

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

Michael G. Biddle, City Attorney  
City of Emeryville  
1333 Park Ave.  
Emeryville, CA 94608-3517

EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE SECTION 27383

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**AGREEMENT ON AFFORDABLE UNITS**  
(Project Name/Address)

This Agreement on Affordable Units is entered into as of \_\_\_\_\_, 20\_\_\_\_, by [DEVELOPER/OWNER NAME], a [TYPE AND LOCATION OF COMPANY], ("**Developer**") and THE CITY OF EMERYVILLE ("**City**") with reference to the following facts:

A. Developer is developing a [DESCRIBE TYPE OF PROJECT(the "**Project**") on that certain real property described on **Exhibit A** attached hereto (the "**Property**"). The Project will consist of [# OF UNITS AND BEDROOMS].

B. The Project is subject to Article 62 of Chapter 4 of Title 9 of the Emeryville Municipal Code ("**Article 62**") requiring twenty percent (20%) of the residential units to be Affordable as such term is defined in Article 62. The Project is further subject to California Health and Safety Code Section 33334.3 requiring residential units to remain affordable for the period of time provided in the statute.

C. The purpose of this Agreement is to acknowledge the agreement between Developer and City for the inclusion of affordable ownership units in the Project and the restrictions affecting the Project.

NOW THEREFORE, the parties agree:

1. Affordable Units. Developer hereby covenants and agrees for itself, its successors, its assigns and every successor in interest in and to all or any portion of the Property, that the Project shall be constructed, owned and operated in accordance with the terms and conditions of this Agreement and the requirements of Article 62. No less than twenty percent (20%) of the Project (i.e., \_\_\_\_\_ units) shall be affordable to persons and families of "moderate income" ("**Moderate Income Eligible Households**"), as such term is defined in Article 62 and California Health and Safety Code Section 50052.5 et seq. ("**Health and Safety Code**"). In the event of a discrepancy between Article 62 and the Health and Safety Code, the Health and Safety Code shall apply.

**[IF PROJECT ALSO CONTAINS LOW INCOME UNITS – NEED TO MODIFY THE ABOVE PARAGRAPH AS FOLLOWS:]**

IN PARAGRAPH 1, SENTENCE 2, AFTER (“**Moderate Income Eligible Households**”), ADD: “or low income” (“**Low Income Eligible Households**”) as such terms are defined in Article 62 and California Health and Safety Code Section 50052.5 et seq. (“**Health and Safety Code**”). In the event of a discrepancy between Article 62 and the Health and Safety Code, the Health and Safety Code shall apply.

**[IF PROJECT ALSO CONTAINS LOW AND VERY LOW INCOME UNITS – NEED TO MODIFY THE ABOVE PARAGRAPH AS FOLLOWS:]**

IN PARAGRAPH 1, SENTENCE 2, AFTER (“**Moderate Income Eligible Households**”), ADD: “or low income” (“**Low Income Eligible Households**”) or “very low income” (“**Very Low Income Eligible Households**”) as such terms are defined in Article 62 and California Health and Safety Code Section 50052.5 et seq. (“**Health and Safety Code**”). In the event of a discrepancy between Article 62 and the Health and Safety Code, the Health and Safety Code shall apply.

**[IF PROJECT CONTAINS LOW INCOME UNITS – NEED TO ADD THE FOLLOWING PARAGRAPH:]**

\_\_\_\_\_ (\_\_) of the Affordable Units in the Project (the “**Moderate Income Affordable Units**”) shall be affordable to and shall be occupied by Moderate Income Eligible Households. However, as to the \_\_\_\_\_ (\_\_) remaining Affordable Units in the Project (the “**Low Income Affordable Units**”), Developer shall cooperate with City’s efforts to make the Low Income Affordable Units affordable to and occupied by Low Income Eligible Households. It is the City’s intent that Low Income Eligible Households will apply for financial assistance through the Ownership Housing Assistance Program for Lower Income Households (“**Ownership Assistance Program**”) established and administered by the Emeryville Redevelopment Agency. If an insufficient number of Low Income Eligible Households are able to obtain adequate financial assistance through the Ownership Assistance Program as a result of the Ownership Assistance Program being discontinued or having insufficient funds or for other reasons, Developer will be relieved of its requirement to cooperate with City’s efforts to make the remaining number of Low Income Affordable Units affordable to Low Income Eligible Households and thereafter the Low Income Affordable Units will be treated as Moderate Income Affordable Units that are affordable to Moderate Income Eligible Households.

