #	TYPE	SQ. FT.	INCOME CATEGORY	RESIDENT LAST NAME	RESIDENT FIRST NAME	RESIDENT E-MAIL ADDRESS	CURRENT STATUS	HOUSEHOLD SIZE	INITIAL MOVE-IN DATE	INCOME LIMIT @ MOVE-IN	HOUSEHOLD INCOME @ MOVE-IN	INITIAL RENT LIMIT	UTILITY ALLOWANCE	NET RENT PER TIC	TENANT PAYS	RECERT EFF DATE PER TIC	HOUSEHOLD SIZE	# MINOR CHILD	INCOME LIMIT @ RECERT	HOUSEHOLD INCOME PER RECERT TIC	RECERT RENT LIMIT	UTILITY ALLOWANCE	OTHER REQUIRED FEES	NET RENT PER TIC	SEC. 8 ASSIST.	TENANT PAYS	RENT AS % OF INCOME	DATE LAST RENT INCREASE	MOVE-OUT DATE
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Apartment Transfers

								INITIAL CERTIFICATION								RECERTIFICATION INCOME AND RENTS PER TIC FORM											
INITIAL UNIT #	TRANSFER UNIT #	TRANSFER UNIT TYPE	TRANSFER INCOME CATEGORY	RESIDENT LAST NAME	RESIDENT FIRST NAME	RESIDENT E-MAIL ADDRESS	TRANSFER UNIT DATE	HOUSEHOLD SIZE	INITIAL MOVE-IN DATE	INCOME LIMIT @ MOVE-IN	HOUSEHOLD INCOME @ MOVE-IN	MAXIMUM RENT LIMIT	UTILITY ALLOWANCE	NET RENT PER TIC	TENANT PAYS	RECERT EFF DATE PER TIC	HOUSEHOLD SIZE	# MINOR CHILD	INCOME LIMIT @ RECERT	HOUSEHOLD INCOME PER RECERT TIC	RENT LIMIT @ RECERT	UTILITY ALLOWANCE	OTHER REQUIRED FEES	NET RENT PER TIC	SEC. 8 ASSIST.	TENANT PAYS	RENT AS % OF INCOME	TRANSFER REASON

Exhibit H

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EXHIBIT I
Residential Marketing Plan

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EXHIBIT J

Supportive Services Plan

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EXHIBIT K

Management & Maintenance Plan

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EXHIBIT G

FORM OF GROUND LEASE

DocuSign Envelope ID: 3154A63F-9426-4C37-B1BB-A8B28573C4D5

GROUND LEASE

by and between

CITY OF EMERYVILLE, A MUNICIPAL CORPORATION

AS LANDLORD

and

_____, L.P.,

A CALIFORNIA LIMITED PARTNERSHIP

AS TENANT

Dated as of _____, 20__

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THIS GROUND LEASE (this "Lease" or this "Agreement"), dated as of _____, 20__ (the "Effective Date"), is entered into by and between the City of Emeryville, a municipal corporation (hereafter "Landlord") and _____, L.P., a California limited partnership (hereafter "Tenant"). Landlord and Tenant are hereafter collectively referred to as the "Parties."

RECITALS

A. Landlord is the owner of fee title to the property known as 4300 and 4310 San Pablo Avenue, identified as Alameda County Assessor's Parcel Nos. 049-1079-014-01 and 049-1079-017-01, and more particularly described in Exhibit A attached hereto (hereafter, the "Property").

B. Landlord and Tenant entered into that certain Lease Disposition and Development Agreement dated as of _____, 2022 (hereafter, the "DDA") which provides for the ground lease of the Property by Landlord to Tenant for the development of the Project on the Property as described in Recital C.

C. Tenant proposes to construct a multi-family residential rental development consisting of sixty-eight (68) units of "Intergenerational Housing" (as defined below), and related improvements, which shall be affordable to Eligible Households in accordance with Exhibit B to the Affordable Housing Covenant, common areas, parking, and related improvements (the "Project" as more particularly described below).

D. Tenant has satisfied the conditions precedent to the lease of the Property, as set forth in the DDA. Therefore, the Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord the Property, upon the terms and conditions set forth in this Lease, for the undertaking of the Project as more particularly described herein.

E. The City has determined that development of the Project pursuant to this Lease is consistent with the General Plan and the City's Housing Element and is compliant with the requirements of California Government Code Section 37364.

F. The City Council has approved the lease of the Property as set forth in this Agreement, has followed all requisite procedures, and has adopted all requisite findings in connection with the foregoing, including without limitation the requirements of Government Code Section 37364.

G. **[RECITAL RE: CEQA/SB 35 COMPLIANCE]**.

H. In connection with the financing and development of the Project, Landlord and Tenant will execute and cause to be recorded in the Official Records the following documents, substantially in the form attached hereto as an exhibit or as attachments to the DDA: Memorandum of Ground Lease (attached hereto as Exhibit B), and an Affordable Housing Covenant (Exhibit F to DDA) (the "Affordability Covenant").

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NOW, THEREFORE, for and in consideration of the covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows.

ARTICLE I.
DEFINITION

1.1 Definitions. The following terms shall have the meanings set forth in the Sections referenced below whenever used in this Agreement and the Exhibits attached hereto. Additional terms are defined in the Recitals and text of this Agreement.

1.1.1 "Affordability Covenant" is defined in Recital H.

1.1.2 "Affordable Rent" is defined in the Affordability Covenant.

1.1.3 "Applicable Laws" is defined in Section 6.3.

1.1.4 "Area Median Income" is defined in the Affordability Covenant.

1.1.5 "City" means the City of Emeryville, a municipal corporation, in its regulatory capacity as opposed to its proprietary interest in the Property as Landlord.

1.1.6 "City Council" means the City Council of the City of Emeryville.

1.1.7 "Claims" is defined in Article X.

1.1.8 "Construction Plans" is defined in Section 6.14.

1.1.9 "Environmental Laws" is defined in Section 7.9.4.2.

1.1.10 "Hazardous Material" is defined in Section 7.9.4.1.

1.1.11 "Improvements" means all buildings, structures, fixtures, fences, walls, paving, parking improvements, driveways, walkways, plazas, landscaping, permanently affixed utility systems and equipment, and other improvements located on the Property, including, without limitation, the Project and all replacements of the foregoing.

1.1.12 "Indemnitees" is defined in Article X.

1.1.13 "Intergeneration Housing" means housing for senior citizens, caregivers, and transition age youth in accordance with California Civil Code Section 51.3.5.

1.1.14 "Lease Termination" is defined in Section 8.2.1.

1.1.15 "Leasehold Mortgage" means a mortgage on the leasehold estate created by this Lease and held by a Leasehold Mortgagee.

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1.1.16 "Leasehold Mortgagee" means the mortgagee or beneficiary of any Leasehold Mortgage and in the event of a transfer of such Leasehold Mortgage, the successor Leasehold Mortgagee, upon delivery of written notice of the transfer to Landlord.

1.1.17 "Major Additional Improvements" is defined in Section 6.24.

1.1.18 "Official Records" means the Official Records of Alameda County.

1.1.19 "Prevailing Wage Laws" is defined in Section 6.3.

1.1.20 "Project" means the residential rental project and related improvements as described in Recital D and Section 6.1, and any replacement thereof pursuant to this Lease.

1.1.21 "Property" is defined in Recital B

1.1.22 "Term" is defined in Section 3.1.

1.1.23 "Transfer" is defined in Section 16.1.

ARTICLE II.
DEMISE OF PREMISES

2.1 Demise. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Property for the Term and on the terms and conditions set forth in this Lease.

2.2 Condition of Title. Landlord leases the Property to Tenant subject to all easements, covenants, conditions, restrictions and other title matters of record existing as of the Effective Date, and all matters that would be apparent from an inspection of the Property on the Effective Date.

2.3 Condition of Property. Tenant specifically acknowledges that the Landlord is leasing the Property to Tenant on an "AS IS", "WHERE IS" and "WITH ALL FAULTS" basis and that, except as provided in Section 4.5 of the DDA, Tenant is not relying on any representations or warranties of any kind whatsoever, express or implied, from Landlord, its employees, board members, agents, or brokers as to any matters concerning the Property, including but not limited to the existing improvements located on the Property as of the Effective Date. The Landlord makes no representations or warranties as to any matters concerning the Property, including without limitation: (i) matters relating to soils, subsoils, geology, the presence or absence of fill, groundwater, drainage, and flood zone designation, (ii) the existence, quality, nature, adequacy and physical condition of utilities serving the Property, (iii) the development potential of the Property, and the Property's use, habitability, merchantability, or fitness, suitability, value or adequacy of the Property for any particular purpose, (iv) the zoning or other legal status of the Property or any other public or private restrictions on use of the Property, (v) the compliance of the Property with Environmental Laws, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity, (vi) the presence or removal of Hazardous Material, substances or wastes on, under or about the Property or the adjoining or neighboring property; and (vii) the condition of title to the Property.

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2.4 Tenant to Rely on Own Experts. Tenant acknowledges that notwithstanding the delivery by Landlord to Tenant of any materials, including, without limitation, third party reports, Tenant will rely entirely on Tenant's own experts and consultants and its own independent investigation and judgment as to all matters relating to the Property.

2.5 Environmental Disclosure. To the extent the Landlord has copies of reports regarding the environmental condition of the Property, it has provided copies to Tenant of those reports known to exist; but the Parties acknowledge that Landlord will not be conducting a public records search of any regulatory agency files—although the Landlord urges Tenant to do so to satisfy itself regarding the environmental condition of the Property. By execution of this Agreement, Tenant: (i) acknowledges its receipt of the foregoing notice respecting the environmental condition of the Property; (ii) acknowledges that it has had an opportunity to conduct its own independent review and investigation of the Property; (iii) agrees to rely solely on its own experts in assessing the environmental condition of the Property and its sufficiency for its intended use; and (iv) waives any and all rights Tenant may have to assert that the Landlord failed to disclose information about the environmental condition of the Property.

2.6 Release by Tenant. Effective upon the Effective Date, Tenant WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES the Indemnitees and any person acting on behalf of the Landlord, from any and all Claims, direct or indirect, known or unknown, foreseen or unforeseen, which Tenant now has or which may arise in the future on account of or in any way arising out of or in connection with the physical condition of the Property, the presence of Hazardous Material in, on, under or about the Property, or any law or regulation applicable thereto including, without limiting the generality of the foregoing, all Environmental Laws. The provisions of this Section 2.6 shall survive the expiration or earlier termination of this Agreement.

TENANT ACKNOWLEDGES THAT TENANT IS FAMILIAR WITH SECTION 1542 OF THE CALIFORNIA CIVIL CODE, WHICH PROVIDES AS FOLLOWS:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

BY INITIALING BELOW, TENANT EXPRESSLY WAIVES THE BENEFITS OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE WITH RESPECT TO THE FOREGOING RELEASE:

Tenant's initials: _____

ARTICLE III.
TERM OF LEASE

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3.1 Term. The Parties shall execute a memorandum of this Lease substantially in the form set forth in Exhibit B attached hereto ("Memorandum") which shall be recorded in the Official Records. The term of this Lease (the "Term") shall commence on the date that the Memorandum is recorded in the Official Records ("Commencement Date"). Unless sooner terminated under the provisions hereof, the Term of this Lease shall expire on the earlier of: (i) the day preceding the seventy-fifth (75th) anniversary of the date of recording of the Certificate of Completion as set forth in Section 6.2; or (ii) seventy-seven (77) years after the Commencement Date (if the date of the Certificate of Completion cannot be determined) (the "Expiration Date"). The expiration or sooner termination of the Term shall be referred to as "Lease Termination."

3.2 Lease Year. For purposes of this Lease, "Lease Year" shall mean each calendar year, or partial calendar year during the Term. If the Commencement Date does not occur on January 1, then any amounts required to be paid under this Lease on a Lease Year basis shall be prorated on a per diem basis for the partial Lease Years that commence with the Commencement Date and end on the Expiration Date.

ARTICLE IV.
RENT

4.1 Rent. The Tenant shall pay to Landlord, rent for the entire Term in the amount of One Hundred Dollars ($100) ("Base Rent"). As of the Commencement Date, the Tenant has pre-paid the entire amount of Base Rent for the Term.

4.2 Additional Rent. Tenant also agrees to pay as rent all sums, Impositions (as defined in Section 5.1 below), costs, expenses, and other payments which Tenant in any of the provisions of this Lease assumes or agrees to pay (collectively, "Additional Rent"). If Tenant fails to pay timely any Additional Rent, Landlord shall have (in addition to all other rights and remedies) all the rights and remedies provided for herein or by law in the case of non-payment of rent, subject to the terms and conditions of this Lease.

4.3 Payment of Rent. The Base Rent and Additional Rent shall be collectively referred to as "Rent" under this Lease. All Rent shall be paid to Landlord in lawful money of the United States at the place to which notices are to be delivered to Landlord, unless Landlord designates a different address for the payment of Rent in writing to Tenant.

ARTICLE V.
TAXES, ASSESSMENTS AND OTHER CHARGES

5.1 Impositions. Tenant covenants and agrees to pay prior to delinquency, all real property taxes, possessory interest taxes, license and permit fees, sales, use or occupancy taxes, assessments whether general or special, ordinary or extraordinary, unforeseen, as well as foreseen, of any kind or nature whatsoever, pertaining to the Property or the Improvements or part thereof, including, but not limited to (i) any assessment, levy, imposition or charge, in lieu of or substitution for real estate taxes, and (ii) any assessment for public improvements or benefits which is assessed, levied, or imposed upon or which becomes due and payable and a lien upon (a) the Property or the Improvements or any part thereof or any personal property,

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equipment or other facility used in the operation thereof, (b) the rent or income received by Tenant from subtenants or licensees, (c) any use or occupancy of the Property or Improvements or part thereof, or (d) this transaction or, subject to the exclusions specified below, any document to which Tenant is a party creating or transferring an estate or interest in the Property or part thereof. All of the foregoing are hereinafter referred to as "Impositions."

5.1.1 Exclusions. Impositions specifically shall exclude (i) any income, franchise, gross receipts, estate, inheritance, transfer or gift tax imposed on Landlord, and (ii) any transfer tax imposed on any document to which Landlord is a party creating or transferring an estate or interest in the Property.

5.1.2 Installments. If, by law, any Imposition is payable, or may at the option of the taxpayer be paid, in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same respectively become due and before any fine or penalty may be added thereto for the nonpayment of any such installment and interest. Any Impositions relating to tax years that are only partially included in the Term shall be prorated between Tenant and Landlord.

5.1.3 Evidence of Payment. Upon request by Landlord, Tenant shall furnish, in form satisfactory to Landlord, evidence of payment prior to delinquency of all Impositions payable by Tenant.

5.2 Tenant Right to Contest. Tenant shall have the right before any delinquency occurs to contest or object to the amount or validity of any Imposition by appropriate legal proceedings, but such right shall not be deemed or construed in any way as relieving, modifying or extending Tenant's covenant to pay any such Imposition at the time and in the manner required by law. Any such contest shall be conducted in accordance with and subject to the requirements of Applicable Laws and otherwise in a manner that does not subject Landlord's title to the Property to foreclosure or forfeiture. Tenant shall indemnify, defend, protect and hold Landlord harmless from and against all claims, damages, losses, liabilities, costs and expenses (including without limitation attorneys' fees) incurred by Landlord as a result of any such contest brought by Tenant. During any contest of an Imposition, Tenant shall (by payment of disputed sums, if necessary) prevent any advertisement of tax sale, foreclosure of, or any divesting of Landlord's title, reversion or other interest in the Property or the Improvements.

5.3 Tenant Duty to File. Tenant shall have the duty of making or filing any exemption application, declaration, statement or report which may be necessary or advisable in connection with property tax exemption or the determination, equalization, reduction or payment of any Imposition which is or which may become payable by Tenant under the provisions of this Article V, and Landlord shall not be responsible for the contents of any such declaration, statement or report. To the extent applicable, Landlord shall (at no additional cost to Landlord) execute such documents as may be necessary for the Property to be exempt from real property taxes pursuant to Revenue and Taxation Code Section 236.

5.4 Utilities. Tenant agrees to pay, or cause to be paid, all charges which are incurred by Tenant or which are otherwise a charge or lien against the Property or part thereof during the

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Term, for gas, water, electricity, light, heat or power, telephone or other communication service use, or other utility use, rendered or supplied upon or in connection with the Property. Tenant shall also obtain, or cause to be obtained, without cost to Landlord, any and all necessary permits, licenses or other authorizations required for the lawful and proper installation and maintenance upon the Property of wires, pipes, conduits and other equipment for the supply of utilities to the Project. In no event shall Landlord have any liability to Tenant, and Tenant hereby releases Landlord, from any and all claims, including but not limited to consequential damages, lost profits and similar damages that Tenant may incur as a result of any interruption, curtailment or diminishment of such utilities, other than for the active negligence or willful misconduct of Landlord. Notwithstanding the foregoing, Tenant shall have the right to challenge the amount or validity of the foregoing charges, provided that doing so does not result in the Property being subjected to any lien or other encumbrance that is not itself adequately released, insured over or otherwise satisfied by Tenant after Tenant has exhausted its efforts to contest the same in accordance with all Applicable Laws.

ARTICLE VI.
DEVELOPMENT OF THE PROPERTY

6.1 Construction of Improvements. Tenant agrees to construct on the Property a sixty-eight (68) unit multi-family residential rental project, consisting of Intergenerational Housing, together with related improvements in accordance with plans and specifications approved by the City. The Project shall include forty-four (44) studio units, sixteen (16) one-bedroom units, , and eight (8) two-bedroom units; (ii) twenty-one (21) parking spaces; (iii) approximately seven thousand (7,000) square feet of ground floor amenity space; (iv) common facilities including laundry facilities, and (v) recreational space. One (1) of the two-bedroom residential units will be a staff unit that is not subject to the affordability and Intergenerational Housing restrictions. Sixty-seven (67) of the residential units will be subject to affordability and Intergenerational Housing restrictions pursuant to the Affordability Covenant and Article VII hereof.

