



# City of San Leandro

Meeting Date: January 8, 2018

## Staff Report

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**File Number:** 17-727

**Agenda Section:** BUSINESS ITEMS

**Agenda Number:** 2.A.

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Cynthia Battenberg  
Community Development Director

**FINANCE REVIEW:** David Baum  
Finance Director

**TITLE:** Staff Report for 1) A Resolution of the City Council of the City of San Leandro to Approve a Loan and Approve a Portion of the City's Measure A-1 Bond Allocation, for a Total of Five Million Dollars (\$5,000,000) to Eden Housing to Support the Development of an Affordable Housing Project and Authorizing the City Manager to Execute Related Documents; and 2) A Resolution of the City Council of the City of San Leandro Authorizing the City Manager to Submit an Application for the State Affordable Housing and Sustainable Communities Program.

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### SUMMARY AND RECOMMENDATIONS

Eden Housing (Eden), a nonprofit housing developer, proposes to develop an attractive 62-unit affordable rental housing development, Parrott Street Apartments, located at 1604 & 1642 San Leandro Boulevard (Assessor's Parcel Number 075-0028-001-02 and 075-0028-011-02). This development would provide needed affordable rental housing for lower income households and would serve as a well-designed transit-oriented development conveniently located across the street from the San Leandro BART station. Eden would like to leverage the City's local funding assistance with a variety of other public affordable housing financing resources, including the State/federal low income housing tax credit program (LIHTC) and the State Affordable Housing and Sustainable Communities (AHSC) Program. The AHSC Program is a highly competitive program and the application submittal deadline is January 16, 2018. The State requires local funding commitments for applicants are approved prior to application submittal.

Staff recommends that the City Council adopt two resolutions: 1) Approve the provision of a City loan and a portion of the City's Measure A-1 (Alameda County) Bond Allocation for a total of \$5 million to Eden Housing to support the development of an affordable housing project and authorize the City Manager to execute all related documents; and 2) Authorize the City Manager to submit an application for the State Affordable Housing and Sustainable Communities (AHSC) Program.

## **BACKGROUND**

Since early 2017, City of San Leandro staff have been in discussions with Eden Housing to assist in the financing for the construction of the proposed Parrott Street Apartments. This project is in alignment with and advances the goals in the City's 2007 Downtown San Leandro Transit-Oriented Development Strategy (Downtown TOD Plan) in addition to the recently updated 2035 General Plan.

Eden Housing currently has an option to purchase the project site from the owner and is in the process of obtaining the necessary financing for this affordable rental housing project, which has a total estimated development cost of over \$33 million (see Attachment 1 for project pro forma). Eden is in need of \$5 million in gap financing from the City. Funds held by the City of San Leandro as the Successor to the former Redevelopment Agency from repayments of past Redevelopment Housing Set-Aside loans cannot cover the entire \$5 million gap. City staff recommends that its \$5 million contribution be comprised of: \$4 million of the City's allocation of Alameda County Measure A-1 Rental Housing Development Fund monies and \$1 million from the City's Housing Successor Agency revenue.

Voters approved the Alameda County A-1 Housing Bond in November 2016. The County allocated a portion of the bond monies to each local jurisdiction in the County. The City was allocated \$11.9 million in A-1 Housing Bond proceeds. In March 2017, the City used a portion of these funds to award \$1.7 million to BRIDGE Housing to fill an emergency gap in funding for the San Leandro Senior Apartments project (Marea Alta Phase 2). With the award to Eden for the Parrott Street Apartments of \$4 million and County bond issuance fees of approximately \$1.2 million, the City's remaining A-1 allocation balance would be approximately \$5 million. Cities need to commit their shares of A-1 funds within the next four years.

In anticipation of Council approval, the City and Eden applied to Alameda County Housing and Community Development Department for the \$4 million for Parrot Street Apartments in late November 2017. Upon approval by the City Council and the Alameda County Board of Supervisors, Eden will contract with the County for the \$4 million from the City's share. The County plans to issue a bond to finance the first round of applicable affordable housing projects and programs including Parrot Street Apartments.

Additionally, the City seeks to apply as a joint applicant with Eden Housing to the State Affordable Housing and Sustainable Communities (AHSC) Program. The Strategic Growth Council released the AHSC Program Notice of Funding Availability in July 2017 with a deadline for applications of January 16, 2018. City staff have been working closely with Eden, Enterprise Community Partners (a technical assistance provider for the AHSC program), and AC Transit to compile a competitive AHSC Program application. The application requests financing for the Parrot Street Apartments in addition to grants for active transportation infrastructure projects and programs. This is the third year for this program with a total of approximately \$255 million available in funding for this year's Notice of Funding Availability round. In the last two rounds, there were approximately \$1 billion in funds requested and about \$455 million awarded statewide including for Marea Alta Phase 2. The source of these funds is the State's Greenhouse Gas Reduction Fund (which are revenues from the State Cap & Trade auctions).

If the City Council approves, Eden and the City will apply for an estimated \$12 million in AHSC funding (though these amounts might change, but not exceed \$15 million total): \$8 million for the affordable rental housing development and \$4 million for active transportation infrastructure improvements and programs. Eden will manage the \$8 million, which will be a loan to Eden, while the City Engineering and Transportation Department will administer the \$4 million infrastructure-related funding, which will be a grant to the City. This resolution seeks approval for an AHSC loan and grant application not to exceed \$15 million to ensure that if there is a significant change in the application's scope of work and budget, it will not delay or invalidate the application since a resolution from the City is required at the time of application submittal.

In order to be competitive for the AHSC program funding, there is a 100-point score system that rewards the total amount of greenhouse gas (GHG) reduced as well as the efficiency of those GHG reductions per dollar of AHSC funds asked. In addition, the scoring rubric awards significant points for active transportation improvements, green building construction, collaboration between the City, Eden and transit partners, demonstration of City's efforts in preventing displacement of low income renters, housing affordability, and utilizing local workforce development and hiring practices.

The City's Community Development Department collaborated with the City's Engineering and Transportation Department to develop comprehensive active transportation projects that will increase the competitiveness of this AHSC Grant application. If awarded, the City will receive approximately \$1.9 million dollars to advance the Bicycle Network West Project Phase 2 and pedestrian improvements along Williams Street. The bicycle improvement plans include a Class IV buffered bicycle lane on Williams Street from Merced Street to San Leandro Boulevard. The pedestrian improvement plans are on Williams Street from Orchard Avenue to Alvarado Street that will include Americans with Disabilities Act (ADA) improvements at intersections and connecting sidewalks and upgrades to the railroad crossing west of San Leandro Boulevard. In addition, the proposal includes approximately \$600,000 in pedestrian lighting westward on Williams Street from San Leandro Boulevard on both sides of the street.

Staff is also coordinating with AC Transit to purchase a bus to further advance AC Transit's Service Expansion Plan efforts in the City. Consequently, this will improve overall services to the San Leandro community and support the region's goals on sustainability.

Eden and the City must demonstrate in their AHSC application how the project leverages other funding sources. Eden Housing will also apply for the recently released State Housing and Community Development Department's Infill Infrastructure Grant (CA IIG) funds. If awarded AHSC funds, the development will be eligible for an allocation of 4% Low Income Housing Tax Credits equity.

### **Analysis**

Below is a summary of key features of the loan agreement for \$1 million between the City and Eden:

#### **Interest Rate and Loan Period**

Three percent (3%) annual interest-only payments for fifty-five (55) years.

Use of Funds

Funds shall be used for site acquisition and/or construction of the Parrott Street Apartments.

Affordability Restrictions

The 62-unit Parrott Street Apartments will provide 22 studios, 22 one-bedroom apartments, and 18 two-bedroom apartments. Fifty-seven of the 62 units will target low and very low income households making between 30% and 60% of the area median income and will remain affordable for 55 years under a regulatory agreement with the City. Five (5) of the 62 units will not be income restricted: one will be for the on-site property manager and four (4) will be reserved for 4 renter households who are currently living in existing rental housing on the site in case they do not qualify as lower income (see “Anti-Displacement Efforts” section below). The building will be five-stories with a community room, a computer learning center, outdoor courtyard with resident vegetable gardens, management office, on-site residential services, on-site laundry facilities, covered bicycle storage, and a live in property manager’s unit.

Anti-Displacement Efforts

There are four occupied rental units on the project site. Eden is committed to ensuring that they are not permanently displaced. Under the regulatory agreement with the City, Eden is required to give all four renter households first priority of the restricted or non-restricted units. Eden will also pay for their temporary relocation during construction.

**Applicable General Plan Policies**

Community Standards

Goal LU-1: Maintain stable, safe, and attractive neighborhoods.

Policy LU-1.9: Multi-Family Housing Upkeep.

Maintain and enforce high standards of property upkeep for existing and new multi-family rental housing development.

Action LU-1.9A: Conditions of Approval.

Use the development review process to establish conditions of approval for new or refurbished multi-family housing development that ensures an ongoing commitment to maintenance once construction work is completed. Establish appropriate fines, penalties, and corrective measures in the event conditions are not being met.

Action LU-1.9B: Maintenance of Rental Properties.

Pursue ordinance revisions and incentives to ensure that landlords are held accountable for the appearance, maintenance, and safety of rental properties, including yard areas and structures.

Neighborhood Character

Goal LU-2: Preserve and enhance the distinct identities of San Leandro neighborhoods.

Policy LU-2.7: Location of Future Multi-Family Development.

Concentrate new multi-family development in the areas near the BART Stations and along major transit corridors such as East 14th Street. Ensure that such development enhances rather than detracts from the character of surrounding neighborhoods.

Policy LU-2.17: Constrained Sites.

Focus new housing development on underutilized or infill sites on the city's flatter lands, rather than on previously undeveloped sites in the hills. Development on sites with significant geologic, hydrologic, or land stability constraints should be strongly discouraged.

New Housing Opportunities

Goal LU-3: Provide housing opportunities and improve economic access to housing for all segments of the community.

Policy LU-3.1: Mix of Unit Types.

Encourage a mix of residential development types in the city, including single family homes on a variety of lot sizes, as well as townhomes, row houses, live-work units, planned unit developments, garden apartments, and medium to high density multi-family housing.

Policy LU-3.2: Mix of Price Ranges.

Encourage a mix of price ranges to provide housing choices for San Leandro residents of all incomes and ages. Opportunities to include affordable units and market rate units within the same development projects should be pursued.

Policy LU-3.3: Affordable Housing Design.

Design new affordable housing to blend in with the existing fabric of the community. Affordable housing should be located in a variety of neighborhoods rather than concentrated in one particular part of the city.

Policy LU-3.4: Promotion of Infill.

Encourage infill development on vacant or underused sites within residential and commercial areas.

Policy LU-3.5: Mixed Use on Transit Corridors.

Encourage mixed use projects containing ground floor retail and upper floor residential uses along major transit corridors. Such development should be pedestrian-oriented, respect the scale and character of the surrounding neighborhood, and incorporate architectural themes that enhance the identity of adjacent commercial districts.

Policy LU-3.6: Housing by Non-Profit Developers.

Promote the participation of non-profit housing organizations in the construction of new affordable housing in San Leandro, with particular emphasis on housing for working families.

Action LU-3.6A: Rental Housing Production

Pursue funds through a variety of government-funded housing programs to assist in the creation of new affordable rental units.

Policy LU-3.7: Amenities and Social Services Within New Housing.

Encourage new affordable housing development to provide amenities for future residents, such as on-site recreational facilities and community meeting space. Where feasible, consider the integration of social services such as child care within such projects.

Coordinating Land Use and Transportation

Goal T-1: Coordinate Land Use and Transportation Planning

Policy T-1.5: Land Use Strategies.

Promote land use concepts that reduce the necessity of driving, encourage public transit use, and reduce trip lengths. These concepts include live-work development, mixed-use development, higher densities along public transit corridors, and the provision of commercial services close to residential areas and employment centers.

Reducing Vehicle Miles Traveled (VMT) Through Zoning: Establish zoning densities and intensities that reinforce the city's desire to reduce vehicle miles traveled (VMT) by focusing development near transit, and providing opportunities to live, work, and shop in close proximity.

Bicycle and Pedestrian Circulation

Goal T-3: Promote and accommodate alternative, environmentally friendly methods of transportation, such as walking and bicycling.

Policy T3.1: Citywide Bikeway System.

Develop and maintain a bikeway system that meets the needs of both utilitarian and recreational users, reduces vehicle trips, and connects residential neighborhoods to employment and shopping areas, BART stations, schools, recreational facilities and other destinations throughout San Leandro and nearby communities.

Action T-3.1.A: Bikeway Plan Implementation.

Maintain a Bicycle and Pedestrian Master Plan and update that Plan every five years to identify existing and future needs and provide specific recommendations for facility and program improvements and phasing. The Plan Map should be formatted for broad public distribution and should show key bicycle facilities, destinations, connections to nearby communities, and safety information. Any changes to the Plan should maintain consistency with city, county, regional, state, and federal policy documents.

Policy T-3.2: Funding.

Maximize the City's eligibility for funding for bicycle and pedestrian improvements, and aggressively pursue such funding to complete desired projects.

Action T-3.2.A: Pursuit of All Eligible Funding Sources.

Identify governmental and non-governmental programs that fund bicycle and pedestrian capital improvements and programs, along with specific funding requirements and deadlines. Where the probability of funding is increased, pursue multi-jurisdictional applications with Alameda County, neighboring cities and other potential partners such as BART and the East Bay Regional Park District (EBRPD).

Policy T-3.6: Pedestrian Environment.

Improve the walkability of all streets in San Leandro through the planning, implementing, and maintaining of pedestrian supportive infrastructure.

Public Transportation

Goal T-4: Ensure that public transportation is safe, convenient, and affordable and provides a viable alternative to driving.

Policy T-4.1: Coordination with Service Providers.

Work collaboratively with AC Transit and BART to ensure that public transit service remains safe, reliable, and affordable, and to improve service frequency and coverage within San Leandro neighborhoods and employment centers.

Action T-4.1.A: AC Transit Improvements.

On an ongoing basis, work with AC Transit to pursue route improvements that provide greater cross-town access, improved access to public facilities, and additional links to BART from San Leandro neighborhoods and employment centers.

Action T-4.1.B: BART Improvements.

On an ongoing basis, work with BART to pursue urban design improvements that enhance access to (the San Leandro BART) station for pedestrians, persons with disabilities, bicycles, and public transit vehicles; Encourage transit-oriented development on land surrounding the BART Stations.

Resource Conservation and Greenhouse Gas Reduction

Goal OSC-7: Promote recycling, water conservation, green building, and other programs that reduce greenhouse gas emissions and create a more sustainable environment.

Policy OSC-7.9 Reducing Greenhouse Gases Through Land Use and Transportation Choices.

Locate and design new development in a manner which maximizes the ability to use transit, walk, or bicycle for most trips, reduce dependence on fossil fuel powered vehicles, and reduce vehicle miles traveled.

Action OSC-7.9.A: Transit-Oriented Development.

Implement transit-oriented development plans for the Downtown and Bay Fair BART station areas and the East 14th Street corridor.

Action OSC-7.9.B: Pedestrian Orientation.

Implement design guidelines which encourage pedestrian friendly development and which de-emphasize the predominance of surface parking lots in transit-oriented development areas such as the BART stations and East 14th Street corridor.

Action OSC-7.9.C: Bicycle and Pedestrian Improvements.

Implement the capital projects identified in the San Leandro Bicycle and Pedestrian Master Plan, and support new projects such as the East Bay Greenway to facilitate travel on foot and by bicycle.

Action OSC-7.9.D: Reducing Motor Vehicle Emissions.

Expand car-sharing and ride-sharing programs, the use of fuel efficient and electric vehicles, and other measures that reduce emissions from motor vehicles.

Action OSC-7.9.E: Improving Public Transit.

Support increased levels of investment in public transportation service and public transit infrastructure so that a larger share of daily trips may be taken by bus, rapid bus, BART, shuttles, and other modes which result in lower greenhouse gas emissions than passenger automobiles.

Housing Element Goal 53: Affordable Housing Development

Policy 53.02 Housing Proximity to Transit.

To the greatest extent feasible, locate future higher density housing in areas that are served by transit, especially BART and frequent bus service. Transit availability not only achieves regional air quality, congestion management, and greenhouse gas reduction goals, it also reduces household transportation expenses and provides more disposable income for housing. The City should lobby strongly for high-quality, premium AC Transit service along the East 14th Street and San Leandro Boulevard corridors so that bus service remains a viable means of transport.

Policy 53.03 Funding.

Actively pursue and leverage private, non-profit, and public funds to facilitate the development of housing affordable to lower and moderate income households in San Leandro. Provide administrative and technical assistance to affordable housing developers and support the applications of these developers for loans, grants, tax credits, and other financing sources that facilitate affordable housing production in the City.

Action 53.03-A: Applications for Grant Funding.