**[IF PROJECT CONTAINS LOW AND VERY LOW INCOME UNITS – NEED TO ADD THE FOLLOWING PARAGRAPH:]**

\_\_\_\_\_ (\_\_) of the Affordable Units in the Project (the “**Moderate Income Affordable Units**”) shall be affordable to and shall be occupied by Moderate Income Eligible Households. However, as to the \_\_\_\_\_ (\_\_) remaining Affordable Units in the Project, Developer shall cooperate with City’s efforts to make these units affordable to

and occupied by Low Income Eligible Households and Very Low Income Eligible Households. Specifically, \_\_\_\_\_ (\_\_\_\_) of the Affordable Units in the Project (the “**Low Income Affordable Units**”), shall be affordable to and occupied by Low Income Eligible Households, and \_\_\_\_\_ (\_\_\_\_) of the Affordable Units in the Project (the “**Very Low Income Affordable Units**”), shall be affordable to and occupied by Very Low Income Eligible Households. It is the City’s intent that Low Income and Very Low Income Eligible Households will apply for financial assistance through the Ownership Housing Assistance Program for Lower Income and Very Low Income Households (“**Ownership Assistance Program**”) established and administered by the Emeryville Redevelopment Agency. If an insufficient number of Low Income Eligible Households are able to obtain adequate financial assistance through the Ownership Assistance Program as a result of the Ownership Assistance Program being discontinued or having insufficient funds or for other reasons, Developer will be relieved of its requirement to cooperate with City’s efforts to make the remaining number of Low Income Affordable Units affordable to Low Income Eligible Households or the Very Low Income Affordable Units affordable to Very Low Income Eligible Households and thereafter the Low Income Affordable Units and the Very Low Income Affordable Units will be treated as Moderate Income Affordable Units that are affordable to Moderate Income Eligible Households.

2. Designation of Affordable Units. The designation of the Affordable Units shall be agreed upon between the Developer and the City. Attached hereto as **Exhibit B** is a site plan of the Project with the Affordable Units designated. The appearance, materials, finished quality, and amenities of the Affordable Units shall be comparable to the market rate units. Attached hereto as **Exhibit C** is a list of the amenities and finishes that will be featured in the units in the Project. The Affordable Units shall be constructed concurrently with or prior to the construction of the market rate units in the Project. The issuance of a Certificate of Occupancy for the market rate units (or portion of units in a phased project), is contingent upon completion and issuance of a Certificate of Occupancy for the Affordable Units (or proportionate share of Affordable Units in a phased project). The construction of the Project shall be in compliance with all the requirements of Article 62. The City will inspect the Affordable Units for compliance with this section prior to issuance of the Certificate of Occupancy for the project and the sale of the units.

3. Resale Restriction Agreement. Upon the first sale by Developer of a Moderate Income Affordable Unit to a Moderate Income Eligible Household, the Developer shall cause the buyer of the Moderate Income Affordable Unit to enter into a Resale Restriction Agreement, in the form attached hereto as **Exhibit D**, which form may be amended prior to its execution, limiting the resale of the Moderate Income Affordable Unit as described therein. **[IF THE PROJECT ALSO CONTAINS LOW INCOME UNITS, ADD THE FOLLOWING:]** Upon the first sale by Developer of a Low Income Affordable Unit to a Low Income Eligible Household, the Developer shall cause the buyer of the Low Income Affordable Unit to enter into a Resale Restriction Agreement, in the form attached hereto as **Exhibit E**, which form may be amended prior to its execution, limiting the resale of the Low Income Affordable Unit as described therein. **[THE FOLLOWING MUST BE INCLUDED IN THE PARAGRAPH, REGARDLESS**

**OF INCOME TARGET LEVEL:** Simultaneous with the sale of each Affordable Unit, the Resale Restriction Agreement shall be recorded against the Affordable Unit. Upon the first sale by Developer of each Affordable Unit within the Project, the Developer shall cause the buyer of the Affordable Unit to enter into a Performance Deed of Trust, in substantially the form attached hereto as **Exhibit F**. Each subsequent buyer of an Affordable Unit shall execute the Resale and Restriction Agreement. Each subsequent buyer of an Affordable Unit shall also be required to execute a Performance Deed of Trust.