6.2 Construction Schedule. Tenant shall commence construction of the Project within sixty (60) days following the Commencement Date and shall diligently prosecute to completion the construction of the Project sufficient to allow City to issue a final certificate of occupancy within thirty-six (36) months following commencement of construction. Subject to force majeure and the City's issuance of permits and approvals, Tenant's failure to commence or complete the Project in accordance with the time periods specified in this Section 6.2 shall be an Event of Default hereunder. In conjunction with completion of construction of the Project, as evidenced by the final certificate of occupancy, the Landlord shall issue to the Tenant a "certificate of completion" (the "Certificate of Completion") evidencing the Tenant's satisfaction of its obligations to construct the Project in accordance with this Lease. A form of the Certificate of Completion is attached as Exhibit C. The Certificate of Completion shall constitute a conclusive determination that the covenants in this Lease solely with respect to the obligations of the Tenant to construct the Project (including the dates for the beginning and completing construction of the Project) have been met. The Certificate of Completion shall not constitute evidence of compliance with, or satisfaction of, any obligation of the Tenant to any holder of a deed of trust securing money loaned to finance the Project or any part thereof, shall not be deemed a notice of completion under the California Civil Code, and shall not constitute evidence

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of compliance with, or otherwise waive, modify, or limit any of the requirements regarding the payment of prevailing wages as set forth in this Lease. Any issuance of the Certificate of Completion by the Landlord shall not waive, limit, or otherwise impair Landlord's right to declare a default for Tenant breach or violation of any other obligations under this Lease. In accordance with the DDA, the Tenant previously funded the "Developer Payment" (as defined in the DDA). No later than thirty (30) days after the Landlord's issuance of the Certificate of Completion, in accordance with this Section, the Landlord shall return any portion of the Developer Payment not previously expended, or otherwise required to be utilized by the Landlord. Upon written request of the Tenant, the Landlord shall provide, within thirty (30) days after such request, documentation evidencing the Landlord's use of the Developer Payment. The Tenant acknowledges that the entire amount of the Developer Payment may be expended by the Landlord regardless of the completion of the Project.

6.3 Construction Standards. Tenant shall carry out and shall cause its contractors to carry out the construction of the Project and all subsequent improvements, alterations and replacements, in a first class and workmanlike fashion in accordance with the Construction Plans approved by Landlord, in compliance with all applicable state, federal, and local laws, rules, ordinances, codes, and regulations, including without limitation California Labor Code Section 1720 et seq. and the regulations adopted pursuant thereto ("Prevailing Wage Laws"), and all other applicable federal and state labor laws and standards, applicable provisions of the California Public Contracts Code (if any), the City zoning and development standards, building, plumbing, mechanical and electrical codes, all other provisions of the City's Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq., Government Code Section 4450, et seq., Government Code Section 11135, et seq., and the Unruh Civil Rights Act, Civil Code Section 51, et seq. (all of the foregoing, collectively "Applicable Laws"). In addition to any other Applicable Laws, Tenant shall and shall cause all contractors and subcontractors to comply with the City's Living Wage Ordinance (Chapter 31 of Title 5 of the Emeryville Municipal Code) or the Minimum Wage, Paid Sick Leave and other Employment Standards (Chapter 37 of Title 5 of the Emeryville Municipal Code), as applicable.

6.4 Easements; Reciprocal Easement/Joint Use Agreement. From time to time at Tenant's request, Landlord shall, in its capacity as fee title owner to the Property, join in the grant of easements to public or private utility companies for utility service to and for the benefit of the Project. Landlord agrees to join in granting or dedicating such public or private utility or other easements as may be reasonably required for the development, maintenance, use, operation or enjoyment of the Property in accordance with this Lease; provided, however, any action taken by the Landlord, at the request of the Tenant pursuant to this Section, shall be without cost or expense to Landlord.

6.5 Protection of Landlord. Nothing in this Lease shall be construed as constituting the consent of the Landlord, express or implied, to the performance of any labor or services, or the furnishing of any materials or any specific improvements, alterations of or repairs to the Property or any part thereof, by any contractor, subcontractor, laborer or materialman such as to give rise to any right of any such contractor, subcontractor, laborer or materialman to file a mechanic's lien or other claim against the fee title to the Property. Landlord shall have the right at all reasonable times to post, and keep posted, on the Property any notices which Landlord may

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deem necessary for the protection of Landlord and the Property from mechanic's liens or other claims. Tenant shall give Landlord ten (10) business days' prior written notice of the commencement of any work to be done on the Property to enable Landlord to post such notices. In addition, Tenant shall make, or cause to be made, timely payment of all monies due and legally owing to all persons doing any work or furnishing any materials or supplies to Tenant or any of its contractors or subcontractors in connection with the Property (subject to Tenant's right to contest the same in accordance with all Applicable Laws).

6.6 Mechanic's Liens and Stop Notices. Tenant shall not allow to be placed on the Property or any part thereof any lien or stop notice on account of materials supplied to or labor performed on behalf of Tenant. If a claim of a lien or stop notice is given or recorded affecting the Project or the Property, Tenant shall within twenty (20) business days of such recording or service: (a) pay and discharge (or cause to be paid and discharged) the same; or (b) effect the release thereof by recording and delivering (or causing to be recorded and delivered) to the party entitled thereto a surety bond in sufficient form and amount; or (c) provide other assurance satisfactory to Landlord that the claim of lien or stop notice will be paid or discharged. Tenant shall indemnify, defend and hold Landlord harmless from and against liability, loss, damages, costs and expenses (including reasonable attorneys' fees) incurred by or brought against Landlord for claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished to Tenant or persons claiming under it.

6.7 Right of Landlord to Satisfy Liens on the Property. If Tenant fails to satisfy or discharge any lien or stop notice on the Property pursuant to and within the time period set forth in Section 6.6 above, upon not less than ten (10) business days' prior written notice to Tenant, the Landlord shall have the right, but not the obligation, to satisfy any such liens or stop notices at Tenant's expense and without further notice to Tenant, and all sums advanced by Landlord for such purpose shall be payable to Landlord as Additional Rent. In such event Tenant shall be liable for and shall immediately reimburse Landlord for such paid lien or stop notice. Alternatively, the Landlord may require Tenant to immediately deposit with Landlord the amount necessary to satisfy such lien or claim pending resolution thereof. The Landlord may use such deposit to satisfy any claim or lien that is adversely determined against Tenant. Tenant shall file a valid notice of cessation or notice of completion upon cessation of construction work on the Property for a continuous period of thirty (30) days or more, and shall take all other reasonable steps to forestall the assertion of claims or liens against the Property. The Landlord may (but has no obligation to) record any notices of completion or cessation of labor, or any other notice that the Landlord deems necessary or desirable to protect its interest in the Property.

6.8 Notice of Completion. Upon completion of construction of any Improvement, Tenant shall file or cause to be filed in the Official Records a "notice of completion", in accordance with the California Civil Code, with respect to the subject work. Upon request of Landlord, Tenant shall make available to Landlord following the completion of the Improvements a full set of as-built plans for the Improvements.

6.9 Use of Plans. The contracts relating to design and construction of the Improvements executed by and between Tenant (or an affiliate of Tenant's general partner) and any architect, other design professional or any general contractor shall provide, in form and substance reasonably satisfactory to Landlord, for the assignment thereof to Landlord as security

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to Landlord for Tenant's performance hereunder, and Landlord shall be furnished with any such contract, together with the further agreement of the parties thereto, that if this Lease is terminated due to Tenant's default, Landlord may, at its election, use any plans and specifications to which Tenant is then entitled pursuant to any such contract upon the payment of any sums due to any party thereto, subject to any prior rights of the Project construction lender.

6.10 Cost of Construction. Tenant shall be solely responsible for all direct and indirect costs and expenses incurred in connection with the development of the Property and the construction of the Improvements. Except as expressly set forth herein, all costs of designing, developing and constructing the Improvements and the Project and compliance with the Project approvals, including without limitation all off-site and on-site improvements required by City in connection therewith, shall be borne solely by Tenant and shall not be an obligation of the Landlord. If any Applicable Laws are hereafter changed so as to require during the Term any alteration of the Improvements, or the reinforcement or any other physical modification of the Improvements, Tenant shall be solely responsible for such cost and expense.

6.11 Project Approvals. Tenant acknowledges and agrees that execution of this Agreement by Landlord does not constitute approval for the purpose of the issuance of building permits for the Project, does not limit in any manner the discretion of City in such approval process, and does not relieve Tenant from the obligation to apply for and obtain all necessary entitlements, approvals, and permits for the development of the Property, including without limitation, the approval of architectural plans, the issuance of any certificates regarding historic resources required in connection with the Project (if any), and the completion of any required environmental review (if any). Tenant covenants that it shall obtain all necessary permits and approvals which may be required by City, or any other governmental agency having jurisdiction over the Property, and shall not commence construction work on the Project prior to issuance of building permits required for such work. Landlord staff shall work cooperatively with Tenant to assist in coordinating the expeditious processing and consideration of all permits, entitlements and approvals necessary for development of the Project on the Property.

6.12 Conditions of Approval. Tenant shall develop the Property in accordance with the terms and conditions of this Agreement and in compliance with the terms and conditions of all approvals, entitlements and permits of any other governmental body or agency with jurisdiction over the Project or the Property granted or issued as of the Effective Date or hereafter granted or issued in connection with development of the Project, including without limitation, all mitigation measures imposed in connection with environmental review of the Project and all conditions of approval imposed in connection with any entitlements, approvals or permits (all of the foregoing approvals, entitlements, permits, mitigation measures and conditions of approval are hereafter collectively referred to as the "Conditions of Approval").

6.13 Fees and Permits. Tenant shall have the sole responsibility for obtaining all necessary governmental permits and approvals for the construction of the Improvements, at Tenant's sole cost and expense. Landlord shall cooperate with Tenant in connection with obtaining any such governmental permits and approvals. Tenant shall be solely responsible for, and shall promptly pay when due, all customary and usual fees and charges of City and all other agencies with jurisdiction over development of the Property in connection with obtaining building permits and other approvals for the Project, including without limitation, those related

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to the processing and consideration of amendments, if any, to the current entitlements, any related approvals and permits, environmental review, architectural review, historic review, and any subsequent approvals for the Project.

6.14 Construction Plans. Tenant has submitted, and as of the Effective Date, City's Building Department has approved, detailed construction plans for the Project (the "Construction Plans"). As used herein Construction Plans means all construction documents upon which Tenant and Tenant's contractors shall rely in developing the Project (including the landscaping, parking, and common areas) and shall include, without limitation, the site development plan, final architectural drawings, landscaping, exterior lighting and signage plans and specifications, materials specifications, final elevations, and building plans and specifications. The Construction Plans and any modifications thereto shall be based upon the scope of development set forth herein and the DDA, the site plan and the elevations approved by the Landlord, and upon the approvals issued by the City for the Project, and shall not materially deviate therefrom without the express written consent of Landlord and City.

6.15 Construction Pursuant to Plans. Tenant shall develop the Project in accordance with the approved Construction Plans, the Conditions of Approval, and all other permits and approvals granted by the City pertaining to the Project. Tenant shall comply with all directions, rules and regulations of any fire marshal, health officer, building inspector or other officer of every governmental agency having jurisdiction over the Property or the Project. Each element of the work shall proceed only after procurement of each permit, license or other authorization that may be required for such element by any governmental agency having jurisdiction. All design and construction work on the Project shall be performed by licensed contractors, engineers or architects, as applicable.

6.16 Change in Construction Plans. If Tenant desires to make any material change in the approved Construction Plans, Tenant shall submit the proposed change in writing to the Landlord for its written approval, which approval shall not be unreasonably withheld or delayed if the Construction Plans, as modified by any proposed change, conform to the requirements of this Agreement and any approvals issued by City after the Effective Date. Unless Landlord notifies Tenant in writing that a proposed change is rejected or that Landlord requests a modification to such proposed change within twenty (20) business days, it shall be deemed approved. If rejected, the previously approved Construction Plans shall continue to remain in full force and effect. Any change in the Construction Plans required in order to comply with applicable codes shall be deemed approved, so long as such change does not substantially nor materially change the architecture, design, function, use, or amenities of the Project as shown on the latest approved Construction Plans. Nothing in this Section is intended to or shall be deemed to modify the City's standard plan review procedures.

6.17 Rights of Access. For the purpose of ensuring that the construction of the Project is completed in compliance with this Agreement, Tenant shall permit representatives of the Landlord to enter upon the Property following 24 hours written notice (except in the case of emergency in which case such notice as may be practical under the circumstances shall be provided). Such rights are in addition to any right to enter and inspect the City may have as a governmental authority.

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6.18 Landlord Disclaimer. Tenant acknowledges that the Landlord is under no obligation, and Landlord does not undertake or assume any responsibility or duty to Tenant or to any third party, to in any manner review, supervise, or inspect the progress of construction or the operation of the Project. Tenant and all third parties shall rely entirely upon its or their own supervision and inspection in determining the quality and suitability of the materials and work, the performance of architects, subcontractors, and material suppliers, and all other matters relating to the construction and operation of the Project. Any review or inspection undertaken by the Landlord is solely for the purpose of determining whether Tenant is properly discharging its obligations under this Agreement, and shall not be relied upon by Tenant or any third party as a warranty or representation by the Landlord as to the quality of the design or construction of the improvements or otherwise.

6.19 Defects in Plans. Landlord shall not be responsible to Tenant or to any third party for any defect in the Construction Plans or for any structural or other defect in any work done pursuant to the Construction Plans. Tenant shall indemnify, defend (with counsel approved by Landlord) and hold harmless the Indemnitees from and against all Claims arising out of, or relating to, or alleged to arise from or relate to defects in the Construction Plans or defects in any work done pursuant to the Construction Plans whether or not any insurance policies shall have been determined to be applicable to any such Claims. Tenant's indemnification obligations set forth in this Section shall survive the expiration or earlier termination of this Agreement. It is further agreed that Landlord does not, and shall not, waive any rights against Tenant which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by Landlord, or Tenant's deposit with Landlord of any of the insurance policies described in this Agreement. Tenant's indemnification obligations pursuant to this Section shall not extend to Claims arising due to the gross negligence or willful misconduct of the Indemnitees.

6.20 Equal Opportunity. There shall be no discrimination on the basis of race, color, religion, creed, sex, sexual orientation, gender identity, marital status, ancestry, national origin, age or disability in the hiring, firing, promoting or demoting of any person engaged in construction work on the Property, and Tenant shall direct its contractors and subcontractors to refrain from discrimination on such basis.

6.21 Prevailing Wage Requirements.

6.21.1 Federal Requirements. To the full extent required by applicable federal law, Tenant and its contractors and agents shall comply with federal Davis Bacon requirements (if applicable), and shall be responsible for carrying out the requirements of such provisions. If applicable, Tenant shall submit to Landlord a plan for monitoring payment of prevailing wages and shall implement such plan at Tenant's expense.

6.21.2 State Requirements.

6.21.2.1 Tenant shall and shall cause its contractors and subcontractors to pay prevailing wages in the construction of the Improvements or any Major Additional Improvements, defined below, as those wages are determined pursuant to Labor Code Sections 1720 et seq. and the implementing regulations of the Department of Industrial Relations (the "DIR"), to employ apprentices as required by Labor Code Sections 1777.5 et seq., and the

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implementing regulations of the DIR and comply with the other applicable provisions of Labor Code Sections 1720 et seq., 1777.5 et seq., 1810-1815 and implementing regulations of the DIR.

6.21.2.2 All calls for bids, bidding materials and the construction contract documents for the Improvements or any Major Additional Improvements must specify that:

(i) No contractor or subcontractor may be listed on a bid proposal nor be awarded a contract for the Improvements or any Major Additional Improvements unless registered with the DIR pursuant to Labor Code Section 1725. 5.

(ii) The Improvements or any Major Additional Improvements are subject to compliance monitoring and enforcement by the DIR.

6.21.2.3 Tenant, as the "awarding body", shall register the Improvements or the Major Additional Improvements as required by Labor Code Section 1773. 3 as set forth in the DIR's online form PWC-100 within two (2) business days after entering into the construction contract and provide evidence of such registration to the City within two (2) business days of such registration and any additional registration reporting to the DIR.

6.21.2.4 In accordance with Labor Code Sections 1725. 5 and 1771.1, Tenant shall require that its contractors and subcontractors be registered with the DIR, and maintain such registration as required by the DIR.

6.21.2.5 Pursuant to Labor Code Section 1771. 4, the Improvements and any Major Additional Improvements are subject to compliance monitoring and enforcement by the DIR. Tenant shall and shall require its contractors and subcontractors to submit payroll and other records electronically to the DIR pursuant to Labor Code Sections 1771.4 and 1776 et seq, or in such other format as required by the DIR.

6.21.2.6 Tenant shall and shall cause its contractors and subcontractors to keep and retain such records as are necessary to determine if prevailing wages have been paid as required pursuant to Labor Code Sections 1720 et seq. , and that apprentices have been employed as required by Labor Code Section 1777.5 et seq., and shall, from time to time upon the request of Landlord provide to Landlord such records and other documentation reasonably requested by Landlord.

6.21.2.7 Tenant shall and shall cause its respective contractors and subcontractors to comply with all other applicable provisions of Labor Code, including without limitation, Labor Code Sections 1720 et seq. , 1725.5, 1771, 1771.1, 1771.4, 1776, 1777.5 et seq., 1810-1815 and implementing regulations of the DIR in connection with construction of the Improvements or any Major Additional Improvements or any other work undertaken or in connection with the Property.

6.21.2.8 Copies of the currently applicable current per diem prevailing wages are available from the DIR website, www. dir.ca.gov. Tenant shall cause its respective contractors to post the applicable prevailing rates of per diem wages at the Property

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site and to post job site notices, in compliance with Title 8 California Code of Regulations 16451(d) or as otherwise as required by the DIR.

6.21.2.9 Tenant shall indemnify, hold harmless and defend (with counsel reasonably selected by the City), to the extent permitted by applicable law, the City, its councilmembers, commissioners, officials, employees, volunteers, and agents, against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Tenant, or its contractors or subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq. , to hire apprentices in accordance with Labor Code Sections 1777.5 et seq., or to comply with the other applicable provisions of Labor Code Sections 1720 et seq., 1725.5, 1771, 1771.1, 1771.4, 1776, 1777.5 et seq., 1810-1815 and the implementing regulations of the DIR in connection with the work performed pursuant to this Agreement. The provisions of this Section shall survive termination of this Agreement.

6.22 Performance and Payment Bonds. Prior to commencement of construction work on the Project, Tenant shall cause its general contractor to deliver to the Landlord copies of payment bond(s) and performance bond(s) issued by a reputable insurance company licensed to do business in California, each in a penal sum of not less than one hundred percent (100%) of the scheduled cost of construction of the Project. The bonds shall name the Landlord as an obligee. In lieu of such performance and payment bonds, subject to Landlord's approval of the form and substance thereof, Tenant may submit evidence satisfactory to the Landlord of the contractor's ability to commence and complete construction of the Project in the form of an irrevocable letter of credit, pledge of cash deposit, certificate of deposit, or other marketable securities held by a broker or other financial institution, with signature authority of the Landlord required for any withdrawal, or a completion guaranty in a form and from a guarantor acceptable to Landlord. Such evidence must be submitted to Landlord in approvable form in sufficient time to allow for Landlord's review and approval prior to the scheduled construction start date.

6.23 Insurance Requirements. Tenant shall maintain and shall cause its contractors to maintain all applicable insurance coverage specified in Article IX.