Continue to pursue all available funding sources for affordable housing construction, including annual applications for federal CDBG and HOME funds, and applications for state funds through the Department of Housing and Community Development.

Action 53.03-B: Support for Non-Profit and For-Profit Affordable Housing Developers.

Continue to provide support and information to non-profit and for-profit developers seeking to create affordable housing in San Leandro, including assistance in applications for Low Income Housing Tax Credits, Mortgage Revenue Bonds, Affordable Housing Program funds, and other funding sources.

Policy 53.06: New Rental Housing

Strongly encourage the development of additional rental housing in the City, including both market rate units and affordable units. It should be recognized that many market rate rentals meet the affordability criteria for moderate income households. Expanded production could increase the supply of workforce housing and address the deficit in housing production for households earning between 60 and 120 percent of the area median income.

Environmental Review



The Parrott Street Apartment multi-family residential building is categorically exempt from the California Environmental Quality Act (CEQA) per Guideline Article 19, Categorical Exemption, Section 15332, In-Fill Development Projects.

### **Board/Commission Review and Actions**

On January 4, 2018, the Board of Zoning Adjustments will consider Site Plan Review approval for the Parrott Street Apartments. The outcome of this meeting is not available as of the writing of this staff report. If there are any significant items to report on this meeting it will be presented by staff at the January 8th San Leandro City Council meeting when this item is considered.

### **Summary of Public Outreach Efforts**

Eden outreached to and held a neighborhood meeting to present the Parrott Street Apartments proposal in June 2017 and five people attended. Also, property owners within 500 feet of the project site were notified of the January 4 Board of Zoning Adjustments meeting.

### **Legal Analysis**

This staff report and related agreements and documents have been reviewed and approved by the City Attorney's Office.

### **Fiscal Impacts**

The City currently has a balance of approximately \$1,300,000 in unencumbered Housing Successor Funds (Fund 168). These funds consist of repayments from the former Redevelopment Agency Housing Set-Aside Fund loans (such as the down payment assistance and owner-occupied housing rehabilitation loan programs as well as prior development loans to nonprofit developers). The use of these funds are designated specifically for affordable housing activities, such as affordable rental housing developments. With the approval of \$1 million loan to Eden, the balance for Fund 168 will be approximately \$300,000.

### **Budget Authority**

Budget authority for the Resolution comes from the City of San Leandro's Housing Successor Funds, which must be used for affordable housing.

## **ATTACHMENTS**

### **Attachment to Staff Report**

- Attachment 1 - Parrott Street Apartments Pro Forma

### **Attachment to Related Legislative Files**

Attached to Resolution:

o Loan Agreement

**PREPARED BY:** Maryann Sargent, Senior Housing Specialist, Community Development Department



**Parrott St. Apartments 4% LIHTC**

<b>Financing Summary</b>		
<b>AFFORDABILITY MIX</b>		
	<b>Units</b>	<b>Net Rent</b>
Extremely Low Income Units @ 20% AMI- studio	9	\$320
Extremely Low Income Units @ 20% AMI- 1 bed	2	\$337
Extremely Low Income Units @ 30% AMI- studio	9	\$502
Extremely Low Income Units @ 30% AMI- 1 bed	3	\$532
Extremely Low Income Units @ 30% AMI- 2 bed	2	\$628
Very Low Income Units @ 50% AMI- studio	4	\$868
Very Low Income Units @ 50% AMI- 1 bed	6	\$924
Very Low Income Units @ 50% AMI- 2 bed	2	\$1,098
Low Income Units @ 60% AMI- 1 bed	11	\$1,119
Low Income Units @ 60% AMI- 2 bed	9	\$1,332
Low-Moderate Income Units @ 80% AMI- 2 bed	4	\$1,801
Manager's Unit (2 BR)	1	
<b>Total</b>	<b>62</b>	
<b>UNIT MIX</b>		
0BR/1BA	22	35%
1BR/1BA	22	35%
2BR/1BA	18	29%
<b>Total</b>	<b>62</b>	
<b>DEVELOPMENT BUDGET</b>		
	<b>Total</b>	<b>Per Unit</b>
Total Land & Improvements	\$3,338,145	\$53,841
Total Design & Consulting	\$1,773,696	\$28,608
Total Construction	\$20,589,266	\$332,085
Total Indirect Costs	\$ 5,552,361	\$89,554
Total Finance & Carry Costs	\$1,845,895	\$29,772
Total TCAC/Syndication	\$140,592	\$2,268
<b>TOTAL DEVELOPMENT COSTS</b>	<b>\$33,239,955</b>	<b>\$536,128</b>
<b>SOURCES OF FINANCING</b>		
	<b>Total</b>	<b>Per Unit</b>
City of San Leandro	\$1,000,000	\$16,129
County A1 (City base allocation)	\$4,000,000	\$64,516
Infill Infrastructure Grant	\$3,146,400	\$50,748
Affordable Housing and Sustainable Communities	\$7,640,596	\$123,235
LIH Tax Credit-LP Capital Contribution	\$14,444,942	\$232,983
Permanent Financing	\$1,627,544	\$26,251
Deferred Developer Fee	\$ 1,380,472	\$22,266
<b>TOTAL SOURCES OF FUNDS</b>	<b>\$33,239,954</b>	<b>\$536,128</b>

<b>Affordable Housing and Sustainable Communities</b>	
<u>Affordable housing</u>	\$7,600,000
<u>Transportation infrastructure</u>	
AC Transit bus	\$1,100,000
Bike lanes	\$1,000,000
Sidewalk and ramp improvements	\$900,000
<u>Transportation-related amenities</u>	
Pedestrian lighting	\$600,000
<b>TOTAL</b>	<b>\$11,200,000</b>

**Parrott St. Apartments 4% LIHTC  
SOURCES AND USES OF FUNDS**

<b>SOURCES of FUNDS</b>	<b>TOTAL</b>	<b>Acq./Predev.</b>	<b>Construction</b>	<b>Permanent</b>	<b>% of Total</b>
City	\$ 1,000,000		\$ 1,000,000	\$ -	3.0%
County	\$ 4,000,000		\$ 4,000,000		12.0%
Infill Infrastructure Grant	\$ 3,146,400		\$ 3,146,400		9.5%
Affordable Housing and Sustainable Communit	\$ 7,640,596	\$ -		\$ 7,640,596	23.0%
LIH Tax Credit-LP Capital Contribution	\$ 14,444,942	\$ -	\$ 600,000	\$ 13,844,942	43.5%
LIH Tax Credit-GP Capital/Non-Priority Deferre	\$ 1,068,745	\$ -	\$ -	\$ 1,068,745	3.2%
Construction Loan			\$ 20,701,986	\$ (20,701,986)	0.0%
Permanent Financing	\$ 1,627,544	\$ -	\$ -	\$ 1,627,544	4.9%
Deferred Developer Fee	\$ 311,727	\$ -	\$ -	\$ 311,727	0.9%
<b>TOTAL SOURCES</b>	<b>\$ 33,239,954</b>	<b>\$ 5,037,094</b>	<b>\$ 24,411,293</b>	<b>\$ 3,791,568</b>	<b>100.00%</b>
<b>USES of FUNDS</b>	<b>TOTAL</b>	<b>Acq./Predev.</b>	<b>Construction</b>	<b>Permanent</b>	<b>Basis Eligible</b>
<b>LAND &amp; IMPROVEMENTS:</b>					
Land Cost	\$ 3,000,000	\$ 3,000,000	\$ -	\$ -	\$ -
Option and Relocation	\$ 308,000	\$ 308,000			
Site Maintenance (i.e. Security, Clean-Up)	\$ 145	\$ 145	\$ -	\$ -	\$ -
Title & Escrow - Land Acquisition	\$ 10,000	\$ 10,000			
Purchaser Legal - Land Acquisition	\$ 20,000	\$ 20,000	\$ -	\$ -	\$ -
<b>Total Land &amp; Improvements</b>	<b>\$ 3,338,145</b>	<b>\$ 3,338,145</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
<b>DESIGN &amp; CONSULTING:</b>					
Architect/landscape architect	\$1,144,686	\$915,749	\$ 228,937	\$ -	\$ 1,144,686
Engineering (civil, joint trench, geotech)	\$ 199,380	\$ 199,380	\$ -	\$ -	\$ 199,380
Construction Management Services	\$ 207,400		\$ 207,400	\$ -	\$ 207,400
Environmental	\$ 57,230	\$ 30,000	\$ 27,230	\$ -	\$ 57,230
Testing & Inspection	\$ 165,000	\$ -	\$ 165,000	\$ -	\$ 165,000
<b>Total Design &amp; Consulting</b>	<b>\$ 1,773,696</b>	<b>\$ 1,145,129</b>	<b>\$ 628,567</b>	<b>\$ -</b>	<b>\$ 1,773,696</b>
<b>CONSTRUCTION:</b>					
Unit Construction	\$ 15,739,361	\$ -	\$ 15,739,361	\$ -	\$ 15,739,361
Solar PV/Thermal	\$ 370,000	\$ -	\$ 370,000	\$ -	\$ 370,000
General Requirements	\$ 1,078,917	\$ -	\$ 1,078,917	\$ -	\$ 1,078,917
Contractors Bond	\$ 210,263	\$ -	\$ 210,263	\$ -	\$ 210,263
Contractor Overhead & Profit	\$ 760,720	\$ -	\$ 760,720	\$ -	\$ 760,720
Pricing Escalation/Design Contingency	\$ 1,361,945	\$ -	\$ 1,361,945	\$ -	\$ 1,361,945
Furniture, Fixtures & Equipment (common are	\$ 92,000	\$ -	\$ 92,000	\$ -	\$ 92,000
Construction Contingency	\$ 976,060	\$ -	\$ 976,060	\$ -	\$ 976,060
<b>Total Construction</b>	<b>\$ 20,589,266</b>	<b>\$ -</b>	<b>\$ 20,589,266</b>	<b>\$ -</b>	<b>\$ 20,589,266</b>
<b>INDIRECT COSTS:</b>					
Permits & Fees	\$ 1,240,000	\$ 62,000	\$ 1,178,000	\$ -	\$ 1,240,000
Borrower Legal Fees - Constr. Loan Closing	\$ 40,000	\$ -	\$ 40,000	\$ -	\$ 40,000
Borrower Legal Fees - Perm. Loan Closing	\$ 20,000	\$ -	\$ -	\$ 20,000	
Borrower Legal Fees - Organization	\$ 6,000	\$ 6,000	\$ -	\$ -	
Audit Fees	\$ 20,000	\$ -	\$ -	\$ 20,000	\$ -
Sponsor Administration	\$ 3,780,472	\$ -	\$ 300,000	\$ 3,480,472	\$ 3,780,472
Appraisal	\$ 5,000	\$ 5,000	\$ -	\$ -	\$ 5,000
Market Study	\$ 5,500	\$ 5,500	\$ -	\$ -	\$ 5,500
Rent/Up Marketing	\$ 77,000	\$ -	\$ 77,000	\$ -	\$ 77,000
Reserves:					
Operating Reserve	\$ 274,013	\$ -	\$ -	\$ 274,013	\$ 274,013
Soft Costs Contingency	\$ 84,376	\$ 35,000	\$ 49,376	\$ -	\$ 84,376
<b>Total Indirect Costs</b>	<b>\$ 5,552,361</b>	<b>\$ 113,500</b>	<b>\$ 1,644,376</b>	<b>\$ 3,794,486</b>	<b>\$ 5,506,361</b>
<b>FINANCE &amp; CARRYING COSTS:</b>					
Liability/COC Insurance	\$ 122,157	\$ 100	\$ 122,057	\$ -	\$ 122,157
Real Estate Taxes	\$ 78,568	\$ 110,088	\$ (31,520)	\$ -	\$ 78,568
Predevelopment Loan Interest	\$ 151,113	\$ 151,113	\$ -	\$ -	\$ 151,113
Costs of Issuance (Bonds)	\$ 247,160	\$ -	\$ 247,160	\$ -	\$ -
Construction Loan Fee	\$ 103,510	\$ -	\$ 103,510	\$ -	\$ 103,510
Construction Lender Costs (appraisal, DD...)	\$ 40,000	\$ -	\$ 40,000	\$ -	\$ 40,000
Construction Lender Legal	\$ 45,000	\$ -	\$ 45,000	\$ -	\$ 45,000
Construction Loan Interest during construction	\$ 517,550	\$ -	\$ 517,550	\$ -	\$ 517,550
Construction Loan Interest post construction	\$ 388,162		\$ 388,162	\$ -	
Soft Lender Legal+Fees	\$ 20,000	\$ -	\$ 20,000	\$ -	\$ 20,000
Perm Loan Fee	\$ 26,275	\$ -	\$ 26,275	\$ -	
Perm Lender Costs (appraisal, DD...)	\$ 20,000	\$ -	\$ 20,000	\$ -	
Perm Lender Legal	\$ 35,000	\$ -	\$ 35,000	\$ -	
Title & Escrow - Construction Loan	\$ 30,000	\$ -	\$ 30,000	\$ -	\$ 30,000
Title & Escrow - Permanent Loan	\$ 15,000	\$ -	\$ -	\$ 15,000	
Lender Inspections	\$ 6,400	\$ 8,000	\$ (1,600)	\$ -	\$ 6,400
<b>Total Finance &amp; Carry Costs</b>	<b>\$ 1,845,895</b>	<b>\$ 269,301</b>	<b>\$ 1,561,594</b>	<b>\$ 15,000</b>	<b>\$ 1,114,297</b>
<b>TAX CREDITS/SYNDICATION EXPENSES:</b>					
TCAC Application Fee	\$ 2,000	\$ 2,000	\$ -	\$ -	\$ -
TCAC Allocation/Reservation Fee	\$ 11,982	\$ 11,982	\$ -	\$ -	\$ -
TCAC Performance Deposit	\$ 47,927	\$ 47,927	\$ -	\$ -	\$ -
TCAC Performance Deposit Refund	\$ (47,927)	\$ -	\$ -	\$ (47,927)	\$ -
TCAC Monitoring Fee	\$ 25,010	\$ -	\$ -	\$ 25,010	\$ -
CDLAC Application Fee	\$ 600	\$ 600			
CDLAC Performance Deposit	\$ 103,510	\$ 103,510	\$ -	\$ -	\$ -
CDLAC Performance Deposit Refund	\$ (103,510)	\$ -	\$ (103,510)	\$ -	\$ -
Syndication Consultant	\$ 45,000	\$ 5,000	\$ 35,000	\$ 5,000	\$ -
Syndication GP Legal Fees	\$ 56,000		\$ 56,000	\$ -	\$ -
<b>Total TCAC/Syndication</b>	<b>\$ 140,592</b>	<b>\$ 171,019</b>	<b>\$ (12,510)</b>	<b>\$ (17,917)</b>	<b>\$ -</b>
<b>TOTAL DEVELOPMENT EXPENSES</b>	<b>\$ 33,239,955</b>	<b>\$ 5,037,094</b>	<b>\$ 24,411,293</b>	<b>\$ 3,791,568</b>	<b>\$ 28,983,620</b>

# Parrott St. Apartments 4% LIHTC

## TAX CREDIT CALCULATION

Calculation / Type of Credit		Fed.+DDA Adj.	Federal	State	Blended Rate	Max TC Option
Total Eligible Basis	93%	28,983,620	28,983,620	28,983,620		<b>Federal Only</b>
Adjusted Threshold Basis Limit		39,564,248	39,564,248	39,564,248		9,216,791
Voluntary Reduction		0	0	0		
Unadjusted Eligible Basis (lesser of above)		28,983,620	28,983,620	28,983,620		<b>Fed + State Separate</b>
DDA or QCT adjustment	x	<u>1.30</u>	<u>1.00</u>	<u>1.00</u>		11,681,349
Adjusted Eligible Basis	=	37,678,707	28,983,620	28,983,620		
Applicable Fraction	x	93%	93%	93%		
Qualified Basis	=	35,207,972	27,083,055	27,083,055		
Tax Credit Rate	0	3.18%	3.18%	13%		<b>Fed + State Blended</b>
Amount of Annual Tax Credits (CA 1st 3 yrs)		1,198,183	921,679	1,198,183		11,681,349
Number of Years of Tax Credits (CA 4th yr)		10	10	2,322,614		
Total Tax Credits		11,981,829	9,216,791	3,520,797	12,737,588	<b>Fed + DDA Adjustment</b>
<u>Tax Credit Factor</u>		<u>1.0000</u>	<u>1.0000</u>	<u>0.7000</u>	<u>0.9171</u>	11,981,829
Estimated Syndication Proceeds		<b>11,981,829</b>	<b>9,216,791</b>	<b>2,464,558</b>	<b>11,681,349</b>	
			1,273,759			14,446,387
<b>Tax Credit Syndication Proceeds</b>						<b>14,444,942</b>