4. No Conveyance Without Agreement. No Affordable Unit may be conveyed without recordation of the Resale Restriction Agreement. Upon recordation of the Resale Restriction Agreement against the Affordable Unit sold, this Agreement shall terminate as to the Affordable Unit sold. Upon request of Developer, City shall execute an instrument evidencing the termination of this Agreement as to the sold Affordable Unit.

5. Marketing and Sales of Units in the Project.

A. Developer shall actively market the units in the Project and pursue sales of the Affordable Units. At least one hundred fifty (150) days prior to the completion of the Affordable Units, Developer shall provide City with a description of its marketing and sales program for the Project, including a marketing and sales program specifically designated for the Affordable Units ("**Affordable Units Marketing and Sales Program**") that is in conformance with the City's Affordable Units Marketing and Sales Program Procedures. The City shall review the Affordable Units Marketing and Sales Program and either approve or request modifications to the program within thirty (30) days of receipt. The Affordable Units Marketing and Sales Program must include a preference for Emeryville residents and employees working within the boundaries of Emeryville, pursuant to the requirements of Article 62. The Developer shall not seek relief from the City under the terms of Article 62 with regard to the initial marketing and sales of the Affordable Units until at least one hundred twenty (120) days after the date of the Certificate of Occupancy for the Affordable Units. Developer shall provide monthly updates to the Affordable Units Marketing and Sales Program commencing thirty (30) days after the date the Affordable Units Marketing and Sales Program is initially delivered to City. The Affordable Units Marketing and Sales Program must also demonstrate the experience of the sales agents in marketing to and encouraging the participation of minority buyers, including solicitation of buyers through local community and worship groups. All sales agents shall be knowledgeable about the affordability restrictions encumbering the Affordable Units so that purchasers of the Affordable Units are familiar with the income limitations and resale restrictions. Buyers shall be informed in writing that the resale restrictions will remain in effect for forty-five (45) years and that the Affordable Unit must be occupied as the buyer's primary residence subject to the terms of the Resale Restriction Agreement, in the form attached hereto as [**Exhibit(s)** \_\_\_\_\_], which form may be amended prior to execution.

B. At least one model unit of each Affordable Unit type must be available for prospective buyers to view at least one week prior to the application deadline for the Affordable Units.

C. The initial sales price and eligible income level of each Affordable Unit shall be as shown on **Exhibit G.**

D. Written certification of the eligibility of the purchaser of each Affordable Unit, including income verification, shall be provided to the City no later than thirty (30) days prior to the sale of the Affordable Unit. If the City disputes the eligibility of the purchaser, City shall notify Developer within ten (10) working days of receipt of a complete eligibility certification package and Developer and City shall meet in good faith to determine whether the purchaser is qualified to purchase the Affordable Unit. However the City shall make the final determination regarding eligibility. City shall have access to the records of Developer for determining compliance with this Section. The provisions of this Paragraph shall be incorporated in the Affordable Units Marketing and Sales Program.

E. The Developer is responsible for implementing the Affordable Units Marketing and Sales Program actively and in good faith. The City may extend the required marketing and sales period if Developer delays implementation or otherwise fails to comply with the Affordable Units Marketing and Sales Program as approved by the City.

F. Following the first sale of an Affordable Unit in the Project, Developer shall provide quarterly written reports to City on the progress of sales in the Project. The report shall contain a listing of Affordable Units under contract for sale with the contract sales price and projected closing date, and a listing of units which have closed escrow, the purchase price of the closed units, the date of the sale, the date the Resale Restriction Agreement and Right of First Refusal is recorded, the name of the owner, the income of the owner and the information and method used to verify the income of the owner.

6. Effect and Duration of Covenants. The covenants contained in this Agreement shall be deemed to run with the land and shall remain in effect for a period of not less than forty-five (45) years from the date of recording this Agreement. The covenants contained in Paragraphs U and V shall remain in effect in perpetuity.

7. Release. Upon request by the Developer, City shall execute an instrument releasing this Agreement from all units that are not Affordable Units upon the sale of such market rate units.

8. Miscellaneous.

A. Expenses. At the time this Agreement is recorded, at City's request Developer shall deposit with the City Five Thousand Dollars (\$5,000.00) for payment of City's costs and expenses incurred in connection with the enforcement, satisfaction or monitoring by City of any of Developer's obligations under this Agreement.