6.24 Additional Construction on Property.

6.24.1 General Standards. Any additional building erected on any portion of the Property permitted under this Lease (other than the initial construction of the Improvements), and any alteration, construction, remodeling, reconstruction or repair work undertaken on or within any existing building on any portion of the Property shall at all times be of high-quality construction and architectural design consistent with the quality standards of the initial Improvements. Subject to Section 6.24.3 below, all Major Additional Improvements shall be diligently prosecuted, and completed: (1) only after the Tenant has obtained the Landlord's prior written approval for such additional construction, (2) without cost to the Landlord, (3) in good and workmanlike manner, (4) in accordance with any plans and specifications approved by the Landlord pursuant to subsection 6.24.2 below, (5) by a licensed contractor reasonably acceptable to the Landlord, pursuant to a construction contract in a form approved by the Landlord that, among other things, includes the City Contract Addendum (as defined in, and attached to, the

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DDA). The Tenant shall secure all necessary permits and approvals for such expansion, prior to submitting any construction plans to the Landlord under this Section.

6.24.2 Approval of Plans. Prior to commencing construction of any Major Additional Improvements (as defined below), the Tenant shall submit to the Landlord for the Landlord's approval plans and specifications for such work which, to the extent relevant, shall contain the same information as set forth in the Construction Plans. The Landlord shall approve or disapprove (in the Landlord's reasonable discretion) such plans and specifications in writing within sixty (60) days of submission. Any disapproval shall state with specificity the reasons for such disapproval.

If rejected by the Landlord in whole or in part, the Tenant shall submit new or corrected construction plans within thirty (30) days of notification of the Landlord's disapproval. The Landlord shall then have thirty (30) days to review and approve the Tenant's new or corrected construction plans. The Landlord's failure to either approve or disapprove the construction plans within such thirty (30) day period shall be deemed approval. The provisions of this Section relating to time periods for approval, rejection, or resubmission of new or corrected construction plans shall continue to apply until construction plans have been approved by the Landlord (or deemed approved) at which time they shall be attached to and become a part of this Lease as if fully set forth herein. Only upon approval of the construction plans shall this condition be met.

In the event that prior to or during the course of construction of any Major Additional Improvements, the Tenant desires to make any material change in the Major Additional Improvements from that contemplated in the approved plans and specifications, the Tenant shall, prior to making such change, submit to the Landlord such plans or other information which document the desired change. The Landlord shall approve or disapprove such change within thirty (30) days of its submission to the Landlord. Any disapproval shall state with reasonable specificity the basis for such disapproval. Unless such change is approved, the previously approved plans and specifications shall remain in effect.

6.24.3 Definition of Major Additional Improvements. "Major Additional Improvements" means any of the following: (1) any new buildings, structures or outdoor facilities to be located on the Property; (2) any substantial alterations, remodeling or rehabilitation of existing buildings, structures, or remodeling or rehabilitation of existing buildings, structures, or outdoor facilities; (3) construction of additional spaces or facilities, (4) any other alteration, construction, remodeling or reconstruction with a cost in excess of One Hundred Thousand Dollars ($100,000); or (5) a change that will reduce the number of bedrooms within any residential unit. Alteration, construction, remodeling, or reconstruction not constituting a Major Additional Improvement shall not require the Landlord's consent or approval of plans and specifications, but must be designed and performed in accordance with the General Standards set forth in subsection 6.24.1 above.

ARTICLE VII.
USE OF THE PROPERTY

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7.1 Permitted Uses. Tenant may use the Property for the construction and operation of the Project and for no other purpose without the prior written consent of Landlord. Tenant shall not do or permit any activity on or about the Property that constitutes a public or private nuisance. At Tenant's sole expense, Tenant shall procure and maintain all governmental licenses or permits required for the proper and lawful conduct of Tenant's activities conducted on the Property.

7.2 Affordability Requirements. For the period of time commencing on the Commencement Date and expiring on the Expiration Date as provided in Section 3.1 hereof, no fewer than sixty-seven (67) of the dwelling units in the Project shall be both rent-restricted and occupied (or if vacant, available for occupancy) by eligible households of low-, very low-, and extremely low-income pursuant to and in accordance with the terms and conditions set forth in the Affordability Covenant.

7.3 Preference for Emeryville Residents, Employees, EUSD Attendees and Displacees from City Regulated Housing. In order to ensure that there is an adequate supply of affordable housing within the City of Emeryville for residents, employees of businesses within the City, or households with one or more children attending the Emery Unified School District and to address potential displacement of households occupying City regulated inclusionary rental units for Very Low Income Households (as defined in the Affordability Covenant) being converted to for-sale condominiums, to the extent permitted by law and consistent with the program regulations for funding sources used for development of the Project, Tenant shall give a preference in the rental of the residential units in the Project to (i) households being displaced from City regulated inclusionary rental units for Very Low Income Households (as defined in the Affordability Covenant) as a result of the unit being converted to a for-sale condominium and (ii) eligible households that include at least one member who lives or works in the City of Emeryville, or has one or more children attending a school within the Emery Unified School District. In the event there are fewer eligible persons available than there are units, units shall be made available to members of the general public. Notwithstanding the foregoing, in the event of a conflict between this provision and the provisions of Section 42 of the Internal Revenue Code of 1986 or any requirement of the United State Department of Housing and Urban Development ("HUD") applicable to the Project, the provisions of such Section 42 or the requirements of HUD shall control. The preferences set forth in this Section 7.3 shall not be applicable at any time that the Project is subject to a Regulatory Agreement from the County of Alameda related to HOME funding and shall not be applicable to any Affordable Unit subject to Project-Based Rental Assistance.

7.4 Manager's Unit. One (1) one-bedroom dwelling unit in the Project shall be used as a resident manager's unit, and shall be exempt from the occupancy and rent restrictions set forth in Sections 7.2 and 7.3 of this Lease.

7.5 No Condominium Conversion. Tenant shall not convert the Project to condominium or cooperative ownership or sell condominium or cooperative conversion rights to the Project during the Term of this Lease.

7.6 Obligation to Refrain from Discrimination. Tenant shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any

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portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, gender identity, disability, age, marital status, ancestry, or national origin of any person. Tenant covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Tenant or any person claiming under or through Tenant establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in, of, or for the Property or part thereof. Tenant shall include such provision in all deeds, leases, contracts and other instruments executed by Tenant, and shall enforce the same diligently and in good faith.

All deeds, leases or contracts made or entered into by Tenant, its successors or assigns, as to any portion of the Property or the improvements located thereon shall contain the following language:

(a) In Deeds, the following language shall appear:

"(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land."

"(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(b) In Leases, the following language shall appear:

"(1) The lessee herein covenants by and for the lessee and lessee's heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation,

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marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased."

"(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(c) In Contracts, the following language shall appear:

"There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to selection, location, number, use or occupancy of tenants, lessee, subtenants, sublessees or vendees of the land."

7.7 Management and Operation of the Project; Compliance with Laws. Tenant agrees to operate, maintain and manage the Property in first-class manner, subject to incidental wear and tear. Tenant, at its sole cost and expense, shall comply with all Applicable Laws pertaining to the use, operation, occupancy and management of the Property. Tenant shall not itself, and shall not permit any subtenant to use the Property or the Improvements for any unlawful purpose and shall not itself, and shall not permit any subtenant to, perform, permit or suffer any act of omission or commission upon or about the Property or the Improvements which would result in a nuisance or a violation of Applicable Law. Landlord shall have the right to review and approve the qualifications of any management entity proposed by Tenant for the Project. Landlord hereby approves EAH, Inc., a California nonprofit public benefit corporation, as the initial management entity for the Project; provided, however, any replacement or substitution of any other entity as the property manager shall remain subject to the Landlord's prior written approval. Any contracting of management services by Tenant shall not relieve Tenant of its primary responsibility for proper performance of management duties.

7.8 Tenant Right to Contest. Tenant shall have the right to contest by appropriate proceedings, in the name of Tenant, and without cost or expense to Landlord, the validity or application of any Applicable Law. If compliance with any Applicable Law may legally be delayed pending the prosecution of any such proceeding without the incurrence of any lien, charge or liability against the Property or Tenant's interest therein, and without subjecting Tenant or Landlord to any liability, civil or criminal, for failure so to comply therewith, Tenant may delay compliance therewith until the final determination of such proceeding. Tenant shall

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indemnify, defend, protect and hold Landlord harmless from and against all claims, damages, losses, liabilities, costs and expenses (including without limitation reasonable attorneys' fees) incurred by Landlord as a result of any such contest brought by Tenant.

7.9 Hazardous Materials.

7.9.1 Obligations of Tenant. Tenant hereby covenants and agrees that:

7.9.1.1 Tenant shall not cause or permit the Property or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Material or otherwise knowingly permit the presence or release of Hazardous Material in, on, under, about or from the Property or the Project with the exception of limited amounts of cleaning supplies and other materials customarily used in construction, use or maintenance of residential/mixed-use properties similar in nature to the Project and used, stored and disposed of in compliance with Environmental Laws.

7.9.1.2 Tenant shall keep and maintain the Property and each portion thereof in compliance with, and shall not cause or permit the Project or the Property or any portion of either to be in violation of, any Environmental Laws.

7.9.1.3 Upon receiving actual knowledge of the same, Tenant shall immediately advise Landlord in writing of: (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Tenant, or the Property pursuant to any applicable Laws; (ii) any and all claims made or threatened by any third party against the Tenant or the Property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Material; (iii) the presence or release of any Hazardous Material in, on, under, about or from the Property; or (iv) Tenant's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Project that may in any way affect the Property pursuant to any Laws or cause it or any part thereof to be designated as Border Zone Property. The matters set forth in the foregoing clauses (i) through (iv) are hereinafter referred to as "Hazardous Materials Claims". The Landlord shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claim.

7.9.1.4 Tenant shall promptly take all actions at its sole expense as are necessary to remediate the Property as required by law; provided that Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld.

7.9.1.5 Without the Landlord's prior written consent, Tenant shall not enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claim.

7.9.2 Environmental Indemnity. From and after the Commencement Date, Tenant shall indemnify, defend and hold Landlord and Indemnitees harmless from and against any demand, lawsuit, liability, obligation, claim, damage, fine, penalty, expense, cost, or cause of action, whether at law or in equity, or any Hazardous Materials Claims resulting from, arising out of, or based upon the release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous

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Materials to or from, the Site in violation, or alleged violation, of any Environmental Laws, no matter when occurred, except that the foregoing indemnity obligation shall not apply to any matters that arise out of the active negligence or willful misconduct of Landlord and Indemnitees. This indemnity shall include any damage, liability, fine, penalty, parallel indemnity, cost or expense arising from or out of any claim, action, suit or proceeding for bodily injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, trespass, contamination, leak, spill, release or other adverse effect on the environment. Tenant's indemnification obligations set forth in this Section shall survive the expiration or earlier termination of this Agreement.

7.9.3 No Limitation. Tenant hereby acknowledges and agrees that Tenant's duties, obligations and liabilities under this Agreement are in no way limited or otherwise affected by any information the Landlord may have concerning the Property and/or the presence in, on, under or about the Property of any Hazardous Material, whether the Landlord obtained such information from the Tenant or from its own investigations, unless such information was known to the Landlord at the time of execution of this Agreement but not disclosed to Tenant.

7.9.4 Definitions.

7.9.4.1 "Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government, including any material or substance which is: (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under sections 25115, 25117 or 25122.7, or listed pursuant to section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a "hazardous substance" under section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a "hazardous substance" under section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum, or any fraction thereof; (vi) friable asbestos; (vii) polychlorinated biphenyls; (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20; (ix) designated as "hazardous substances" pursuant to section 311 of the Clean Water Act (33 U.S.C. § 1317); (x) defined as a "hazardous waste" pursuant to section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, (42 U.S.C. § 6903); or (xi) defined as "hazardous substances" pursuant to section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, et seq., as the foregoing statutes and regulations now exist or may hereafter be amended.

7.9.4.2 "Environmental Laws" means all laws, ordinances, statutes, codes, rules, regulations, orders and decrees, of the United States, the State of California, the County of Alameda, City, any other political subdivision in which the Site is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over City, Developer, the Site, the Improvements or Hazardous Materials, including all applicable state labor laws and

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standards (including prevailing wages, as applicable); all applicable public contracts requirements, zoning and development standards; building, plumbing, mechanical and electrical codes; all other provisions of the City Municipal Code (including City's Living Wage Ordinance in section 5-31.01, et seq. thereof, as applicable), and all applicable disabled and handicapped access requirements, including the Americans With Disabilities Act, 42 U.S.C. section 12101, et seq., Government Code section 4450, et seq., Government Code section 11135, et seq., and the Unruh Civil Rights Act, Civil Code section 51, et seq.

ARTICLE VIII.
SURRENDER AND RIGHT TO REMOVE

8.1 Ownership During Term.

8.1.1 Improvements. During the Term of this Lease the Improvements shall, subject to the terms of this Lease, be and remain the property of Tenant.

8.1.2 Personal Property. All personal property, furnishings, fixtures and equipment installed by Tenant in, on or around the Property which (i) are not attached to the Property so as to cause substantial damage upon removal, and (ii) are not necessary for the normal operation and occupancy of the Project, shall be the personal property of Tenant (the "Personal Property"). At any time during the Term, Tenant shall have the right to remove the Personal Property provided Tenant shall repair any damage caused by the removal of such Personal Property. Personal Property shall not include any portion or part of major building components or fixtures necessary for the operation of the basic building systems (such as elevators, escalators, chillers, boilers, plumbing, electrical systems, lighting, sanitary fixtures and HVAC systems) which shall be deemed a part of the Improvements.

8.2 Ownership at Lease Termination.

8.2.1 Improvements. Upon the Lease Termination, the Improvements and all stoves, refrigerators and dishwashers installed in the residential units (the "Appliances") shall unconditionally be and become the property solely of Landlord, and no compensation therefor shall be due or paid by Landlord to Tenant for any part thereof, and this Lease shall operate as a conveyance and assignment thereof. Upon Lease Termination, Tenant shall surrender to Landlord the Property, the Improvements and the Appliances in good order, condition and repair, reasonable wear and tear excepted, free and clear of all liens, claims and encumbrances other than those matters existing prior to the Effective Date or matters subsequently created or consented to by Landlord. Upon Lease Termination, at Landlord's request Tenant agrees to execute, acknowledge and deliver to Landlord such recordable instruments as are necessary or desirable to confirm the termination of the Lease and all Tenant's rights hereunder and to perfect Landlord's right, title and interest in and to the Property, the Improvements and the Appliances.

8.2.2 Personal Property. With the exception of the Appliances, any Personal Property may be removed prior to Lease Termination by Tenant; provided, however, the removal shall be with due diligence, and without expense to Landlord, and any part of the Property damaged by such removal shall be promptly repaired by Tenant. Any Personal Property which remains on the Property for thirty (30) days after the Lease Termination may, at the option of

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Landlord, be deemed to have been abandoned and either may be retained by Landlord as its property or may be disposed of in accordance with Applicable Law. If requested by Landlord within a reasonable time but not less than six months prior to the termination of this Lease, upon Lease Termination Tenant shall, at Tenant's sole cost and expense, remove all Personal Property, or portions thereof designated by Landlord.

8.3 Condition of Improvements at Lease Termination. Landlord has entered this Lease in reliance on the fact that, at Lease Termination, Landlord will receive from Tenant the Improvements in good condition and repair, reasonable wear and tear excepted and reflecting the age of the Improvements at such time and Landlord's willingness during the Term of this Lease to consent to the encumbrance of Tenant's interest in the Property for construction financing. At any time during the Term, upon reasonable advance notice and during normal business hours, Landlord may inspect the Property and Improvements to confirm that they are being properly maintained as required herein. Following its inspection, Landlord may deliver to Tenant written notification of any portions of the Property or Improvements which Landlord has determined are not being properly maintained and Tenant shall promptly comply with the provisions of this Lease regarding such items; provided, the failure of Landlord to inspect or to notify Tenant of any default hereunder shall not be a waiver of Landlord's right to enforce Tenant's maintenance and repair obligations hereunder.

8.4 Survival. The provisions of this Article VIII shall survive Lease Termination.

ARTICLE IX.
INSURANCE

9.1 Insurance. Tenant, at its sole cost and expense, commencing upon the Effective Date and continuing throughout the Term (except as otherwise specified below) shall keep and maintain in full force and effect policies of insurance pursuant to and in accordance with the requirements set forth in this Article IX. Landlord shall review and update the insurance requirements no more often than every five (5) years during the term of this Lease and shall provide to Tenant written notice of the updated insurance requirements.

9.1.1 Tenant and all contractors working on behalf of Tenant on the Project shall maintain a commercial general liability policy in the amount of One Million Dollars ($1,000,000) each occurrence, Two Million Dollars ($2,000,000) annual aggregate, together with Three Million Dollars ($3,000,000) excess liability coverage, or such other policy limits as Landlord may require in its reasonable discretion, including coverage for bodily injury, property damage, products, completed operations and contractual liability coverage. Such policy or policies shall be written on an occurrence basis and shall name the Indemnitees as additional insureds.

9.1.2 Tenant and all contractors working on behalf of Tenant shall maintain a comprehensive automobile liability coverage in the amount of Two Million Dollars ($2,000,000), combined single limit including coverage for owned and non-owned vehicles and shall furnish or cause to be furnished to Landlord evidence satisfactory to Landlord that Tenant and any contractor with whom Tenant has contracted for the performance of work on the

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Property or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law. Automobile liability policies shall name the Indemnitees as additional insureds.

9.1.3 Upon commencement of construction work and continuing until issuance of the final certificate of occupancy or equivalent for the Project, Tenant and all contractors working on behalf of Tenant shall maintain a policy of builder's all-risk insurance in an amount not less than the full insurable cost of the Project on a replacement cost basis naming Landlord as loss payee.

9.1.4 Tenant shall maintain property insurance covering all risks of loss (other than earthquake), including flood (if required) for 100% of the replacement value of the Project with deductible, if any, in an amount acceptable to Landlord, naming Landlord as loss payee.

9.1.5 Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A: VII. The Commercial General Liability and comprehensive automobile policies required hereunder shall name the Indemnitees as additional insureds. Builder's Risk and property insurance shall name Landlord as loss payee as its interest may appear pursuant to this Lease.

9.1.6 Prior to commencement of construction work, Tenant shall furnish Landlord with certificates of insurance in form acceptable to Landlord evidencing the required insurance coverage and duly executed endorsements evidencing such additional insured status. The certificates shall contain a statement of obligation on the part of the carrier to notify Landlord of any material adverse change, cancellation, termination or non-renewal of the coverage at least thirty (30) days in advance of the effective date of any such material adverse change, cancellation, termination or non-renewal.

9.1.7 If any insurance policy or coverage required hereunder is canceled or reduced, Tenant shall, within fifteen (15) business days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with Landlord a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, Landlord may, without further notice and at its option, procure such insurance coverage at Tenant's expense, and Tenant shall promptly reimburse Landlord for such expense upon receipt of billing from Landlord. Failure to file such certificate shall also constitute an event of default.

9.1.8 Coverage provided by Tenant shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by Landlord, and the policies shall so provide. The Tenant's full insurance limit, including limits that exceed the requirements of this Lease shall be available to cover claims against the Landlord. The insurance policies shall contain a waiver of subrogation for the benefit of the Landlord. Tenant shall furnish the required certificates and endorsements to Landlord prior to the commencement of construction of the Project, and shall provide Landlord with certified copies of the required insurance policies upon request of Landlord.