GP Contribution

1,444

Amount of Eligible Basis Forgo

\$ - \$ -

Unadjusted Basis Limits				2017 Alameda Threshold Basis Limits (diff)	
Unit Type	Basis/Unit	No. Units	Total	Basis/Unit 4%	Basis/Unit 9%
Studio	228,354	22	5,023,788	228,354	203,046
1 Bedroom	263,290	22	5,792,380	263,290	234,110
2 Bedroom	317,600	17	5,399,200	317,600	282,400
3 Bedroom	406,528	0	0	406,528	361,472
4 Bedroom	452,898	0	0	452,898	402,702
<b>Unadjusted Threshold Basis Limit</b>		<b>61</b>	<b>16,215,368</b>		

Adjustments	*NOTE: Asterisked items cannot total more than 39%		
Bonds, 55 yr, % units 36-50% AMI	19.7%	3,189,908	1% for every 1% of units between 36- 50% AMI
Bonds, 55 yr, % units 35% AMI or less	82.0%	13,291,285	2% for every 1% of units at 35% AMI or less
Prevailing wage or PLA*	20%	3,243,074	20% for prevailing wage; 25% for PLAs
Structured parking*	7%	1,135,076	
Impact Fees	equal to actual amt	868,000	
Elevator*	10%	1,621,537	At least 95% of upper floor units are serviced by elevator
221(d)(3) Maximum Eligible Basis		<b>39,564,248</b>	
<b>Adjusted Threshold Basis Limit</b>		<b>\$39,564,248</b>	

**Parrott St. Apartments 4% LIHTC**  
**CASH FLOW PROJECTION**

Year	Infl./Vacancy	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Calendar	Factors	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034
Tenant Payments	2.5%	643,644	659,735	676,228	693,134	710,463	728,224	746,430	765,090	784,218	803,823	823,919	844,517	865,630	887,270	909,452
Other Income	1.0%	6,696	6,763	6,831	6,899	6,968	7,038	7,108	7,179	7,251	7,323	7,397	7,471	7,545	7,621	7,697
Commercial/Childcare Income	1.0%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Section 8 Income	2.0%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Scheduled Gross Income</b>		<b>650,340</b>	<b>666,498</b>	<b>683,059</b>	<b>700,033</b>	<b>717,430</b>	<b>735,262</b>	<b>753,538</b>	<b>772,269</b>	<b>791,469</b>	<b>811,146</b>	<b>831,315</b>	<b>851,987</b>	<b>873,175</b>	<b>894,891</b>	<b>917,149</b>
Residential Vacancy	7.5%	(48,776)	(49,987)	(51,229)	(52,502)	(53,807)	(55,145)	(56,515)	(57,920)	(59,360)	(60,836)	(62,349)	(63,899)	(65,488)	(67,117)	(68,786)
Section 8 Vacancy	7.5%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Commercial Vacancy	50.0%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Effective Gross Income</b>		<b>601,565</b>	<b>616,511</b>	<b>631,830</b>	<b>647,531</b>	<b>663,623</b>	<b>680,117</b>	<b>697,022</b>	<b>714,349</b>	<b>732,108</b>	<b>750,310</b>	<b>768,967</b>	<b>788,088</b>	<b>807,687</b>	<b>827,774</b>	<b>848,363</b>
Operating Expenses for all units	3.5%	(392,200)	(405,927)	(420,134)	(434,839)	(450,059)	(465,811)	(482,114)	(498,988)	(516,453)	(534,528)	(553,237)	(572,600)	(592,641)	(613,384)	(634,852)
Issuer Monitoring Fee and County Monitor	0.0%	(7,734)	(7,734)	(7,734)	(7,734)	(7,734)	(7,734)	(7,734)	(7,734)	(7,734)	(7,734)	(7,734)	(7,734)	(7,734)	(7,734)	(7,734)
Replacement Reserves	1.0%	(37,200)	(37,572)	(37,948)	(38,327)	(38,710)	(39,098)	(39,489)	(39,883)	(40,282)	(40,685)	(41,092)	(41,503)	(41,918)	(42,337)	(42,760)
<b>Net Operating Income</b>		<b>164,430</b>	<b>165,277</b>	<b>166,013</b>	<b>166,630</b>	<b>167,120</b>	<b>167,474</b>	<b>167,685</b>	<b>167,743</b>	<b>167,639</b>	<b>167,363</b>	<b>166,903</b>	<b>166,251</b>	<b>165,393</b>	<b>164,319</b>	<b>163,016</b>
Debt Service - 1st Mortgage		(110,892)	(110,892)	(110,892)	(110,892)	(110,892)	(110,892)	(110,892)	(110,892)	(110,892)	(110,892)	(110,892)	(110,892)	(110,892)	(110,892)	(110,892)
Debt Service - 2nd Mortgage		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Debt Service - AHSC	0.42%	(32,091)	(32,091)	(32,091)	(32,091)	(32,091)	(32,091)	(32,091)	(32,091)	(32,091)	(32,091)	(32,091)	(32,091)	(32,091)	(32,091)	(32,091)
<b>Net Available Cash</b>		<b>21,447</b>	<b>22,295</b>	<b>23,030</b>	<b>23,647</b>	<b>24,137</b>	<b>24,492</b>	<b>24,703</b>	<b>24,761</b>	<b>24,657</b>	<b>24,380</b>	<b>23,921</b>	<b>23,268</b>	<b>22,411</b>	<b>21,336</b>	<b>20,033</b>
Debt Coverage Ratio		1.15	1.16	1.16	1.17	1.17	1.17	1.17	1.17	1.17	1.17	1.17	1.16	1.16	1.15	1.14
Debt Coverage Ratio (w/o section 8)																
Asset Management Fee	\$ 5,000	(5,000)	(5,175)	(5,356)	(5,544)	(5,738)	(5,938)	(6,146)	(6,361)	(6,584)	(6,814)	(7,053)	(7,300)	(7,555)	(7,820)	(8,093)
Deposit to Transition Reserve	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Deferred Developer Fee	\$ 211,727	(16,447)	(17,120)	(17,674)	(18,104)	(18,399)	(18,553)	(18,556)	(18,399)	(18,072)	(17,565)	(16,868)	(15,968)	(14,855)	0	0
Partnership Management Fee	\$ 25,000	0	0	0	0	0	0	0	0	0	0	0	0	0	(13,517)	(11,940)
<b>Available Cash Flow</b>		<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>



# City of San Leandro

Meeting Date: January 8, 2018

## Resolution - Council

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**File Number:** 17-728

**Agenda Section:** BUSINESS ITEMS

**Agenda Number:**

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Cynthia Battenberg  
Community Development Director

**FINANCE REVIEW:** David Baum  
Finance Director

**TITLE:** RESOLUTION of the City Council of the City of San Leandro Approving the Provision of a Loan and a Portion of the City's Measure A-1 Bond Allocation to Eden Housing to Support the Development of an Affordable Housing Project and Authorizing the City Manager to Execute Related Documents

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**WHEREAS**, Eden Housing, a nonprofit housing developer, is proposing to develop a 62-unit affordable rental housing project ("Project") located at 1604 and 1642 San Leandro Boulevard (the "Property"); and

**WHEREAS**, the Project will consist of 22 studio apartments, 22 one-bedroom apartments, and 18 two-bedroom apartments, of which 57 units will be rented at an affordable housing cost to low and very-low income households; and

**WHEREAS**, in order to make the Project financially feasible, Eden Housing is leveraging various funding sources, and is requesting Five Million Dollars (\$5,000,000) from the City to help finance the Project; and

**WHEREAS**, Eden Housing has requested, and City has agreed to provide, a loan to Eden Housing in the amount of One Million Dollars (\$1,000,000) with annual interest-only payments at 3% interest with a final maturity in year 55 (the "Loan") to assist in the development of the Project; and

**WHEREAS**, the Loan is comprised of funds held by the City as the Housing Successor to the former Redevelopment Agency of the City of San Leandro; and

**WHEREAS**, in exchange for receipt of the Loan, Eden Housing has agreed to enter into an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (the "Regulatory Agreement"), which would be recorded against the Property and which would require

Project rents to be affordable to low and very low-income households for a term of not less than 55 years; and

**WHEREAS**, Eden Housing shall execute an agreement with the City establishing the terms and conditions of the Loan (the “Loan Agreement”), and shall concurrently execute a secured promissory note (the “Note”) in the amount of the Loan and a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (“Deed of Trust”), which shall provide the City with a security interest in the Property and the Project; and

**WHEREAS**, the Loan Agreement, Regulatory Agreement, Note, and Deed of Trust are collectively referred to as the “Loan Documents”; and

**WHEREAS**, in November 2016, Alameda County Voters adopted an affordable housing bond measure, commonly known as Measure A-1; and

**WHEREAS**, the City’s allocation of A-1 bond proceeds is approximately Eleven Million Nine Hundred Thousand Dollars (\$11,900,000); and

**WHEREAS**, the City previously provided One Million Seven Hundred Thousand Dollars (\$1,700,000) of A-1 bond proceeds for the San Leandro Senior Project (Marea Alta Phase 2); and

**WHEREAS**, in addition to the Loan, Eden Housing is requesting, and the City has agreed to provide, Four Million Dollars (\$4,000,000) in funds from the City’s allocation of Measure A-1 Bond Funds (the “Measure A-1 Bond Support”); and

**WHEREAS**, the Alameda County Board of Supervisors must approve the award of the Measure A-1 Bond Support to Eden Housing; and

**WHEREAS**, if the Board of Supervisors approves the award of Measure A-1 Bond Support to Eden Housing, after related bond issuance fees are deducted, the City’s allocation of Measure A-1 funds will be approximately Five Million Dollars (\$5,000,000); and

**WHEREAS**, the City Council desires to approve the Loan and Measure A-1 Bond Support to Eden Housing in order to make the project financially feasible and assist with the creation of new affordable housing in the community.

**NOW, THEREFORE** the City Council of the City of San Leandro does RESOLVE as follows:

1. The City Council hereby finds and determines that the above recitals are true and correct and have served as the basis, in part, for the findings and actions of the City Council set forth below.
2. The City Council hereby approves the Loan Agreement between the City and Eden Housing substantially in the form on file with the City Clerk, with such changes as deemed necessary by the City Attorney and City Manager.
3. The City Council hereby approves the allocation of Measure A-1 Bond Support to Eden



Housing to assist with the development of the Project; and

4. The City Manager is authorized to execute the Loan Agreement and related Loan Documents, in a form approved by the City Attorney, and to take such further actions as may be necessary or appropriate to carry out this Resolution, including executing such documents as are necessary for the allocation of Measure A-1 Bond Support.

**LOAN AGREEMENT**

**by and between**

**THE CITY OF SAN LEANDRO,  
a California charter city**

**and**

**EDEN HOUSING,  
a California non-profit public benefit corporation**

\_\_\_\_\_, 2018

Exhibits

- A Legal Description of Property
- B Form of Memorandum of Loan Agreement
- C Form of Certificate of Completion
- D Form of Regulatory Agreement
- E Form of Promissory Note
- F Form of Deed of Trust
- G Financing Plan

THIS LOAN AGREEMENT (this “**Agreement**”) is entered into effective as of \_\_\_\_\_, 2018 (“**Effective Date**”) by and between the City of San Leandro, a California charter city (“**City**”) and Eden Housing, a California non-profit public benefit corporation (“**Developer**”). City and Developer are hereinafter collectively referred to as the “**Parties.**”

## RECITALS

A. Developer owns, or has the contractual right to purchase, that certain real property located at 1604 and 1642 San Leandro Boulevard (the “**Property**”), known as Assessor’s Parcel Numbers 075-0028-001-02 and 075-0028-011-02, as more particularly described on Exhibit A attached hereto and incorporated herein by this reference.

B. Developer has proposed to develop a 62-unit multifamily residential apartment building consisting of 22 studio apartments, 22 one-bedroom apartments and 18 two-bedroom apartments, of which 57 units will be rented at an affordable housing cost to low and very-low income households (the “**Project**”).

C. Developer has requested, and City has agreed, to provide a loan to Developer in the amount of One Million Dollars (\$1,000,000) (the “**Loan**”) to assist in the development of the Project pursuant to the terms and conditions set forth herein.

D. The purpose of this Agreement is to effectuate the Redevelopment Plan by providing for the development of the Property as more particularly set forth herein. The City has determined that (i) development of the Property pursuant to this Agreement will be of benefit to the City by providing affordable housing in the City, and (ii) the loan is necessary to make the Project economically feasible and affordable to low and very low-income households.

E. A material inducement to City to enter into this Agreement is the agreement by Developer to develop the Property within the time periods specified herein and in accordance with the provisions hereof, and the City would be unwilling to enter into this Agreement in the absence of an enforceable commitment by Developer to complete the Project in accordance with such provisions and within such time periods.

F. Concurrently herewith: (i) Developer shall execute a secured promissory note (the “**Note**”) in the amount of the Loan and a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (“**Deed of Trust**”), which shall provide City with a security interest in the Property and the Project, and (ii) Developer and City shall execute a an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (the “**Regulatory Agreement**”), which shall be recorded against the Property and which shall require Project rents to be affordable to low and very low-income households for a term of not less than 55 years. The Note, the Regulatory Agreement and Deed of Trust are collectively hereinafter referred to as the “**City Documents.**”

NOW, THEREFORE, in consideration of the mutual covenants contained herein and good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

## ARTICLE I

### DEFINITIONS

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 “**Certificate of Completion**” is defined in Section 3.15.
- 1.2 “**City Documents**” is defined in Recital F.
- 1.3 “**Claims**” is defined in Section 3.17.
- 1.4 “**Conditions of Approval**” is defined in Section 3.2.
- 1.5 “**Construction Plans**” is defined in Section 3.11.
- 1.6 “**Environmental Laws**” is defined in Section 9.4.
- 1.7 “**Hazardous Materials**” is defined in Section 9.3.
- 1.8 “**Improvements**” is defined in Section 3.9.
- 1.9 “**Indemnitees**” is defined in Section 3.17.
- 1.10 “**Loan**” is defined in Recital C and Article 4.
- 1.11 “**Note**” is defined in Article 4.
- 1.12 “**Project**” is defined in Recital B and further described in Section 3.2.
- 1.13 “**Regulatory Agreement**” is defined in Recital F.

## ARTICLE II

### REPRESENTATIONS; EFFECTIVE DATE AND TERM

2.1 Developer's Representations. Developer represents and warrants as follows, and Developer covenants that until the expiration or earlier termination of this Agreement, upon

learning of any fact or condition which would cause any of the warranties and representations in this Section 2.1 not to be true, Developer shall immediately give written notice of such fact or condition to City. Developer acknowledges that City shall rely upon Developer's representations made herein notwithstanding any investigation made by or on behalf of City.

(i) Authority. Developer is a non-profit benefit corporation duly organized and in good standing under the laws of the State of California. Developer has the full right, power and authority to undertake all obligations of Developer as provided herein, and Developer's execution, performance and delivery of this Agreement, the Regulatory Agreement, the City Documents have been duly authorized by all requisite actions.

(ii) No Conflict. Developer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer is a party or by which it is bound.

(iii) No Litigation or Other Proceeding. No litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of Developer to perform its obligations under this Agreement.

(iv) No Developer Bankruptcy. Developer is not the subject of a bankruptcy or insolvency proceeding.

2.2 City Representations. City represents and warrants to Developer and covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.2 not to be true, City shall immediately give written notice of such fact or condition to Developer. City acknowledges that Developer shall rely upon City's representations made herein notwithstanding any investigation made by or on behalf of Developer.

(i) Authority. City is a California charter city duly organized and in good standing under the laws of the State of California. City has the full right, power and authority to undertake all of the respective obligations as provided herein, and the execution, performance and delivery of this Agreement by City has been duly authorized by all requisite actions on the part of each such entity. The persons executing this Agreement on behalf of City has been duly authorized to do so. This Agreement constitutes a valid and binding obligation of City.

(ii) No Conflict. City's execution, delivery and performance of their respective obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which City is a party or by which either is bound.

(iii) No Litigation or Other Proceeding. No litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of City to perform their obligations under this Agreement.

(iv) No Bankruptcy. City is not the subject of a bankruptcy or insolvency proceeding.

2.3 Effective Date; Memorandum. The obligations of Developer and City hereunder shall be effective as of the Effective Date. Concurrently with the execution of this Agreement, the Parties shall execute a Memorandum of this Agreement substantially in the form attached hereto as Exhibit B which shall be recorded in the Official Records of Alameda County (“**Official Records**”).

### ARTICLE III

#### DEVELOPMENT OF THE PROJECT

3.1 The Property. Developer represents and warrants that as of the Effective Date: (i) Developer possesses or has the contractual right to acquire fee simple title to the Property, and (ii) to the best knowledge of Developer after reasonable inquiry, the Property is subject to no covenant, condition, restriction or agreement that would hinder or prevent Developer’s performance of its obligations under this Agreement, the Regulatory Agreement, and the City Documents. If at any time the foregoing statements become untrue, the City shall have the right to terminate this Agreement upon written notice to Developer.