B. Financial Information. Upon request, Developer shall deliver to City such quarterly, periodic or other financial information as the City may reasonably request, including an audited financial statement of the Affordable Units in the Project.

C. Indemnity. Developer hereby indemnifies, defends and holds harmless the City, its officers, employees and agents against any losses, damages, liabilities, claims, actions, judgments, court costs and legal or other expenses (including attorneys' fees) which City may incur as a consequence of: (i) any breach of this Agreement, or (ii) any act or omission by Developer, any contractor, subcontractor or material supplier, engineer, architect or other person or entity with respect to the Project. Developer shall pay immediately upon City's demand any amounts owing under this indemnity together with interest from the date the indebtedness arises until paid at the rate of interest which shall be the highest rate then allowed by law. The indemnity set forth herein shall not extend to losses, damages, liabilities, claims, actions, judgments, court costs and legal or other expenses which City, its officers, employees and agents, incur to the extent that such are caused by the City's gross negligence or willful misconduct. This indemnification shall survive termination (partial or complete) of this Agreement.

D. Further Assurances. At either the City's or the Developer's reasonable request and at Developer's expense, City and Developer shall execute, acknowledge and deliver any other instruments and perform any other acts necessary, desirable or proper (as determined by City) to carry out the purposes of this Agreement.

E. Notices. All written notices and demands under this Agreement shall be deemed served upon delivery or, if mailed, upon the date shown on the delivery receipt (or the date on which delivery was refused as shown on the delivery receipt) after deposit in United States Postal Service by certified mail, postage prepaid, return receipt requested, or after delivery or attempted delivery by an express delivery service, and addressed to the address of Developer or City appearing below. Notice of change of address may be given in the same manner.

F. Relationship of Parties. The City neither undertakes nor assumes any responsibility or duty to Developer or to any third party with respect to the Project. Nothing contained in this Agreement or other document or instrument made in connection with this Agreement shall be deemed or construed to create a partnership, tenancy-in-common, joint tenancy, joint venture or co-ownership by or between City and Developer. The City shall not be in any way responsible for the debts, losses, obligations or duties of Developer.

G. City's Delay. The City shall not be liable in any way for the City's failure to perform or delay in performing under this Agreement. The City may suspend or terminate all or any portion of its obligations under this Agreement if deemed in the City's best interests.

H. Attorneys' Fees; Enforcement. If any action at law or equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which the party may be entitled.

I. No Assignment. Developer shall not assign Developer's interest under this Agreement without the City's prior written consent. Any assignment made without such consent shall be void. If approved by the City in writing, this prohibition shall not apply to the transfer of the interests of the Developer in the Project or to the Developer's improvements to any other development entity such as a joint venture, limited liability company, partnership or

corporation that includes the Developer or any of its affiliates, which is created for the sole purpose of financing and development of the Developer's Project and for which the Developer retains management and operating control. The Developer shall submit documentation that the proposed development entity has the financial and other necessary capabilities to carry out the obligations under this Agreement, including information about the identity, background, experience and financial capability of each participant in the proposed development entity. In addition, the Developer shall submit a proposed Assignment and Assumption Agreement transferring the rights and obligations under this Agreement to the proposed development entity. Such Assignment and Assumption Agreement shall be in a form approved by the City Attorney.

J. Severability. If any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that portion shall be deemed severed from this Agreement and the remaining parts shall remain in full force as though the invalid, illegal, or unenforceable portion had never been part of this Agreement.

K. Heirs, Successors and Assigns. The covenants contained in this Agreement shall inure to the benefit of the City and its successors and assigns and shall be binding upon Developer and any successor in interest to the Property and the Project or any part thereof during their respective periods of ownership. The covenants shall run in favor of the City and its successors and assigns for the entire period during which such covenants shall be in force and effect, without regard to whether the City is or remains any owner of any land or interest therein to which such covenants relate. The City and its successors and assigns, in the event of any breach of any such covenants, shall have the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach.

L. Rights Cumulative, No Waiver. All the City's rights and remedies provided in this Agreement, granted by law or otherwise, are cumulative and may be exercised by the City at any time. City's exercise of any right or remedy shall not constitute a cure of any default. No waiver shall be implied from any failure of City to take, or any delay by the City in taking, action concerning any default or failure of condition under this Agreement, or from any previous waiver of any similar or unrelated default or failure of condition. Any waiver or approval under any of this Agreement must be in writing and shall be limited to its specific terms.

M. Time. Time is of the essence of each term of this Agreement.

N. Headings. All headings appearing in any of this Agreement are for convenience only and shall be disregarded in construing this Agreement.

O. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California. Developer and all persons and entities in any manner obligated to City under this Agreement consent to the venue in the state court having jurisdiction where the property is located and also consent to service of process by any means authorized by California law.

P. Integration; Interpretation. This Agreement contains or expressly incorporates by reference the entire agreement of the parties with respect to the matters contemplated herein and supersedes all prior negotiations. This Agreement shall not be modified except by written instrument executed by all parties. Any reference in any of this Agreement to the Project shall include all or any parts of the Project. Any reference to this Agreement includes any amendments, renewals or extensions approved by City. Any reference in this Agreement shall include all or any of the provisions of this Agreement and this Agreement unless otherwise specified.

Q. Joint and Several Liability. If the Developer is a joint venture, then the liability of the joint venturers shall be joint and several.

R. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered will be deemed to be an original and all of which, taken together, will be deemed to be one and the same instrument.

S. Conflicts of Interest. No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested. The Developer warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement.

T. Nonliability of City Officials and Employees. No member, official or employee of the City shall be personally liable to the Developer in the event of any default or breach by the City or for any amount which may become due to the Developer or on any obligations under the terms of this Agreement.

U. No Discrimination Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, disability, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property or the project, nor shall the developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with references to the selection, location, number, use or occupancy of tenants, lessees or vendees in the property or project.

All deeds, leases or contracts made relative to the Property or the Project, the improvements thereon or any part thereof, shall contain or be subject to substantially the following nondiscrimination clauses:

1. In deeds: The Grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, disability, marital status, national origin or



ancestry in the sale, lease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land.

2. In leases: The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, disability, marital status, national origin or ancestry in the leasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees or vendees in the land herein leased.

3. In contracts: There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, disability, marital status, national origin or ancestry in the sale, lease, transfer, use occupancy, tenure or enjoyment of the land, nor shall the transferee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees or vendees in the land.

V. Maintenance. Developer and any successors and assigns in interest, including the Homeowners' Association, agree to maintain the improvements and landscaping in the Project in a clean, orderly and good condition and repair and to keep the Project free from accumulation of debris and waste materials during the term of this Agreement. Developer shall submit to the City the Conditions, Covenants and Restrictions ("CC&Rs") for the Project, ninety (90) days prior to the estimated completion of the Project. The CC&Rs shall include a provision for funding the on-going maintenance of the landscaping and other common area improvements in the Project. The City shall review the CC&Rs and either approve or request modifications to the program within fifteen (15) days of receipt.

W. Default.

1. Any failure by Developer to perform any term or provision of this Agreement shall constitute an "Event of Default" (1) if Developer does

not cure such failure within thirty (30) days following written notice of default from the City, or (2) if such failure is not of a nature which can be cured within such thirty (30) day period, the Developer does not within such thirty (30) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure.

2. Any notice of default given hereunder shall specify in detail the nature of the failure in performance which the City claims constitutes the Event of Default and the manner in which such Event of Default may be satisfactorily cured in accordance with the terms and conditions of this Agreement. During the time periods herein specified for cure of a failure to perform, the Developer shall not be construed to be in default of this Agreement for any purposes.

Upon an uncured Event of Default, the City may exercise any and all remedies at law or in equity. Any failure or delay by the City in asserting any of its rights or remedies as to any Event of Default shall not operate as a waiver of any Event of Default or of any such rights or remedies or deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

9. Exhibits. The following exhibits are attached hereto and incorporated herein for reference.

A - Legal Description

B - Site Plan of Project, including designation of Affordable Units

C - Amenities and Finishes of Units in Project

D - Resale Restriction Agreement – Moderate Income Affordable Units

[ADD AS APPLICABLE]

E - Resale Restriction Agreement – Low Income Affordable Units

F - Resale Restriction Agreement – Very Low Income Affordable Units

[REQUIRED FOR ALL AGREEMENTS AS FOLLOWS:]

G - Performance Deed of Trust

H - Initial Sales Prices and Eligible Income Levels

In witness thereto, the parties set forth below execute this Agreement on Affordable Units as of the date first written above in this Agreement.

**DEVELOPER:**

[NAME OF DEVELOPER/OWNER, TYPE AND LOCATION OF COMPANY]

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

Its: \_\_\_\_\_

Address for notice purposes:

\_\_\_\_\_  
\_\_\_\_\_

**CITY:**

THE CITY OF EMERYVILLE

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

Its: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
City Attorney

Address for notice purposes:

City Of Emeryville  
Attn: City Attorney  
1333 Park Ave.  
Emeryville, CA 94608

*[Signatures to be Notarized]*

STATE OF CALIFORNIA                    )  
  ) ss  
COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_, before me the undersigned, a notary public, personally appeared \_

\_\_\_\_\_

personally known to me  
proved to me on the basis of satisfactory evidence

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

~~~~~

STATE OF CALIFORNIA                    )  
                                                          ) ss  
COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_, before me the undersigned, a notary public, personally appeared \_

\_\_\_\_\_

personally known to me  
proved to me on the basis of satisfactory evidence

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

**EXHIBIT A**

PROPERTY DESCRIPTION

**EXHIBIT B**

SITE PLAN OF THE PROJECT AND  
DESIGNATION OF AFFORDABLE UNITS

**EXHIBIT C**

**AMENITIES AND FINISHES OF UNITS IN PROJECT**



**EXHIBIT D**

RESALE RESTRICTION AGREEMENT  
MODERATE INCOME AFFORDABLE UNITS

**EXHIBIT E**

RESALE RESTRICTION AGREEMENT  
LOW INCOME AFFORDABLE UNITS

**EXHIBIT F**

**RESALE RESTRICTION AGREEMENT**  
**VERY LOW INCOME AFFORDABLE UNITS**

**EXHIBIT G**

**PERFORMANCE DEED OF TRUST**

## EXHIBIT H

### INITIAL SALES PRICES AND ELIGIBLE INCOME LEVELS

[REVISE AS APPLICABLE]

| CITY OF EMERYVILLE AFFORDABLE HOUSING SET ASIDE PROGRAM<br>AGREEMENT ON AFFORDABLE UNITS<br>PROJECT: _____<br>[address, Emeryville]                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                  |                                     |               |               |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|-------------------------------------|---------------|---------------|
| Sales Prices for Below Market Rate Set-Aside Units                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                  |                                     |               |               |
| Unit Number                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Unit Type        | # Bedrooms/Square Footage (approx.) | Income Level* | Sales Price** |
| Units 201, 202, 211, 301, 302, 310, 410<br>(7 total)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Residential unit | 1-bedroom/1 bath<br>(618-652 sf)    | Moderate      | \$267,400     |
| Units 203, 209, 306, 308, 309, 408<br>(6 total)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Residential unit | 2-bedroom/1.5 bath<br>(905-960 sf)  | Moderate      | \$291,400     |
| <p>Moderate Income sales prices are based on 35% of 110% of Year 2006 area median income for Alameda County. Prices are based on capitalization of net income after deductions for monthly housing expenses per Article 62 of Emeryville Municipal Code.</p> <p>* Thirteen (13) units shall be reserved for Moderate Income Households, subject to provisions of Paragraph 1 of Agreement.</p> <p>** Initial sales prices shown in this table will be adjusted by City as required to reflect annual income limits available on date that Affordable Units Marketing and Sales Program is initiated to public.</p> |                  |                                     |               |               |

| YEAR 2006 INCOME LIMITS                                                                                                                                                                                                                                                         |                    |                    |                    |                    |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|--------------------|--------------------|--------------------|
|                                                                                                                                                                                                                                                                                 | 1 person household | 2 person household | 3 person household | 4 person household |
| Area Median Income                                                                                                                                                                                                                                                              | \$58,700           | \$67,000           | \$75,400           | \$83,800           |
| Moderate Income*                                                                                                                                                                                                                                                                | \$70,400           | \$80,500           | \$90,500           | \$100,600          |
| <p>Source: U.S. Department of Housing and Urban Development; State Housing and Community Development Department. Income limits are for Alameda County and are adjusted annually.</p> <p>* Household's income for moderate income affordable unit may not exceed this level.</p> |                    |                    |                    |                    |