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ARTICLE X.
INDEMNIFICATION BY TENANT

Tenant shall indemnify, defend (with counsel approved by Landlord), protect and save Landlord and its elected and appointed officials, officers, employees, and agents (all of the foregoing, collectively the "Indemnitees") harmless from and against any and all claims, liabilities, losses, damages, fines, penalties, demands, suits, actions, causes of action, judgments, judicial or administrative proceeding, deficiency, order, costs and expenses (including without limitation reasonable attorneys' fees and court costs) (all of the foregoing, collectively "Claims") which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to: the construction, renovation, use, operation, or management of, the Property or the Improvements; any breach or default on the part of Tenant in the performance of any covenant or agreement to be performed by Tenant pursuant to this Lease; any negligence of Tenant or any of its agents, contractors, employees, sublessees or licensees; any accident, injury or damage caused to any person in or on the Property or Improvements; the furnishing of labor or materials by Tenant; or the failure to comply with Applicable Laws (including without limitation, all claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code Sections 1726 and 1781); whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that Landlord does not and shall not waive any rights against Tenant which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by Landlord, or Tenant's deposit with Landlord of any of the insurance policies described in this Agreement. Tenant's indemnification obligations set forth in this Section shall not apply to Claims arising solely from the gross negligence or willful misconduct of the Indemnitees. Tenant's obligation to indemnify, as set forth in this Section, are in addition to, and shall not be limited by, any additional obligation to indemnify the Landlord pursuant to any other agreement between the Parties, or any approval provided by the Landlord to the Tenant in connection with the Project in the Landlord's capacity as a governmental authority. The provisions of this section shall survive expiration of the Term or other termination of this Lease, and shall remain in full force and effect and are not limited by the amount of insurance as may be required.

ARTICLE XI.
DAMAGE AND DESTRUCTION

11.1 Damage or Destruction. In the event of any damage to or destruction of the Improvements during the Term for which insurance coverage is required under this Lease, Tenant shall restore and rebuild the Improvements as nearly as possible to their condition immediately prior to such damage or destruction, subject to any restrictions imposed by changes in Applicable Law and the availability of insurance proceeds for such purpose. Tenant shall commence diligently and continuously to carry out such rebuilding to full completion as soon as possible. Unless Landlord agrees otherwise in writing, Tenant shall commence reconstruction of the Improvements within one hundred and eighty (180) days following the date upon which insurance proceeds are made available for such work. Tenant shall be deemed to have commenced reconstruction when Tenant engages an architect for such work. Upon the occurrence of damage or destruction, all insurance proceeds paid in respect of such damage or destruction shall be applied to the payment of the costs of the restoration and rebuilding required

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to be performed by Tenant pursuant to this Lease. The insurance proceeds shall be held in trust by a financial institution agreed upon by Landlord and Tenant (the "Insurance Trustee"), with the costs of such trust to be a first charge against the insurance proceeds. After the completion of the restoration and rebuilding of the Improvements, any remaining insurance proceeds shall be paid to Tenant and Tenant shall be entitled to retain the same.

11.1.1 Mortgagee Protection. Notwithstanding the foregoing or any other provision to the contrary in this Article XI, if a Leasehold Mortgagee requires insurance proceeds payable with respect to a casualty to be paid to it or its successors or assigns pursuant to the terms of its Leasehold Mortgage, the insurance proceeds shall be delivered to such Leasehold Mortgagee to be applied by such Leasehold Mortgagee in accordance with such Leasehold Mortgage. No settlement with the issuer of any insurance policy purchased by the Tenant shall be made without the mutual agreement of the Landlord and Tenant and any Leasehold Mortgagee. Landlord and Tenant each agree to execute, acknowledge and deliver to the other any instruments that may be reasonably required to effectuate or facilitate this provision.

11.2 Rebuilding by Tenant. The funds held by the Insurance Trustee shall be held in trust and shall be applied to the cost of rebuilding. Any funds held by the Insurance Trustee following final completion of rebuilding and payment of all costs and expenses thereof and removal of any liens related thereto, shall be paid to Tenant.

11.3 Disbursement of Funds. The Insurance Trustee shall disburse funds only on a periodic basis approved by Landlord and Tenant and only upon receipt of invoices and other documentation, certified as correct by Tenant's architect, if an architect is required for the repair, evidencing satisfactory completion of the work for which payment is requested (a "Payment Request"). Further, the Insurance Trustee shall not disburse any funds unless the payment request is accompanied by (a) an executed conditional lien release in form complying with California law relating to all labor and materials described in the Payment Request and (b) an executed final lien release in form complying with California law releasing all claims for labor and materials described in the immediately preceding Payment Request.

11.4 Notice Required. In the event of material damage to or destruction of the Improvements, or any part thereof, Tenant shall promptly give Landlord and Leasehold Mortgagee notice of such occurrence and take all actions reasonably required to protect against hazards caused by such damage or destruction. For purposes of this Article XI damage or destruction shall be deemed to be material if the estimated cost to repair equals or exceeds One Hundred Thousand Dollars ($100,000).

11.5 Removal of Debris. If this Lease shall terminate following the occurrence of damage to or destruction of the Improvements and at a time when Tenant shall not have restored and rebuilt the Improvements, then Tenant shall, at its cost and expense after the use of any insurance proceeds released for such purpose, remove the debris and damaged portion of Improvements (including without limitation all foundations) and restore the Property and Improvements or the applicable portion thereof to a neat, clean and safe condition.

11.6 Tenant's Right to Terminate. Notwithstanding any contrary provision of this Article XI, Tenant shall have the option to terminate this Lease and be relieved of the obligation

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to restore the Improvements where all or substantially all of the Improvements are substantially damaged or destroyed and such damage or destruction resulted from a cause not insured against by Tenant nor required to be insured against by Tenant under this Lease (an "Uninsured Loss"), and where all of the following occur:

(i) No more than one hundred twenty (120) days following the Uninsured Loss, Tenant shall notify Landlord of its election to terminate this Lease. To be effective, such notice must include the written consent of all Leasehold Mortgagees and partners of Tenant to Tenant's exercise of the option to terminate set forth in this Section 11.6. Landlord shall be entitled to rely upon the foregoing notice and certification as conclusive evidence that Tenant has obtained the consent of all Leasehold Mortgagees to Tenant's exercise of its option to terminate this Lease.

(ii) No more than sixty (60) days following the giving of the notice required by the preceding paragraph (i) or such longer time as may be reasonable under the circumstances, Tenant shall, at Tenant's expense after the use of any insurance proceeds released for such purpose, remove all debris and other rubble from the Property, secure the Property against trespassers, and at Landlord's election, remove all remaining Improvements on the Property.

(iii) No more than thirty (30) days following Tenant's termination notice, Tenant shall deliver to Landlord a quitclaim deed to the Property and Improvements in recordable form, in form and content satisfactory to Landlord and/or with such other documentation as may be reasonably requested by Landlord or any title company on behalf of Landlord, terminating Tenant's interest in the Property and Improvements.

ARTICLE XII.
LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

If Tenant shall at any time fail to pay any Imposition or other charge payable by Tenant to a third party as required by this Lease within the time permitted (which shall be deemed to include any time to contest the same that is permitted by Applicable Laws), or to pay for or maintain any of the insurance policies required pursuant to Article IX within the time therein permitted, or to make any other payment or perform any other act on its part to be made or performed hereunder within the time permitted by this Lease, then after thirty (30) days' written notice to Tenant and after satisfying all other notice requirements set forth in this Lease respecting Leasehold Mortgagees and partners of Tenant and such parties' failure to timely cure (or as applicable, commence to cure) the same, and without waiving or releasing Tenant from any obligation of Tenant hereunder, Landlord may (but shall not be required to): (i) pay such Imposition or other charge payable by Tenant; (ii) pay for and maintain such insurance policies required pursuant to Article IX; or (iii) make such other payment or perform such other act on Tenant's part to be made or performed under this Lease; and Landlord may enter upon the Property and Improvements for such purpose and take all such action thereon as may be reasonably necessary therefor.

All sums paid by Landlord and all costs and expense incurred by Landlord in connection with the performance of any such act (together with interest thereon at the Default Rate from the

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respective dates of Landlord's making of each such payment) shall constitute additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand. The "Default Rate" shall mean interest calculated at an annual rate equal to the rate of interest most recently announced by Bank of America N.A. (or its successor bank) at its San Francisco office as its "reference rate" but in no event more than the maximum rate of interest permitted by law. If Bank of America or its successor no longer issues a "reference rate," the most comparable rate of the largest bank with its corporate headquarters in California shall be used. If there is no such bank or comparable rate, then the Default Rate shall be the highest legal rate of interest that may be charged at that time.

ARTICLE XIII.
REPAIRS, CHANGES, ALTERATIONS AND NEW CONSTRUCTION

13.1 Repairs and Maintenance. Tenant covenants and agrees, throughout the Term, without cost to Landlord, to take good care of the Property and to keep the same in good order and condition. Tenant shall promptly, at Tenant's own cost and expense, make all necessary repairs, interior and exterior, structural and nonstructural, ordinary as well as extraordinary, whether contemplated or not contemplated at the time of execution of this Lease, and shall keep the Property in a well maintained, safe, clean and sanitary condition. The term "repairs" shall include replacements or renewals when necessary, and all such repairs made by Tenant shall be at least equal in quality and class to the original work. Tenant waives any rights created under any law now or hereafter in force to make repairs to the Improvements at Landlord's expense. Tenant shall keep and maintain all portions of the Property and the sidewalks adjoining the same in a clean and orderly condition, free of accumulation of dirt, rubbish, and graffiti. From time to time during the Term, upon not less than 48 hours prior notice from Landlord, Landlord may enter the Property, or portions thereof, to determine if Tenant is properly maintaining the Property. If, following any such inspection by Landlord, Landlord delivers notice of any deficiency to Tenant, Tenant shall promptly prepare and deliver to Landlord Tenant's proposed plan for remedying the indicated deficiencies. Tenant's failure to deliver a remedial plan and to complete, within a reasonable time, remedial work shall be a default under this Lease (subject to all applicable notice and cure rights of Tenant, Leasehold Mortgagees, and partners of Tenant). Landlord's failure to deliver, following any Landlord's inspection, any notice of deficiency to Tenant, shall not be a waiver of any default by Tenant under this Article XIII. Tenant shall defend, indemnify and hold Landlord harmless from and against any claim, loss, expense, cost, or liability incurred by Landlord arising out of Tenant's failure to fully and timely fulfill its obligations to maintain and repair the Property as required hereunder.

13.2 Changes and Alterations. Tenant shall not during the Term make any changes or alterations in, to or of the Improvements without the prior written consent of Landlord, which Landlord shall not unreasonably withhold, so long as Tenant complies with all of the following at Tenant's sole cost and expense:

(a) The change or alteration shall be in harmony with neighboring buildings and shall not materially impair the value or structural integrity of the Improvements.

(b) The change or alteration shall be for a use which is permitted hereunder.

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(c) No change, alteration or addition shall be undertaken until Tenant shall have obtained and paid for, so far as the same may be required from time to time, all permits and authorizations of any federal, state or municipal government or departments or subdivisions of any of them, having jurisdiction. Landlord shall join in the application for such permits or authorizations whenever such action is necessary; provided, however, that Landlord shall incur no liability or expense in connection therewith.

(d) Any change, alteration or addition shall be made in a good and workmanlike manner and in accordance with all applicable permits and all Applicable Laws.

(e) During the period of initial renovation of, or of construction of any change, alteration or addition in, to or of, the Improvements or of any permitted demolition or new construction or of any restoration, Tenant shall maintain or cause to be maintained property and other applicable insurance described in Article IX, which policy or policies by endorsement thereto, if not then covered, shall also insure any change, alteration or addition or new construction, including all materials and equipment incorporated in, on or about the Improvements (including excavations, foundations and footings) under a broad form all risks builders' risk form or equivalent thereof.

(f) Tenant shall comply with the provisions of Article VI hereof.

(g) At Landlord's request, Tenant shall provide Landlord with a copy of as-built drawings for the Improvements within sixty (60) days following the completion of the Improvements.

13.3 Exceptions to Requirement for Consent. The foregoing notwithstanding, following Landlord's issuance of a Certificate of Completion as set forth in Section 6.2, above, Tenant shall not be required to obtain Landlord's prior written consent to any changes, alterations or improvements so long as such do not meet the definition of "Major Additional Improvements" (defined above) and all the following requirements are met:

(a) The change, alteration or improvement is nonstructural;

(b) The change, alteration or improvement is not visible from the exterior of any building on the Land;

(c) The change, alteration or improvement has a cost of less than One Hundred Thousand Dollars ($100,000); and

(d) The provisions of Article VI are satisfied.

Notwithstanding the foregoing, except in response to emergency situations for which it would not be reasonably practicable or possible to provide such advance notice, Tenant shall deliver to Landlord not later than ten (10) business days prior to commencement of any construction, change, alteration or repair, written notice of the proposed work, a general description of the proposed work and sufficient information to permit Landlord to post a notice of non-responsibility on the Property.

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13.4 No Right to Demolish. Notwithstanding any other provisions of this Article XIII, Tenant shall have no right to demolish any Improvement, once built, unless Tenant shall have received the prior written consent of Landlord which shall not be unreasonably withheld if the age and condition of the Improvements makes repair or reconstruction impractical or financially infeasible.

ARTICLE XIV.
EMINENT DOMAIN

14.1 Eminent Domain.

14.1.1 Definitions. The following definitions shall apply in construing the provisions of this Article XIV:

(a) "Award" means all compensation, damages or interest, or any combination thereof, paid or awarded for the taking, whether pursuant to judgment, by agreement, or otherwise.

(b) "Notice of intended taking" means any notice or notification on which a reasonably prudent person would rely and would interpret as expressing an existing intention of taking as distinguished from a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a written notice of intent to take.

(c) "Partial taking" means any taking that is not a total taking, a substantial taking, or a temporary taking.

(d) "Substantial taking" means the taking of so much of the Property that the remaining portion thereof would not be economically and feasibly usable by Tenant for the then existing uses and purposes of the Property, in Tenant's reasonable judgment, but shall exclude a temporary taking.

(e) "Taking" means any taking of or damage, including severance damage, to all or any part of the Property or any interest therein by the exercise of the power of eminent domain, or by inverse condemnation, or a voluntary sale, transfer or conveyance under threat of condemnation in avoidance of the exercise of the power of eminent domain or while condemnation proceedings are pending.

(f) "Temporary taking" means the taking of any interest in the Property for a period of less than one (1) year.

(g) "Total taking" means the taking of all or substantially all of the Property, but shall exclude a temporary taking.

14.2 Notice. The party receiving any notice of the kind specified below shall promptly give the other party and all Leasehold Mortgagees written notice of the receipt, contents and date of the notice received:

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(a) notice of intended taking;

(b) service of any legal process relating to condemnation of all or any portion of the Property;

(c) notice in connection with any proceedings or negotiations with respect to such a condemnation; or

(d) notice of intent or willingness to make or negotiate a private purchase, sale or transfer in lieu of condemnation.

Landlord and Tenant, and any Leasehold Mortgagee, each shall have the right to represent its respective interest in each proceeding or negotiation with respect to a taking or intended taking and to make full proof of their respective claims. No agreement, settlement, sale or transfer to or with the condemning authority shall be made without the mutual agreement of Landlord and Tenant and any Leasehold Mortgagee. Landlord and Tenant each agree to execute, acknowledge and deliver to the other any instruments that may be reasonably required to effectuate or facilitate the provisions of this Lease relating to condemnation.

14.3 Total or Substantial Taking. In the event of a total or substantial taking of fee title to the Property, Tenant's interest in this Lease and all obligations of Tenant subsequently accruing hereunder shall cease as of the date of the vesting of title in the condemning authority; provided, however, that if actual physical possession of all or part of the Property is taken by the condemning authority prior to such date of vesting of title, Tenant's obligations to pay Rent and other sums under this Lease shall terminate as of such earlier date. In the event of a total or substantial taking of an interest in the Property other than fee title, at Tenant's option (exercisable by written notice to Landlord), Tenant's interest in this Lease and all obligations of Tenant subsequently accruing hereunder shall cease as aforesaid.

14.3.1 Award. In the event of a total or substantial taking, the Award shall be apportioned as follows, in the following order:

(a) To Leasehold Mortgagee in an amount equal to the amount owing on the Leasehold Mortgage.

(b) To Landlord that portion of the Award equal to the fair market value of the Property. Any "bonus value" attributable to this Lease shall be paid to Landlord.

(c) To Tenant, that portion of the Award equal to the fair market value of the Improvements (subject to Landlord's reversionary interest), less the amount paid to the Leasehold Mortgagee pursuant to (a) above.

(d) (The balance, if any, shall be allocated between Landlord and Tenant respectively in that proportion in which (i) the fair market value of the Property bears to (ii) the fair market value of the Improvements, exclusive of Landlord's reversionary interest.

14.3.1.2 Temporary Taking. In the event of a temporary taking, Tenant shall be entitled to the whole Award, and this Lease shall remain in full force and effect.

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14.3.1.3 Partial Taking. In the event of a partial taking, this Lease shall remain in full force and effect, covering the remainder of the Property, and Tenant shall repair and restore any damage to the Improvements caused by such partial taking consistent with and subject to the provisions applicable to a restoration in the event of an insured casualty under Article IX, so that after completion of the restoration the Improvements shall be, as nearly as possible, in a condition as good as the condition immediately preceding the partial taking. The Award for any partial taking shall be deposited and disbursed in the same manner as insurance proceeds are disbursed for restoration pursuant to Article IX, and upon completion of the restoration, any remaining portion of the Award shall be allocated as set forth in Section 14.1.6.1.

14.3.1.4 Award on Partial Taking. In the event of a partial taking, after application of the Award for restoration pursuant to Section 14.1.6, any remaining portion of such Award shall be apportioned as follows, in the following order:

(a) To Leasehold Mortgagee in an amount equal to the amount owing on the Leasehold Mortgage.

(b) To Landlord, that portion of the Award attributable to the fair market value of the portion of the Property taken.

(c) To Tenant, that portion of the Award equal to the fair market value of the portion of the Improvements taken (subject to Landlord's reversionary interest), less the amount paid to the Leasehold Mortgagee pursuant to (a) above, but only to the extent that the proceeds of the Award are not used for restoration of the Improvements.

(d) The balance, if any, shall be allocated between Landlord and Tenant respectively in that proportion in which (i) the fair market value of the Property bears to (ii) the fair market value of the Improvements exclusive of the reversionary interest of Landlord. Any "bonus value" attributable to this Lease shall be paid to Landlord.

(e) Any severance damages awarded or payable because only a portion of the Property is taken by eminent domain shall be (a) paid to Tenant during the first 37.5 years of this Lease and (b) equally divided between Tenant and Landlord during the next 37.5 years of this Lease (except to the extent needed to replace any Improvements taken by eminent domain with equivalent Improvements on the remainder of the Property).