3.2 Scope of Development. Developer shall develop the Project on the Property in accordance with the terms and conditions of this Agreement, the Regulatory Agreement, the City Documents and in compliance with the terms and conditions of all approvals, entitlements and permits that the City or any other governmental body or agency with jurisdiction over the Project or the Property has granted or issued as of the date hereof or may hereafter grant or issue in connection with development of the Project, including without limitation, all mitigation measures imposed in connection with environmental review of the Property and 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**”).

The Project consists of the design, development and construction on the Property of a 62-unit five-story multifamily residential project, consisting of 22 studio apartments, 22 one-bedroom apartments, and 18 two-bedroom apartments together with a community room, computer learning center, outdoor courtyard with garden, management office, on-site resident services, on-site property manager, laundry facilities and covered bike storage. All but five of the two-bedroom apartments will be affordable to Low Income and Very Low Income households.

3.3 Affordable Housing. Developer covenants and agrees for itself, its successors and assigns that thirty (30) of the residential units developed within the Project shall be occupied by Low Income or Very Low Income households and rented at an affordable rent to households of low and very low-income in accordance with the terms hereof and the Regulatory Agreement which the Parties shall execute substantially in the form attached hereto as Exhibit D concurrently with the execution of this Agreement, and which shall be recorded in the Official Records on the date that Developer acquires the Property.

3.4 Project Approvals. Developer acknowledges and agrees that execution of this Agreement by City does not constitute approval for the purpose of the issuance of building permits for the construction of the Project, does not limit in any manner the discretion of City in such approval process, and does not relieve Developer from the obligation to obtain all necessary entitlements, approvals, and permits for the construction of the Project, 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 of the Project pursuant to CEQA and the National Environmental Policy Act (NEPA).

Developer covenants that it shall: (i) obtain all necessary permits and approvals which may be required by City and any other governmental agency having jurisdiction over the construction of the Project or the development of the Property, (ii) comply with all Conditions of Approval, (iii) comply with all mitigation measures, if any, imposed in connection with any environmental review of the Property or the Project, and (iv) not commence construction of the Project prior to issuance of building permits.

3.5 Fees. Developer shall be solely responsible for, and shall promptly pay when due, all customary and usual fees and charges of City in connection with obtaining building permits and other approvals for the Project, including without limitation, those related 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 or the development of the Property.

3.6 Development Schedule. Developer shall commence and complete construction of the Project and shall satisfy all other obligations of Developer under this Agreement within the time periods set forth herein, as such time periods may be extended upon the mutual written consent of the Parties. Developer shall commence construction of the Project by the later of (i) thirty (30) days following receipt of all approvals and financing for the Project, or (ii) no later than the date required for the commencement of construction pursuant to Low-Income Housing Tax Credit ("LIHTC") program requirements if the Project is financed in part by LIHTC, and shall diligently prosecute to completion the construction of the Project in order to allow City to issue a final certificate of occupancy for the Project within twenty-four (24) months following commencement of construction. Developer's failure to commence or complete construction of the Project in accordance with the foregoing schedule as such may be amended by the written consent of the Parties shall constitute a default hereunder.

3.7 Cost of Acquisition and Construction. Except as expressly set forth herein, Developer shall be solely responsible for all direct and indirect costs and expenses incurred in connection with the acquisition of the Property, the design, development and construction of the Project and compliance with the Conditions of Approval, including without limitation the installation and construction of all off-site or on-site improvements required by City in connection therewith, and none of such costs and expenses shall be the obligation of the City.

3.8 Rights of Access; Books and Records. For the purpose of ensuring that the Project is developed in compliance with this Agreement, Developer shall permit representatives



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

3.9 City Disclaimer. Developer acknowledges that the City is under no obligation, and neither City undertakes or assumes any responsibility or duty to Developer or to any third party, to in any manner review, supervise, or inspect the progress of construction or the operation of the Project. Developer 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 City is solely for the purpose of determining whether Developer is properly discharging its obligations under this Agreement, and shall not be relied upon by Developer or any third party as a warranty or representation by the City as to the quality of the design or construction of the improvements constructed on the Property ("**Improvements**") or otherwise.

3.10 Financing Plan. As set forth in the attached Exhibit\_\_\_, Developer has provided City with a preliminary financing plan for the Project ("**Financing Plan**") which describes (i) the estimated costs of Project development, including acquisition costs, and hard and soft construction costs, (ii) an operating pro forma which describes projected revenue and expenses for the Project, and (iii) identification of sources of construction and permanent financing. Developer has, or anticipates that it will, submit an application to the California Tax Credit Allocation Committee ("**TCAC**") for a preliminary tax credit reservation not later than the first funding round of 2019. If Developer, using its good faith best efforts, does not receive a TCAC Preliminary Reservation following Developer's initial application, Developer shall have the right to reapply for TCAC funding over the next two years through the last funding round of 2020.

Not later than sixty (60) days prior to the commencement of construction (see Section 3.6) Developer shall provide evidence to City that all sources of funds for Project construction and permanent financing have been firmly committed by Developer, equity investors or lending institutions, subject only to commercially reasonable conditions.

3.11 Construction Plans. Developer shall submit to City's Building Department detailed construction plans for the Project (the "**Construction Plans**"). As used herein "**Construction Plans**" mean all construction documents upon which Developer and Developer's contractors shall rely in building the Project and developing the Property (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 shall be based upon the scope of development set forth herein and upon the development approvals issued by the City for the Project, and shall not materially deviate therefrom without the express written consent of City.

3.12 Construction Pursuant to Plans. Developer shall construct 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 development of the Project. Developer 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.

3.13 Change in Construction Plans. If Developer desires to make any material change in the approved Construction Plans, Developer shall submit the proposed change in writing to the City 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. The Parties shall meet in good faith to discuss the changes if the City propose to reject the changes. 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 design, function, use, or amenities of the Project as shown on the latest approved Construction Plans.

3.14 Defects in Plans. City shall not be responsible to Developer 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. Developer shall indemnify, defend (with counsel approved by City) and hold harmless the Indemnitees (defined in Section 3.17 below) 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. Developer's indemnification obligations set forth in this Section shall survive the expiration or earlier termination of this Agreement and the recordation of a Certificate of Completion. It is further agreed that City do not, and shall not, waive any rights against Developer which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Developer's deposit with City of any of the insurance policies described in this Agreement. Developer's indemnification obligations pursuant to this Section shall not extend to Claims arising due to the gross negligence or willful misconduct of the Indemnitees.

3.15 Certificate of Completion for Project. Promptly after completion of construction of the Project, issuance of a final Certificate of Occupancy by the City and the written request of Developer, the City will provide an instrument ("**Certificate of Completion**") so certifying. The Certificate of Completion shall be conclusive evidence that Developer has satisfied its obligations regarding the development of the Property.

The Certificate of Completion shall be issued substantially in the form attached hereto as Exhibit C, and at Developer's option, shall be recorded in the Official Records. The Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a deed of trust or mortgage securing money loaned to finance the Project or any part thereof and shall not be deemed a notice of completion under the California

Civil Code, nor shall such Certificate provide evidence that Developer has satisfied any obligation that survives the expiration of this Agreement, including without limitation, Developer's obligations pursuant to the Regulatory Agreement.

3.16 Equal Opportunity. During the construction of the Project, there shall be no discrimination on the basis of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged in construction of the Project, and Developer shall direct its contractors and subcontractors to refrain from discrimination on such basis.

3.17 Prevailing Wage Requirements. To the extent, and if, required by applicable federal and state laws, rules and regulations, Developer and its contractors and agents shall comply with California Labor Code Section 1720 *et seq.* and applicable federal labor laws and standards, and the regulations adopted pursuant thereto ("**Prevailing Wage Laws**"), and shall be responsible for carrying out the requirements of such provisions. Developer shall submit to City a plan for monitoring payment of prevailing wages and shall implement such plan at Developer's expense.

Developer shall indemnify, defend (with counsel approved by City) and hold the City, and its respective elected and appointed officers, officials, employees, agents, consultants, and contractors (collectively, the "**Indemnitees**") harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (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 payment or requirement of payment of prevailing wages or the requirement of competitive bidding in the construction of the Project, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to the Prevailing Wage Laws, or any act or omission of Developer related to this Agreement with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that City do not and shall not waive any rights against Developer which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Developer's deposit with City of any of the insurance policies described in this Agreement. The provisions of this Section 3.17 shall survive the expiration or earlier termination of this Agreement and the issuance of a Certificate of Completion for the Project. Developer's indemnification obligations under this Section 3.17 shall not apply to any Claim which arises as a result of an Indemnitee's gross negligence or willful misconduct.

3.18 Compliance with Laws. Developer shall carry out and shall cause its contractors to carry out the construction of the Project in conformity with all applicable federal, state and local laws, rules, ordinances and regulations, including without limitation, all applicable federal and state labor laws and standards, applicable provisions of the California Public Contracts Code, 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.*

3.19 Liens and Stop Notices. Until the expiration of the term of the Regulatory Agreement and full repayment of the Loan, Developer 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 Developer. If a claim of a lien or stop notice is given or recorded affecting the Project, Developer shall within thirty (30) 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 provide other assurance satisfactory to City that the claim of lien or stop notice will be paid or discharged.

3.20 Right of City to Satisfy Liens on the Property. If Developer fails to satisfy or discharge any lien or stop notice on the Property pursuant to Section 3.19 above, the City shall have the right, but not the obligation, to satisfy any such liens or stop notices at Developer's expense and without further notice to Developer. In such event Developer shall be liable for and shall immediately reimburse City for such paid lien or stop notice. Alternatively, the City may require Developer to immediately deposit with City the amount necessary to satisfy such lien or claim pending resolution thereof. The City may use such deposit to satisfy any claim or lien that is adversely determined against Developer. Developer shall file a valid notice of cessation or notice of completion upon cessation of construction of the Improvements 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 or the Improvements. The City may (but has no obligation to) record any notices of completion or cessation of labor, or any other notice that the City deems necessary or desirable to protect its interest in the Property and the Improvements.

3.21 Insurance Requirements. Developer shall maintain and shall cause its contractors to maintain all applicable insurance coverage specified in Article XI.

3.22 Performance and Payment Bond(s).

(a) Prior to commencement of construction of the Project, Developer shall deliver to the City 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.

(b) In lieu of such performance and payment bonds, Developer may submit evidence satisfactory to the City of the Developer'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 City required for any withdrawal, or a completion guaranty in a form and from a guarantor acceptable to City. Such evidence must be submitted in approvable form in sufficient time to allow the City to review and approve the information within prior to the scheduled construction start date.

## ARTICLE IV

### CITY FINANCIAL ASSISTANCE

4.1 Loan. Using funds from the City's Housing Successor fund, the City shall provide a loan in the amount of One Million Dollars (\$1,000,000) (the "**Loan**") to Developer upon the terms and conditions and for the purposes set forth in this Agreement. The Loan shall be evidenced by a promissory note (the "**Note**") substantially in the form attached hereto as Exhibit E, and shall be secured by a deed of trust (the "**Deed of Trust**") executed by Developer as Trustor substantially in the form attached hereto as Exhibit F and recorded against the Property subordinate only to such liens as City shall approve in writing. The outstanding principal balance of the Note will accrue [three percent (3%)] simple annual interest commencing upon the date of disbursement.

Provided that Developer has complied with all conditions precedent to disbursement of the Loan set forth in Section 4.5, the proceeds of the Loan ("**Loan Proceeds**") shall be disbursed in accordance with Section 4.4 hereof. The Parties agree that City shall disburse Loan Proceeds only for the purposes set forth in Section 4.4.

4.2 Payment Dates; Maturity Date. Annual payments shall be due and payable on a residual receipts basis in accordance with the formula set forth in the Note. The entire outstanding principal balance of the Loan together with accrued interest and all other sums due under the City Documents shall be payable in full on the fifty-fifth (55<sup>th</sup>) anniversary of the date that City issues the final certificate of occupancy for the Project.

4.3 Security. As security for repayment of the Note, Developer shall execute the Deed of Trust pursuant to which City shall be provided a lien against the Property and the Improvements. The Deed of Trust shall be recorded in the Official Records on the date that Developer acquires the Property. The Deed of Trust may be subordinated only to such liens and subject only to such title exceptions as City may approve in writing. The City acknowledges that Developer's construction and permanent lender(s) may require the subordination of the Deed of Trust. Developer acknowledges that the Deed of Trust secures performance of Developer's obligations pursuant to this Agreement and the Regulatory Agreement which may survive repayment of the Note, and that the Deed of Trust shall not be reconveyed prior to Developer's satisfaction of such obligations.

4.4 Use and Disbursement of Proceeds. The Loan Proceeds shall be used solely to fund acquisition of the Property and/or construction of the Project, and closing, escrow and other costs approved by the City.

4.5 Conditions to Disbursement of Loan Proceeds. City's obligation to fund the Loan and disburse the proceeds thereof is conditioned upon the satisfaction of all of the following conditions:

(a) Developer's delivery to City of each of the following: (i) certificate of good standing, certified by the Secretary of State indicating that Developer is properly organized, in good standing, and authorized to do business in the State of California, (ii) a certified resolution indicating that Developer has authorized this transaction and that the persons executing this Agreement, the Regulatory Agreement, and the City Documents on Developer's behalf have been duly authorized to do so, [(iii) certified copies of Developer's limited partnership agreement ("**Partnership Agreement**") and LP-1, (iv) a certificate of good standing, certified by the Secretary of State indicating that Developer's general partner is properly organized, in good standing, and authorized to do business in the State of California, and (v) certified copies of Developer's general partner's articles of incorporation, bylaws, and I.R.S. tax-exemption determination letter.]

(b) Developer's delivery to the City of evidence of insurance coverage in accordance with the requirements set forth in Section 11.2.

(c) Developer's delivery of the Regulatory Agreement and each of the City Documents, each fully-executed and acknowledged as applicable.

(d) Recordation of the Memorandum, the Regulatory Agreement and the Deed of Trust in the Official Records.

(e) The issuance by an insurer satisfactory to City of an A.L.T.A. lender's policy of title insurance ("**Title Policy**") for the benefit of City in the amount of the Loan, insuring that the lien of the Deed of Trust is subject only to such defects, liens, conditions, encumbrances, restrictions, easements and exceptions as City may approve in writing and containing such endorsements as City may reasonably require, with the cost of the Title Policy to be paid by Developer.

(f) The City's receipt of a written requisition for disbursement of funds from Developer specifying the amount and use of the requested funds, accompanied by the title company's estimated settlement statement showing the acquisition price, closing costs and all other amounts due in escrow for Developer's acquisition of the Property.

4.6 No Obligation to Disburse Proceeds Upon Default. Notwithstanding any other provision of this Agreement, the City shall have no obligation to disburse or authorize the disbursement of any portion of the Loan Proceeds following:

- (i) the failure of any of Developer's representations and warranties made in this Agreement or in connection with the Loan to be true and correct in all material respects;
- (ii) the termination of this Agreement by mutual agreement of the Parties;
- (iii) the conditions to disbursement of the Loan set forth in Section 4.5 have not been satisfied within the time frame set forth in Section 3.1, unless an extension of such date is approved by City in writing; or

- (iv) the occurrence of an Event of Default under this Agreement, the Regulatory Agreement, any of the City Documents which remains uncured beyond any applicable cure period.

#### 4.7 Prepayment; Acceleration

(a) Prepayment. Developer shall have the right to prepay the Loan at any time and from time to time, without penalty or premium, provided that any prepayment of principal must be accompanied by interest accrued but unpaid to the date of prepayment. Prepayments shall be applied first to accrued but unpaid interest and then to principal. Any such prepayment shall have no effect upon Developer's obligations under the Regulatory Agreement which shall survive for the full term of the Regulatory Agreement.

(b) Due On Sale or Encumbrance. Unless City agrees otherwise in writing, the entire unpaid principal balance and all interest and other sums accrued under the Note shall be due and payable upon the Transfer (as defined in Section 7.2) absent the prior written consent of City of all or any part of or interest in the Property except as otherwise permitted pursuant to this Agreement.