No payments shall be made to Tenant pursuant to this Section if any default by Tenant hereunder has occurred and is continuing unless and until such default is cured.

14.3.1.5 Partial Taking in Last Five Years. If a partial taking occurs during the last five (5) years of Term and the reasonably estimated cost of reconstruction work exceeds ten percent (10%) of the replacement value of the Improvements, Tenant shall have the right and option to treat the same as a substantial taking by giving written notice thereof to Landlord no later than the earlier of: (a) the date of vesting of title in the condemning authority of the portion of the Property taken, or (b) the date upon which the condemning authority takes physical possession of such portion of the Property. If Tenant does give such notice the partial

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taking shall be considered as a substantial taking and the taking shall be subject to the provisions of Section 14.1.3.

ARTICLE XV.
MORTGAGES

15.1 Leasehold Mortgages. Tenant shall have the right, at any time and from time to time during the Term, to encumber its leasehold interest hereunder with a Leasehold Mortgage or Mortgages subject to Landlord's prior written consent (which consent will not be unreasonably withheld) provided that (a) no Leasehold Mortgage shall in any way impair (except as otherwise stated herein or as provided by law) the enforcement of Landlord's right and remedies herein and by law provided, (b) any such Leasehold Mortgage shall at all times be subject and subordinate to, and shall not affect or become a lien upon Landlord's right, title or estate in the Property or in this Lease, and (c) Tenant shall give Landlord prior written notice of any such Leasehold Mortgage, accompanied by a true and correct copy of any such Leasehold Mortgage. Any Leasehold Mortgage shall be subject to the terms and conditions set forth in this Article XV.

15.2 Rights of Leasehold Mortgagee.

15.2.1 Notices. If Landlord shall have been provided with written notice of the address of any Leasehold Mortgagee, Landlord shall mail to such Leasehold Mortgagee a copy of any notice under this Lease at the time of giving such notice to Tenant, and no such notice shall be effective against such Leasehold Mortgagee, and no termination of this Lease or termination of Tenant's right of possession of the Property or reletting of the Property by Landlord predicated on the giving by Landlord of any notice shall be effective, unless Landlord gives to such Leasehold Mortgagee written notice or a copy of its notice to Tenant of such default or termination, as the case may be.

15.2.2 Right to Cure.

(a) In the event of any default by Tenant under the provisions of this Lease, the Leasehold Mortgagee shall have the right, but not the obligation, to remedy or cause to be remedied such default (including the right to enter the Property and to take possession of the Property if necessary to cure the default) within the same cure period as afforded Tenant hereunder, extended by an additional sixty (60) days, which cure period shall commence as against the Leasehold Mortgagee upon the receipt by the Leasehold Mortgagee of the notice of default. Landlord shall accept such performance by the Leasehold Mortgagee as if the same had been done by Tenant.

(b) The term "incurable default" as used herein means any default which cannot be reasonably cured by a Leasehold Mortgagee. The term "curable default" means any default under this Lease which is not an incurable default. Any failure to pay monetary sums shall at all times be deemed a curable default. Any failure to comply with the requirements of Section 7.2 hereof shall at all times be deemed a curable default, and as to Leasehold Mortgagees or any entity acquiring the interest of Tenant in the Property and in this Lease as a result of the foreclosure of a Leasehold Mortgage (or an assignment or deed in lieu thereof), Landlord shall not terminate this Lease provided such party is diligently and in good faith proceeding to cure

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any such default. In the event of any curable default under this Lease, and if prior to the expiration of the applicable grace period specified in Section 15.2.2 (a) the Leasehold Mortgagee shall give Landlord written notice that it intends to undertake the curing of such default, or to cause the same to be cured, or to exercise its rights to acquire the leasehold interest of Tenant or possession of the Property by foreclosure or otherwise, and shall promptly commence and then proceed with diligence to do so, whether by performance on behalf of Tenant of its obligations under this Lease, by foreclosure or otherwise, then Landlord will not terminate or take any action to effect a termination of this Lease or re-enter, take possession of or relet the Property, appoint a receiver, exercise any other remedy under this Lease, or similarly enforce performance of this Lease so long as the Leasehold Mortgagee is diligently and in good faith engaged in the curing of such default or effecting such foreclosure, and upon completion of a foreclosure (or assignment or deed in lieu thereof) and obtaining of possession by the Leasehold Mortgagee, the applicable cure period shall be deemed to have been commenced. The foregoing sentence shall not be deemed to extend the time period within which a default in the payment of money must be cured under Section 15.2.2 (a). The Leasehold Mortgagee shall not be required to continue such possession or continue such foreclosure proceedings. Nothing herein shall preclude Landlord from terminating this Lease with respect to any additional default which shall occur during any period of forbearance and not be remedied within the cure period, if any, applicable to any such additional default, except that Leasehold Mortgagee shall have the same rights specified in this Article XV with respect to any additional defaults.

In the event of any incurable default under this Lease, and if prior to the expiration of the applicable grace period specified in Section 15.2.2 (a) of this Lease, the Leasehold Mortgagee shall give Landlord written notice that it intends to exercise its rights to acquire the leasehold interest of Tenant by foreclosure or otherwise, and shall promptly commence and then proceed with diligence to do so, whether by foreclosure or otherwise, then Landlord will not terminate or take any action to effect a termination of this Lease or re-enter, take possession of or relet the Property or similarly enforce performance of this Lease so long as the Leasehold Mortgagee is diligently and in good faith engaged in effecting such foreclosure and such incurable default shall be deemed cured upon the foreclosure of the Leasehold Mortgage (or assignment or deed in lieu thereof).

(c) If the default by Tenant pertains to the failure of Tenant to complete construction of the Project within the time period required under Section 6.2 of this Lease, and if prior to the expiration of the applicable grace period specified in Section 15.2.2 (a) of this Lease, the Leasehold Mortgagee shall give Landlord written notice that it intends to undertake to exercise its rights to acquire the leasehold interest of Tenant or possession of the Property by foreclosure or otherwise, and shall promptly commence and then proceed with diligence to do so, whether by foreclosure or otherwise, then Landlord will not terminate or take any action to effect a termination of this Lease or re-enter, take possession of or relet the Property or similarly enforce performance of this Lease so long as the Leasehold Mortgagee is diligently and in good faith engaged in the completion of the construction of the Project or effecting such foreclosure or acquisition of possession; provided, however, Landlord shall not be obligated to forbear from a termination or other enforcement of its rights under the Lease in response to such default beyond the date which is three (3) years following the date of foreclosure of the Leasehold Mortgage (or deed or assignment in lieu of foreclosure); provided, further, that additional extensions will be granted by the Landlord, in its reasonable discretion, if

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the Landlord determines that there has been good faith progress in pursuing completion of the Project, which may include, among other things, securing a substitute developer, obtaining additional or substitute financing, or securing a substitute construction contractor.

(d) If a Leasehold Mortgagee is prohibited, stayed or enjoined by any bankruptcy, insolvency or other judicial proceedings involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings, the times specified for commencing or prosecuting such foreclosure or other proceedings for Leasehold Mortgagee shall be extended for the period of such prohibition.

15.2.3 Execution of New Lease. If this Lease is terminated for any reason, including by Tenant's trustee in bankruptcy, receiver, liquidator or other similar person on account of a default or if Tenant's interest under this Lease shall be sold, assigned or transferred pursuant to the exercise of any remedy of the Leasehold Mortgagee, or pursuant to judicial proceedings, and if (i) all monetary defaults of Tenant have been cured, and (ii) the Leasehold Mortgagee shall have arranged to the reasonable satisfaction of Landlord to cure any other curable default of Tenant under this Lease, then Landlord, within thirty (30) days (or such period as may reasonably be necessary to enable Landlord to comply with statutory requirements applicable to Landlord's lease of real property) after receiving a written request therefor, which shall be given within sixty (60) days after such termination or transfer and upon payment to it of all reasonable out-of-pocket expenses, including attorneys' fees, incident thereto, will execute and deliver a new lease of the Property to the Leasehold Mortgagee or its affiliate or other nominee or to the purchaser, assignee or transferee, as the case may be, for the remainder of the Term, containing the same covenants, agreements, terms, provisions, priority, and limitations, as are contained herein. The tenant under such new lease shall be personally obligated only for the performance of obligations under the Lease commencing as of the date of such foreclosure or assumption, and ending as of the date of any assignment of the Lease to a successor tenant.

(a) Upon the execution and delivery of a new lease, the new tenant, in its own name or in the name of Landlord may take all appropriate steps as shall be necessary to remove Tenant from the Property, but Landlord shall not be subject to any liability for the payment of fees, including attorneys' fees, costs or expenses in connection therewith, and the new tenant shall pay all such fees, including attorneys' fees, costs and expenses, on demand, and shall make reimbursement to Landlord of all such fees, including attorneys' fees, costs and expenses, incurred by Landlord. Tenant acknowledges and agrees that Landlord shall have no liability whatsoever to Tenant in connection with any such action, and hereby releases Landlord from any claim Tenant may have with respect thereto.

(b) Following foreclosure or enforcement of a Leasehold Mortgage, or assignment in lieu thereof, Landlord will recognize the purchaser or assignee of the leasehold estate as the Tenant under the Lease.

(c) After such termination and cancellation of the Lease and prior to the expiration of the period within which the Leasehold Mortgagee may elect to obtain a new lease from Landlord, Landlord shall refrain from terminating any existing sublease or otherwise encumbering the Property or the Improvements without the prior written consent of the Leasehold Mortgagee. Any new lease shall enjoy the same priority in time and in right as the

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Lease over any lien, encumbrance or other interest created by Landlord before or after the date of such new lease, and shall vest in the new lessee all right, title, interest, power and privileges of Tenant hereunder in and to the Property and the Improvements, including, without limitation, the assignment of Tenant's interest in and to all then existing subleases and sublease rentals and the automatic vesting of title to all Improvements, fixtures and personal property of Tenant. Such new lease shall provide, with respect to each and every permitted sublease which immediately prior to the termination of the Lease was superior to the lien of the Leasehold Mortgage that the new lessee shall be deemed to have recognized the sublessee under the sublease, pursuant to the terms of the sublease as though the sublease had never terminated but had continued in full force and effect after the termination of the Lease, and to have assumed all the obligations of the sublessor under the sublease accruing from and after the termination of the Lease, except that the obligation of the new lessee, as sublessor, under any covenant of quiet enjoyment, expressed or implied, contained in any such sublease shall be limited to the acts of such new lessee and those claiming by, under or through such new lessee. If more than one entity claims to be the Leasehold Mortgagee that is entitled to a new lease pursuant to this subsection, Landlord shall enter into such new lease with the lender whose mortgage or deed of trust is prior in lien. Landlord, without liability to Tenant or any lender with an adverse claim, may rely upon a lender title insurance policy issued by a responsible title insurance company doing business in the state of California as the basis for determining the appropriate Leasehold Mortgagee who is entitled to such new lease.

15.2.4 Tenant Default Under Leasehold Mortgage. If Tenant defaults under a Leasehold Mortgage, the Leasehold Mortgagee may exercise with respect to Tenant's interest in the Property and the Improvements any right, power or remedy under the Leasehold Mortgage which is not in conflict with the provisions of this Lease, including without limitation, judicial or nonjudicial foreclosure of the Leasehold Mortgage (or deed or assignment in lieu thereof), appointment of a receiver, and/or revocation of Tenant's license to collect rents.

15.2.5 No Merger. There shall be no merger of this Lease or any interest in this Lease, nor of the leasehold estate created hereby, with the fee estate in the Property, by reason of the fact that this Lease or such interest therein, or such leasehold estate may be directly or indirectly held by or for the account of any person who shall hold the fee estate in the Property, or any interest in such fee estate, nor shall there be such a merger by reason of the fact that all or any part of the leasehold estate created hereby may be conveyed or mortgaged in a Leasehold Mortgage to a Leasehold Mortgagee who shall hold the fee estate in the Property or any interest of the Landlord under this Lease.

15.2.6 Assumption of Obligations. For the purpose of this Article XV, the making of a Leasehold Mortgage shall not be deemed to constitute an assignment or Transfer of this Lease or of the leasehold estate hereby created, nor shall any Leasehold Mortgagee, as such, be deemed an assignee or transferee of this Lease or of the leasehold estate hereby created so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder. The purchaser at any sale of this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignee or transferee of this Lease and of the leasehold estate hereby created under any instrument or assignment or transfer in lieu of the foreclosure of any Leasehold Mortgage, in order to be deemed to be an assignee or transferee

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and before the same shall be binding on Landlord, must assume in writing the performance of all of the terms, covenants, and conditions on the part of Tenant to be performed hereunder during the period such party holds a leasehold interest in the Property by an instrument, in recordable form, reasonably satisfactory to Landlord; provided however, that nothing contained herein shall be construed to require the purchaser, assignee or transferee as described above to be obligated to cure any default by Tenant.

15.2.7 Limitation of Leasehold Mortgagee Liability for Tenant Defaults. Notwithstanding any contrary provision hereof: (i) no Leasehold Mortgagee shall be required to pay any liens or charges that are extinguished by the foreclosure of its Leasehold Mortgage; (ii) any incurable default shall be, and shall be deemed to have been waived by Landlord upon completion of foreclosure proceedings or acquisition of Tenant's interest in this Lease by any purchaser at a foreclosure sale, or any entity who otherwise acquires Tenant's interest from the Leasehold Mortgagee by deed in lieu of foreclosure. Any entity acquiring the interest of Tenant in the Property and in this Lease as a result of the foreclosure of a Leasehold Mortgage (or an assignment or deed in lieu thereof) acquires an interest in the leasehold only, and shall be liable to perform the obligations of Tenant under this Lease only during the period such entity retains ownership of the interest of Tenant in the Property and in this Lease.

15.3 Non-Subordination of Fee. Nothing in this Lease shall be construed as an agreement by Landlord to subordinate its fee interest in the Property or its right to rent payments hereunder or any other right of Landlord herein. Except as expressly set forth in this Article XV, no Leasehold Mortgage shall impair Landlord's ability to enforce its rights and remedies under this Lease or provided by law. Landlord shall have no obligation to encumber or otherwise subordinate its fee interest in the Property or in this Lease to the interest of any Leasehold Mortgagee in this Lease or in Tenant's leasehold estate.

15.4 Subsequent Transfers. In the event any person or entity becomes the lessee under the Lease by means of foreclosure or deed in lieu of foreclosure or pursuant to any new lease obtained under Section 15.2.7, such person or entity may assign or Transfer the Lease or such new lease in compliance with the terms of Article XVI.

15.5 Landlord's Rights Under Leasehold Mortgages.

15.5.1 Notice of Tenant's Default. Tenant shall use best efforts to ensure that every Leasehold Mortgage secured by a deed of trust on Tenant's leasehold estate in the Property shall expressly provide that:

(a) the lender shall give Landlord contemporaneous notice of any default by Tenant thereunder, if the failure to cure such default could reasonably be expected to result in acceleration of the maturity of the debt secured by the Leasehold Mortgage; provided however, that the lender's giving or failure to give notice shall not affect the lender's rights or ability to timely pursue all applicable remedies, including, but not limited to, filing a notice of default or notice of sale, instituting judicial foreclosure proceedings, or seeking the appointment of a receiver. In addition, within three (3) business days following Tenant's receipt of any notice of default under any financing document affecting the Property, Tenant shall provide Landlord with a copy of such notice.

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(b) Landlord shall have the right to cure any curable default by Tenant (but without obligation to do so) upon the same terms and conditions and within ninety (90) days measured from the date that Landlord receives notice thereof; and

(c) If Landlord shall tender payment in full of all sums required to be paid under the Leasehold Mortgage or the note secured thereby (disregarding any acceleration of maturity thereunder, but including any costs or expenses arising as a result of such default) on or before ninety (90) calendar days from the date of such notice of default from the lender to Landlord, then the lender shall accept such payment and rescind the acceleration, if any. Any sums paid by Landlord pursuant to this Section 15.5.1 shall become immediately due and payable from Tenant to Landlord as Rent due under this Lease; provided however, that no Leasehold Mortgagee shall be obligated to cure a failure by Tenant to pay such amount pursuant to the rights granted to Leasehold Mortgagees under this Lease and Landlord shall have no right to terminate this Lease as a result of Tenant's failure to pay such amounts.

(d) Landlord shall have the right and option (but not the obligation), during the period described in the last sentence of this paragraph, by notice in writing to the lender, to purchase any Leasehold Mortgage, the note secured thereby, and any other instruments securing or guaranteeing such note or otherwise evidencing any obligation secured by the Leasehold Mortgage. The purchase price therefor shall be the full amount due and owing to the lender thereunder, including any costs, expenses, swap termination fees, and penalties payable in accordance with the terms thereof. The sale and assignment by the lender shall be without recourse or warranty by the lender except that such lender has good title to the note (or is authorized to obtain payment or acceptance on behalf of one who has good title) and has the authority to transfer the loan to the Landlord. The right granted by this paragraph may be exercised by Landlord at any time after the lender has declared the entire sum secured by any Leasehold Mortgage to be due and payable or has commenced proceedings to foreclose any Leasehold Mortgage, and such right shall terminate ninety (90) days following receipt by Landlord of the notice described above.

15.6 Reserved.

15.7 No Voluntary Surrender/Modification. Notwithstanding anything to the contrary set forth herein, Landlord will not voluntarily surrender the Lease or accept a voluntary surrender of the Tenant's leasehold estate, and Landlord will not amend or modify the Lease without the prior written consent of (i) all holders of any Leasehold Mortgage then in effect (which such party may withhold in such party's sole discretion), and (ii) the limited partners of Tenant. Landlord will not enforce against any Leasehold Mortgagee any waiver or election made by Tenant under the Lease which has a material adverse effect on the value of Tenant's leasehold estate or the rights of Tenant under the Lease without the prior written consent of such Leasehold Mortgagee (which may be withheld in its sole discretion).

15.8 Leasehold Mortgagee Right to Pay Landlord Obligations. Leasehold Mortgagees shall have the right, but not the obligation, upon not less than five (5) business days' prior written notice to Landlord, to pay any taxes payable by Landlord with respect to the Property, and to cure any monetary or nonmonetary default by Landlord under any encumbrance on the Property which has priority over this Lease; and if any Leasehold Mortgagee does so pay or cure,

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Landlord agrees that it will reimburse such Leasehold Mortgagee for the amount thereof promptly following Landlord's receipt of Leasehold Mortgagee's written request therefor.

15.9 Amendments for the Benefit of Leasehold Mortgagees. Landlord and Tenant shall cooperate to include in this Lease by suitable amendment from time to time, provisions which may reasonably be requested by any proposed Leasehold Mortgagee for the purpose of implementing the mortgagee protection provisions contained in this Lease and allowing such Leasehold Mortgagee reasonable means to protect or preserve the lien of the Leasehold Mortgage upon the occurrence of a default under the Lease. Landlord and Tenant each agree to execute and deliver (and acknowledge, if necessary for recording purposes) any agreement reasonably necessary to effect any such amendment; provided however, that any such amendment shall not in any way affect the Term, the Rent payable hereunder, nor otherwise in any material respect adversely affect any rights of Landlord under this Lease.

ARTICLE XVI.
ASSIGNMENT, TRANSFER, SUBLETTING

16.1 Restrictions on Transfer or Assignment by Tenant. Following the Effective Date, except as permitted pursuant to Article XV and this Article XVI, Tenant shall not sell, transfer, encumber, pledge, assign, convey, sublet or otherwise dispose ("Transfer") all or any portion of its interest in the Property, the Improvements or this Lease voluntarily, involuntarily, by operation of law, or otherwise, without Landlord's prior written consent. Each Transfer shall comply with all requirements therefor set forth elsewhere in this Lease and Tenant shall have no right to hypothecate or encumber its interest in this Lease or sublet or assign all or any portion of the Property and/or the Improvements except as expressly provided under the terms of this Lease. No voluntary or involuntary assignee, sublessee, or successor in interest of Tenant shall acquire any rights or powers under this Lease except as expressly set forth herein.

16.1.1 Exceptions. Notwithstanding any contrary provision of this Lease, Landlord's consent shall not be required, and the provisions of Section 16.2 below shall not be applicable, with respect to the following Transfers: (A) the renting or leasing of residential units to tenants in the ordinary course of business; (B) the renting or leasing of retail or commercial space to tenants in the ordinary course of business, provided that use of the retail and commercial space will conform to applicable City regulations, including without limitation, the City's zoning ordinance, and any applicable use restrictions imposed by the Conditions of Approval or otherwise agreed upon by Landlord and Tenant; (C) the granting of a Leasehold Mortgage in accordance with Section 15.1 or the foreclosure of a Leasehold Mortgage or the acquisition of Tenant's interest in this Lease by an assignment or deed in lieu of foreclosure; (D) the first Transfer following any event described in clause (C) of this sentence; and (E) the assumption of limited partner interest by EAH Inc, or an affiliate controlled by EAH Inc. In addition, Landlord shall not unreasonably withhold consent to any Transfer of Tenant's interest in the Property or any portion thereof, to an entity in which EAH Inc., a California nonprofit public benefit corporation, retains 50% or more of the equity or beneficial interest in said entity or to a limited partnership in which EAH or its affiliate acts as the general partner. Neither the transfer of limited partner interests in Tenant, nor the admission of an investor limited partner to Tenant's partnership shall be considered a Transfer for purposes of this Article XVI.

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16.2 Procedure for Obtaining Landlord's Consent.

(a) Transfer Request. With respect to each Transfer requiring the Landlord's consent under Section 16.1, Tenant shall send to Landlord written request for Landlord's approval of the Transfer (a "Transfer Consent Request") specifying the name and address of the proposed transferee and its legal composition (if applicable). Each Transfer Request shall be accompanied by all of the following:

(i) An audited or certified financial statement of the proposed transferee for the three most recent calendar or fiscal years prepared in accordance with generally accepted accounting procedures by a certified public accounting firm sufficiently current and detailed to evaluate the proposed transferee's assets, liabilities and net worth and certified as true and correct by the proposed transferee;

(ii) a description of the nature of the interest proposed to be transferred, the portion or portions of the Property affected by the Transfer, and the proposed effective date of such Transfer;

(iii) a true and complete copy of the proposed assumption agreement described in Section 16.6;

(iv) a complete history of the proposed transferee describing its background, its current real estate projects and location thereof, and the background of the principals or personnel to be involved in the development or operation of the portion of the Property subject to the Transfer and stating whether the proposed transferee ever filed for bankruptcy or had projects that were foreclosed;

(v) a description of all projects of the proposed transferee which during the past five (5) years have been the subject of substantial litigation; and

(vi) any such other information as reasonably requested by Landlord within fifteen (15) business days following the receipt of the above information, in order to make an informed decision whether or not to approve or disapprove the Transfer.

(b) Approval of Landlord. Within sixty (60) days following receipt of all the information referred to in Section 16.3 (a), Landlord shall approve or disapprove a proposed transferee with respect to the information supplied which approval shall not be unreasonably withheld. If Landlord fails to give Tenant written notice of its disapproval of the transferee or request additional information in writing within such sixty (60) day period, it shall be deemed to have approved the transferee.

16.3 Subleases; Nondisturbance and Attornment. Tenant agrees for the benefit of Landlord that each sublease, rental agreement, and any other agreement for occupancy of any part of the Improvements (each an "Occupancy Agreement"): (a) shall state that it is subject to the terms and provisions of this Lease, and (b) shall require that the subtenant under the Occupancy Agreement shall attorn to and accept Landlord as the sublessor or other party under the Occupancy Agreement in the event this Lease is terminated. Landlord agrees that as long as each Occupancy Agreement complies with the requirements of the preceding clauses (a) and (b),

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then upon the expiration or termination of this Lease, Landlord shall recognize the subtenant or occupant under the Occupancy Agreement as the direct tenant of Landlord under the terms and conditions contained in the Occupancy Agreement and for a term equal to the then unexpired term of the Occupancy Agreement; provided however, that: (i) at the time of the expiration or termination of this Lease no uncured default shall exist under the Occupancy Agreement which at such time would permit the termination of the Occupancy Agreement or the exercise of any dispossession remedy provided for therein; and (ii) Landlord shall not be (x) liable for any prior act or omission of Tenant under the Occupancy Agreement; (y) liable for the return of any security deposit under the Occupancy Agreement not actually received by Landlord; or (z) subject to any offsets or defenses that the subtenant or occupant may have against Tenant. The provisions of this Section 16.3 shall survive the expiration or termination of this Lease.

16.4 Limitations.

(a) Non-Transfer Period. In no event shall Tenant request Landlord to approve any Transfer prior to the date that all of the following shall have occurred:

(i) the construction of the Improvements shall be complete and a Certificate of Completion as provided by Section 6.2, above, shall be issued with respect to the Project; and

(ii) all costs and expenses with regard to the construction of the Project and related Improvements shall be paid in full, all lien periods shall have expired and there shall be no liens on the Property, the Improvements, the Landlord's fee title or any portion thereof.

The provisions of this Section 16.4 (a) shall not be applicable to the granting of a Leasehold Mortgage in accordance with Section 15.1, and shall not be applicable to, or after, the foreclosure of a Leasehold Mortgage or the acquisition of Tenant's interest in this Lease by assignment or deed in lieu of foreclosure.

(b) No Relief from Liability. No Transfer will limit, diminish or otherwise relieve Tenant of any liability described herein. The provisions of this Section 16.4 (b) shall not be applicable to any Transfer following the foreclosure of a Leasehold Mortgage or following the acquisition of Tenant's interest in this Lease by assignment or deed in lieu of foreclosure.

(c) No Consent If Bankruptcy. In no event shall Landlord be required to consent or be deemed to consent to a Transfer to a party then subject to any proceedings under any insolvency, bankruptcy or similar laws.

(d) Criteria for Transfer. Landlord shall be deemed to be reasonable in withholding its consent to a proposed Transfer if, among other requirements, either of the following conditions is unsatisfied:

(i) Tenant delivers to Landlord an audited financial statement of the proposed transferee for the three most recent calendar or fiscal years prepared in accordance with generally accepted accounting principles by a recognized certified accounting

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firm demonstrating that the proposed transferee (or its principals) is a viable, going concern with sufficient financial ability to own, operate and manage the Property; and

(ii) the proposed transferee shall have demonstrated experience operating and managing affordable residential/mixed-use properties similar to the Project.

16.5 Involuntary and Other Transfers. Without limiting any other restrictions on transfer contained in this Lease, no interest of Tenant in this Lease, the Property or part thereof shall be assignable in the following manner:

(a) under an order of relief filed, or a plan of reorganization confirmed, for or concerning Tenant by a bankruptcy court of competent jurisdiction under the federal bankruptcy act or the laws of the State of California, whereby any interest in this Lease, the Property or part thereof is assigned to any party which does not qualify as an approved transferee pursuant to this Lease unless such order is filed or such plan is confirmed in connection with an involuntary proceeding brought against Tenant and Tenant reacquires such transferred interest within ninety (90) days after the date such order is filed or such plan is confirmed;

(b) if Tenant assigns substantially all of its assets for the benefit of its creditors; or

(c) if an order of attachment is issued by a court of competent jurisdiction, whereby any interest in this Lease, the Property or part thereof or substantially all of Tenant's assets are attached by its creditors and such order of attachment is not stayed within ninety (90) days after the date it is issued.

The transfers described in this Section 16.5 shall constitute a breach under this Lease by Tenant and Landlord shall have the right to terminate this Lease as a result of any such transfer taking place, in which case this Lease shall not be treated as an asset of Tenant. In such event, a Leasehold Mortgagee may request a new lease in accordance with Section 15.2.3.

16.6 Assumption Agreement and Release. No permitted Transfer shall be effective until any curable default hereunder shall have been cured and there shall have been delivered to Landlord an assumption agreement, executed by the transferor and the proposed transferee, whereby such transferee expressly assumes liability for such Lease obligations as arise and/or accrue during the period in which the transferee retains ownership of the interest of Tenant in the Property and in this Lease. The parties agree that as a condition to any Transfer taking place the transferee shall deliver to Landlord representations and warranties confirming the accuracy of the information delivered to Landlord concerning its current financial condition and its outstanding or pending liabilities.

16.7 Change in General Partner of Tenant. In addition to the restrictions on Transfers as set forth in this Article XVI, Landlord shall have the right to approve any change in the identity of the general partner of Tenant, including without limitation, any admission of any new general partner or withdrawal of any existing general partner. Such approval right of Landlord shall also apply to the transfer of a majority of the ownership interest in a general partner of Tenant. Landlord shall not unreasonably withhold, delay or condition its approval under this

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Section 16.7. Notwithstanding any contrary provision of this Section 16.7, Landlord's approval shall not be required with respect to any change in the identity or ownership of the general partner of Tenant as long as following such change the general partner of Tenant continues to be an entity which controls, is controlled by, or is under common control with EAH Inc., a California nonprofit public benefit corporation. For purposes of this Article XVI, "control" shall mean the right to direct the management and affairs of an entity, whether by virtue of the ownership of ownership interests, by contract, by appointment of directors or by common or overlapping boards. Removal of the general partner of Tenant by the Tenant's Limited Partner for cause in accordance with the Tenant's Partnership Agreement shall not require the consent of the Landlord, provided, that the Limited Partner concurrently with removal of the General Partner replaces the General Partner with an interim replacement General Partner ("Interim General Partner") that is an affiliate of the Limited Partner. The Limited Partner must replace the Interim General Partner with a permanent replacement General Partner ("Permanent Replacement General Partner") within 90 days from the date the General Partner was removed from the Partnership. Upon written request from the Tenant, the Landlord may give the Tenant thirty (30) day extensions at Landlord's sole discretion, up to a total of a ninety (90) day extension, but in all events the Permanent Replacement General Partner must be admitted to the Partnership no later than one hundred eighty days (180) after the date the General Partner was removed from Tenant. The nomination of the Permanent Replacement General Partner shall be subject to City's consent. Failure to replace the General Partner with the Permanent Replacement General Partner within the time set forth above shall constitute an Event of Default under this Lease and Landlord may terminate the Lease immediately upon delivering the Notice of termination.

16.8 Sale by Landlord. Nothing contained in this Lease shall be deemed in any way to limit, restrict or otherwise affect the right of Landlord to sell, transfer, assign or convey all or any portion of the right, title and estate of Landlord in the Property and in this Lease; provided, however, that in each such instance any such sale, transfer, assignment or conveyance shall be subject to this Lease, and Tenant's other rights arising out of this Lease shall not be affected or disturbed in any way by any such sale, transfer, assignment or conveyance. Any other provision of this Lease to the contrary notwithstanding, each covenant, agreement or obligation of Landlord under this Lease relating to the ownership or use of the Property is intended to and shall constitute a covenant running with the title to the Property and shall be binding upon the owner from time to time of the Property. At such time as Landlord shall sell, transfer, assign or convey the entire right, title and estate of Landlord in the Property and in this Lease, all obligations and liability on the part of Landlord arising under this Lease after the effective date of such sale, transfer, assignment or conveyance shall terminate as to Landlord, and thereupon all such liabilities and obligations shall be binding upon the transferee.

ARTICLE XVII.
BREACHES, REMEDIES AND TERMINATION

17.1 Event of Default. Tenant shall be in default under this Lease upon the occurrence of any of the following ("Events of Default"):

(a) Monetary Obligation. Tenant at any time is in default hereunder as to any monetary obligation (including without limitation, Tenant's obligation to pay taxes and

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assessments due on the Property or part thereof, subject to Tenant's rights to contest such charges pursuant to Section 5.2), and such default continues for ten (10) business days after Tenant receives Notice of Breach (as defined in Section 17.2.1);

(b) Insurance. Tenant fails to obtain and maintain any policy of insurance required pursuant to this Lease, and Tenant fails to cure such default within ten (10) days;

(c) Abandonment. Tenant abandons the Property;

(d) Bankruptcy. Tenant or any general partner of Tenant files a voluntary petition in bankruptcy or files any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or seeks or consents to or acquiesces in the appointment of any trustee, receiver or liquidator of Tenant (or any general partner of Tenant) or of all or any substantial part of its property, or of any or all of the royalties, revenues, rents, issues or profits thereof, or makes any general assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due;

(e) Reorganization. A court of competent jurisdiction enters an order, judgment or decree approving a petition filed against Tenant seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree remains unvacated and unstayed for an aggregate of ninety (90) days from the first date of entry thereof, or any trustee receiver or liquidator of Tenant of all or any substantial part of its property, or of any or all of the royalties, revenues, rents, issues or profits thereof is appointed without the consent or acquiescence of Tenant and such appointment remains unvacated and unstayed for an aggregate of ninety (90) days, such ninety (90) day period to be extended in all cases during any period of a bona fide appeal diligently pursued by Tenant;

(f) Attachment. Subject to Tenant's right to contest the following charges pursuant to Sections 5.2 and 6.6, Tenant fails to pay prior to delinquency taxes or assessments due on the Property or the Improvements or fails to pay when due any other charge that may result in a lien on the Property or the Improvements, and Tenant fails to cure such default within ninety (90) days of the date of delinquency, but in all events prior to the date upon which the holder of any lien has the right to pursue foreclosure thereof;

(g) Transfer. Tenant Transfers all or any portion of Tenant's interest in this Lease, the Property, the Improvements or part thereof in violation of the provisions of Article XVI and fails to rescind such Transfer within ten (10) business days after written notice from Landlord;

(h) Other Obligations. Tenant defaults in the performance of any term, provision, covenant or agreement contained in this Agreement other than an obligation enumerated in this Section 17.1 and unless a shorter cure period is specified for such default, the default continues for ten (10) business days in the event of a monetary default or thirty (30) days

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in the event of a nonmonetary default after the date upon which Landlord shall have given written notice of the default to Tenant; provided however, if the default is of a nature that it cannot be cured within thirty (30) days, an Event of Default shall not arise hereunder if Tenant commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith to completion.

17.2 Notice and Opportunity to Cure.

17.2.1 Notice of Breach. Unless expressly provided otherwise in this Lease, no breach by a party shall be deemed to have occurred under this Lease unless another party first delivers to the nonperforming party a written request to perform or remedy (the "Notice of Breach"), stating clearly the nature of the obligation which such nonperforming party has failed to perform, and stating the applicable period of time, if any, permitted to cure the default.

17.2.2 Failure to Give Notice of Breach. Failure to give, or delay in giving, Notice of Breach shall not constitute a waiver of any obligation, requirement or covenant required to be performed hereunder. Except as otherwise expressly provided in this Lease, any failure or delay by either party in asserting any rights and remedies as to any breach shall not operate as a waiver of any breach or of any such rights or remedies. Delay by either party in asserting any of its rights and remedies shall not deprive such party of the right to institute and maintain any action or proceeding which it may deem appropriate to protect, assert or enforce any such rights or remedies.

17.2.3 Limited Partners' Right to Cure. The limited partners of Tenant ("Limited Partners") shall have the right to cure any curable default of Tenant hereunder upon the same terms and conditions afforded to Tenant within the same cure period as afforded Tenant hereunder extended by an additional sixty (60) days; provided however, if the default is of such a nature that the Limited Partners reasonably determine that it is necessary to replace the general partner of Tenant in order to cure such default, then the cure period shall be extended by an additional sixty (60) days after the removal and replacement of such general partner, provided that the Limited Partners have promptly commenced and diligently proceeded with all requisite actions to effect such removal and replacement. Landlord agrees that it shall deliver notice of default to the Limited Partners in accordance with Section 17.2.1 concurrently with delivery of such notice to Tenant provided that Landlord has been given the address for delivery of such notices. Any such cure by a Limited Partner shall be accepted by Landlord as if performed by Tenant or by any Leasehold Mortgagee. If this Lease has been terminated, upon any such cure by a Limited Partner, Landlord shall, upon request by such Limited Partner enter into a new lease with such Limited Partner (or any of its affiliated designees) pursuant to substantially similar terms and conditions as those set forth in this Lease, subject to the rights of Leasehold Mortgagees pursuant to Article XV. Notwithstanding the preceding sentence, the Landlord shall not exercise its rights to terminate this Lease pursuant to Section 17.3 until the expiration of the Limited Partner's cure period. No rights and remedies of Landlord shall be effective as against any Limited Partner unless Landlord has delivered to such Limited Partner all notices required to be so delivered hereunder and such Limited Partner has been afforded the opportunity to cure as provided herein. Landlord agrees not to amend any material provision of this Lease without the prior written consent of the Limited Partners.

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17.3 Remedies Upon Default.

17.3.1 Landlord's Remedies. Upon the occurrence of any Event of Default and in addition to any and all other rights or remedies of Landlord hereunder and/or provided by law, but subject in all events to the rights and remedies of Leasehold Mortgagees under Article XV hereof and of any Limited Partner under this Article XVII, Landlord shall have the right to terminate this Lease and/or Tenant's possessory rights hereunder, in accordance with applicable law to re-enter the Property and take possession thereof and of the Improvements, and except as otherwise provided herein, to remove all persons and property therefrom, and to store such property at Tenant's risk and for Tenant's account, and Tenant shall have no further claim thereon or hereunder. In no event shall this Lease be treated as an asset of Tenant after any final adjudication in bankruptcy except at Landlord's option so to treat the same but no trustee, receiver, or liquidator of Tenant shall have any right to disaffirm this Lease.

17.3.2 Remedies Upon Abandonment. If Tenant should breach this Lease and abandon the Property, Landlord may, at its option, but subject in all events to the rights and remedies of Leasehold Mortgagees under Article XV hereof and of any Limited Partner under this Article XVII, enforce all of its rights and remedies under this Lease, including the right to recover the rent as it becomes due hereunder. Additionally, Landlord shall be entitled to recover from Tenant all costs of maintenance and preservation of the Property, and all costs, including attorneys' and receiver's fees incurred in connection with the appointment of and performance by a receiver to protect the Property and Landlord's interest under this Lease.