4.8 Nonrecourse. Except as expressly provided in this Section 4.8, Developer shall have no personal liability for payment of the principal of, or interest on the Note, and the sole recourse of City with respect to the payment of the principal of, and interest on the Note shall be to the Property and the Improvements and any other collateral held by City as security for the Note; provided however, nothing contained in the foregoing limitation of liability shall:

(A) impair the enforcement against all such security for the Loan of all the rights and remedies of the City under the Deed of Trust and any financing statements City files in connection with the Loan, as each of the foregoing may be amended, modified, or restated from time to time;

(B) impair the right of City to bring a foreclosure action, action for specific performance or other appropriate action or proceeding to enable City to enforce and realize upon the Deed of Trust, the interest in the Property and the Improvements created thereby and any other collateral given to City in connection with the indebtedness evidenced by the Note, and to name the Developer as party defendant in any such action;

(C) be deemed in any way to impair the right of the City to assert the unpaid principal amount of the Loan as a demand for money within the meaning of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto;

(D) constitute a waiver of any right which City may have under any bankruptcy law to file a claim for the full amount of the indebtedness owed to City under the Note or to require that the Property and the Improvements shall continue to secure all of the indebtedness owed to City in accordance with the Note and the Deed of Trust; or

(E) limit or restrict the ability of City to seek or obtain a judgment against Developer to enforce against Developer to:

(a) recover under Sections 3.14, 3.17, 9.2, 11.1, 12.1, and 12.19 hereof (pertaining to Developer's indemnification obligations), or

(b) recover from Developer compensatory damages as well as other costs and expenses incurred by City (including without limitation attorney's fees and expenses) arising as a result of the occurrence of any of the following:

(i) any fraud or material misrepresentation on the part of the Developer, or any officer, director or authorized representative of Developer in connection with the request for or creation of the Loan, or in this Agreement, the Regulatory Agreement or any City Document, or in connection with any request for any action or consent by City in connection with the Loan;

(ii) any failure to maintain insurance on the Property and Improvements as required pursuant to this Agreement, the Regulatory Agreement and the City Documents;

(iii) failure to pay taxes, assessments or other charges which may become liens on the Property or Improvements;

(iv) the presence of hazardous or toxic material or waste on the Property or other violation of the Developer's obligations under Section 9.1 hereof or those sections of the Deed of Trust pertaining to environmental matters;

(v) the occurrence of any act or omission of Developer that results in waste to or of the Property or the Improvements and which has a material adverse effect on the value of the Property or the Improvements;

(vi) the removal or disposal of any personal property or fixtures or the retention of rents, insurance proceeds, or condemnation awards in violation of the Deed of Trust;

(vii) the material misapplication of Loan Proceeds; and

(viii) the material misapplication of the proceeds of any insurance policy or award resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property or the Improvements.

## **ARTICLE V**

### **INTENTIONALLY OMITTED**



## ARTICLE VI

### USE OF THE PROPERTY

6.1 Use; Affordable Housing. Developer covenants and agrees for itself and its successors and assigns that the Property shall be used for the development and operation of a residential rental project with 57 affordable units in accordance with the terms and conditions of this Agreement and the Regulatory Agreement.

6.2 Maintenance. Developer shall at its own expense, maintain the Property, the Improvements and related landscaping and common areas in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Developer agrees to maintain the Project and the Property (including without limitation, the residential units, common areas, landscaping, driveways, parking areas and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property or at the Project. Developer shall prevent and/or rectify any physical deterioration of the Property and the Project and shall make all repairs, renewals and replacements necessary to keep the Property and the Improvements in good condition and repair. Developer shall provide adequate security services for occupants of the Project.

6.3 Taxes and Assessments. Developer shall pay all real and personal property taxes, assessments and charges and all franchise, income, payroll, withholding, sales, and other taxes assessed against the Property and payable by Developer, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property; provided, however, that Developer shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event the Developer exercises its right to contest any tax, assessment, or charge, the Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest. Developer shall have the right to apply for all applicable tax exemptions, including, without limitation, the welfare exemption from property tax for low-income housing.

6.4 Obligation to Refrain from Discrimination. Developer shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Developer 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 Developer or any person claiming under or through Developer 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. Developer shall include such provision in all deeds, leases, contracts and other instruments executed by Developer, and shall enforce the same diligently and in good faith.

## ARTICLE VII

### LIMITATIONS ON CHANGE IN OWNERSHIP, MANAGEMENT AND CONTROL OF DEVELOPER

7.1 Change Pursuant to this Agreement. Developer and its principals have represented that they possess the necessary expertise, skill and ability to carry out the development of the Project on the Property pursuant to this Agreement. The qualifications, experience, financial capacity and expertise of Developer and its principals are of particular concern to the City. It is because of these qualifications, experience, financial capacity and expertise that the City has entered into this Agreement with Developer. No voluntary or involuntary successor, assignee or transferee of Developer shall acquire any rights or powers under this Agreement, except as expressly provided herein.

7.2 Prohibition on Transfer. Prior to the expiration of the term of the Regulatory Agreement, Developer shall not, except as expressly permitted by this Agreement, directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, “**Transfer**”) of the whole or any part of the Property, the Project, the Improvements, or this Agreement, without the prior written approval of City. Any such attempt to assign this Agreement without the City’s consent shall be null and void and shall confer no rights or privileges upon the purported assignee. In addition to the foregoing, prior to the expiration of the term of the Regulatory Agreement, except as expressly permitted by this Agreement, Developer shall not undergo any significant change of ownership without the prior written approval of City. For purposes of this Agreement, a “significant change of ownership” shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Developer, taking all transfers into account on a cumulative basis; provided however, neither the admission of an investor limited partner(s), nor the transfer by the investor limited partner(s) to subsequent limited partner(s) shall be restricted by this provision.

7.3 Permitted Transfers. Notwithstanding any contrary provision hereof, the prohibitions set forth in this Article shall not be deemed to prevent: (i) the granting of temporary easements or permits to facilitate development of the Property; (ii) the dedication of any property required pursuant to this Agreement; (iii) the lease of individual residences to tenants for occupancy as their principal residence in accordance with the Regulatory Agreement; (iv) assignments creating security interests for the purpose of financing the acquisition, construction or permanent financing of the Project or the Property in accordance with the approved Financing Plan and subject to the requirements of Article VIII, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; (v) a transfer to a limited partnership in which Eden Housing, Inc., a California

nonprofit public benefit corporation (“**Eden**”), or an entity which is under the direct control or under common control with Eden or in which Eden is the sole member or the general partner (“**Controlled Affiliate**”), is the general partner (the “**Partnership**”); (vi) the admission of limited partners and any transfer of limited partnership interests in accordance with the Partnership’s Partnership Agreement; (vii) a Transfer to Eden or a Controlled Affiliate, or a Transfer to the general partner of Partnership in accordance with a right of first refusal or option contained in Partnership’s Partnership Agreement; (viii) a Transfer of the general partner’s interest in the Partnership to a Controlled Affiliate; or (ix) the removal of the Partnership’s general partner by the investor limited partner for a default under the Partnership Agreement, provided the replacement general partner is reasonably satisfactory to City.

7.4 Requirements for Proposed Transfers. The City may, in the exercise of their sole discretion, consent to a proposed Transfer of this Agreement, the Property or portion thereof if all of the following requirements are met (provided however, the requirements of this Section 7.4 shall not apply to Transfers described in clauses (i) through (iv) of Section 7.3):

(i) The proposed transferee demonstrates to the City’s satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the City to competently complete construction of the Project and to otherwise fulfill the obligations undertaken by the Developer under this Agreement.

(ii) The Developer and the proposed transferee shall submit for City review and approval all instruments and other legal documents proposed to effect any Transfer of this Agreement, the Property or interest therein together with such documentation of the proposed transferee’s qualifications and development capacity as the City may reasonably request.

(iii) The proposed transferee shall expressly assume all of the rights and obligations of the Developer under this Agreement, the Regulatory Agreement, the City Documents arising after the effective date of the Transfer and all obligations of Developer arising prior to the effective date of the Transfer (unless Developer expressly remains responsible for such obligations) and shall agree to be subject to and assume all of Developer’s obligations pursuant to the Conditions of Approval and all other conditions, and restrictions set forth in this Agreement and the Regulatory Agreement.

(iv) The Transfer shall be effectuated pursuant to a written instrument satisfactory to the City in form recordable in the Official Records.

Consent to any proposed Transfer may be given by the City Manger unless the City Manager, in his or her discretion, refers the matter of approval to the City Council. If the City rejects a proposed Transfer, the City, as applicable, shall provide the reasons for such rejection in writing within thirty (30) days following receipt of written request by Developer, and representatives of the City shall meet with Developer and the proposed transferee to discuss in good faith the reasons for the rejection and Developer’s and transferee’s responses thereto.

7.5 Effect of Transfer without City Consent.

7.5.1 In the absence of specific written agreement by the City, no Transfer by Developer shall be deemed to relieve the Developer or any other party from any obligation under this Agreement or the Regulatory Agreement.

7.5.2 Without limiting any other remedy City may have under this Agreement, or under law or equity, this Agreement may be terminated by City if without the prior written approval of the City, Developer assigns or Transfers this Agreement or the Property prior to the City's issuance of a Certificate of Completion. This Section 7.5.2 shall not apply to Transfers described in clauses (i) through (iv) of Section 7.3.

7.6 Recovery of City Costs. Developer shall reimburse City for all costs, including but not limited to attorneys' fees, incurred in reviewing instruments and other legal documents proposed to affect a Transfer under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee within ten days following City's delivery to Developer of an invoice detailing such costs. This Section 7.6 shall not apply to Transfers described in Section 7.3.

## ARTICLE VIII

### SECURITY FINANCING AND RIGHTS OF MORTGAGEES

8.1 Mortgages and Deeds of Trust for Development. Mortgages and deeds of trust, or any other reasonable security instrument are permitted to be placed upon the Property only for the purpose of securing loans approved pursuant to the approved Financing Plan for the purpose of financing the acquisition of the Property, the design and construction of the Improvements, other expenditures reasonably necessary for development of the Property pursuant to this Agreement, and the rehabilitation and/or refinancing of the Project. Developer shall not enter into any conveyance for such financing without the prior written approval of the City Manager or his or her designee. As used herein, the terms "mortgage" and "deed of trust" shall mean any security instrument used in financing real estate acquisition, construction and land development.

8.1.1 Memorandum and Regulatory Agreement to be Senior to Mortgages. City agree that if required by construction and/or permanent lenders the Memorandum of this Agreement and the Regulatory Agreement may be subordinated to deeds of trust or other security instruments approved by the City pursuant to a written instrument conforming to the requirements of California Health and Safety Code Section 33334.14(a)(4) and including without limitation, the provisions set forth in Section 8.4 below.

8.2 Holder Not Obligated to Construct. The holder of any mortgage, deed of trust authorized by this Agreement shall not be obligated to construct or complete the Improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed to permit or authorize any such holder to devote the Property or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

8.3 Notice of Default and Right to Cure. Whenever City delivers any notice of default hereunder, City shall concurrently deliver a copy of such notice to each holder of record of any mortgage or deed of trust secured by the Property provided that City has been provided with the address for delivery of such notice. City shall have no liability to any such holder for any failure by the City to provide such notice to such holder. Each such holder shall have the right, but not the obligation, at its option, to cure or remedy any such default or breach.

Without limiting the foregoing, no Mortgagee (including any Mortgagee who obtains title to Developer's interest in the Property or any part thereof as a result of foreclosure proceedings or transfer in lieu of foreclosure) shall be obligated by the provisions of this Agreement to construct the Project unless Mortgagee expressly assumes such obligation by written notice to City. Whether or not a Mortgagee elects to assume Developer's obligation to construct the Project, nothing in this Agreement shall be construed to permit such Mortgagee to construct any improvements other than the Project authorized under this Agreement. If the Mortgagee elects to assume Developer's obligation to construct the Project, Mortgagee shall not be bound by the Developer's completion date, provided that, upon assuming such obligation, Mortgagee shall diligently proceed to completion. If, after acquiring Developer's interest in the Property, Mortgagee elects not to assume Developer's obligation to complete the Project, Mortgagee shall so notify City with 90 days after Mortgagee's acquisition of the Developer's interest in the Property, and Mortgagee shall use good faith efforts to sell such interest within six (6) months after delivery of such notice to a developer who will construct the Project.

8.4 City Right to Cure Defaults. In the event of a breach or default by Developer under a mortgage or deed of trust secured by the Property, City may cure the default, without acceleration of the subject loan, following prior notice thereof to the holder of such instrument and Developer. In such event, Developer shall be liable for, and City shall be entitled to reimbursement from Developer for all costs and expenses incurred by City associated with and attributable to the curing of the default or breach and such sum shall constitute a part of the indebtedness secured by the Deed of Trust.

8.5 Holder to be Notified. Developer, for itself, its successors and assigns hereby warrants and agrees that each term contained herein dealing with security financing and rights of holders shall be either inserted into the relevant deed of trust or mortgage or acknowledged by the holder prior to its creating any security right or interest in the Property.

8.6 Modifications to Agreement. City shall not unreasonably withhold their consent to modifications of this Agreement requested by Project lenders or investors provided such modifications do not alter City's substantive rights and obligations under this Agreement.

8.7 Estoppel Certificates. Any Party shall, at any time, and from time to time, within thirty (30) days after receipt of written request from the other Party, execute and deliver to such Party a written statement certifying that, to the knowledge of the certifying Party: (i) this Agreement is in full force and effect and a binding obligation of the Parties (if such be the case), (ii) this Agreement has not been amended or modified, or if so amended, identifying the

amendments, and (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, describing the nature of any such defaults.

## ARTICLE IX

### ENVIRONMENTAL MATTERS

9.1 No City Liability; Developer's Covenants. City shall not be responsible for the cost of any soil, groundwater or other environmental remediation or other response activities for any Hazardous Materials, if any, existing or occurring on the Property or any portion thereof, and Developer shall be solely responsible for all actions and costs associated with any such activities required by any regulatory agency with jurisdiction over the Property and/or required for the development of the Project, the Property, or any portion thereof. Upon receipt of any notice regarding the presence, release or discharge of Hazardous Materials in, on or under the Property, or any portion thereof, Developer (as long as Developer owns the property which is the subject of such notice) agrees to timely initiate and diligently pursue and complete all appropriate response, remediation and removal actions for the presence, release or discharge of such Hazardous Materials within such deadlines as specified by applicable Environmental Laws. Developer hereby covenants and agrees that:

(1) Developer shall not knowingly permit the Project or the Property or any portion of either to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence or release of Hazardous Materials in, on, under, about or from the Project or the Property with the exception of cleaning supplies and other materials customarily used in construction, rehabilitation, use or maintenance of residential property and used, stored and disposed of in compliance with Hazardous Materials Laws, and

(2) Developer shall keep and maintain the Project and 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 Hazardous Materials Laws.

9.2 Environmental Indemnification. Developer shall indemnify, defend (with counsel approved by City) and hold the Indemnitees harmless from and against any and all Claims including without limitation any expenses associated with the investigation, assessment, monitoring, response, removal, treatment, abatement or remediation of Hazardous Materials and administrative, enforcement or judicial proceedings resulting, arising, or based directly or indirectly in whole or in part, upon (i) the presence, release, use, generation, discharge, storage or disposal or the alleged presence, release, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Property, or (ii) the failure of Developer, Developer's employees, agents, contractors, subcontractors, or any person acting on behalf of any of the foregoing to comply with Hazardous Materials Laws or the covenants set forth in Section 9.1. The foregoing indemnity shall further apply to any residual contamination in, on, under or about the Property or affecting any natural resources, and to any contamination of any property or natural resources arising in connection

with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws. The provisions of this Section 9.2 shall survive the issuance of a Certificate of Completion for the Project and the expiration or earlier termination of this Agreement. Developer's indemnification obligation under this Section 9.2 shall not apply to acts described in clause (i) above caused by the gross negligence or willful misconduct of an Indemnitee.

9.2.1 No Limitation. Developer hereby acknowledges and agrees that Developer's duties, obligations and liabilities under this Agreement, including, without limitation, under Section 9.2 above, are in no way limited or otherwise affected by any information the City may have concerning the Property and/or the presence in, on, under or about the Property of any Hazardous Materials, whether the City obtained such information from the Developer or from its own investigations. It is further agreed that City do not and shall not waive any rights against Developer that they may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or the deposit with City by Developer, of any of the insurance policies described in this Agreement.

9.3 Hazardous Materials. As used herein, the term "**Hazardous Materials**" means any substance, material or waste which is or becomes regulated by any federal, state or local governmental authority, and includes without limitation (i) petroleum or oil or gas or any direct or indirect product or by-product thereof; (ii) asbestos and any material containing asbestos; (iii) any substance, material or waste regulated by or listed (directly or by reference) as a "hazardous substance", "hazardous material", "hazardous waste", "toxic waste", "toxic pollutant", "toxic substance", "solid waste" or "pollutant or contaminant" in or pursuant to, or similarly identified as hazardous to human health or the environment in or pursuant to, the Toxic Substances Control Act [15 U.S.C. 2601, et seq.]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, et seq.], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, et seq.], the Resource Conservation and Recovery Act [42 U.S.C. 6901, et seq.], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, et seq.], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, et seq.], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, et seq.], the California Hazardous Waste Act [California Health and Safety Code Section 25100, et seq.], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, et seq.], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, et seq.], as they now exist or are hereafter amended, together with any regulations promulgated thereunder; (iv) any substance, material or waste which is defined as such or regulated by any "Superfund" or "Superlien" law, or any Environmental Law; or (v) any other substance, material, chemical, waste or pollutant identified as hazardous or toxic and regulated under any other federal, state or local environmental law, including without limitation, asbestos, polychlorinated biphenyls, petroleum, natural gas and synthetic fuel products and by-products.

9.4 Environmental Laws. As used herein, the term "**Environmental Laws**" means all federal, state or local statutes, ordinances, rules, regulations, orders, decrees, judgments or

common law doctrines, and provisions and conditions of permits, licenses and other operating authorizations regulating, or relating to, or imposing liability or standards of conduct concerning (i) pollution or protection of the environment, including natural resources; (ii) exposure of persons, including employees and agents, to Hazardous Materials (as defined above) or other products, raw materials, chemicals or other substances; (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities; (iv) the manufacture, use or introduction into commerce of chemical substances, including without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal; or (iv) the use, release or disposal of toxic or hazardous substances or Hazardous Materials or the remediation of air, surface waters, groundwaters or soil, as now or may at any later time be in effect, including but not limited to the Toxic Substances Control Act [15 U.S.C. 2601, et seq.]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, et seq.], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, et seq.], the Resource Conservation and Recovery Act [42 U.S.C. 6901, et seq.], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, et seq.], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, et seq.], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, et seq.], the California Hazardous Waste Act [California Health and Safety Code Section 25100, et seq.], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, et seq.], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, et seq.], as each of the foregoing now exist or are hereafter amended, together with any regulations promulgated thereunder.

## ARTICLE X

### DEFAULTS, REMEDIES AND TERMINATION

10.1 Event of Developer Default. The following events shall constitute an event of default on the part of Developer (“**Event of Developer Default**”):

(a) Developer fails to commence or complete construction of the Project within the times set forth in Section 3.6, or subject to force majeure, abandons or suspends construction of the Project prior to completion for a period of sixty (60) days or more;

(b) Developer fails to pay when due the principal and interest (if any) payable under the Note and such failure continues for thirty (30) days after City notifies Developer thereof in writing;

(c) A Transfer occurs, either voluntarily or involuntarily, in violation of Article VII;

(d) Developer fails to maintain insurance on the Property and the Project as required pursuant to this Agreement, and Developer fails to cure such default within ten (10) days;

(e) Subject to Developer’s right to contest the following charges pursuant to Section 6.3, if Developer fails to pay prior to delinquency taxes or assessments due on the Property or the



Project or fails to pay when due any other charge that may result in a lien on the Property or the Project, and Developer fails to cure such default within 30 days of date of delinquency, but in all events upon the imposition of any such tax or other lien;

(f) A default is declared under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Property and remains uncured beyond any applicable cure period such that the holder of such security instrument has the right to accelerate repayment of such loan;

(g) Any representation or warranty contained in this Agreement or in any financial statement, certificate or report submitted to the City in connection with this Agreement or Developer's request for the Loan proves to have been false in any material and adverse respect when made and continues to be materially adverse to the City;

(h) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"), Developer (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Developer in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Developer; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due;

(i) A court of competent jurisdiction shall have made or entered any decree or order (1) adjudging the Developer to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of the Developer or seeking any arrangement for Developer under bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (3) appointing a receiver, trustee, liquidator, or assignee of the Developer in bankruptcy or insolvency or for any of its properties, or (4) directing the winding up or liquidation of the Developer;

(j) Developer shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) 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 sixty (60) 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 period shall apply under this subsection as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution;

(k) The Developer shall have voluntarily suspended its business or Developer shall have been dissolved or terminated;

(l) An event of default arises under this Agreement, the Regulatory Agreement, or any City Document and remains uncured beyond any applicable cure period; or

(m) Developer defaults in the performance of any term, provision, covenant or agreement contained in this Agreement other than an obligation enumerated in this Section 10.1 and unless a shorter cure period is specified for such default, the default continues for ten (10)

days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which City shall have given written notice of the default to Developer; provided however, if the default is of a nature that it cannot be cured within 30 days, a Developer Event of Default shall not arise hereunder if Developer 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 and in no event later than ninety (90) days after receipt of notice of the default or such longer period as the City may allow.

10.2 City Default. An event of default on the part of City (“**Event of City Default**”) shall arise hereunder if City fails to keep, observe, or perform any of its covenants, duties, or obligations under this Agreement, and the default continues for a period of thirty (30) days after written notice thereof from Developer to City, or in the case of a default which cannot with due diligence be cured within thirty (30) days, City fails to commence to cure the default within thirty (30) days of such notice and thereafter fails to prosecute the curing of such default with due diligence and in good faith to completion.

10.3 City’s Right to Terminate Agreement. If an Event of Developer Default shall occur and be continuing beyond any applicable cure period, then City shall, in addition to other rights available to it under law or this Agreement, have the right to terminate this Agreement. If City makes such election, City shall give written notice to Developer and to any mortgagee entitled to such notice specifying the nature of the default and stating that this Agreement shall expire and terminate on the date specified in such notice, and upon the date specified in the notice, this Agreement and all rights of Developer under this Agreement, shall expire and terminate.

10.4 City’s Remedies and Rights Upon an Event of Developer Default. Upon the occurrence of an Event of Developer Default and the expiration of any applicable cure period, City shall have all remedies available to them under law or equity, including, but not limited to the following, City may, at its election, without notice to or demand upon Developer, except for notices or demands required by law or expressly required pursuant to this Agreement, the Regulatory Agreement, or the City Documents, exercise one or more of the following remedies:

- (a) Accelerate and declare the balance of the Note and interest accrued thereon immediately due and payable;
- (b) Seek specific performance to enforce the terms of this Agreement, the Regulatory Agreement, or City Documents;
- (c) Foreclose on the Property pursuant to the Deed of Trust;
- (d) Pursue any and all other remedies available under law to enforce the terms of the this Agreement, the Regulatory Agreement, and the City Documents and City’s rights thereunder.

10.5 Developer’s Remedies Upon an Event of City Default. Upon the occurrence of an City Event of Default, in addition to pursuing any other remedy allowed at law or in equity or

otherwise provided in this Agreement, Developer may bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking to obtain any other remedy consistent with the purpose of this Agreement.

10.6 Remedies Cumulative; No Consequential Damages. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different time, of any other rights or remedies for the same or any other default by the other Party. Notwithstanding anything to the contrary set forth herein, a party's right to recover damages in the event of a default shall be limited to actual damages and shall exclude consequential damages.

10.7 Inaction Not a Waiver of Default. No failure or delay by any Party in asserting any of its rights and remedies as to any default shall operate as a waiver of such default or of any such rights or remedies, nor deprive any Party of its rights to institute and maintain any action or proceeding which it may deem necessary to protect, assert or enforce any such rights or remedies in the same or any subsequent default.

## ARTICLE XI

### INDEMNITY AND INSURANCE.

11.1 Indemnity. Developer shall indemnify, defend (with counsel approved by City) and hold Indemnitees harmless from and against any and all Claims, including without limitation, Claims arising directly or indirectly, in whole or in part, as a result of or in connection with Developer's or Developer's contractors, subcontractors, agents or employees development, construction, improvement, operation, ownership or maintenance of the Project or the Property, or any part thereof or otherwise arising out of or in connection with Developer's performance under this Agreement. Developer's indemnification obligations under this Section 11.1 shall not extend to Claims resulting from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 11.1 shall survive the issuance of a Certificate of Completion for the Project and the expiration or earlier termination of this Agreement. It is further agreed that City do not and shall not waive any rights against Developer that they may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or the deposit with City by Developer, of any of the insurance policies described in this Agreement.

#### 11.2 Liability and Workers Compensation Insurance.

(a) Developer and all contractors working on behalf of Developer on the Project shall maintain a commercial general liability policy in the amount of Two Million Dollars (\$2,000,000) combined single limit, Four Million Dollars (\$4,000,000) annual aggregate, or such other policy limit as City may require in their 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.

(b) Developer and all contractors working on behalf of Developer shall maintain a comprehensive automobile liability coverage in the amount of One Million Dollars (\$1,000,000), combined single limit including coverage for owned and non-owned vehicles and shall furnish or cause to be furnished to City evidence satisfactory to City that Developer and any contractor with whom Developer has contracted for the performance of work on the 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.

(c) Upon commencement of construction and continuing until issuance of a Certificate of Completion, Developer and all contractors working on behalf of Developer 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 City as a loss payee.

(d) Developer 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 City, naming City as a loss payee.

(e) 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-VIII. 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 City as a loss payee.

(f) Prior to closing of the Loan, Developer shall furnish City with certificates of insurance in form acceptable to City 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 City 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.

(g) If any insurance policy or coverage required hereunder is canceled or reduced, Developer shall, within fifteen (15) 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 City 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, City may, without further notice and at its option, procure such insurance coverage at Developer's expense, and Developer shall promptly reimburse City for such expense upon receipt of billing from City.

(h) Coverage provided by Developer shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by City, and the policies shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the City. Developer shall furnish the required certificates and endorsements to City prior to the

commencement of construction of the Project, and shall provide City with certified copies of the required insurance policies upon request of City.

## ARTICLE XII

### MISCELLANEOUS PROVISIONS

12.1 No Brokers. Each Party warrants and represents to the other that no person or entity can properly claim a right to a real estate commission, brokerage fee, finder's fee, or other compensation with respect to the transactions contemplated by this Agreement. Each Party agrees to defend, indemnify and hold harmless the other Party from any claims, expenses, costs or liabilities arising in connection with a breach of this warranty and representation. The terms of this Section shall survive the expiration or earlier termination of this Agreement.

12.2 Enforced Delay; Extension of Times of Performance. Subject to the limitations set forth below, performance by any Party shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended where delays are due to: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, governmental restrictions or priority, litigation, including court delays, unusually severe weather, acts or omissions of the other Parties, acts or failures to act of any other public or governmental agency or entity (other than the acts or failures to act of City which shall not excuse performance by City), or any other cause beyond the affected Party's reasonable control. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Parties within thirty (30) days of the commencement of the cause and such extension is not rejected in writing by the other Parties within ten (10) days of receipt of the notice. None of the Parties shall unreasonably withhold consent to an extension of time pursuant to this Section.

Times of performance under this Agreement may also be extended in writing by the mutual agreement of Developer and City (acting in the discretion of its City Manager unless he or she determine in his or her discretion to refer such matter to the City Council). City and Developer acknowledge that adverse changes in economic conditions, either of the affected Party specifically or the economy generally, changes in market conditions or demand, and/or inability to obtain financing to complete the work of Improvements shall not constitute grounds of enforced delay pursuant to this Section. Each Party expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Effective Date.

12.3 Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement 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:

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

(ii) 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;

(iii) 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;

**City:** City of San Leandro  
835 East 14<sup>th</sup> Street  
San Leandro, CA 94577  
Attention: City Manager

**Developer:** Eden Housing, Inc.  
22645 Grand St.  
Hayward, CA 94541  
Attention: President

12.4 Attorneys' Fees. If any 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.

12.5 Waivers; Modification. No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any other covenant or provision hereof, and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the waiving party. This Agreement may be amended or modified only by a written instrument executed by the Parties.

12.6 Binding on Successors. Subject to the restrictions on Transfers set forth in Article VII, 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.

12.7 Survival. All representations made by Developer hereunder and Developer's obligations pursuant to Sections 3.14, 3.17, 9.2, 11.1, 12.1, and 12.19, and the City's obligations pursuant to Section 12.1, shall survive the expiration or termination of this Agreement and the issuance and recordation of a Certificate of Completion.

12.8 Construction. 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 all of the 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 all Parties had prepared it.

12.9 Action or Approval. Whenever action and/or approval by City is required under this Agreement, the City Manager or his or her designee may act on and/or approve such matter unless specifically provided otherwise, or unless the City Manager determines in his or her discretion that such action or approval requires referral to the City Council for consideration.

12.10 Entire Agreement. This Agreement, including Exhibits A through G attached hereto and incorporated herein by this reference, together with the Regulatory Agreement, the City Documents contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings, representations or statements between the Parties with respect to the subject matter hereof.

12.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which taken together shall constitute one instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto having additional signature pages executed by the other Parties. Any executed counterpart of this Amendment may be delivered to the other Parties by facsimile and shall be deemed as binding as if an originally signed counterpart was delivered.

12.12 Severability. If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement is defeated by such invalidity or unenforceability.

12.13 No Third Party Beneficiaries. Nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the Parties and their respective successors and assigns, any rights or remedies hereunder.

12.14 Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

12.15 Non-Liability of Officials, Employees and Agents. No officer, official, employee or agent of City shall be personally liable to Developer or its successors in interest in the event of any default or breach by City or for any amount which may become due to Developer or its successors in interest pursuant to this Agreement.

12.16 Time 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.

12.17 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 in the Superior Court of Alameda County, California or in the Federal District Court for the Northern District of California.

12.18 General Indemnification. Developer shall indemnify, defend (with counsel approved by City) and hold harmless Indemnitees from all Claims (including without limitation, attorneys’ fees) arising in connection with any claim, action or proceeding to attack, set aside, void, or annul any approval by the City or any of its agencies, departments, commissions, agents, officers, employees or legislative body concerning the Project or this Agreement. The City will promptly notify Developer of any such claim, action or proceeding, and will cooperate fully in the defense. The City may, within the unlimited discretion of each, participate in the defense of any such claim, action or proceeding, and if the City chooses to do so, Developer shall reimburse City for reasonable attorneys’ fees and expenses incurred.

[ 12.19 Investor Limited Partner Provisions. City agree to the following provisions for the benefit of Borrower’s investor limited partner:

- (a) City will give the limited partner a copy of any written notice (at the limited partner’s address set forth in the Regulatory Agreement) that City gives to Developer under this Agreement, the Regulatory Agreement or the City Documents;
- (b) City will give the limited partner ten (10) days after the limited partner’s receipt of such notice to cure a non-payment of any sum due under the City Documents;
- (c) City will give the limited partner thirty (30) days after the limited partner’s receipt of such notice to cure any other default under this Agreement, the Regulatory Agreement or the City Documents;
- (d) If a default is incapable of being cured within thirty days, City will give the limited partner an additional ninety (90) days to cure such default provided the limited partner has commenced to cure such default and is diligently proceeding to cure such default through the end of such period;



(e) If the limited partner makes any such payment or otherwise cures such default, City will accept such action as curing such default as if such payment or cure were made by Developer;

(f) City will permit the limited partner to transfer the limited partner's interest to any person or entity at any time provided that, if at the time of such transfer the limited partner has not made 100% of the capital contributions the limited partner is required to make to Developer, the limited partner shall remain liable to Developer for such capital contributions;

(g) City will permit the limited partner to remove the general partner of Developer in accordance with the Partnership Agreement, provided that the substitute general partner is reasonably acceptable to City;

(h) City will permit insurance and condemnation proceeds to be used to rebuild the Project provided that (i) sufficient funds are provided from other sources to effectively rebuild the Project to a lawful multifamily housing complex, and (ii) subject to the rights of any senior lenders, City shall hold all such proceeds and disburse them based on the progress of construction, subject to such additional reasonable conditions as City may impose.]

**SIGNATURES ON FOLLOWING PAGE.**

IN WITNESS WHEREOF, the Parties have entered into this Agreement effective as of the date first written above.

**EDEN HOUSING, INC.**  
**a California non-profit financing corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY OF SAN LEANDRO**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
City Manager

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

Exhibit A

**LEGAL DESCRIPTION OF PROPERTY**

Real property in the City of San Leandro, County of Alameda, State of California, described as follows:

**PARCEL ONE:**

A PORTION OF BLOCK 28, AS SAID BLOCK IS SHOWN ON THE "MAP OF THE TOWN OF SAN LEANDRO, COUNTY SEAT OF ALAMEDA COUNTY", FILED FEBRUARY 27, 1855 IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHEASTERN LINE OF PARROTT STREET WITH THE NORTHEASTERN LINE OF WARD STREET, FORMERLY ESTUDILLO STREET AND RUNNING THENCE SOUTHEASTERLY ALONG SAID LINE OF WARD STREET 100 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 150 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 100 FEET TO THE SOUTHEASTERN LINE OF PARROTT STREET AND THENCE SOUTHWESTERLY ALONG SAID LINE OF PARROTT STREET 150 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION THEREOF CONDEMNED IN FAVOR OF THE CITY OF SAN LEANDRO, A MUNICIPAL CORPORATION, PER FINAL ORDER OF CONDEMNATION RECORDED SEPTEMBER 19, 1983 AS INSTRUMENT NO. 83-172989 OF OFFICIAL RECORDS.

**PARCEL TWO:**

A PORTION OF BLOCK 28, AS SAID BLOCK IS SHOWN ON THE "MAP OF THE TOWN OF SAN LEANDRO, COUNTY SEAT OF ALAMEDA COUNTY", FILED FEBRUARY 27, 1855 IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERN LINE OF SAN LEANDRO BOULEVARD, FORMERLY ESTUDILLO STREET DISTANT THEREON NORTHERLY 130 FEET FROM THE POINT OF INTERSECTION THEREOF, WITH THE NORTHERN LINE OF THORNTON STREET; RUNNING THENCE NORTHERLY ALONG SAID LINE OF SAN LEANDRO BOULEVARD, 50 FEET; THENCE AT A RIGHT ANGLE EASTERLY 150 FEET; THENCE AT A RIGHT ANGLE SOUTHERLY 50 FEET; THENCE AT A RIGHT ANGLE WESTERLY, 150 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION THEREOF CONDEMNED IN FAVOR OF THE CITY OF SAN LEANDRO, A MUNICIPAL CORPORATION, PER FINAL ORDER OF CONDEMNATION RECORDED OCTOBER 15, 1984 AS INSTRUMENT NO. 84-207316 OF OFFICIAL RECORDS

APN: 075-0028-001-02 and 075-0028-011-02

Exhibit B

**FORM OF MEMORANDUM OF LOAN AGREEMENT**  
(Attach form of Memorandum.)

Exhibit C

**FORM OF CERTIFICATE OF COMPLETION**  
(Attach form of Certificate.)

Exhibit D

**FORM OF REGULATORY AGREEMENT**

**Recording requested by and  
when recorded mail to:**

City of San Leandro  
835 East 14<sup>th</sup> Street  
San Leandro, CA 94577  
Attention: City Clerk

EXEMPT FROM RECORDING FEES PER

**GOVERNMENT CODE §§6103, 27383**

Space above this line for Recorder's use.

**AFFORDABLE HOUSING REGULATORY AGREEMENT**

**AND**

**DECLARATION OF RESTRICTIVE COVENANTS**

**by and between**

**THE CITY OF SAN LEANDRO,  
a California charter city**

**and**

**EDEN HOUSING,  
a California non-profit public benefit corporation**

This Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this “**Agreement**”) is entered into effective as of \_\_\_\_\_, 2018 (“**Effective Date**”) by and between the City of San Leandro, a California charter city (the “**City**”) and Eden Housing, a California non-profit benefit corporation (“**Owner**”). City and Owner are hereinafter collectively referred to as the “**Parties**.”

## RECITALS

A. Owner has purchased or has the contractual right to purchase certain real property located at 1604 and 1642 San Leandro Boulevard in the City of San Leandro, California, known as Assessor’s Parcel Numbers 075-0028-001-02 and 075-0028-011-02, as more particularly described in Exhibit A attached hereto (the “**Property**”).

B. Owner intends to construct, own and operate on the Property a 62-unit rental housing development, of which 57 units will be rented to very low-income and low-income households (the “**Project**”) in accordance with that certain Loan Agreement (the “**Loan Agreement**”) dated as of the date hereof and executed by and between Owner and City, a memorandum of which shall be recorded substantially concurrently herewith in the Official Records of Alameda County (“**Official Records**”).

C. The Loan Agreement provides that no fewer than 30 of the residential units in the Project shall be affordable to and occupied by or available for occupancy by very low-income and low-income households for a period of not less than 55 years.

D. Pursuant to the Loan Agreement, City has agreed to provide to Owner a loan in the amount of One Million Dollars (\$1,000,000) (the “**Loan**”) in order to provide partial financing for acquisition of the Property and construction of the Project. The Loan is evidenced by a Secured Promissory Note (the “**Note**”) executed by Owner and dated as of the date hereof, and is secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the “**Deed of Trust**”) dated as of the date hereof and executed by Owner for the benefit of City. The City Deed of Trust will be recorded in the Official Records substantially concurrently herewith.

E. The Parties have agreed to enter into and record this Agreement in order to satisfy the conditions described in the foregoing Recitals. The purpose of this Agreement is to regulate and restrict the occupancy and rents of the Project’s Restricted Units (defined below) for the benefit of the Project occupants. The Parties intend the covenants set forth in this Agreement to run with the land and to be binding upon Owner and Owner’s successors and assigns for the full term of this Agreement.

**NOW THEREFORE**, in consideration of the foregoing, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

1. Definitions. The following terms have the meanings set forth in this Section wherever used in this Agreement or the attached exhibits.

**"Area Median Income" or "AMI"** means the area median income for Alameda County, California, adjusted for household size, as published by the California Tax Credit Allocation Committee ("**TCAC**"). If TCAC ceases to make such determination, Area Median Income shall be the median income applicable to Alameda County, with adjustments for household size, as determined from time to time by the U.S. Department of Housing and Urban Development ("**HUD**") pursuant to the United States Housing Act of 1937 as amended, or such other method of median income calculation applicable to the City of San Leandro that HUD may hereafter adopt in connection with such Act.

**"Eligible Household"** means a household for which gross household income upon initial occupancy does not exceed the maximum income level for a Restricted Unit as specified in Section 2.2 and that meets the requirements set forth in Section 2.1.

**"Low-Income"** means an annual gross household income that is less than or equal to sixty percent (60%) of AMI.

**"Qualifying Rent"** means a monthly rent that does not exceed one-twelfth of 30% of the applicable income level set forth for a Low-Income or Very Low-Income household.

**"Restricted Unit"** means a dwelling unit which is reserved for occupancy at a Qualifying Rent by a Very Low-Income or Low-Income household in accordance with and as set forth in Sections 2.1 and 2.2.

**"Very Low-Income"** means an annual gross household income that is less than or equal to fifty percent (50%) of AMI.

2. Use and Affordability Restrictions. Owner hereby covenants and agrees, for itself and its successors and assigns, that the Property shall be used solely for the construction and operation of a 62-unit rental housing development in compliance with the Loan Agreement, the development approvals granted by the City of San Leandro, and the requirements set forth herein. City acknowledges that there are five units in the Project that will not be income restricted under any funding sources (the "**Market Rate Units**"). Owner represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the occupancy and affordability restrictions set forth in this Agreement, and Owner covenants that it shall not enter into any agreement that is inconsistent with such restrictions without the express written consent of City. Notwithstanding the foregoing or anything to the contrary contained herein, if the terms of financing for the Project require greater affordability restrictions than those imposed hereby, the requirements of such other financing shall prevail for the term thereof.

2.1 Affordability Requirements. For a term of fifty-five (55) years commencing upon the date of issuance of a final certificate of occupancy for the Project, thirty (30) of the dwelling units in the Project shall be both Rent-Restricted (as defined below) and occupied (or if vacant, available for occupancy) by Eligible Households whose income does not exceed Very Low-Income. A dwelling unit shall qualify as "**Rent-Restricted**"

if the gross rent charged for such unit does not exceed the Qualifying Rent as adjusted for assumed household size in accordance with the applicable provisions of the TCAC guidelines.

## 2.2 Rents for Restricted Units.

### (a) Rents for Restricted Units shall be limited to Qualifying Rents.

Notwithstanding the foregoing, no tenant qualifying for a Restricted Unit shall be denied continued occupancy of a unit in the Project because, after admission, such tenant's adjusted income increases to exceed the qualifying limit for such Restricted Unit. A household which at initial occupancy qualifies as Low-Income or Very Low-Income shall be treated as continuing to be of Low-Income or Very Low-Income regardless of increases in such households income, subject to Section 2.2(b) below.

### (b) In the event that, upon recertification of the income of a tenant of a Restricted Unit, Owner determines that the tenant no longer qualifies as Very Low-Income but does qualify as Low-Income, the tenant may continue to occupy the apartment and, upon sixty (60) days written notice to tenant, Owner may increase the tenant's rent to the permitted Low-Income Qualifying Rent. In the event that, upon recertification of the income of a tenant of a Restricted Unit, Owner determines that the tenant no longer qualifies as Low Income, the tenant may continue to occupy the apartment and, upon sixty (60) days written notice to tenant, Owner may increase the tenant's rent to one-twelfth (1/12th) of thirty percent (30%) of the Eligible Household's actual household income, and Owner shall either (i) rent the next available apartment (but not the Market Rate Units) to an Eligible Household at a Qualifying Rent not exceeding the maximum applicable Qualifying Rent specified in Section 2.2(a), or (ii) re-designate another apartment in the Project that is occupied by an Eligible Household as a Restricted Unit, in order to meet the requirements of this Agreement.

2.3 Unit Sizes and Design. The Restricted Units shall consist of 11 studio apartments, 11 one-bedroom apartments and 8 two-bedroom apartments.

2.4 Manager's Unit. One dwelling unit in the Project may be used as a resident manager's unit, and shall be exempt from the occupancy and rent restrictions set forth in this Agreement.

2.5 No Condominium Conversion. Owner shall not convert the Project to condominium or cooperative ownership or sell condominium or cooperative rights to the Project during the term of this Agreement.

## 2.6 Non-Discrimination; Compliance with Fair Housing Laws.



2.7.1 Fair Housing. Owner shall comply with state and federal fair housing laws in the marketing and rental of the units in the Project. Owner shall accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing Section 8 program or any successor thereto.

2.7.2 Non-Discrimination. Owner 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 Owner or any person claiming under or through Owner 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. Owner shall include such provision in all deeds, leases, contracts and other instruments executed by Owner, and shall enforce the same diligently and in good faith.

### 3. Reporting Requirements.

3.1. Tenant Certification. Owner or Owner's authorized agent shall obtain from each household prior to initial occupancy of each Restricted Unit, and on every anniversary thereafter, a written certificate containing total household income with such supporting documentation as City may reasonably require.

Owner shall retain such certificates for not less than three (3) years, and upon City's request, shall make the originals available for inspection by City and shall provide copies of such certificates to City.

3.2 Annual Report; Inspections. Owner shall submit an annual report ("**Annual Report**") to the City in form satisfactory to City, together with a certification that the Project is in compliance with the requirements of this Agreement. The Annual Report shall, at a minimum, include the following information for each dwelling unit in the Project: (i) unit number; (ii) number of bedrooms; (iii) current rent and other charges; (iv) dates of any vacancies during the previous year; (v) number of people residing in the unit; (vi) total household income of residents; (vii) documentation of source of household income; and (viii) the information required by Section 3.1.

Upon City's request, Owner shall include with the Annual Report, an income recertification for each household, documentation verifying tenant eligibility, and such additional information as City may reasonably request from time to time in order to demonstrate compliance with this Agreement. The Annual Report shall conform to the format requested by City; provided however, during such time that the Project is subject to a regulatory agreement restricting occupancy and/or rents pursuant to requirements

imposed in connection with the use of federal low-income housing tax credits or tax-exempt financing, Owner may satisfy the requirements of this Section by providing City with a copy of compliance reports required in connection with such financing.

Owner shall permit representatives of City to enter and inspect the Property and the Project during reasonable business hours in order to monitor compliance with this Agreement upon 24-hours advance notice of such visit to Owner or to Owner's management agent.

4. Term of Agreement.

4.1 Term of Restrictions. This Agreement shall remain in effect through the 55<sup>th</sup> anniversary of the issuance of the final certificate of occupancy for the Project.

4.2 Effectiveness Succeeds Conveyance of Property and Repayment of Loan. This Agreement shall remain effective and fully binding for the full term hereof regardless of (i) any sale, assignment, transfer, or conveyance of the Property or the Project or any part thereof or interest therein, (ii) any payment, prepayment or extinguishment of the Loan or Note, or (iii) any reconveyance of the Deed of Trust, unless this Agreement is terminated earlier by City in a recorded writing.

4.3 Reconveyance. Upon the termination of this Agreement, the Parties agree to execute and record appropriate instruments to release and discharge this Agreement; provided, however, the execution and recordation of such instruments shall not be necessary or a prerequisite to the termination of this Agreement upon the expiration of the term specified in Section 4.1.

5. Binding Upon Successors; Covenants to Run with the Land. Owner hereby subjects its interest in the Property and the Project to the covenants and restrictions set forth in this Agreement. The City and Owner hereby declare their express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of Owner, City, regardless of any sale, assignment, conveyance or transfer of the Property, the Project or any part thereof or interest therein. Any successor-in-interest to Owner, including without limitation any purchaser, transferee or lessee of the Property or the Project (other than the tenants of the individual dwelling units within the Project) shall be subject to all of the duties and obligations imposed hereby for the full term of this Agreement. Each and every contract, deed, ground lease or other instrument affecting or conveying the Property or the Project or any part thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, ground lease or other instrument. If any such contract, deed, ground lease or other instrument has been executed prior to the date hereof, Owner hereby covenants to obtain and deliver to City an instrument in recordable form signed by the parties to such contract, deed, ground lease or other instrument pursuant to

which such parties acknowledge and accept this Agreement and agree to be bound hereby.

Owner agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Property and the Project in favor of City.

6. Property Management; Repair and Maintenance; Marketing.

6.1 Management Responsibilities. Owner shall be responsible for all management functions with respect to the Property and the Project, including without limitation the selection of tenants, certification and recertification of household income and eligibility, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. City shall have no responsibility for management or maintenance of the Property or the Project.

6.2 Management Entity. City shall have the right to review and approve the qualifications of the management entity proposed by Owner for the Project. The contracting of management services to a management entity shall not relieve Owner of its primary responsibility for proper performance of management duties. [City approves Eden Housing Management, Inc. as the initial property management entity for the Project.]

No later than six (6) months following commencement of Project construction, Owner shall submit for City review and approval, a proposed management contract ("**Management Contract**"). The Management Contract shall describe the services to be provided by the management entity, including without limitation, marketing, tenant qualification and certification, maintenance, and repairs. During the term of this Agreement, City shall have the right to review and approve any proposed amendments to the Management Contract, any new management contracts, and any new management entity proposed for the Project. If City has not responded to any submission of the Management Contract, the proposed management entity, or a proposed amendment or change to any of the foregoing within 20 business days following City's receipt of such plan, contract, amendment, or proposal the plan, contract, amendment or proposal shall be deemed approved.

6.3 Repair, Maintenance and Security. Throughout the term of this Agreement, Owner shall at its own expense, maintain the Property and the Project in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Owner agrees to maintain the Project and the Property (including without limitation, the residential units, common areas, landscaping, driveways, parking areas and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps

to prevent the same from occurring on the Property or at the Project. Owner shall prevent and/or rectify any physical deterioration of the Property and the Project and shall make all repairs, renewals and replacements necessary to keep the Property and the improvements located thereon in good condition and repair. Owner shall provide adequate security services for occupants of the Project.

6.3.1 Rights of City to Perform Maintenance. In the event that Owner breaches any of the covenants contained in Section 6.3, and such default continues for a period of ten (10) business days after written notice from City (with respect to graffiti, debris, and waste material) or thirty (30) days after written notice from City (with respect to landscaping, building improvements and general maintenance), then City, in addition to any other remedy it may have under this Agreement or at law or in equity, shall have the right, but not the obligation, to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and the landscaped areas on the Property. All costs expended by City in connection with the foregoing, shall constitute an indebtedness secured by the Deed of Trust, and shall be paid by Owner to City upon demand. All such sums remaining unpaid thirty (30) days following delivery of City's invoice therefor shall bear interest at the rate of 10% per annum.

6.4 Marketing and Management Plan. Not later than six (6) months following issuance of building permits for the Project, Owner shall submit for City review and approval, a plan for marketing and managing the Property ("**Marketing and Management Plan**"). The Marketing and Management Plan shall address in detail how Owner plans to market the Restricted Units to prospective Eligible Households in accordance with fair housing laws and this Agreement, Owner's tenant selection criteria, and how Owner plans to certify the eligibility of Eligible Households. Owner shall work with the City to implement local preference for City residents and/or workers for the restricted and non-restricted units if feasible and in compliance with federal fair housing laws.

At initial lease up of the Project, Owner shall give first preference for either Restricted Units or Market Rate Units to the four (4) households residing at 1642 San Leandro Boulevard, San Leandro, CA that will be temporary relocated prior to commencement of Project construction.

The Plan shall also describe the management team and shall address how the Owner and the management entity plan to manage and maintain the Property and the Project. The Plan shall include the proposed management agreement and the form of rental agreement that Owner proposes to enter into with Project tenants. Owner shall abide by the terms of the Marketing and Management Plan in marketing, managing, and maintaining the Property and the Project, and throughout the term of this Agreement, shall submit proposed modifications to City for its review and approval.

6.5 Approval of Amendments. If City has not responded to any submission of the Management and Marketing Plan, the proposed management entity, or a proposed amendment or change to any of the foregoing within 30 days following City's receipt of

such plan, proposal or amendment, the plan, proposal or amendment shall be deemed approved by City.

6.6 Fees, Taxes, and Other Levies. Owner shall be responsible for payment of all fees, assessments, taxes, charges, liens and levies, including without limitation possessory interest taxes, if applicable, imposed by any public entity, authority or utility company with respect to the Property or the Project, and shall pay such charges prior to delinquency. However, Owner shall not be required to pay any such charge so long as (a) Owner is contesting such charge in good faith and by appropriate proceedings, (b) Owner maintains reserves adequate to pay any contested liabilities, and (c) on final determination of the proceeding or contest, Owner immediately pays or discharges any decision or judgment rendered against it, together with all costs, charges and interest. Nothing in this Section 6.6 shall prevent Owner from applying for all applicable tax exemptions including the welfare exemption from property tax for low-income housing.

6.7 Insurance Coverage. Prior to issuance of building permits for the Project, and continuing throughout the term of this Agreement Owner shall comply with the insurance requirements set forth in the Loan Agreement, and shall, at Owner's expense, maintain in full force and effect insurance coverage as specified in the Loan Agreement; provided however, during such time that lenders or low-income housing tax credit investors providing financing for the Project impose insurance requirements that are inconsistent with the requirements set forth in the Loan Agreement, Owner may satisfy the requirements of this Section by meeting the requirements of such lenders or investors. Notwithstanding the foregoing, throughout the term hereof, Owner shall comply with the provisions of the Loan Agreement pertaining to (i) provision to City of proof of insurance for the Project, (ii) naming of City as additional insured, and (iii) provision to City of notice of cancellation or reduction in coverage.

6.8 Property Damage or Destruction. If any part of the Project is damaged or destroyed, Owner shall repair or restore the same, consistent with the occupancy and rent restriction requirements set forth in this Agreement. Such work shall be commenced within 120 days after the damage or loss occurs and shall be completed within one year thereafter (or such longer time as the City may approve with respect to commencement or completion) provided that insurance proceeds are available to be applied to such repairs or restoration within such period and the repair or restoration is financially feasible. During such time that lenders or low-income housing tax credit investors providing financing for the Project impose requirements that differ from the requirements of this Section the requirements of such lenders and investors shall prevail.

7. Recordation; No Subordination. This Agreement shall be recorded in the Official Records of Alameda County. Owner hereby represents, warrants and covenants that with the exception of the City Documents (as defined in the Loan Agreement) and easements of record, absent the written consent of City, this Agreement shall not be subordinated in priority to any lien (other than those pertaining to taxes or assessments), encumbrance, or other interest in the Property or the Project. If at the time this

Agreement is recorded, any interest, lien, or encumbrance has been recorded against the Project in position superior to this Agreement, upon the request of City, Owner hereby covenants and agrees to promptly undertake all action necessary to clear such matter from title or to subordinate such interest to this Agreement consistent with the intent of and in accordance with this Section 7, and to provide such evidence thereof as City may reasonably request. City agree that this Agreement may be subordinated to a first deed of trust securing Project construction financing and a first deed of trust securing permanent financing for the Project pursuant to subordination agreements that provide the City with reasonably adequate notice and cure rights and protections consistent with the requirements of California Health and Safety Code Section 33334.14(a)(4).

## 8. Transfer and Encumbrance.

8.1 Restrictions on Transfer and Encumbrance. During the term of this Agreement, except as permitted pursuant to the Loan Agreement or this Agreement, Owner shall not directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, “**Transfer**”) of the whole or any part of the Property, the Project, or the Improvements, without the prior written consent of the City.

8.2 Permitted Transfers. Notwithstanding any contrary provision hereof, the prohibitions on Transfer set forth herein shall not be deemed to prevent: (i) the granting of temporary easements or permits to facilitate development of the Property; (ii) the dedication of any property required pursuant to the Loan Agreement; (iii) the lease of individual residents to tenants for occupancy as their principal residence in accordance with this Agreement; (iv) assignments creating security interests for the purpose of financing the acquisition, construction or permanent financing of the Project or the Property in accordance with the Loan Agreement, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; (v) a transfer to a limited partnership in which Eden Housing, Inc., a California nonprofit public benefit corporation (“Eden”), or an entity which is under the direct control or under common control with Eden or in which Eden is the sole member or the general partner (“Controlled Affiliate”), is the general partner (the “Partnership”); (vi) the transfer of Owner’s interest to Eden or a Controlled Affiliate, or Partnership’s general partner pursuant to a right of first refusal or option provided in the partnership agreement for Owner (“**Partnership Agreement**”); (vii) the admission of limited partners and any transfer of limited partnership interests in the Partnership in accordance with the Partnership Agreement; (viii) a Transfer of the general partner’s interest in the Partnership to a Controlled Affiliate; or (ix) the removal of Developer’s general partner by the investor limited partner for a default under the Partnership Agreement, provided the replacement general partner is reasonably satisfactory to City.

In addition, City shall not withhold their consent to the sale, transfer or other disposition of the Project, in whole or in part, provided that (1) the Project is and shall continue to be operated in compliance with this Agreement; (2) the transferee expressly

assumes all obligations of Owner imposed by this Agreement; (3) the transferee executes all documents reasonably requested by the City with respect to the assumption of the Owner's obligations under this Agreement, and upon City's request, delivers to the City an opinion of its counsel to the effect that such document and this Agreement are valid, binding and enforceable obligations of such transferee; and (4) either (A) the transferee has at least three years' experience in the ownership, operation and management of low-income rental housing projects of similar size to that of the Project, without any record of material violations of nondiscrimination provisions or other state or federal laws or regulations applicable to such projects, or (B) the transferee agrees to retain a property management firm with the experience and record described in subclause (A).

Consent to any proposed Transfer may be given by the City Manager, unless the City Manager, in his or her discretion, refers the matter of approval to the City Council. The proposed Transfer shall be approved or disapproved by City in writing within thirty (30) days following City's receipt of written request by Owner. If rejected, City representatives shall meet with Owner and the proposed transferee in good faith to discuss the reasons for the disapproval.

8.3 Encumbrances. Owner agrees to use best efforts to ensure that any deed of trust secured by the Project for the benefit of a lender other than City ("**Third-Party Lender**") shall contain each of the following provisions: (i) Third-Party Lender shall use its best efforts to provide to City a copy of any notice of default issued to Owner concurrently with provision of such notice to Owner (provided however, the failure to do so shall not impair such Third-Party Lender's rights and remedies); (ii) City shall have the reasonable right, but not the obligation, to cure any default by Owner within the same period of time provided to Owner for such cure extended by an additional 60 days; (iii) provided that City has cured any default under Third-Party Lender's deed of trust and other loan documents, City shall have the right to foreclose City's Deed of Trust and take title to the Project without acceleration of Third-Party Lender's debt; and (iv) City shall have the right to transfer the Project without acceleration of Third-Party Lender's debt to a nonprofit corporation, a limited partnership with a nonprofit general partner, or other entity which shall own and operate the Project as an affordable rental housing Project, subject to the prior written consent of the Third-Party Lender. Owner agrees to provide to City a copy of any notice of default Owner receives from any Third-Party Lender within three (3) business days following Owner's receipt thereof.

8.4 Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon all or any portion of the Project or the Property, and the purchaser at any trustee's sale or foreclosure sale shall not be liable for any violation of any provision hereof occurring prior to the acquisition of title by such purchaser. Such purchaser shall be bound by and subject to this Agreement from and after such trustee's sale or foreclosure sale. Promptly upon determining that a violation of this Agreement has occurred, City shall give written notice to the holders of record of any mortgages or deeds of trust encumbering the Project or the Property that such violation has occurred.

9. Default and Remedies.

9.1 Events of Default. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

- (a) The occurrence of a Transfer in violation of Section 8.1 hereof;
- (b) Owner's failure to maintain insurance on the Property and the Project as required hereunder, and the failure of Owner to cure such default within 10 days.
- (c) Subject to Owner's right to contest the following charges, Owner's failure to pay taxes or assessments due on the Property or the Project or failure to pay any other charge that may result in a lien on the Property or the Project, and Owner's failure to cure such default within 10 days.
- (d) Owner's default in the performance of any term, provision or covenant under this Agreement or under any other City Document (other than an obligation enumerated in this Subsection 9.1), and unless such provision specifies a shorter cure period for such default, the continuation of such default for ten (10) days in the event of a monetary default or thirty (30) days in the event of a non-monetary default following the date upon which City shall have given written notice of the default to Owner, or if the nature of any such non-monetary default is such that it cannot be cured within 30 days, Owner's failure to commence to cure the default within thirty (30) days and thereafter prosecute the curing of such default with due diligence and in good faith, but in no event longer than 60 days from receipt of the notice of default.

The limited partners of Owner shall have the right to cure any default of Owner hereunder upon the same terms and conditions afforded to Owner. Provided that City has been given written notice of the address for delivery of notices to the limited partners, City shall provide any notice of default hereunder to the limited partners concurrently with the provision of such notice to Owner, and as to the limited partners, the cure periods specified herein shall commence upon the date of delivery of such notice in accordance with Subsection 11.3.

9.2 Remedies. If within the applicable cure period, Owner fails to cure a default or fails to commence to cure and diligently pursue completion of a cure, as applicable, or if a cure is not possible, City may proceed with any of the following remedies:

- A. Bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking declaratory relief;
- B. Pursuant to the City Documents, accelerate and declare the balance of the City Note and interest accrued thereon immediately due and payable;



- C. For violations of obligations with respect to rents for Restricted Units, impose as liquidated damages a charge in an amount equal to the actual amount collected in excess of the Qualifying Rent;
- D. Pursue any other remedy allowed at law or in equity.

Each of the remedies provided herein is cumulative and not exclusive. The City may exercise from time to time any rights and remedies available to them under applicable law or in equity, in addition to, and not in lieu of, any rights and remedies expressly provided in this Agreement.

10. Indemnity. Owner shall indemnify, defend (with counsel approved by City) and hold the City, and their respective elected and appointed officers, officials, employees, agents, and representatives (collectively, the “**Indemnitees**”) harmless from and against all liability, loss, cost, expense (including without limitation attorneys’ fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively “**Claims**”) arising directly or indirectly, in whole or in part, as a result of or in connection with Owner’s development or management of the Property and the Project. Owner’s indemnification obligations under this Section 10 shall not extend to Claims resulting from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 10 shall survive the expiration or earlier termination of this Agreement. It is further agreed that City do not and shall not waive any rights against Owner that they may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or the deposit with City by Owner, of any of the insurance policies described in this Agreement or the Loan Agreement.

11. Miscellaneous.

11.1 Amendments. This Agreement may be amended or modified only by a written instrument signed by the Parties.

11.2 No Waiver. Any waiver by City of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by City to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by City at any time to require strict performance by Owner of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

11.3 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement 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:

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

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

(iii) 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;

**City:** City of San Leandro  
835 East 14<sup>th</sup> Street  
San Leandro, CA 94577  
Attention: City Manager

**Owner:** Eden Housing, Inc.  
22645 Grand St.  
Hayward, CA 94541  
Attention: President

11.4 Further Assurances. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

11.5 Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

11.6 Action by the City. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the City is required or permitted under this Agreement, 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 city council.

11.7 Non-Liability of City and City Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to Owner or any successor in interest, in the event of any default or breach by the City, or for any amount of money which may become due to Owner or its successor or for any obligation of City under this Agreement.

11.8 Headings; Construction. The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party.

11.9 Time is of the Essence. Time is of the essence in the performance of this Agreement.

11.10 Governing Law. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law.

11.11 Attorneys' Fees and Costs. If any legal or administrative action is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

11.12 Severability. If any provision of this Agreement 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 thereby.

11.13 Entire Agreement; Exhibits. This Agreement, together with the City Documents contains the entire agreement of Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto. The exhibits attached hereto are incorporated herein by this reference.

11.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

**SIGNATURES ON FOLLOWING PAGE.**

IN WITNESS WHEREOF, the Parties have executed this Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants as of the date first written above.

**EDEN HOUSING, INC.,  
a California non-profit public benefit  
corporation**

**CITY OF SAN LEANDRO,  
a California charter city**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Name: \_\_\_\_\_

City Manager

ATTEST:

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

City Clerk

APPROVED AS TO FORM:

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

City Attorney

**SIGNATURES MUST BE NOTARIZED.**

Exhibit A

**PROPERTY**

(Attach legal description.)

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

State of California )

County of Alameda )

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

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

2890662.3

Exhibit E

**FORM OF PROMISSORY NOTE**  
(Attach form of Promissory Note.)

Exhibit F

**FORM OF DEED OF TRUST**  
(Attach form of Deed of Trust.)

Exhibit G

**FINANCING PLAN**  
(Attach Financing Plan.)

2890667.3



# City of San Leandro

Meeting Date: January 8, 2018

## Staff Report

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**File Number:** 17-731

**Agenda Section:** BUSINESS ITEMS

**Agenda Number:**

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Cynthia Battenberg  
Community Development Director

**FINANCE REVIEW:** David Baum  
Finance Director

**TITLE:** RESOLUTION of the City Council of the City of San Leandro Authorizing the City Manager to Submit an Application for the Affordable Housing and Sustainable Communities Program

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**WHEREAS**, Eden Housing, a nonprofit housing developer, is proposing to develop a 62-unit affordable rental housing project located at 1604 and 1642 San Leandro Boulevard (the "Project"); and

**WHEREAS**, in order to make the Project financially feasible, Eden Housing is leveraging various funding sources, including funding from the City; and

**WHEREAS**, the State of California, the Strategic Growth Council and the Department of Housing and Community Development ("Department") have issued a Notice of Funding Availability dated October 2, 2017 ("NOFA"), under the Affordable Housing and Sustainable Communities ("AHSC") Program established under Division 44, Part 1 of the Public Resources Code commencing with Section 75200; and

**WHEREAS**, the City of San Leandro ("City") desires to apply for AHSC Program funds and submit the application package released by the Department for the AHSC Program; and

**WHEREAS**, the Strategic Growth Council is authorized to approve funding allocations for the AHSC Program, subject to the terms and conditions of the Notice of Funding Availability, program guidelines, application package, and standard agreement, and the Department is authorized to administer the approved funding allocations of the AHSC Program; and

**WHEREAS**, the City intends to apply for AHSC Program funds as a joint applicant with Eden Housing, and has been working closely with Eden Housing, Enterprise Community Partners, and AC Transit to develop a competitive AHSC Program application; and



**WHEREAS**, the City and Eden Housing anticipate applying for approximately twelve million dollars (\$12,000,000) in AHSC program funds, which includes eight million dollars (\$8,000,000) for the Project and four million dollars (\$4,000,000) for active transportation improvements and programs; and

**WHEREAS**, the City is seeking authorization to apply for not to exceed fifteen million dollars (\$15,000,000) in AHSC program funds, which includes ten million dollars (\$10,000,000) for the Project and five million dollars (\$5,000,000) for active transportation improvements and programs, in order to accommodate potential changes in the scope of the application and budget without the need to obtain additional authorization from the City Council; and

**WHEREAS**, if the application is approved, Eden Housing will be responsible for managing the affordable housing related loan, and the City's Engineering and Transportation Department will administer the infrastructure-related grants.

**NOW, THEREFORE** the City Council of the City of San Leandro does RESOLVE as follows:

1. The City Manager, on behalf of the City of San Leandro, is hereby authorized and directed to apply for and submit to the Department the AHSC Program Application as detailed in the Notice of Funding Availability dated October 2, 2017, for Round 3 in a total amount not to exceed \$15,000,000 of which \$10,000,000 is requested as a loan for an Affordable Housing Development ("AHSC Loan") and \$5,000,000 is requested for a grant for Housing-Related Infrastructure (HRI), Sustainable Transportation Infrastructure, Transit-Related Amenities or Program activities ("AHSC Grant") as defined by the AHSC Program Guidelines adopted by Sustainable Growth Council on July 17, 2017, errata August 14, 2017 and October 23, 2017. If the application is approved, the City is hereby authorized and directed to enter into, execute, and deliver a State of California Standard Agreement ("Standard Agreement") in a total amount not to exceed \$15,000,000 (\$10,000,000 for the AHSC Loan and \$5,000,000 for the AHSC Grant), and any and all other documents required or deemed necessary or appropriate to secure the AHSC Program funds from the Department, and all amendments thereto (collectively, the "AHSC Documents".)

2. The City will be subject to the terms and conditions as specified in the Standard Agreement. Funds are to be used for allowable capital asset project expenditures to be identified in Exhibit A of the Standard Agreement. The application in full is incorporated as part of the Standard Agreement. Any and all activities funded, information provided, and timelines represented in the application are enforceable through the Standard Agreement. The City hereby agrees to use the funds for eligible capital asset(s) in the manner presented in the application as approved by the Department and in accordance with the Notice of Funding Availability and Program Guidelines and Application Package.

3. The City Manager is authorized to execute the AHSC Program Application Package and the AHSC Documents as required by the Department for participation in the AHSC Program and to take all actions necessary to carry out the intent of this Resolution.