17.3.3 Landlord Right to Continue Lease. In the event of any default under this Lease by Tenant (and regardless of whether or not Tenant has abandoned the Property), this Lease shall not terminate (except by an exercise of Landlord's right to terminate under Section 17.3.1) unless Landlord, at Landlord's option, elects to terminate Tenant's right to possession or, at Landlord's further option, by the giving of any notice (including, without limitation, any notice preliminary or prerequisite to the bringing of legal proceedings in unlawful detainer) to terminate Tenant's right to possession. For so long as this Lease continues in effect, Landlord may enforce all of Landlord's rights and remedies under this Lease, including, without limitation, the right to recover all rent and other monetary payments as they become due hereunder. For the purposes of this Lease, the following shall not constitute termination of Tenant's right to possession: (a) acts of maintenance or preservation or efforts to relet the Property; or (b) the appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Lease.

17.3.4 Right to Injunction; Specific Performance. In the event of a default by Tenant under this Lease that remains uncured beyond any applicable grace periods permitted hereunder, Landlord shall have the right to commence an action against Tenant for damages, injunction and/or specific performance. Tenant's failure, for any reason, to comply with a court-ordered injunction or order for specific performance shall constitute a breach under this Lease.

17.3.5 Damages Upon Termination. Should Landlord elect to re-enter the Property, or should Landlord take possession pursuant to legal proceedings or to any notice provided by law, this Lease shall thereupon terminate, and Landlord may recover from Tenant:

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(a) the worth at the time of award of the unpaid rent which is due, owing and unpaid by Tenant to Landlord at the time of termination; and

(b) the worth at the time of award of the amount by which the unpaid rent which would have come due after termination until the time of award exceeds the amount of rental loss that Tenant proves could have been reasonably avoided; and

(c) the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of rental loss which Tenant proves could be reasonably avoided; and

(d) all other amounts necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things are likely to result therefrom, including all costs (including attorneys' fees) of repossession, removing persons or property from the Property, repairs, reletting and reasonable alterations of the Improvements in connection with reletting, if any.

All computations of the worth at the time of award of amounts recoverable by Landlord under subparagraphs (a), (b), and (d) above shall be computed by allowing interest at a rate equal to the rate of interest most recently announced by Bank of America, N.A., (or any successor bank) at its principal office in San Francisco as its "reference rate" serving as the basis upon which effective rates of interest are calculated for those transactions making reference thereto, but in no event in excess of the maximum rate of interest permitted under applicable law. The worth at the time of the award recoverable by Landlord under (c) above shall be computed by discounting the amount otherwise recoverable by Landlord at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus 1%, or at such lower discount rate as may hereafter be specified by applicable California statute.

17.4 Right to Receiver. Following the occurrence of an Event of Default, if Tenant (and all Leasehold Mortgagees and Limited Partners) fails after receipt of a Notice of Breach to cure the default within the time period set forth in this Lease, Landlord, at its option, may have a receiver appointed to take possession of Tenant's interest in the Property with power in the receiver (a) to administer Tenant's interest in the Property, (b) to collect all funds available in connection with the operation of the Property, and (c) to perform all other acts consistent with Tenant's obligations under this Lease, as the court deems proper. Landlord's rights under this Section 17.4 shall be subject and subordinate to the rights of all Leasehold Mortgagees and Limited Partners.

17.5 Remedies Cumulative. No remedy in this Article XVII shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute, and every power and remedy given by this Lease may be exercised from time to time and as often as occasion may arise or as may be deemed expedient, subject to any limitations referred to hereinabove.

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17.6 No Election of Remedies. The rights given in this Article XVII to receive, collect or sue for any rent or rents, moneys or payments, or to enforce the terms, provisions and conditions of this Lease, or to prevent the breach or nonobservance thereof, or the exercise of any such right or of any other right or remedy hereunder or otherwise granted or arising, shall not in any way affect or impair or toll the right or power of Landlord upon the conditions and subject to the provisions in this Lease to terminate Tenant's right of possession because of any default in or breach of any of the covenants, provisions or conditions of this Lease beyond the applicable cure period.

17.7 Survival of Obligations. Nothing herein shall be deemed to affect the right of Landlord to indemnification for liability arising prior to the termination of the Lease for personal injuries or property damage or in connection with any other Claim, nor shall anything herein be deemed to affect the right of Landlord to equitable relief where such relief is appropriate. No expiration or termination of the Lease by operation of law, or otherwise, and no repossession of the Property or any part thereof shall relieve Tenant of its previously accrued liabilities and obligations hereunder, all of which shall survive such expiration, termination or repossession.

17.8 No Waiver. Except to the extent that Landlord may have agreed in writing, no waiver by Landlord of any breach by Tenant of any of its obligations, agreements or covenants hereunder shall be deemed to be a waiver of any subsequent breach of the same or any other covenant, agreement or obligation, nor shall any forbearance by Landlord to seek a remedy for any breach by Tenant be deemed a waiver by Landlord of its rights or remedies with respect to such breach.

ARTICLE XVIII.
GENERAL PROVISIONS

18.1 Estoppel Certificates. At any time and from time to time, Landlord and Tenant, shall for the benefit of any Limited Partner or Leasehold Mortgagee, on at least twenty (20) business days' prior written request by the requesting party, deliver to the party requesting same a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there shall have been modifications that the same is in full force and effect as modified and stating the modifications) and the dates to which the Rent has been paid and stating whether or not, to the best knowledge of the certifying party, the other party is in default in the performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which the certifying party may have knowledge and such other statements or certifications reasonably requested. A prospective purchaser, mortgagee, or Limited Partner shall be entitled to request such a statement and rely on a statement delivered hereunder.

18.2 Quiet Enjoyment. Landlord covenants and agrees that Tenant (and pursuant to the provision of Articles XV and XVII, respectively, any Leasehold Mortgagee and Limited Partner, as applicable), upon paying the Rent and all other charges herein provided for and observing and keeping all covenants, agreements and conditions of this Lease on its part to be observed and kept, shall quietly have and enjoy the Property during the Term of this Lease without hindrance or molestation by anyone claiming by or through Landlord, subject, however, to the exceptions, reservations and conditions of this Lease.

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18.3 Landlord's Right to Enter the Property. Landlord and its agents may enter the Property or the Improvements from time to time with reasonable notice (and, upon Tenant's request, when accompanied by representative(s) of Tenant), except for emergencies in which case no notice shall be required, to inspect the same, to post notices of nonresponsibility and similar notices, and to discharge Tenant's obligations hereunder when Tenant has failed to do so within a reasonable time after written notice from Landlord.

18.4 Representations of Landlord and Tenant.

18.4.1 Representations of Tenant. Tenant hereby represents and warrants that all of the following are true and correct as of the Effective Date:

(a) Tenant is a limited partnership, duly organized, validly existing and in good standing under the laws of the State of California;

(b) Tenant has taken all requisite action in connection with the execution of this Lease and the undertaking of the obligations set forth herein. This Lease constitutes the legally valid and binding obligation of Tenant, enforceable against Tenant in accordance with its terms, except as it may be affected by bankruptcy, insolvency or similar laws or by legal or equitable principles relating to or limiting the rights of contracting parties generally; and

(c) The execution of this Lease and the acceptance of the obligations set forth herein do not violate any court order or ruling binding upon Tenant or any provision of any indenture, agreement or other instrument to which Tenant is a party or may be bound. Neither the entry into nor the performance of this Lease will violate, be in conflict with or constitute a default under any charter, bylaw, partnership agreement, trust agreement, mortgage, deed of trust, indenture, contract, judgment, order or other agreement, charge, right or interest applicable to Tenant.

18.4.2 Representations of Landlord. Landlord hereby represents and warrants that all of the following are true and correct as of the Effective Date:

(a) Landlord has taken all requisite action in connection with the execution of this Lease and the undertaking of the obligations set forth herein. This Lease constitutes the legally valid and binding obligation of Landlord, enforceable against Landlord in accordance with its terms, except as it may be affected by bankruptcy, insolvency or similar laws or by legal or equitable principles relating to or limiting the rights of contracting parties generally.

(b) The execution of this Lease and the acceptance of the obligations set forth herein do not violate any court order or ruling binding upon Landlord or any provision of any indenture, agreement or other instrument to which Landlord is a party or may be bound. Neither the entry into nor the performance of this Lease will violate, be in conflict with or constitute a default under any charter, bylaw, partnership agreement, trust agreement, mortgage, deed of trust, indenture, contract, judgment, order or other agreement, charge, right or interest applicable to Landlord.

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(c) As of the Effective Date, Landlord has not executed or consented to the recordation of any monetary lien on Landlord's fee interest in the Property, and Landlord agrees that it will not execute or consent to the recordation of any monetary lien on Landlord's fee interest in the Property unless the holder of such lien agrees irrevocably to recognize this Lease in the event of any realization upon the Property by such holder or its successors or assigns.

18.5 Miscellaneous.

18.5.1 Severability. If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

18.5.2 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Lease shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

(a) personal delivery, in which case notice is effective upon delivery;

(b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;

(c) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;

(d) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

Landlord: City of Emeryville
1333 Park Avenue
Emeryville, CA 94608
Attn: City Manager
Phone: (510) 596-4370
Facsimile: (510) 596-3724

And

City of Emeryville
1333 Park Avenue

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Emeryville, CA 94608
Attn: City Attorney
Phone: (510) 596-4380
Facsimile: (510) 596-3724

Tenant: _____, L.P.
c/o EAH Inc.
22 Pelican Way
San Rafael, CA 94901
Attention: President
Telephone: (415) 295-8854

With Copies to:

Bocarsly Emden Cowan Esmail & Arndt LLP
633 W. Fifth Street, 64h Floor
Los Angeles, CA 90071
Attn: Nicole Deddens, Esq.
Telephone: (213) 239-8029
Facsimile: (213) 559-0765

And with copies to: _____

Leasehold Mortgagees: _____

_____

County of Alameda
Housing and Community Development Department
224 W. Winton Avenue, Room 108
Hayward, CA 94544
Attention: Housing Director

18.5.3 Captions; Construction. The captions used for the sections and articles of this Lease are inserted for convenience only and shall not be used to construe this Lease. The language in all parts of this Lease shall be construed as a whole, according to its fair meaning and not strictly for or against Landlord or Tenant.

18.5.4 Tenant's Rights. Landlord acknowledges that, subject to Tenant's obligations to pay rent pursuant to the terms of this Lease, Tenant shall have the exclusive right to deduct, claim, retain and enjoy any and all income, appreciation gain, depreciation, amortization and tax credits for federal and state tax purposes relating to the Property and Landlord shall treat Tenant as the tax owner of the Property for federal income tax purposes and shall not file any tax returns inconsistent with this treatment.

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18.5.5 Binding on Successors. Subject to the restrictions on Transfers set forth in Article XVI, this Agreement shall bind and inure to the benefit of the Parties and their respective permitted successors and assigns. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any permitted successor and assign of such Party who has acquired an interest in compliance with this Agreement or under law.

18.5.6 Memorandum of Lease. A memorandum of lease substantially in the form attached hereto as Exhibit B shall be executed by Landlord and Tenant and recorded in the Official Records.

18.5.7 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of Alameda County, California or in the Federal District Court for the Northern District of California.

18.5.8 Attorneys' Fees. If either Party fails to perform any of its obligations under this Agreement, or if any dispute arises between the Parties concerning the meaning or interpretation of any provision hereof, then the prevailing Party in any proceeding in connection with such dispute shall be entitled to the costs and expenses it incurs on account thereof and in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

18.5.9 Indemnity Includes Defense Costs. In any case where either party is obligated under an express provision of this Lease, to indemnify and to save the other party harmless from any damage or liability, the same shall be deemed to include defense of the indemnitee by the indemnitor, such defense to be through legal counsel reasonably acceptable to the indemnitee.

18.5.10 No Brokers; No Third-Party Beneficiaries. Landlord represents that it has not engaged any broker or agent to represent Landlord in this transaction. Tenant represents that it has not engaged any broker or agent to represent Tenant in this transaction. Each party agrees to indemnify and hold the other harmless from and against any and all liabilities or expenses, including attorneys' fees and costs, arising out of, or in connection with claims made by any broker or individual for commissions or fees as a result of the acts of the indemnifying party. There shall be no third-party beneficiaries to this Lease other than the Leasehold Mortgagees and Limited Partners.

18.5.11 Disclaimer of Partnership, Lender/Borrower Relationship. The relationship of the parties under this Lease is solely that of landlord and tenant, and it is expressly understood and agreed that Landlord does not as a result of this Lease in any way nor for any purpose become a partner of Tenant or a joint venturer with Tenant in the conduct of Tenant's business or otherwise. This Lease is not intended to, and shall not be construed to, create the relationship of principal and agent, partnership, joint venture, association, or seller and buyer as between Landlord and Tenant. It is further expressly understood and agreed that this Lease is not intended to, and shall not be construed to create the relationship of lender and borrower, and Landlord does not, solely as a result of this Lease, become a lender to Tenant.

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18.5.12 Entire Agreement; Amendments. This Lease together with the DDA, the Affordability Covenant and the other documents executed in connection with the DDA contains the entire agreement between the parties relative to the subject matter hereof. All previous correspondence, communications, discussions, agreements, understandings or proposals and acceptances thereof between the parties or their representatives, whether oral or written, are deemed to have been integrated into and superseded by this Lease and are of no further force and effect except as expressly provided in this Lease. No amendment or modification hereof shall be effective for any purpose unless in writing signed by Landlord and Tenant.

18.5.13 Time is of the Essence; Calculation of Time Periods. Time is of the essence for each condition, term, obligation and provision of this Agreement. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is not a business day, in which event the period shall run until the next business day. The final day of any such period shall be deemed to end at 5:00 p.m., local time at the Property. For purposes of this Agreement, a "business day" means a day that is not a Saturday, Sunday, a federal holiday or a state holiday under the laws of California.

18.5.14 Survival. The following provisions shall survive the expiration or termination of this Lease: all representations made by Tenant hereunder, Tenant's release of Landlord pursuant to Section 2.6, Tenant's indemnification obligations pursuant to Sections 5.2, 6.6, 6.19, 7.8, 7.9, 13.1, and 18.5.10 and Article X, and all other provisions of this Lease which state that they shall survive the expiration or termination of this Lease.

18.5.15 Headings; Interpretation. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

18.5.16 Counterparts. This Lease may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

18.5.17 Action by the Landlord. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the Landlord is required or permitted under this Lease, such action shall be in writing, and such action may be given, made or taken by the City Manager or by any person who shall have been designated by the City Manager, without further approval by the governing board of the Landlord. In any approval, consent, or other determination by Landlord required hereunder, Landlord shall act reasonably and in good faith.

18.5.18 Inspection of Books and Records. Upon request, Tenant shall permit the Landlord to inspect at reasonable times and on a confidential basis those books,

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records and all other documents of Tenant necessary to determine Tenant's compliance with the terms of this Agreement.

SIGNATURES ON FOLLOWING PAGE

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IN WITNESS WHEREOF, Landlord and Tenant have entered into this Lease as of the Effective Date.

LANDLORD:

CITY OF EMERYVILLE, a municipal corporation

By: _____
Christine Daniel, City Manager

ATTEST:

_____
Sheri Hartz, City Clerk

APPROVED AS TO FORM:

_____
_____, City Attorney

TENANT:

_____, L.P., a California limited partnership

By: _____LLC, a California limited liability company, its sole and managing general partner

By: EAH INC., a California nonprofit public benefit corporation, its managing and sole member

By: _____
Name: _____
Its: _____

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Exhibit A

LEGAL DESCRIPTION OF PROPERTY

Land situated in the state of California, County of Alameda, described as follows:

The westerly 100 feet of Lot 1, and a portion of the westerly 100 feet of Lot 2, Block 1, Map of Subdivisions of a portion of Plot #6 as per Kellersberger's survey of the Ranchos of V. & D. Peralta, filed December 16, 1876, Map Book 2, Page 6, Alameda County Records described as follows:

Commencing at the point of intersection of the northerly line of 43rd Street with the easterly line of San Pablo Avenue, as said Street and Avenue are shown on said map; thence easterly along said Northerly line of said 43rd Street, 100 feet; thence at right angles northerly 104.25 feet; thence at a right angles westerly 100 feet to said easterly line of San Pablo Avenue 104.25 feet to the point of commencement.

Assessor's Parcel No. 049-1079-014-01

Land situated in the state of California, County of Alameda, described as follows:

Parcel 1:
Being portions of Lots 2 and 3, Block 1, "Map of the Subdivision of A Portion of Plot 6, as shown on Kellersberger's Survey of the Ranchos of V. & D. Peralta," filed December 16, 1876, Map Book 2, Page 6, Alameda County Records, described as follows:

Beginning at a point on the easterly line of San Pablo Avenue distant thereon northerly 104.25 feet from the intersection thereof with the northerly line of 43rd Street, as said Avenue and Street are shown on the maps herein referred to; thence northerly along said easterly line of said San Pablo avenue, 51.75 feet to the southern line of the parcel of land described in the deed by M. Down to Albert Hammarberg and Gertrude Hammarberg dated July 16, 1945, recorded July 19, 1945, under Recorders' Series #SS/45761; thence along the last mentioned line easterly 100 feet, thence southerly parallel with said eastern line of San Pablo Avenue 51.75 feet; thence westerly parallel with said northern line of 43rd Street 100 feet to point of beginning.

Parcel 2:
The western 100 feet of Lot 4, Block 1, "Map of the Subdivision of a Portion of Plot 6, as shown on Kellersberger's survey of the Ranchos of V. & D. Peralta," filed December 16, 1876, Alameda County Records, Map Book 2, Page 6.

Assessor's Parcel No. 049-1079-017-01

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Exhibit B

MEMORANDUM OF LEASE

DocuSign Envelope ID: 3154A63F-9426-4C37-B1BB-A8B28573C4D5

MEMORANDUM OF GROUND LEASE

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.

BLOCK/LOT_____

Address: 4300 San Pablo Avenue, Emeryville, CA

MEMORANDUM OF GROUND LEASE

THE UNDERSIGNED LESSOR(S) DECLARE(S):
Documentary Transfer Tax is $_____; City Transfer Tax is $_____
Computed on full value of property conveyed, or
Computed on full value less value of liens and/or encumbrances remaining at time of sale,

THIS MEMORANDUM OF GROUND LEASE ("**Memorandum**"), dated for identification purposes as of _____, 20__, is entered into by and between the CITY OF EMERYVILLE , a municipal corporation ("**City**"), and _____, L.P., a California limited partnership ("**Tenant**").

Pursuant to that certain Ground Lease Agreement (the "Lease"), Landlord hereby leases to Tenant and Tenant leases from Landlord certain real property situated in the City of Emeryville, California, more specifically described on Exhibit A attached hereto (the "Site"), consisting of one or more parcels.

The Lease is dated as of _____, 20_____, and the term of the Lease commences as of the date of recordation of this Memorandum, and shall continue until the earlier of: (i) the day preceding the seventy-fifth 75th) anniversary of the date of recording of the Certificate of Completion as set forth in Section ____ of the Lease; or (ii)) seventy-seven (77) years after the recordation of this Memorandum, unless sooner terminated pursuant to the terms of the Lease.

This Memorandum shall incorporate herein all of the terms and provisions of the Lease as though fully set forth therein.

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This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the Lease, of which this is a memorandum. Capitalized terms used herein which are not defined shall have the meanings as defined in the Lease.

The parties have executed this Memorandum on the dates specified immediately adjacent to their respective signatures.

Dated: _____

LANDLORD:

CITY OF EMERYVILLE,
a municipal corporation

By: _____
Name: _____
Its: _____

[notary acknowledgment required]

APPROVED AS TO FORM:

_____
City Attorney

Dated: _____

TENANT:

_____, L.P., a
California limited partnership

By: _____LLC, a
California limited liability company, its sole and managing general partner

By: EAH INC., a California nonprofit public benefit corporation, its managing and sole member

By: _____

Name: _____

Its: _____

[notary acknowledgment required]

DocuSign Envelope ID: 3154A63F-9426-4C37-B1BB-A8B28573C4D5

EXHIBIT A

LEGAL DESCRIPTION

Land situated in the state of California, County of Alameda, described as follows:

The westerly 100 feet of Lot 1, and a portion of the westerly 100 feet of Lot 2, Block 1, Map of Subdivisions of a portion of Plot #6 as per Kellersberger's survey of the Ranchos of V. & D. Peralta, filed December 16, 1876, Map Book 2, Page 6, Alameda County Records described as follows:

Commencing at the point of intersection of the northerly line of 43rd Street with the easterly line of San Pablo Avenue, as said Street and Avenue are shown on said map; thence easterly along said Northerly line of said 43rd Street, 100 feet; thence at right angles northerly 104.25 feet; thence at a right angles westerly 100 feet to said easterly line of San Pablo Avenue 104.25 feet to the point of commencement.

Assessor's Parcel No. 049-1079-014-01

Land situated in the state of California, County of Alameda, described as follows:

Parcel 1:
Being portions of Lots 2 and 3, Block 1, "Map of the Subdivision of A Portion of Plot 6, as shown on Kellersberger's Survey of the Ranchos of V. & D. Peralta," filed December 16, 1876, Map Book 2, Page 6, Alameda County Records, described as follows:

Beginning at a point on the easterly line of San Pablo Avenue distant thereon northerly 104.25 feet from the intersection thereof with the northerly line of 43rd Street, as said Avenue and Street are shown on the maps herein referred to; thence northerly along said easterly line of said San Pablo avenue, 51.75 feet to the southern line of the parcel of land described in the deed by M. Down to Albert Hammarberg and Gertrude Hammarberg dated July 16, 1945, recorded July 19, 1945, under Recorders' Series #SS/45761; thence along the last mentioned line easterly 100 feet, thence southerly parallel with said eastern line of San Pablo Avenue 51.75 feet; thence westerly parallel with said northern line of 43rd Street 100 feet to point of beginning.

Parcel 2:
The western 100 feet of Lot 4, Block 1, "Map of the Subdivision of a Portion of Plot 6, as shown on Kellersberger's survey of the Ranchos of V. & D. Peralta," filed December 16, 1876, Alameda County Records, Map Book 2, Page 6.

Assessor's Parcel No. 049-1079-017-01

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EXHIBIT C

FORM OF CERTIFICATE OF COMPLETION

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.

BLOCK/LOT_____

Address: 4300 San Pablo Avenue, Emeryville, CA

CERTIFICATE OF COMPLETION
(Ground Lease)

The CITY OF EMERYVILLE, a municipal corporation ("Landlord"), and _____, L.P., a California limited partnership ("Tenant"), entered into that certain Ground Lease dated as of _____20__ (the "Lease"), a memorandum of which was recorded in the official records of Alameda County on _____, 20__, as document number_____. The Lease governs certain real property as more particularly described in Exhibit A (the "Property").

Pursuant to Section 6.2 of the Lease, the Landlord certifies that the Tenant has met its obligations under Section of the Lease regarding the construction of the Project on the Property. This Certificate of Completion shall not constitute evidence of compliance with, or satisfaction of, any obligation of the Tenant to any holder of a deed of trust securing money loaned to finance the Property, or any part thereof, and shall not be deemed to be either a notice of completion under the California Civil Code or a certificate of occupancy. This Certificate of Completion shall not constitute evidence of compliance with the requirements of Section 6.3 of the Lease. The issuance of this Certificate of Completion shall have no effect on the Term of the Lease, and the remaining provisions of the Lease shall remain in full force and effect throughout the Term.

Capitalized terms used in this Certificate of Completion which are not defined herein shall have the meanings given such terms in the Lease.

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The parties have executed this Certificate of Completion on the dates specified immediately adjacent to their respective signatures.

Dated: _____

LANDLORD:
CITY OF EMERYVILLE,
a municipal corporation
By: _____
Name: _____
Its: _____

[notary acknowledgment required]

APPROVED AS TO FORM:

_____
City Attorney

Dated: _____

TENANT:
_____, L.P., a
California limited partnership

By: _____LLC, a
California limited liability company, its sole and managing general partner

By: EAH INC., a California nonprofit public benefit corporation, its managing and sole member

By: _____

Name: _____

Its: _____

[notary acknowledgment required]

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EXHIBIT H

FORM OF CITY CONTRACT ADDENDUM

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CONSTRUCTION CONTRACT ADDENDUM

This Construction Contract Addendum is made this _____day of _____, ____, by and between _____ ("**Owner**"), and_____ ("**Contractor**").

RECITALS

A. The City of Emeryville (**"City**") and Owner have entered into that certain 3706 San Pablo Avenue Affordable Housing Ground Lease Disposition and Development Agreement dated April 16, 2015 and amended on _____, ("**Agreement**") pursuant to which the City agreed to ground lease to Owner that certain real property with a street address of 4300 and 4310 San Pablo Avenue (APN No. 049-1079-014-01; 049-1079-017-1), (the "**Site**") under the terms and conditions set forth in the Agreement and the ground lease dated _____ ("**Ground Lease**") and Owner agreed to develop on the Site sixty-eight (68) multi-family residential rental units ("**Project**").

B. Owner is borrowing funds from the City to support development of the Project, and has executed a Loan Agreement, Deed of Trust, and Promissory Note.

C. The Agreement, the Ground Lease, the Loan Agreement, Deed of Trust and Promissory Note are herein referred to as the "**City Documents**".

D. Owner and Contractor have entered into a construction agreement dated _____ under which Contractor has agreed to undertake construction work on the Project (the "**Contract**").

E. Owner and Contractor wish to modify and add to the terms of the Contract as set forth in this Addendum, and Contractor agrees to be bound by the following provisions in the construction of said Project, in order to provide for certain terms required by the City as a condition to financing of the Project. The City has indicated that it will not make the loan, as contemplated by the Loan Agreement, unless Contractor agrees to be bound by the terms hereof.

NOW, THEREFORE, Owner and Contractor hereby agree as follows:

1. OWNER'S OBLIGATIONS. Owner agrees that any obligation imposed on Contractor by this Addendum does not waive, diminish, or alter any of Owner's obligations to the City under the City Documents, and that the obligations of Contractor to the City contained herein are in addition to those obligations of Owner to the City contained in the City Documents. Owner shall be solely responsible for satisfying its obligations to Contractor under the Contract.

2. CONSENT TO ASSIGNMENT OF DEVELOPMENT RIGHTS. Contractor consents to the assignment of its Contract with Owner to the City under the conditions specified in the City Documents. Contractor agrees that if there is a breach of any of the City Documents or any other Event of Default (as the term may be defined in the relevant City Document), the City may elect to enforce the assignment and take over the Contract. Contractor agrees to

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continue to perform its obligations under the Contract and this Addendum for the benefit and account of the City in the same manner as if performed for the benefit and account of Owner in the absence of the assignment at no additional cost to the City, as long as Contractor continues to receive the compensation called for under the Contract. Contractor agrees that the City shall not have any obligation under the Contract until the City notifies it in writing of the City 's election to accept the assignment.

3. COMMENCEMENT AND COMPLETION OF CONSTRUCTION. Contractor must begin construction of the Project by the date set for the commencement of construction in the City Documents. Contractor may not commence construction until the City has issued a written notice to proceed to Owner. Contractor must diligently prosecute construction of the Project to completion, and must complete construction of the Project by the completion date set forth in the City Documents.

4. CONSTRUCTION BONDS. Contractor must obtain a labor and material (payment) bond and a performance bond, or a dual bond which covers both payment and performance obligations, with respect to the construction of the Project in a penal sum each of not less than one hundred percent (100%) of the scheduled cost of construction. Such bonds must be issued by a company which is authorized to transact surety insurance in California and which has assets exceeding its liabilities in an amount equal to or in excess of the bond amount. The bonds must name the City as an obligee. In lieu of said bonds, a letter of credit in the sole name and possession of the City in the penal amount and in a form acceptable to the City may be substituted.

5. CONTRACT WORK. Contractor warrants and represents that it is licensed or otherwise authorized to perform the construction work specified in the Contract in the State of California. Contractor warrants and represents that it holds a current City of Emeryville Business License Certificate. All construction work must be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work in the State of California. Contractor shall insert similar provisions in all subcontracts for work for the Project.

6. QUALITY OF WORK. Contractor must construct the Project in conformance with the Plans and Specifications and any modifications thereto approved by the City. Contractor must construct the Project according to general industry standards and shall employ building materials of a quality suitable for the requirements of the Project and conforming to general industry standards. Contractor must construct the Project in full conformance with applicable local, state, and federal statutes, regulations, and building and housing codes.

The parties acknowledge that the City is under no duty to review the Plans and Specifications or to inspect construction of the Project. Any review or inspection undertaken by the City of the Project is solely for the purpose of determining whether Owner and Contractor are properly discharging their obligations to the City, and should not be relied upon by Owner, Contractor, or any third parties as a warranty or representation by the City as to the quality of the design or construction of the Project.

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7. ADDITIONS OR CHANGES IN WORK. The City and Owner must be notified in a timely manner of any changes in the work required to be performed under the Contract or this Addendum, including any substantial additions, changes, or deletions to the approved Plans and Specifications. A written change order authorized by the City must be obtained before any of the following changes, additions, or deletions in work for the Project may be performed: (1) any change that exceeds fifty thousand dollars ($50,000); or (2) any set of changes that cumulatively exceeds two hundred thousand dollars ($200,000); or (3) any substantial change in building materials or equipment, specifications, or the architectural or structural design of the Project as provided for in the Plans and Specifications. Consent to any additions, changes, or deletions to the work shall not release Contractor from any other obligations herein, or release Contractor or its surety from any surety bond.

8. SITE INSPECTIONS. Contractor shall permit and facilitate observation and inspection of work at the job site by the City and its agents and by public authorities during reasonable business hours.

9. AUDITS. Contractor must make available for examination at reasonable intervals and during normal business hours to the City 's representatives all books, accounts, reports, files, and other papers or property with respect to all matters covered by the Contract and this Addendum, and must permit these representatives to audit, examine, and make copies, excerpts or transcripts from such records.

10. LEAD-BASED PAINT. Contractor and its subcontractors may not use lead-based paint in the construction or maintenance of the Property. Contractor must insert such a provision in all subcontracts for work performed on the Project which involve the application of paint.

11. NONDISCRIMINATION. Contractor may not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, sexual preference, national origin, AIDS or AIDS-related conditions, or disability in any phase of employment during construction. Contractor agrees to post in conspicuous places available to all employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

12. PREVAILING WAGES. All workers performing construction work for the Project employed by Contractor and by any of its subcontractors must be compensated in an amount no less than the general prevailing rate of per diem wages as determined by the California Department of Industrial Relations under California Labor Code Sections 1770, et seq., and implementing rules and regulations. Contractor must comply with, and must ensure that its subcontractors comply with, all reporting and recordkeeping requirements of the applicable prevailing wage statutes and regulations.

In the event of underpayment of wages by Contractor or by any subcontractor employed on the Project, the City , in addition to other rights and remedies afforded by this Agreement, may: (1) demand that any underpaying employer comply with these requirements; (2) demand that the underpaying employer pay the difference between the prevailing wage rate and the

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amount actually paid to workers; (3) withhold and/or pay any Loan proceeds as necessary to compensate workers the full wages required under this Agreement (whether or not the Loan payee is directly responsible for the underpayment); (4) in the case of failure to pay state prevailing wages, impose liquidated damages in an amount up to fifty dollars ($50) per working day on any underpaying employer for each worker paid less than the prevailing wage, the amount of such liquidated damages to be determined solely by the City according to the standards contained in California Labor Code Section 1775; and/or (5) pursue any lawful administrative or court remedy to enforce these requirements against the underpaying employer. Any underpaying employer shall comply with a demand to pay any amounts due under this section within ten calendar days of the demand.

Contractor must include the prevailing wage requirement in all subcontracts for work on this Project, and must specify that the City is an intended third party beneficiary of such provisions. Contractor must take reasonable measures to monitor and enforce the prevailing wage requirements imposed on its subcontractors, including withholding payments to those subcontractors who violate these requirements. In the event that Contractor fails to take the above measures, Contractor shall be liable for the full amount of any underpayment of wages, plus costs and attorneys' fees, as if Contractor was the actual employer.

Contractor agrees that it would be impracticable or extremely difficult to fix the actual damages the City would suffer from violations of the prevailing wage provisions, and that the sums and formulas designated herein as liquidated damages represent a reasonable approximation of the damages the City is likely to suffer from violations of these terms. Contractor agrees to pay in full any accrued liquidated damages to the City within ten business days of a written demand by the City for such payment.

13. INSURANCE COVERAGE. Contractor must have in full force and effect during the construction of the Project the insurance coverage required under the City Documents.

14. WORKERS' COMPENSATION. Contractor must carry or cause to be carried Workers' Compensation and Employers' Liability Insurance as required by the California Labor Code for all persons employed in connection with this Project.

15. NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. No member, official, employee, or agent of the City shall be personally liable to Contractor for any obligation created under the terms of the Contract or this Addendum except in the case of actual fraud or willful misconduct by such person.

16. INDEMNITY. Notwithstanding the insurance requirements herein, Contractor hereby indemnifies, defends and holds , the City of Emeryville its respective members, officers, officials, employees, and agents, (collectively, the “Indemnified Parties”), harmless against any losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including attorneys' fees) which an Indemnified Party may incur as a consequence of Contractor's failure to perform any obligations as and when required by the Contract or this Addendum, any act or omission by Contractor or its subcontractors with respect to the Project, or any failure of any of Contractor's representations or warranties to be true and complete, except to

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the extent such losses are caused by the negligence or willful misconduct of the Indemnified Party. Contractor shall pay immediately upon the Indemnified Party's demand any amounts owing under this indemnity. The duty of Contractor to indemnify includes the duty to defend the Indemnified Party in any court action, administrative action, or other proceeding brought by any third party arising from the Project. Contractor's duty to indemnify the Indemnified Party shall survive the term of the Contract.

17. HAZARDOUS MATERIALS. Neither Contractor nor any of its subcontractors may use the Property or allow the Property to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. Contractor shall immediately notify the City and Owner in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the Property requiring notice to be given to any governmental agency under Hazardous Materials Laws; (b) any knowledge by Contractor that the Property does not comply with any Hazardous Materials Laws; (c) the receipt by Contractor of written notice of any Hazardous Materials claims; and (d) the discovery by Contractor of any occurrence or condition on the Property or on any real property located within 2,000 feet of the Property that could cause the Property to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

18. NOTICE OF DEFAULT TO LENDER. Contractor shall give the City prior or concurrent written notice of any default or breach claimed by Contractor against Owner or any other party under the Contract. The notice shall describe the default and give the City the option to cure said default within 30 calendar days. No termination of the Contract by Contractor shall be binding unless the City has been given the required notice and has not cured the default within 30 calendar days.

19. REMEDIES. The parties hereto agree that the City, while not a party to the Contract, is an intended third party beneficiary of the obligations imposed on Contractor in this Addendum. In the event of any breach or violation of any agreement or obligation of Contractor under the Contract or this Addendum, the City may proceed with any of the following remedies:

A. Bring an action in equitable relief seeking the specific performance by Contractor of the terms and conditions of the Contract or this Addendum, and/or enjoining, abating, or preventing any violation of said terms and conditions;

B. Order immediate stoppage of construction and demand that any condition leading to the default be corrected before construction may continue;

C. Enter the Property and take any actions necessary in its judgment to complete construction of the Project as permitted under the assignment of development rights;

D. Suspend disbursement of Loan funds for the Project until the breach or violation is corrected, or, if Owner had any concurrent obligation to perform on or ensure performance on the breached obligation, cancel the Loan commitment made to Owner and terminate the City 's obligation to disburse Loan funds to Owner; or

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E. Pursue any other remedy allowed at law or in equity.

20. GOVERNING LAW. This Addendum shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law and those provisions preempted by federal law.

21. DEFINITIONS. Capitalized terms not defined in this Addendum shall have the same meaning as defined in the Loan Agreement.

22. ATTORNEYS' FEES AND COSTS. In the event any legal action is commenced to interpret or to enforce the terms of this Addendum, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

23. TIME. Time is of the essence in the performance of this Addendum by Contractor.

24. CONSENTS AND APPROVALS. Any consent or approval required under this Addendum shall not be unreasonably withheld, delayed, or conditioned.

25. BINDING UPON SUCCESSORS. All provisions of this Addendum shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of each of the parties; provided, however, that this section does not waive the prohibition on assignment of this Addendum by Contractor without the City 's consent.

26. RELATIONSHIP OF CONTRACTOR AND CITY. Contractor understands that the City neither undertakes nor assumes any responsibility or duty to Contractor or to any third party. The relationship of Contractor and the City for this Project shall not be construed as a joint venture, equity venture, or partnership. The City shall have no obligation to any party under the Contract, but is an intended third party beneficiary of the obligations under this Addendum. Contractor shall have no authority to act as an agent of the City or to bind the City to any obligation.

27. ASSIGNMENT. Contractor may not assign any of its interests under the Contract or the Addendum to any other party, except with the prior written consent of the City. Any unauthorized assignment shall be void.

28. AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to this Addendum must be in writing, and shall be made only if executed by Owner and Contractor, and consented to in writing by the City.

29. SEVERABILITY. Every provision of this Addendum is intended to be severable. If any provision of this Addendum is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired.

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30. ADDENDUM CONTROLS. In the event that any provisions of this Addendum and the Contract conflict, the terms of this Addendum shall control.

[SIGNATURE BLOCKS ON NEXT PAGE]

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IN WITNESS WHEREOF, the undersigned parties have executed this Construction Contract Addendum as of the date first written above.

"CONTRACTOR"

By: _____

Title: _____

"OWNER"

By: _____
its sole and managing general partner

By: EAH INC.,
a California nonprofit public benefit corporation,
its managing and sole member

By: _____
Name:
Its: