

CITY OF DALY CITY

Regular Meeting - CITY COUNCIL

AGENDA

Monday, January 27, 2020 - 7:00 PM
City Hall Council Chambers – 2nd Floor
333 – 90th Street, Daly City, CA 94015

Live Telecast: Comcast Channel 27, Astound 26, AT&T U-Verse 99

Webcast: www.dalycity.org/meetings

For those wishing to address the City Council on any Item on the Agenda or under Public Appearances/Oral Communications, please complete a Speaker Card located at the entrance to the Council Chambers and submit to a Staff Member as early in the meeting as possible.

Persons with disabilities who require auxiliary aids or services in attending or participating in this meeting should call the office of the City Clerk at 991-8078 as soon as possible.

CALL TO ORDER:

PLEDGE TO THE FLAG:

ROLL CALL:

PRESENTATIONS:

Proclaiming the Month of February Black History Month in Daly City (Shakeel Ali, President of the Jefferson Elementary School District Board of Education)

APPROVAL OF MINUTES:

Regular Meeting of January 13, 2020

APPROVAL OF AGENDA:

CONSENT AGENDA

All items listed on the Consent Agenda are considered to be routine and may be approved by one roll call vote of the City Council. There shall be no separate discussion of the matters on the Consent Agenda unless requested by a member of the City Council. If discussion is required, that item will be removed from the Consent Agenda and will be

AVAILABILITY OF PUBLIC RECORDS:

All public record to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at the City Clerk's Office, City Hall located at 333 90th Street, Daly City, CA during normal business hours, at the same time that the public records are distributed or made available to the legislative body.

considered separately at the end of the Agenda.

Resolutions:

1. Requesting the Use of State Asset Forfeiture Funds for the Harvard Kennedy School - Senior Executives in State and Local Government Course
2. Acceptance of the Subdivision Improvements for the Edgeworth Avenue Homes Subdivision
3. Resolution to Authorize City Manager to Execute Agreement for Website and Agenda Management Systems
4. Authorization to Execute a Contract with Eaton Pumps for the Westlake Pump Rehabilitation
5. Setting Time and Place of Public Hearing - Proposed Allowance for Automated License Plate Readers in Police Department Fleet
6. Accept and Appropriate \$1,310,000 from the Local Streets and Roads Preservation Program Funds for the Daly City Street Resurfacing and Slurry Seal Project

END OF CONSENT AGENDA

PUBLIC HEARINGS:

7. Approval of a Resolution Approving Government Code Section 52201 Summary Report in Connection with the Disposition and Development of Property by and Between the City of Daly City and Equity Residential

Staff:

Mothershead/Zimmerman

Recommended Action:

Open/Close Hearing

Adopt Resolution

Roll Call

8. Adoption of Resolution Approving the Disposition and Development Agreement (DDA) Between the City and Equity Residential for the Property Located at 6401 Mission Street

Staff:

Mothershead/Zimmerman

Recommended Action:

Open/Close Hearing

Adopt Resolution

Roll Call

9. Adoption of Resolution Authorizing City's Participation in the Statewide Community Infrastructure Program with the California Statewide Communities Development Authority

Staff:

Zimmerman/Mothershead

Recommended Action:

Adopt Resolution

Open/Close Hearing

Roll Call

AWARD OF BIDS/CONTRACTS:

10. Appropriate Funds and Award Construction Contract for the Police Parking Lot Security Fence Project

Staff:

Yip

Recommended Action:

Adopt Resolution

Roll Call

11. Award of Construction Contract for Westlake Library HVAC and Roof Replacement Project

Staff:

Yip

Recommended Action:

Adopt Resolution

Roll Call

ORDINANCES:

12. Second Reading, Ordinance No. 1435, Adding Chapter 2.58 to the Municipal Code, Establishing Small Business Commission

Staff:

Zimmerman

Recommended Action:

Adopt Ordinance

Roll Call

13. Second Reading, Ordinance No. 1436, Amending the Daly City Zoning Map to establish Planned Development Standards for PD-31A

Staff:

Zimmerman

Recommended Action:

Adopt Ordinance

Roll Call

PUBLIC APPEARANCES/ORAL COMMUNICATIONS:

NOTE: Speakers are limited to two minutes, unless modified by the Mayor. The Council cannot take action on any matter raised under this item

APPOINTMENTS: Board/Commission Membership Committee Appointments

REPORTS:

14. Council Committee

A Council Committee Meetings January 10-27,
2020

15. City Council

16. Staff

ADJOURNMENT:

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To view videos of the City Council meetings, visit <http://yt.vu/+dalycitycouncil>

The meeting was called to order by Mayor Buenaventura at 7:03 P.M.

ROLL CALL: Councilmembers Present:
Glenn R. Sylvester, Mayor
Juslyn C. Manalo, Vice Mayor
Raymond A. Buenaventura
Rod Daus-Magbual
Pamela DiGiovanni

Staff Present:
Shawwna Maltbie, City Manager
Rose L. Zimmerman, City Attorney
K. Annette Hipona, City Clerk

APPROVAL OF MINUTES:

Special Meeting of December 9, 2019 and Regular Meeting of December 9, 2019

It was moved by Vice Mayor Manalo, seconded by Councilmember DiGiovanni and carried to approve the minutes of the special and regular meetings of December 9, 2019.

APPROVAL OF AGENDA:

It was moved by Councilmember Daus-Magbual, seconded by Vice Mayor Manalo and carried to approve the agenda.

CONSENT AGENDA:

It was moved by Vice Mayor Manalo, seconded by Councilmember DiGiovanni and carried to approve the consent agenda.

Resolutions:

Use of Federal Asset Forfeiture Funds (DEA) to Purchase a Command Post Utility Unit for Supervisor Vehicle

Resolution 20-1, Authorizing Use of Federal Asset Forfeiture (DEA) Funds to Purchase Command Post Utility Unit for Supervisor Vehicle

Notice of Completion for 2019-20 Crocker/Hillside, Junipero Serra Boulevard, and San Pedro Road Slurry Seal Project

Resolution 20-2, Accepting Completion of Certain Project in the Department of Public Works (2019-20 Crocker/Hillside, Junipero Serra Boulevard, and San Pedro Road Slurry Seal)

Approving Second Extension of Exclusive Negotiating Agreement between the City of Daly City and Duggan's Mortuary for Property at Westlake Avenue and Junipero Serra Boulevard, Daly City California

Resolution 20-3, Approving Second Extension of Exclusive Negotiating Agreement Between the City of Daly City and Duggan's Mortuary for Property Located at Westlake Avenue and Junipero Serra Boulevard, Daly City California

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Approving Second Extension of Exclusive Negotiating Agreement between the City of Daly City and Thunder Village for Property at Westlake Avenue and Junipero Serra Boulevard, Daly City California

Resolution 20-4, Approving Second Extension of Exclusive Negotiating Agreement Between the City of Daly City and Thunder Village Properties, LLC For Property Located at Westlake Avenue and Junipero Serra Boulevard, Daly City California

Setting Time and Place of Public Hearing – Proposed Ordinance Amending Chapter 2.02 – Re: Office of the City Manager

Resolution 20-5, Setting Time and Place of Hearing Re: Proposed Ordinance Amending Chapter 2.02 Of Title 2 of the Daly City Municipal Code Re: Office of the City Manager

Setting Time and Place of Public Hearing – Participating in the Statewide Community Infrastructure Program with the California Statewide Communities Development Authority

Resolution 20-6, Setting Time and Place of Public Hearing to Consider the City's Participating in the Statewide Community Infrastructure Program with the California Statewide Communities Development Authority

Check Registers:

Check Registers for the Month of November 2019

Check Registers for the Month of December 2019

END OF CONSENT AGENDA

PUBLIC HEARINGS:

Introduction of Ordinance to Establish a Small Business Commission

Economic Development Specialist Brandon Phipps discussed the reasoning behind the recommendation to establish a Small Business Commission and details on the proposed ordinance that would form said commission.

It was moved by Vice Mayor Manalo, seconded by Councilmember Daus-Magbual and carried to open the public hearing.

Marian Mann, resident, thanked the Vice Mayor for considering the needs of small businesses in the City. Ms. Mann mentioned there are many vacancies on Mission Street and believed that such a commission would help promote small businesses by having them support each other.

It was moved by Councilmember Buenaventura, seconded by Councilmember Daus-Magbual and carried to close the public hearing.

It was moved by Mayor Sylvester, seconded by Councilmember DiGiovanni and carried for City Attorney to Read by Title Only. Vice Mayor Manalo introduced the following ordinance:

Ordinance 1435, Adding Chapter 2.58 of Title 2 of the Daly City Municipal Code Re: Small Business Commission

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General Plan Amendment GPA-9-18-13666, Zone Change ZC-9-18-13662, Design Review DR-9-18-13665, Mitigated Negative Declaration CEQA-9-18-13664 – Jefferson Union High School District Faculty and Staff Housing Project at 699 Serramonte Boulevard

Associate Planner Carmelisa Morales gave a project overview and presented the applicant's proposal to construct faculty and staff housing comprising of 122 units, an automated car lift system, and open space areas at 699 Serramonte Boulevard.

Jefferson Union High School District (JUHSD) Trustees Kalimah Salahudin and Andrew Lie outlined the benefits of the project including the goal of retaining highly qualified teachers by providing affordable housing for teachers and staff. They also addressed Council's questions regarding traffic and construction concerns and the adjacent community garden.

Mayor Sylvester opened the public hearing.

The following speakers supported the construction of the housing project and gave various reasons: the need for affordable housing for faculty and staff; the impact to lower the high turnover rate of faculty; the strong demand for the housing project; the voter approval for said housing; and the income disparity between JUHSD and other school districts.

Patty Lenahan, JUHSD
Jennifer Pefeleti
Monica Casey, JUHSD

Lee Medvedoff, JUHSD
Hayley Holloman, JUHSD
Alex Melendrez, teacher/HLC

Michael Rodriguez, JUHSD
Marlene Gutierrez, JUHSD

The following individuals voiced concern regarding the ecological impacts the construction could have to the surrounding area including impacts on the community garden and native plants and animals. Speakers also mentioned potential cultural impacts, the lack of notification to the tribes, and requested for a plan of action from the school.

Debbie Santiago, American Indians/Miwok
Richard Beltran, Ramaytush Ohlone

Edgar Santiago
Erick Campbell

It was moved by Vice Mayor Manalo, seconded by Councilmember Daus-Magbual and carried to close the public hearing.

It was moved by Mayor Sylvester, seconded by Councilmember Buenaventura and carried for City Attorney to Read by Title Only. Councilmember Daus-Magbual introduced the following ordinance:

Ordinance 1436, Amending the Daly City Zoning Map by Amending Ordinance No. 1048 to Planned Development Zone (PD -31A) And Establishing Planned Development Standards

It was moved by Councilmember Buenaventura, seconded by Councilmember DiGiovanni and carried by unanimous roll call vote to adopt the following resolution:

Resolution 20-7, Adopting A Mitigated Negative Declaration (CEQA-9-18-13664), Adopting Findings of Fact for General Plan Amendment (GPA-9-18-13666, Zone Change ZC-9-18-13662 and Design Review DR-9-18-13665) for Jefferson Union High School District Faculty and Staff Housing Project

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COMMUNICATIONS:

Introduction of an Ordinance Adding Chapter 5.92 to the Daly City Municipal Code and Adoption of the Short-Term Rental Fees

Associate Planner Carmelisa Morales presented the revised ordinance adopting regulations and associated fees for Short-Term Rentals (STR). Ms. Morales also reported on the public comments received expressing both benefits and concerns regarding STRs.

The following individuals who operate STRs commented on the benefits of STRs including added tax revenue to the City, STRs serving as hotels for tourists, and STRs giving owners more control over their properties. Some expressed concern with the proposed ordinance which they regarded as restrictive and arbitrary and requested for its postponement until revisions are made.

Stella Stark	Joe Litehiser	Linda Litehiser
Arthur Shekhtman	Benjamin Butler	Rochelle Fortier Nwadibia
John Pfister	Wrich Printz	Coral Om

The following speakers supported the proposed ordinance but requested additional restrictions on STRs. They expressed concern with the negative impacts that STRs have on Daly City's housing stock, neighborhood integrity, quality of life, and safety.

Sharon Howell	Tim Cannon	Christopher Swanson
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Mayor Sylvester called for a 5-minute recess of the meeting at 9:25 P.M. and reconvened at 9:30 P.M.

Council gave direction to staff on the information it required to make a decision on this matter and direction on revisions to the ordinance. City Attorney Rose Zimmerman suggested either tabling the item or continuing it to a date certain in order to address Council's questions and direction to staff.

It was moved by Councilmember Buenaventura, seconded by Mayor Sylvester and carried by voice vote to table the item for further research and revisions.

Use Permit UPR-6-19-14071 and Design Review DR-11-19-14321 – Hilldale School Expansion at 25 and 79 Florence Street

Planning Manager Michael Van Lonkhuysen presented the applicant's proposal to modify an existing application to increase the enrollment of Hilldale School and allow for additional parking on site.

Leigh Shinn, resident, was concerned that the expansion would exacerbate traffic and safety issues due to a lack of a parking structure and particularly during student drop-off and pick-up times.

Buuchau Dukhovny, resident, believed the expansion would alleviate traffic issues since it will be adding a turnaround drop-off area for students.

Mr. Sittner, Hilldale School representative, addressed Council's questions regarding traffic and safety concerns and how the addition of a turnaround drop-off area would lessen these issues.

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It was moved by Councilmember Daus-Magbual, seconded by Vice Mayor Manalo and carried by unanimous roll call vote to adopt the following resolution:

Resolution 20-8, Adopting Findings of Fact and Imposing Conditions of Approval on Use Permit (UPR-6-19-14071) And Design Review (DR-11-19-14321), for Hilldale School Expansion

PUBLIC APPEARANCES/ORAL COMMUNICATIONS:

Christine Fuller, resident, gave her condolences to the Mayor for the passing of his mother. Ms. Fuller complained about illegal dumping and commended Mr. Chiu and the Public Works staff for their efforts. She requested flyers listing City programs and services to distribute to indigent individuals.

Marian Mann, resident, reported the cancellation of this year's holiday decoration contest, and announced that she would manage the 20th holiday decoration contest next year.

ADJOURNMENT:

At 10:55 PM, Mayor Sylvester adjourned the meeting in memory of Anthony Auimatagi, Luis V. Chavez, Clorinda M. Chavez, Mahorian Laud, Edna Macalinao, Linda S. Mangisel, and Raeann Yinger.

Approved as submitted, this 27th
day of January, 2020.

City Clerk

Mayor



City Council Meeting Agenda Report

Item # _____

Meeting Date: January 27, 2019

Subject: **Requesting the Use of State Asset Forfeiture Funds for the Harvard Kennedy School - Senior Executives in State and Local Government Course**

Recommended Action

Staff recommends Council approve the use of State Asset Forfeiture Funds to fund the 3-week Harvard Kennedy School - Senior Executives in State and Local Government course.

Background

The Daly City Police Department identifies development opportunities for staff to prepare them for continued success in the future. The Harvard Kennedy School - Senior Executives in State and Local Government is recognized as one of the top development courses in the country for senior executives. This course will provide the Police Department with additional resources to better lead the department into the future and prepare command staff for future opportunities. The Chief of Police has applied for and been accepted to the program.

Discussion

Senior officials in local government need knowledge and skills to develop creative solutions with less resources and increased public scrutiny. The Senior Executives in State and Local Government course provides opportunities for experienced senior executives to participate in a 3-week program that will challenge assumptions, develop conceptual frameworks for policy issues, examine innovative partnerships, explore the relationship between the community and government, and exchange ideas with experienced faculty and a diverse group of colleagues.

Fiscal Impact

Funding is available through State Asset Forfeiture Funds. The cost is approximately \$18,000.00 and staff is requesting no more than \$19,000.00 to cover contingencies. There is no request for matching funds.

Summary/Conclusions

Staff is available to provide any additional information desired by the Mayor or Councilmembers.

Respectfully submitted,

A handwritten signature in cursive script that reads "Patrick Hensley".

Patrick Hensley
Chief of Police



City Council Agenda Report

Item # _____

Meeting Date: January 27, 2020

Subject: Final Acceptance of the Subdivision Improvements for the Edgeworth Avenue Homes Subdivision

Recommended Action

Recommend the City Council accept the completion of subdivision improvements for the Edgeworth Avenue Homes Subdivision and authorize the release of bonds in accordance with the Subdivision Improvement Agreement.

Background

On August 11, 2014, the City Council adopted Resolution 14-138 approving the tentative map for the Edgeworth Avenue Homes Subdivision, also known as the Edgeworth Nursery Homes, located south of Washington Street between Annie Street and Edgeworth Avenue. The tentative map allowed for the subdivision of four lots totaling 1.72 acres into 25 single family lots.

On September 14, 2015, the City Council adopted Resolution 15-161 approving the Subdivision Improvement Agreement and final map for the development. The single-family residential project consists of 25 homes in an existing neighborhood accessed by adjacent public streets. Previously the site was occupied by a plant nursery. The Subdivision Improvement Agreement and bonds associated with the work were originally executed and provided by Edgeworth Development Group, LLC. In 2016, the Subdivision Improvement Agreement was accepted and assumed by Lafferty Communities (Lafferty Daly City, LLC).

Subdivision improvements associated with the construction of the project included grading and drainage, water, sanitary sewer, joint trench utilities, landscaping, and streetlights. The total value of the subdivision improvements is \$426,380. Initially, Edgeworth Development Group, LLC provided bonds in the amount of \$426,380. In 2016, when Lafferty Communities accepted and assumed the Subdivision Improvement Agreement, these bonds were returned in exchange for bonds in the amount of \$112,820 representing the estimated value of subdivision improvement work not yet completed at that time.

Discussion

The Developer, Lafferty Communities, has completed the construction of improvements in accordance with the Subdivision Improvement Agreement, the plans and specifications, and to the satisfaction of the City Engineer.

The Developer provided bonds in the amount of \$112,820, which may now be released in accordance with the terms of the Subdivision Improvement Agreement. These bonds were received in exchange for the initial bonds provided by Edgeworth Development Group, LLC in the amount of \$426,380. A warranty bond in the amount of \$42,638 will be held for a one-year period, in the event that any of the improvements fail within that time.

Fiscal Impact

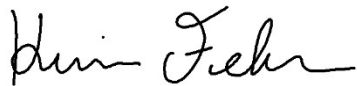
There is no fiscal impact to the City as a result of this action.

Summary/Conclusion

Recommend the City Council accept the completion of subdivision improvements for Edgeworth Avenue Homes and authorize the release of bonds in accordance with the Subdivision Improvement Agreement.

Staff is available to provide any additional information desired by the Mayor or Councilmembers.

Respectfully submitted,



Kevin Fehr
City Engineer



Richard Chiu, Jr.
Director of Public Works



City Council Meeting Agenda Report

Item # _____

Meeting Date: January 27, 2020

Subject: Resolution Authorizing City Manager to Execute Agreement for Website and Agenda Management Systems

Recommended Action

Staff recommends that the City Council approve a resolution authorizing the City Manager to execute a multi-year agreement with CivicPlus in the amount of \$172,597 for website and agenda management systems.

Background

The City has used Sire (currently Hyland) products for its website, agenda, and document management needs for several years. Evolving technology during this timeframe has created an interest in evaluating other vendors for the City's website, agenda, and document management needs.

Discussion

The City released a Request for Proposals (RFP) in September 2019 to solicit proposals from vendors for website, agenda, and document management services. Vendors were provided with the opportunity to submit proposals for one, two, or all three of these services. The deadline for proposal submissions was ultimately extended to November 8, 2019 in order to accommodate additional vendors and proposals. Six vendors submitted proposals. Table 1 provides the names of all six vendors and the type of management services they offered in their proposal.

Table 1: Vendors and Types of Management Services

Vendor	Type of Management Services		
	Website	Agenda	Document
CivicLive	✓		
CivicPlus	✓	✓	
Granicus	✓	✓	✓
Hyland	✓	✓	✓
PrimeGov		✓	
Revize	✓		

Written proposals were reviewed by representatives of the City Manager's Office, the Finance Department (including the Information Services Division or "ISD"), and the Police Department (due to the unique document management systems of Police). Points were assigned in accordance with the evaluation criteria provided in the RFP.

City Council Agenda Report

Subject: Resolution Authorizing City Manager to Execute Agreement for Website and Agenda Management Systems

Meeting Date: January 27, 2020

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Both proposals for document management services were considered incomplete and were rejected. A new RFP – exclusively for document management systems – will be issued in the near future.

Vendors with the highest scores for website and agenda management services were invited to provide demonstrations. Representatives from the City Manager's Office, the City Clerk's Office, Economic and Community Development, Finance, ISD, Library and Recreation, and Police participated in the demonstrations and evaluated the demonstrations.

CivicPlus received the highest overall scores for website and agenda management systems. Subsequent discussion and negotiation has resulted in an acceptable service agreement. Staff recommends an initial three-year agreement with CivicPlus with an option to renew for an additional two years in one-year increments.

The implementation of the new website and agenda management services will result in a more appealing, convenient website for the City as well as better online engagement for public meetings. Both services will significantly increase the ease of use by City staff.

Fiscal Impact

The cost of website and agenda management services is provided in Table 2:

Table 2: Cost of CivicPlus Services

	Website Services		Agenda Services		
	Initial Cost	Annual Cost	Initial Cost	Annual Cost	
Year 1	\$45,646	\$7,800	\$9,850	\$14,600	
Year 2		\$7,800		\$14,600	
Year 3		\$8,190		\$15,038	
Year 4		\$8,600		\$15,489	
Year 5		\$9,030		\$15,954	
Total	\$45,646	\$41,420	\$9,850	\$75,681	Grand Total \$172,597

Funding for the first six months of 2020 is included in the current Information Services Division budget. Funding for the remainder of the remainder of the agreement will be requested in upcoming biennial budgets. The total cost of \$162,648 is a substantial savings compared to original estimates.

Summary/Conclusion

Staff recommends adopting a resolution authorizing the City Manager to execute an agreement between the City of Daly City and CivicPlus for three years with an option to renew for an additional two years in one-year increments for a total amount not to exceed \$162,648.

Staff is available to provide any additional information desired by the Mayor or Councilmembers.

City Council Agenda Report

Subject: Resolution Authorizing City Manager to Execute Agreement for Website and Agenda Management Systems

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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Timothy Birch', with a stylized, cursive script.

Timothy Birch
Deputy Director of Finance and
Administrative Services

A handwritten signature in blue ink, appearing to read 'Todd High', with a stylized, cursive script.

Todd High
Director of Finance and
Administrative Services



City Council Meeting Agenda Report

Item # _____

Meeting Date: January 27, 2020

Subject: Westlake Well Pump and Motor Replacement

Recommended Action

City Council authorize staff to contract with Eaton Pumps to replace the Westlake Well pump, motor, casing, and associated equipment in an amount not to exceed \$300,000.

Background/Discussion

In 2018, the Westlake Well casing was structurally compromised due to corrosion. If the flow from a well is not consistent, a corrosive environment can form and damage equipment. The City is currently in a Regional Agreement with the San Francisco PUC, City of San Bruno, and Cal Water to avoid pumping from wells in the Westside Basin Aquifer during agreed periods of time. This Agreement was put in place to allow the aquifer to recharge and provide greater levels of water during drought conditions and this has occurred. Unfortunately, this situation also caused the corrosion to occur. Other agencies have experienced similar types of issues. To prevent future failures due to this type of corrosion during low-flow periods, this project includes corrosive resistant stainless-steel well casings.

This project was unanticipated because the structural failure occurred after the 2019/20 Biennial Budget was approved. Due to the possibility the Agreement will allow for pumping in April this year, staff is proposing to transfer the needed funds from the Fund 41-Water Enterprise Fund Balance to provide for this action.

Eaton Pumps has been a primary contractor for drinking water well projects in Daly City, is thoroughly experienced in the Westlake Well, and is prepared to move forward immediately with this time-sensitive project. The scope of work includes providing the pump, motor, column pipe, motor electrical cable, and installation services.

Fiscal Impact

Sufficient funds are available in Fund 41-Water Enterprise Fund Balance to provide for this request.

Summary/Conclusion

City Council authorize staff to contract with Eaton Pumps to replace the Westlake Well pump, motor, and associated equipment in an amount not to exceed \$300,000.

Staff is available to provide any additional information desired by the Mayor or Councilmembers.

Respectfully submitted,

Thomas J. Piccolotti
Director of Water and Wastewater Resources

Joshua Cosgrove
P&E Maintenance Manager



City Council Meeting Agenda Report

Item # _____

Meeting Date: January 27, 2020

Subject: Setting Time and Place of Public Hearing – Proposed Allowance for a Total of 10 Automated License Plate Readers in Police Department Fleet

Recommended Action

City Council to set February 24, 2020 as time, and City Council Chambers as place, of public hearing for approval to a proposed allowance of up to (10) Automated License Plate Reader (ALPR) systems in the Police Department fleet.

Background

The Police Department currently has (4) Automated License Plate Reader (ALPR) systems, (3) affixed to patrol cars, and (1) affixed to a Parking Enforcement vehicle. ALPR technology scans license plates at a high rate of speed and cross-checks those license plate numbers against law enforcement databases. These systems have provided valuable intelligence by providing police officers with immediate identification of stolen/wanted vehicles and missing persons. The Police Department complies with California Civil Code Section 1798.90.5 et seq. regarding ALPR technologies. Public agencies are required to provide an opportunity for public comment at a regularly scheduled public meeting of the governing body of the public agency before implementing or changing the existing program.

Discussion

The Police Department is proposing a requested allowance to purchase up to (10) ALPR systems, which would be affixed to city-owned police vehicles/trailers. Any additional ALPR's purchased, will be deployed in the field on a regular basis as part of standard patrol and crime reduction efforts. The ALPR systems improve the efficiency and effectiveness of our Police Officers and Police Assistants. ALPR's assist in locating vehicles with instantaneous inquiries in law enforcement databases. Equally important is the increase in officer and community safety. The technology automatically checks license plates and alerts with an audible tone. This reduces the need for officers to input information and physically scan through several pages of returns. Approximate costs for ALPR's are in the \$20,000 range, making a mass purchase unfeasible. Allowing for maximum of (10) ALPR's in the Police Department fleet will provide the opportunity for us to purchase new units as funding becomes available.

Summary/Conclusions

Staff is available to provide any additional information desired by the Mayor or Councilmembers.

Respectfully submitted,

Cameron Christensen
Captain

Patrick Hensley
Chief of Police



City Council Agenda Report

Item # _____

Meeting Date: January 27, 2020

Subject: Accept and Appropriate \$1,310,000 in One Bay Area Grant 2 Local Streets and Roads Preservation Program Funds for the 2019 Daly City Street Resurfacing and Slurry Seal Project

Recommended Action

Staff recommends that the City Council accept and appropriate the Local Streets and Road (LSR) Preservation Program funds under One Bay Area Grant 2 (OBAG 2) funding in the amount of \$1,310,000, and authorize the City Manager, or her designee, to execute the funding agreements and other documents necessary for grant fund reimbursement from the California Department of Transportation (Caltrans) for the 2019 Daly City Street Resurfacing and Slurry Seal project.

Background

In September 2016, the San Mateo County, City and County Association of Governments (C/CAG) issued a call for projects for the OBAG 2 LSR Preservation Program. Program funds are to be used for the construction of pavement rehabilitation and preventive maintenance projects. A total of \$11,068,000 was available to San Mateo County for this cycle of the LSR program.

In November 2016, City Council authorized staff to submit an application to C/CAG for the OBAG 2 LSR Preservation Program and adopted a resolution of local support required by the Metropolitan Transportation Commission (MTC). The City's application was initially approved to receive \$1,252,000 and was subsequently allocated an additional \$58,000 in funding from C/CAG.

In total, the City was awarded \$1,310,000 in grant funds from the OBAG 2 LSR Preservation Program with a required 11.47% minimum local match for fiscal year (FY) 2019-20. The OBAG 2 grant funding was allocated for construction and construction engineering, and the local match was to be used for design services.

Discussion

In order to secure the OBAG 2 grant funds, the City needs to execute a Program Supplement to the Administering Agency-State Agreement. The Program Supplement is distributed by Caltrans who oversees all federally funded projects in the state.

Staff is proposing to use the grant funds for the 2019 Daly City Street Resurfacing and Slurry Seal project. The project will include work on some or all of the following street sections:

- Eastgate Drive from N. Mayfair Avenue to Glenwood Avenue,
- Geneva Avenue from Castillo Street to Schwerin Street,
- Junipero Serra Blvd. from Citrus Avenue to John Daly Boulevard,
- South Hill Boulevard from Alta Vista Way to Bellevue Avenue,

**Accept and Appropriate \$1,310,000 in One Bay Area Grant 2
Local Streets and Roads Preservation Program Funds
for the 2019 Daly City Street Resurfacing and Slurry Seal Project
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- Southgate Avenue from St. Francis Boulevard to El Dorado Drive, and
- Westmoor Avenue from Southgate Avenue to Baldwin Avenue.

The City will also be constructing ADA concrete curb ramps at street intersections in compliance with federal requirements prior to street rehabilitation.

Fiscal Impact

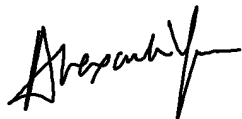
City Council previously appropriated \$345,000 from the City's Measure A Gas Tax fund for the project's design services and local match requirement. This action will accept and appropriate \$1,310,000 of OBAG 2 LSR grant funds to FY 2019-20 CIP Account 17-312-613 Transportation Fund – 2019 Daly City Street Resurfacing and Slurry Seal project account for a total of \$1,655,000.

Summary/Conclusion

Staff recommends that the City Council accept and appropriate the Local Streets and Road (LSR) Preservation Program funds under One Bay Area Grant 2 (OBAG 2) funding in the amount of \$1,310,000, and authorize the City Manager, or her designee, to execute the funding agreements and other documents necessary for grant fund reimbursement from Caltrans for the 2019 Daly City Street Resurfacing and Slurry Seal project.

Staff is available to provide any additional information desired by the Mayor or City Council Members.

Respectfully submitted,



Alexander Yuen
Engineer I



Richard Chiu, Jr.
Director of Public Works

Attachments:

1. Program Supplement 04-5196F15-F029

PROGRAM SUPPLEMENT NO. F029
to
ADMINISTERING AGENCY-STATE AGREEMENT
FOR FEDERAL-AID PROJECTS NO 04-5196F15

Adv Project ID **Date:** January 3, 2020
0419000152 **Location:** 04-SM-0-DLC
 Project Number: STPL-5196(042)
 E.A. Number:
 Locode: 5196

This Program Supplement hereby adopts and incorporates the Administering Agency-State Agreement for Federal Aid which was entered into between the Administering Agency and the State on 05/11/16 and is subject to all the terms and conditions thereof. This Program Supplement is executed in accordance with Article I of the aforementioned Master Agreement under authority of Resolution No. _____ approved by the Administering Agency on _____
(See copy attached).

The Administering Agency further stipulates that as a condition to the payment by the State of any funds derived from sources noted below obligated to this PROJECT, the Administering Agency accepts and will comply with the special covenants or remarks set forth on the following pages.

PROJECT LOCATION: Eastgate Ave, Westmoor Ave, Southgate Ave, South Hill Blvd, Junipero Serra Blvd, and Geneva Ave

TYPE OF WORK: Street Resurfacing and Slurry Seal

LENGTH: 0.0(MILES)

Estimated Cost	Federal Funds		Matching Funds	
	Z230	\$1,310,000.00	LOCAL	OTHER
\$2,225,212.00			\$915,212.00	\$0.00

CITY OF DALY CITY

STATE OF CALIFORNIA
Department of Transportation

By _____

By _____

Title _____

Chief, Office of Project Implementation
Division of Local Assistance

Date _____

Date _____

Attest _____

I hereby certify upon my personal knowledge that budgeted funds are available for this encumbrance:

Accounting Officer



Date 1/3/20

\$1,310,000.00

SPECIAL COVENANTS OR REMARKS

1. A. The ADMINISTERING AGENCY will advertise, award and administer this project in accordance with the current published Local Assistance Procedures Manual.

B. ADMINISTERING AGENCY agrees that it will only proceed with work authorized for specific phase(s) with an "Authorization to Proceed" and will not proceed with future phase(s) of this project prior to receiving an "Authorization to Proceed" from the STATE for that phase(s) unless no further State or Federal funds are needed for those future phase(s).

C. STATE and ADMINISTERING AGENCY agree that any additional funds which might be made available by future Federal obligations will be encumbered on this PROJECT by use of a STATE-approved "Authorization to Proceed" and Finance Letter. ADMINISTERING AGENCY agrees that Federal funds available for reimbursement will be limited to the amounts obligated by the Federal Highway Administration.

D. Award information shall be submitted by the ADMINISTERING AGENCY to the District Local Assistance Engineer within 60 days of project contract award and prior to the submittal of the ADMINISTERING AGENCY'S first invoice for the construction contract.

Failure to do so will cause a delay in the State processing invoices for the construction phase. Attention is directed to Section 15.7 "Award Package" of the Local Assistance Procedures Manual.

E. ADMINISTERING AGENCY agrees, as a minimum, to submit invoices at least once every six months commencing after the funds are encumbered for each phase by the execution of this Project Program Supplement Agreement, or by STATE's approval of an applicable Finance Letter. STATE reserves the right to suspend future authorizations/obligations for Federal aid projects, or encumbrances for State funded projects, as well as to suspend invoice payments for any on-going or future project by ADMINISTERING AGENCY if PROJECT costs have not been invoiced by ADMINISTERING AGENCY for a six-month period.

If no costs have been invoiced for a six-month period, ADMINISTERING AGENCY agrees to submit for each phase a written explanation of the absence of PROJECT activity along with target billing date and target billing amount.

ADMINISTERING AGENCY agrees to submit the final report documents that collectively constitute a "Report of Expenditures" within one hundred eighty (180) days of PROJECT completion. Failure of ADMINISTERING AGENCY to submit a "Final Report of Expenditures" within 180 days of PROJECT completion will result in STATE imposing sanctions upon ADMINISTERING AGENCY in accordance with the current Local Assistance Procedures Manual.

F. Administering Agency shall not discriminate on the basis of race, religion, age, disability, color, national origin, or sex in the award and performance of any Federal-

SPECIAL COVENANTS OR REMARKS

assisted contract or in the administration of its DBE Program Implementation Agreement. The Administering Agency shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of Federal-assisted contracts. The Administering Agency's DBE Implementation Agreement is incorporated by reference in this Agreement. Implementation of the DBE Implementation Agreement, including but not limited to timely reporting of DBE commitments and utilization, is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the Administering Agency of its failure to carry out its DBE Implementation Agreement, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

G. Any State and Federal funds that may have been encumbered for this project are available for disbursement for limited periods of time. For each fund encumbrance the limited period is from the start of the fiscal year that the specific fund was appropriated within the State Budget Act to the applicable fund Reversion Date shown on the State approved project finance letter. Per Government Code Section 16304, all project funds not liquidated within these periods will revert unless an executed Cooperative Work Agreement extending these dates is requested by the ADMINISTERING AGENCY and approved by the California Department of Finance.

ADMINISTERING AGENCY should ensure that invoices are submitted to the District Local Assistance Engineer at least 75 days prior to the applicable fund Reversion Date to avoid the lapse of applicable funds. Pursuant to a directive from the State Controller's Office and the Department of Finance; in order for payment to be made, the last date the District Local Assistance Engineer can forward an invoice for payment to the Department's Local Programs Accounting Office for reimbursable work for funds that are going to revert at the end of a particular fiscal year is May 15th of the particular fiscal year. Notwithstanding the unliquidated sums of project specific State and Federal funding remaining and available to fund project work, any invoice for reimbursement involving applicable funds that is not received by the Department's Local Programs Accounting Office at least 45 days prior to the applicable fixed fund Reversion Date will not be paid. These unexpended funds will be irrevocably reverted by the Department's Division of Accounting on the applicable fund Reversion Date.

H. As a condition for receiving federal-aid highway funds for the PROJECT, the Administering Agency certifies that NO members of the elected board, council, or other key decision makers are on the Federal Government Exclusion List. Exclusions can be found at www.sam.gov.

2. A. ADMINISTERING AGENCY shall conform to all State statutes, regulations and procedures (including those set forth in the Local Assistance Procedures Manual and the Local Assistance Program Guidelines, hereafter collectively referred to as "LOCAL ASSISTANCE PROCEDURES") relating to the federal-aid program, all Title 23 Code of

SPECIAL COVENANTS OR REMARKS

Federal Regulation (CFR) and 2 CFR Part 200 federal requirements, and all applicable federal laws, regulations, and policy and procedural or instructional memoranda, unless otherwise specifically waived as designated in the executed project-specific PROGRAM SUPPLEMENT.

B. Invoices shall be formatted in accordance with LOCAL ASSISTANCE PROCEDURES.

C. ADMINISTERING AGENCY must have at least one copy of supporting backup documentation for costs incurred and claimed for reimbursement by ADMINISTERING AGENCY. ADMINISTERING AGENCY agrees to submit supporting backup documentation with invoices if requested by State. Acceptable backup documentation includes, but is not limited to, agency's progress payment to the contractors, copies of cancelled checks showing amounts made payable to vendors and contractors, and/or a computerized summary of PROJECT costs.

D. Indirect Cost Allocation Plan/Indirect Cost Rate Proposals (ICAP/ICRP), Central Service Cost Allocation Plans and related documentation are to be prepared and provided to STATE (Caltrans Audits & Investigations) for review and approval prior to ADMINISTERING AGENCY seeking reimbursement of indirect costs incurred within each fiscal year being claimed for State and federal reimbursement. ICAPs/ICRPs must be prepared in accordance with the requirements set forth in 2 CFR, Part 200, Chapter 5 of the Local Assistance Procedural Manual, and the ICAP/ICRP approval procedures established by STATE.

E. STATE will withhold the greater of either two (2) percent of the total of all federal funds encumbered for each PROGRAM SUPPLEMENT or \$40,000 until ADMINISTERING AGENCY submits the Final Report of Expenditures for each completed PROGRAM SUPPLEMENT PROJECT.

F. Payments to ADMINISTERING AGENCY for PROJECT-related travel and subsistence (per diem) expenses of ADMINISTERING AGENCY forces and its contractors and subcontractors claimed for reimbursement or as local match credit shall not exceed rates authorized to be paid rank and file STATE employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced by ADMINISTERING AGENCY are in excess of DPA rates, ADMINISTERING AGENCY is responsible for the cost difference, and any overpayments inadvertently paid by STATE shall be reimbursed to STATE by ADMINISTERING AGENCY on demand within thirty (30) days of such invoice.

G. ADMINISTERING AGENCY agrees to comply with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirement for Federal Awards.

H. ADMINISTERING AGENCY agrees, and will assure that its contractors and subcontractors will be obligated to agree, that Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be

SPECIAL COVENANTS OR REMARKS

used to determine the allowability of individual PROJECT cost items.

I. Every sub-recipient receiving PROJECT funds under this AGREEMENT shall comply with 2 CFR, Part 200, 23 CFR, 48 CFR Chapter 1, Part 31, Local Assistance Procedures, Public Contract Code (PCC) 10300-10334 (procurement of goods), PCC 10335-10381 (non-A&E services), and other applicable STATE and FEDERAL regulations.

J. Any PROJECT costs for which ADMINISTERING AGENCY has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR, Part 200, 23 CFR, 48 CFR, Chapter 1, Part 31, and other applicable STATE and FEDERAL regulations, are subject to repayment by ADMINISTERING AGENCY to STATE.

K. STATE reserves the right to conduct technical and financial audits of PROJECT WORK and records and ADMINISTERING AGENCY agrees, and shall require its contractors and subcontractors to agree, to cooperate with STATE by making all appropriate and relevant PROJECT records available for audit and copying as required by the following paragraph:

ADMINISTERING AGENCY, ADMINISTERING AGENCY'S contractors and subcontractors, and STATE shall each maintain and make available for inspection and audit by STATE, the California State Auditor, or any duly authorized representative of STATE or the United States all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts and ADMINISTERING AGENCY shall furnish copies thereof if requested. All of the above referenced parties shall make such AGREEMENT, PROGRAM SUPPLEMENT, and contract materials available at their respective offices at all reasonable times during the entire PROJECT period and for three (3) years from the date of submission of the final expenditure report by the STATE to the FHWA.

L. ADMINISTERING AGENCY, its contractors and subcontractors shall establish and maintain a financial management system and records that properly accumulate and segregate reasonable, allowable, and allocable incurred PROJECT costs and matching funds by line item for the PROJECT. The financial management system of ADMINISTERING AGENCY, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices set to or paid by STATE.

M. ADMINISTERING AGENCY is required to have an audit in accordance with the Single Audit Act of 2 CFR 200 if it expends \$750,000 or more in Federal Funds in a single fiscal year of the Catalogue of Federal Domestic Assistance.

N. ADMINISTERING AGENCY agrees to include all PROGRAM SUPPLEMENTS adopting the terms of this AGREEMENT in the schedule of projects to be examined in ADMINISTERING AGENCY's annual audit and in the schedule of projects to be

SPECIAL COVENANTS OR REMARKS

examined under its single audit prepared in accordance with 2 CFR, Part 200.

O. ADMINISTERING AGENCY shall not award a non-A&E contract over \$5,000, construction contracts over \$10,000, or other contracts over \$25,000 [excluding professional service contracts of the type which are required to be procured in accordance with Government Code sections 4525 (d), (e) and (f)] on the basis of a noncompetitive negotiation for work to be performed under this AGREEMENT without the prior written approval of STATE. Contracts awarded by ADMINISTERING AGENCY, if intended as local match credit, must meet the requirements set forth in this AGREEMENT regarding local match funds.

P. Any subcontract entered into by ADMINISTERING AGENCY as a result of this AGREEMENT shall contain provisions B, C, F, H, I, K, and L under Section 2 of this agreement.

**SUMMARY REPORT PURSUANT TO
SECTION 52201 OF
CALIFORNIA GOVERNMENT CODE
IN CONNECTION WITH THE SALE OF PROPERTY
BY AND BETWEEN THE CITY OF DALY CITY AND EQUITY RESIDENTIAL**

The City of Daly City ("City") is considering the approval of the proposed sale and disposition of a ~0.36-acre parcel ("Property") located at 6401 Mission Street in Daly City, California (APN: 003-224-100) for the development of a multifamily residential housing development of up to 170 residential units.

The Property is vacant, unimproved land and was originally acquired by the former Daly City Redevelopment Agency ("RDA") in November 2006. The subject Property is described in greater detail herein and is also identified and defined as such in the proposed Disposition and Development Agreement ("DDA") proposed to be entered into by and between the City and Equity Residential, a limited partnership organized in Delaware and authorized to do business in California (the "Developer").

This summary report ("Report") for the proposed sale of the Property has been prepared by the City pursuant to California Government Code Section 52201. This Report sets forth certain details of the proposed DDA.

I. BACKGROUND

Section 52201 of the California Government Code provides that a city, county, or city and county may sell or lease property to create an economic opportunity. The acquisition, sale, or lease shall first be approved by the legislative body by resolution after a legally noticed public hearing. The city, county, or city and county shall also make available a copy of a report that describes and contains specific elements of the proposed transaction(s) for public inspection prior to the public hearing.

Pursuant to 52201(a)(2)(B), the Report must include the following information:

- A copy of the proposed acquisition, sale, or lease agreement.
- A summary that describes and specifies all of the following:
 - o The cost of the agreement to the city, county, or city and county, including land acquisition costs, clearance costs, relocation costs, the costs of any improvements to be provided by the city, county, or city and county, plus the expected interest on any loans or bonds to finance the agreements.
 - o For the sale or lease of property, the estimated value of the interest to be conveyed or leased, determined at the highest and best uses permitted under the general plan or zoning.
 - o For the sale or lease of property, the estimated value of the interest to be conveyed or leased, determined at the use and with the conditions, covenants, and development costs required by the sale or lease. The purchase price or present value of the lease payments which the lessor will be required to make during the

term of the lease. If the sale price or total rental amount is less than the fair market value of the interest to be conveyed or leased, determined at the highest and best use, then the city, county, or city and county shall provide as part of the summary an explanation of the reasons for the difference.

- o An explanation of why the acquisition, sale, or lease of the property will assist in the creation of economic opportunity, with reference to all supporting facts and materials relied upon in making this explanation.

This Report outlines the primary terms of the proposed sale of the Property from the City to the Developer as outlined in the proposed DDA and addresses the reporting requirements pursuant to Government Code Section 52201.

II. REPORT ORGANIZATION

This Report is based upon information provided in connection with the proposed disposition of the Property and is organized into the following sections:

- **Summary of the Proposed Disposition** – This section includes a description of and other relevant information pertaining to the proposed conveyance of the subject Property between the City and Developer under the DDA;
- **Cost of the Agreement to the City** – This section summarizes the cost of the agreement to the City, including land acquisition costs, clearance costs, relocation costs, the costs of any improvements to be provided by the City, plus the expected interest on any loans or bonds to finance the agreements;
- **Estimated Value of the Interest to be Conveyed Determined at the Highest and Best Use Permitted Under the General Plan or Zoning** – This section estimates the value of the interest to be conveyed, determined at the highest and best use permitted under the general plan or zoning for the subject Property;
- **Estimated Value of the Interest to be Conveyed Determined at the Use and with the Conditions, Covenants, and Development Costs Required by the Sale** – This section estimates the value of the Property interest to be conveyed determined at the use and with the conditions, covenants, and development costs required by the sale of the Property; i.e. the purchase price;
- **Consideration Received and Comparison with the Established Value** – This section includes an explanation of the reasons for the difference, if the sale price of the Property is less than the fair market value of the interest to be conveyed, determined at the highest and best use;
- **Economic Opportunity** – This section describes the existing condition of the Property and includes an explanation of why the sale of the Property will assist in the creation of economic opportunity.

This Summary Report sets forth certain details of the proposed disposition of the Property by the City to the Developer. A copy of the proposed DDA is attached to this Summary Report (see Attachment "A").

III. SUMMARY OF PROPOSED SALE AND DISPOSITION OF THE PROPERTY

Under the terms of the DDA, the City would sell the Property, at fair market value, to the Developer in "As-Is", "Where-Is", and "With All Faults" condition for a purchase price of \$540,000 ("Purchase Price") to effectuate the development of a multifamily rental residential project.

The Developer's proposed project, as outlined in the DDA, is a rental residential project that generally consists of up to one-hundred seventy (170) multi-family dwelling units, including approximately seventeen (17) apartments that will be affordable to low-income households. The Project will also contain a ground floor publicly-accessible open space and additional amenities, including public art.

IV. COST OF THE AGREEMENT TO THE CITY

The City is not providing an economic development subsidy. The estimated value of the Property is \$540,000 (See V, below), and the City is receiving \$540,000 in consideration.

V. ESTIMATED VALUE OF THE INTEREST TO BE CONVEYED DETERMINED AT THE HIGHEST AND BEST USE PERMITTED UNDER THE GENERAL PLAN AND ZONING

The City obtained an appraisal of the Property dated July 31, 2018 from Cushman & Wakefield that values the Property at \$540,000 at the highest and best use permitted under the General Plan and zoning.

VI. ESTIMATED VALUE OF THE INTEREST TO BE CONVEYED AT THE USE AND WITH THE CONDITIONS, COVENANTS, AND DEVELOPMENT COSTS REQUIRED BY THE SALE

The estimated value of the interest to be conveyed by the sale is equal to estimated value of the interest at highest and best use, or \$540,000.

In March 2017, the City marketed the Site through a competitive "request for qualifications" ("RFQ") process, resulting in two (2) qualified responses from development teams. In August 2017, the City subsequently released a "Round Two" request for proposals and term sheets from the qualified respondents. The firm competing with the Developer eventually removed itself from consideration, and the Developer provided its proposal and term sheet, including a proposed offer of \$500,000. When the City eventually commissioned its appraisal of the Property, and it resulted in a fair market valuation of \$540,000, the Developer increased its offer to be equal to the fair market valuation. As part of due diligence during the Exclusive Negotiation Rights Agreement ("ENA") phase of the transaction, the City's economic development consultant, Kosmont Companies, reviewed the Developer's financial pro forma and provided a peer review residual land value analysis, validating the fair reuse value of \$540,000.

VII. CONSIDERATION RECEIVED AND COMPARISON WITH THE ESTIMATED VALUE OF THE INTEREST TO BE CONVEYED AT HIGHEST AND BEST USE

The consideration proposed to be received by the City is equal to the appraised value of the Property at its highest and best use, or \$540,000. The City is not providing an economic development subsidy.

VIII. ECONOMIC OPPORTUNITY

The January 2019 Fiscal and Economic Impact Analysis prepared by ALH Urban & Regional Economics explains that the Project will generate new jobs and support local business activity in Daly City:

- Net revenue surplus to the City of Daly City of approximately \$183,438 per year;
- During construction, an increase in economic activity by \$74.0 million, creating 375 direct and indirect jobs and resulting in \$32.7 million in personal income generated in the City of Daly City;
- After completion, a total economic impact of \$9.4 million per year in Daly City, supporting about \$3.6 million in personal income through indirect and induced impacts. An estimated 56 new indirect and induced jobs will be created by this spending, off-site but within Daly City.

In addition:

- The Project will convert a long-underutilized parcel of vacant land into critically-needed housing stock near public transit, including seventeen (17) apartments that will be affordable to low-income households
- The Project will include public artwork and open space at the corner of Hillside Blvd. and Mission Street;
- The Project will include several “green” features, including rooftop photovoltaic panels providing heat and electricity, and a greywater recovery system which includes supplemental heat and cooling features.

Given that the Project is estimated to create 374 new construction jobs and 56 new permanent jobs (including indirect and induced jobs), and because there is no net investment of public resources, the employment creation benefit exceeds the benchmark measure of “economic opportunity” described in Government Code 52200.2(a).

Additionally, since the site currently generates no property tax revenue, the increased property taxes exceed the 15% increase in property tax revenue identified as a measure of “economic opportunity” in Government Code 52200.2(b).



City Council Meeting Agenda Report

Item # _____

Meeting Date: January 27, 2020

Subject: Approval of a Resolution Approving Government Code Section 52201 Summary Report in Connection with the Disposition and Development of Property by and Between the City of Daly City and Equity Residential

RECOMMENDED ACTION

It is recommended that the City Council adopt a resolution approving the summary report pursuant to Government Code Section 52201 Report (attached) for the disposition and development of the property located at 6401 Mission Street, Daly City, CA.

BACKGROUND

Initiated by the dissolution of Redevelopment Agencies in 2011, the City of Daly City's Successor Agency drafted a Long-Range Property Management Plan (LRPMP) which detailed disposition strategies for former Redevelopment Agency properties. The LRPMP was approved by the Oversight Board and the Department of Finance (DOF) in 2015. The property located at 6401 Mission Street (Property/Site) was retained for future development.

In March 2017, the City marketed the Site through a competitive RFQ (request for qualifications) process, resulting in two qualified responses from development teams. In August 2017, the City initiated a second round of review for qualified development teams requesting additional project-specific documentation. During this second round of review, one of the competing firms voluntarily removed itself from consideration. The remaining development team (Equity Residential) provided its proposal and term sheet to the City which included a proposed purchase price for the Site of \$500,000 and a proposed development concept for up to 170 multifamily residential units. Equity Residential subsequently increased their offer for the Site to \$540,000 pursuant to a City-commissioned appraisal which resulted in a fair market valuation of \$540,000.

Through ongoing negotiations, the City of Daly City and Equity Residential (Developer) created a draft Disposition and Development Agreement (DDA) that sets forth terms and conditions for the sale and development of the Site. Prior to the sale of the Site, and in order for the City of Daly City to be compliant with State law regarding the lease or sale of former redevelopment agency property, it is necessary that the City create and make available a fair use report pursuant to California Government Code Section 52201 (Report) that affirms the fair use of the property and its creation of an economic opportunity.

DISCUSSION

Government Code Section 52201 Summary Report

Government Code Section 52201 authorizes the City to sell or lease property to which it holds title for the purpose of creating economic opportunity. The Code requires that the City must

first secure approval of the proposed disposition from the City Council after a public hearing. A copy of the proposed DDA and a summary report of the proposed transaction has been made available for public inspection prior to the public hearing.

Kosmont Companies, an independent consultant to the City, prepared the Government Code Section 52201 Summary Report in compliance with the Code (the "Section 52201 Summary Report"). The Section 52201 Summary Report is attached to this report and is incorporated herein by this reference.

The Section 52201 Summary Report contains the following information:

- Summary of the Proposed Disposition – This section includes a description of and other relevant information pertaining to the proposed conveyance of the subject Property between the City and Developer under the DDA;
- Cost of the Agreement to the City – This section summarizes the cost of the agreement to the City, including land acquisition costs, clearance costs, relocation costs, the costs of any improvements to be provided by the City, plus the expected interest on any loans or bonds to finance the agreements;
- Estimated Value of the Interest to be Conveyed Determined at the Highest and Best Use Permitted Under the General Plan or Zoning – This section estimates the value of the interest to be conveyed, determined at the highest and best use permitted under the general plan or zoning for the subject Property;
- Estimated Value of the Interest to be Conveyed Determined at the Use and with the Conditions, Covenants, and Development Costs Required by the Sale – This section estimates the value of the Property interest to be conveyed determined at the use and with the conditions, covenants, and development costs required by the sale of the Property; i.e. the purchase price;
- Consideration Received and Comparison with the Established Value – This section includes an explanation of the reasons for the difference, if the sale price of the Property is less than the fair market value of the interest to be conveyed, determined at the highest and best use;
- Economic Opportunity – This section describes the existing condition of the Property and includes an explanation of why the sale of the Property will assist in the creation of economic opportunity.

This Summary Report sets forth certain details of the proposed disposition of the Property by the City to the Developer. Under the terms of the DDA, the City would sell the Property, at fair market value, to the Developer in "As-Is", "Where-Is", and "With All Faults" condition for a purchase price of \$540,000 ("Purchase Price") to effectuate the development of a multifamily rental residential project.

The Developer's proposed project, as outlined in the DDA, is a rental residential project that generally consists of up to one-hundred seventy (170) multi-family dwelling units, including approximately seventeen (17) apartments that will be affordable to low-income households. The Project will also contain a ground floor publicly-accessible open space and additional amenities, including public art. The City is not providing an economic development subsidy. The estimated value of the Property is \$540,000, and the City is receiving \$540,000 in consideration.

A specific comparison of proposed project impacts and the economic opportunity requirements defined under Government Code 52200.2(a) is shown below:

Employment Creation:

- Project Estimates: 374 new construction jobs; 56 new permanent jobs;
- Requirement Under Government Code 52200.2(a): At least one full-time equivalent, permanent job for every thirty-five thousand dollars of city investment in the project after full capacity and implementation.

As the City has not invested in the proposed Equity Residential project, the project's impacts exceed the benchmark measure of economic opportunity for employment as described in Government Code 52200.2(a).

Property Tax:

- Project Estimates: ~\$681,000 total annual property taxes; ~\$126,000 annual property taxes to City of Daly City;
- Requirement Under Government Code 52200.2(a): An increase of at least 15% of total property tax resulting from the project at full implementation when compared to the year prior to the property being acquired by the government entity.

As the Site currently generates no property tax revenue due to public ownership, the project's impacts exceed the 15% benchmark measure for economic opportunity for property tax as described in Government Code 52202.2(a).

Section 52201 of the California Government Code provides that a city may sell or lease property to create an economic opportunity (pursuant to Council approval by resolution) subsequent to conducting a legally noticed public hearing and making a fair use report available for public review.

The City of Daly City has satisfied the requirements of Government Code 52201 related to the disposition and development of former RDA properties designated for future development under the Long Rang Property Management Plan. Moreover, the City has demonstrated the proposed project creates economic opportunity in excess of the benchmark measures described in Government Code 52200.2(a) in the form of 375 new construction jobs, 56 new permanent jobs and the generation of approximately \$126,000 in annual City property tax revenue.

City Council Agenda Report

Approval of a Resolution Approving Government Code Section 52201
Summary Report in Connection with the Disposition of Property by and Between
the City of Daly City and Equity Residential

January 27, 2020

Page 4 of 4

Following this public hearing the City Council pursuant to Government Code Section 52201 will consider the approval of the DDA between the City of Daly City and Equity Residential.

CONCLUSION

Staff recommends that the City Council approve a resolution approving the Government Code Section 52201 Report (Attached) and authorize a finding that the Disposition and Development Agreement (DDA) for the property located at 6401 Mission Street, Daly City, CA creates an economic opportunity and has been presented in compliance to *California Government Code 52201*.

Respectfully submitted,



Rose Zimmerman
City Attorney



Tatum Mothershead
Director, Economic and Community Development

Attachment:

1. Summary Report Pursuant to Section 52201 of the California Government Code



City Council Meeting Agenda Report

Item # _____

Meeting Date: January 27, 2020

Subject: DISPOSITION AND DEVELOPMENT AGREEMENT FOR 6401 MISSION STREET, DALY CITY

Recommended Action

Approve and authorize execution of a Disposition and Development Agreement (DDA) between EQR-Hillside II LP (Developer) and the City of Daly City for certain property located at 6401 Mission Street in Daly City, California.

Background

Initiated by the dissolution of Redevelopment Agencies in 2011, the City of Daly City's Successor Agency drafted a Long-Range Property Management Plan (LRPMP) which detailed disposition strategies for former Redevelopment Agency properties. The LRPMP was approved by the Oversight Board and the Department of Finance (DOF) in 2015. The property located at 6401 Mission Street (Site) was included in the LRPMP as a site to be retained for future development.

In March 2017, the City marketed the Site through a competitive RFQ (request for qualifications) process, resulting in two qualified responses from development teams. In August 2017, the City initiated a second round of review for qualified development teams requesting additional project-specific documentation. During this second round of review, one of the competing firms voluntarily removed itself from consideration. The remaining development team (Equity Residential) provided its proposal and term sheet to the City which proposed development concept for up to 170 multifamily residential units.

On April 9, 2018, the City Council approved an Exclusive Negotiating Agreement (ENA) between the City of Daly City and Equity Residential for the property located at 6401 Mission Street, Daly City.

During this time, the City and Equity Residential have negotiated the project design and the terms and condition of the DDA. The proposed DDA is for a proposed development of the property as a multifamily rental housing development of up to ten (10) stories and consisting of up to 170 residential units including approximately 17 apartments that will be affordable to low-income households, together with ground floor publicly-accessible open space and additional amenities, including public art.

Project Description

Planning and Zoning Entitlements for the property were originally approved in 2004. Phase I of that development consisted of 95 residential units and 16,500 square feet of commercial development with a parking structure that could accommodate 404 parking spaces. A portion of the parking spaces in the garage were made available to patrons of the War Memorial Community Center. Phase II consisted of an entitlement for a 7-story, 74,000 square foot retail and office building. The underlying property for Phase I was acquired by the previous developer, Landmark

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Daly City LLC, and constructed. Phase II was retained by the Daly City Redevelopment Agency. Equity Residential acquired the Phase I development in 2011.

Once EQR entered into an ENA with the City of Daly City, they applied for a General Plan Amendment, Planned Development Amendment, and Design Review to consider the change from office to the proposed 170-unit multiple-family development identified in the draft Disposition and Development Agreement being considered tonight. The Developer and City staff have diligently processed the entitlement application and it is anticipated that the Planning Commission and City Council will review the entitlements in April 2020.

Disposition and Development Agreement

Business deal points for the proposed Agreement have been previously negotiated with the City Council and are the subject of this public hearing. Those deal points include the following:

1. **Development Plan:** A multi-family housing development. The new building will be up to ten stories or 110-feet from the mid-point elevation along Mission Street to the average roof elevation of the highest occupied floor and will have as many as 170 new apartment units. Ground floor commercial, lobby, and/or active amenity space visible to the street will comprise a minimum of 50% of the building frontage along Mission Street, with no requirement for commercial use. A new garage ramp will connect the existing bottom parking level built in Landmark Phase I with a new curb cut entrance along Mission Street, within the new building frontage. Equity Residential will not be required to build additional parking for the new building, provided an independent parking study validates the development proposal. The remainder of the existing parking garage and apartment building will not be considered part of the project area for code upgrades for any other purpose. The City will be responsible for relocating the existing bus shelter outside the Property boundary prior to Closing Date.
2. **Purchase Price:** EQR will pay \$540,000 and will be paid in cash.
3. **Organized Labor:** Off-site fabrication of the modular units will be assembled in the greater Seattle and greater Portland areas. Several of the manufacturing partners utilize union labor in their facilities, including most notably Supreme Steel which will be constructing all of the steel for the project.

On-site construction and fabrication will involve working with local unions to create blended crews of ironworkers, carpenters and laborers. The developer's local partner, Swinerton Builders, is signatory to the carpenters and laborers unions, and will play an instrumental role in facilitating the creation of these crews and the execution of the on-site work.

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4. EQR will comply with the City's Inclusionary Housing Ordinance and provide 17 units affordable to households earning 70% of the Area Mean Income.
5. EQR will propose public art concepts to the Arts and Culture Commission for their input. Based on the Commission's input, EQR will present final artwork to the City Council for their approval. EQR will install and maintain the artwork at their cost, not to exceed \$100,000.

Summary/Conclusion

The draft DDA was made available for public inspection pursuant to California Government Code. Staff recommends that the City Council conduct a public hearing and consider approval of Disposition and Development Agreement (DDA) with EQR Hillside II LP for certain property located at 6401 Mission Street in Daly City, California.

Staff is available to provide any additional information desired by the Mayor or Councilmembers.

Respectfully submitted,



Rose Zimmerman

City Attorney



Tatum Mothershead

Director, Economic and Community Development

Attachment

Draft Disposition and Development Agreement

DISPOSITION AND DEVELOPMENT AGREEMENT

by and between

THE CITY OF DALY CITY

and

EQR-HILLSIDE II LP

6401 Mission Street

_____, 2020

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (this "**Agreement**") is entered into effective as of _____, 2020 ("**Effective Date**") by and between the City of Daly City, a municipal corporation ("**City**") and EQR-Hillside II LP, a Delaware limited partnership ("**Developer**"). City and Developer are collectively referred to herein as the "**Parties**."

RECITALS

A. City is the owner of the real property consisting of approximately 0.36 acres of vacant land located at 6401 Mission Street in Daly City, California, known as San Mateo County Assessor's Parcel No. 003-224-100, and more particularly described in Exhibit A-1 and depicted in Exhibit A-2 attached hereto (the "**Property**"). The Property was conveyed to the City by the Successor Agency to the Daly City Redevelopment Agency pursuant to a Long-Range Property Management Plan approved by the California Department of Finance in accordance with Health and Safety Code Section 34191.5.

B. City has a 13% undivided tenancy-in-common interest (the "**TIC Interest**") in the parcel of land improved with an existing parking structure (the "**Parking Garage**") located in the Landmark Phase I project adjacent to the Property at 88 Hillside Boulevard (the "**Landmark Project**") pursuant to that certain Tenancy-In-Common Agreement dated as of February 24, 2011 and recorded in the Official Records on February 25, 2011 as Instrument No. 2011-023668 (the "**Tenancy-in-Common Agreement**"), and City has easement interests in the Parking Garage pursuant to that certain Parking Basement Agreement (Landmark Parking Garage) dated as of September 14, 2004 and recorded on October 31, 2005 as Instrument No. 2005-190456 (as subsequently amended, the "**Parking Easement Agreement**" and together with the Tenancy-In-Common Agreement, collectively, the "**Parking Agreements**"). The TIC Interest is more particularly described in Exhibit A-3 attached hereto.

C. Following City's evaluation of proposals submitted in response to a Request for Developer Qualifications, City and ERP Operating Limited Partnership, an Illinois limited partnership affiliated with Developer, entered into an Exclusive Negotiating Rights Agreement dated as of April 19, 2018 (as amended from time to time, the "**ENA**"), pursuant to which the Parties agreed to negotiate the terms for the proposed conveyance and development of the Property and the concurrent conveyance of the TIC Interest.

D. Developer has proposed the development of the Property as a multifamily rental housing development of up to ten (10) stories and consisting of up to 170 residential units including approximately 10% of the residential units as apartments that will be affordable to low- and moderate-income households, together with ground floor publicly-accessible open space and additional amenities, including public art (collectively, and as more particularly described in Section 2.3 and Exhibit B attached hereto, the "**Project**"). Developer proposes to use the rights under the Parking Agreements to provide parking for the Project, and the proposed Project will include Developer's construction of a ramp that will connect the Parking Garage to the Project at the frontage along Mission Street.

E. Following a duly noticed public hearing, on January 27, 2020, the City Council adopted Resolution No. ___ approving this Agreement. In connection with the proposed Project,

Developer will use commercially reasonable efforts to submit applications (the “**Entitlement Applications**”) to City for a General Plan amendment, a Planned Development Zone amendment, and Design Review approval (collectively, the “**Entitlements**”), and a Development Agreement pursuant to Government Code Section 65864 *et seq.* (the “**Development Agreement**”).

F. City previously prepared an environmental impact report that evaluated the potential environmental effects of the Landmark Project and considered development of _____ on the Property (the “**Landmark EIR**”), pursuant to CEQA. City certified the Landmark EIR on May 24, 2004. Following Developer’s submission of the Entitlement Applications, City will evaluate the Project pursuant to CEQA, and prepare a study which addresses the extent to which the Landmark EIR considers environmental effects of the Project (the “**Addendum**” and together with the Landmark EIR, the “**Project CEQA Documentation**”).

G. Following City’s evaluation of the Project CEQA Documentation and after a duly noticed public hearing, the Planning Commission will make recommendations to the City Council regarding the approval of the Entitlements and the Development Agreement, regarding whether the potential environmental effects of the Project are adequately considered by the Landmark EIR, and regarding whether the Entitlements can be granted relying on the Project CEQA Documentation in accordance with Section 15164 of the CEQA Guidelines. Following a duly noticed public hearing and the making of the requisite determinations by the City Council, the City Council will take action with respect to approving the Entitlements, making the determination required Government Code Section 52201, and approving the Development Agreement.

H. Upon satisfaction of the conditions precedent set forth in this Agreement and subject to the terms and conditions set forth herein, the City will convey the Property and convey or assign City’s rights and obligations under the Parking Agreements to Developer for development of the Project.

I. Concurrently with the conveyance of the Property and the TIC Interest to Developer, among other documents, Developer will execute an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants that will be recorded in the Official Records and that will require rents for the restricted residential units in the Project to be affordable to low- and moderate-income households for a term of not less than fifty-five (55) years.

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

AGREEMENT

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; EXHIBITS

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

"Affiliate" means (1) any corporation, limited liability company, partnership or other entity which directly or indirectly controls, is controlled by, or is under common control with Developer, ERP Operating Limited Partnership, an Illinois limited partnership, or Equity Residential, a Maryland real estate investment trust; and (2) a limited partnership (or a limited liability company) in which Developer or an entity controlled by Developer, ERP Operating Limited Partnership, or Equity Residential is the managing general partner (or managing member).

"Affordable Rent" is defined in the Regulatory Agreement.

"Applicable Laws" is defined in Section 5.14.

"Area Median Income" is defined in the Regulatory Agreement.

"Assignment of Intangible Property" is defined in Section 3.7.

"Authorized Representative" means the City Manager of the City of Daly City, or his or her designee.

"CEQA" means the California Environmental Quality Act, Public Resources Code section 21000 *et seq.*

"CEQA Determinations" is defined in Section 2.4.

"Certificate of Completion" is defined in Section 5.11.

"City" means the City of Daly City, California, a municipal corporation.

"City Council" means the City Council of the City of Daly City, California.

"City Documents" means, collectively, this Agreement, the Regulatory Agreement, the Parking Agreement Amendment, the Memorandum, and the Grant Deed.

"Claims" means all actual liabilities, losses, costs, expenses (including without limitation reasonable attorneys' fees and costs of litigation), claims, demands, actions,

suits, judicial or administrative proceedings, penalties, deficiencies, fines, orders and damages.

"Closing Date" or **"Close of Escrow"** shall be the date that escrow closes for the conveyance of the Subject Property to Developer.

"Conditions of Approval" is defined in Section 5.4.

"Construction Commencement Date" means the date two (2) years after the Final Approval Date; provided, however, that Developer shall have the right to extend the Construction Commencement Date up to three (3) times by giving written notice to City of its election to extend the Construction Commencement Date, each such extension to be for a period of no more than one (1) year; provided, further, that the Construction Commencement Date will not be earlier than the date ten (10) business days after the Closing Date nor later than the date five (5) years after the Closing Date, subject to Force Majeure.

"Construction Plans" is defined in Section 5.6.

"Design Documents" is defined in Section 2.4.

"Developer" means EQR-Hillside II LP, a Delaware limited partnership.

"Developer Indemnitees" means Developer and its direct and indirect parent companies, and their respective officers, employees, partners, members, agents, consultants, contractors, Affiliates, successors and assigns.

"Developer's General Partner" means EQR-Hillside II GP LLC, a Delaware limited liability company.

"Developer's Permitted Exceptions" is defined in Section 3.1.

"Development Agreement" is defined in Recital E.

"Economic Force Majeure" is defined in Section 11.2.2.

"ENA" is defined in Recital C.

"Entitlement Applications" is defined in Recital E.

"Entitlements" is defined in Recital E.

"Environmental Laws" is defined in Section 6.9.2.

"Escrow Agent" is defined in Section 3.3.

"Final Approval Date" is defined in Section 3.8.

"Force Majeure" is defined in Section 11.2.

“Good Faith Deposit” means the deposit paid by Developer or its Affiliate to City pursuant to the ENA, as such is replenished in accordance with the ENA.

“Grant Deed” is defined in Section 3.1.

“Hazardous Material” is defined in Section 6.9.1.

“Hazardous Material Delay” is defined in Section 11.2.2.

“Improvements” means the improvements located or to be located on the Property including, without limitation, the residential dwelling units to be constructed pursuant to this Agreement.

“Indemnitees” means City and its elected and appointed officers, officials, employees, agents, consultants and contractors.

“Landmark EIR” is defined in Recital F.

“Landmark Project” is defined in Recital B.

“Memorandum” is defined in Section 3.7.

“Official Records” means the Official Records of San Mateo County.

“Owner’s Title Policy” is defined in Section 3.8.

“Parking Agreement Amendment” is defined in Section 3.1.

“Parking Agreements” is defined in Recital B.

“Parking Easement Agreement” is defined in Recital B.

“Parking Garage” is defined in Recital B.

“Permitted Mortgage” is defined in Section 8.3.

“Planning Commission” means the Planning Commission of the City of Daly City.

“Project” is defined in Recital D and is more fully described in Section 2.3 and Exhibit B.

“Project CEQA Documentation” is defined in Recital F.

“Property” is defined in Recital A and described and depicted in Exhibits A-1 and A-2.

“Property Information” is defined in Section 3.6.

“Purchase Price” is defined in Section 3.2.

“Regulatory Agreement” is defined in Section 3.7.

“Repurchase Option” is defined in Section 9.9.

“Subject Property” means, collectively, the Property and the TIC Interest, subject to City’s reservation of certain public parking rights granted pursuant to the Parking Agreements.

“Tenancy-in-Common Agreement” is defined in Recital B.

“TIC Interest” is defined in Recital B and described in Exhibit A-3.

“TIC Title Report” is defined in Section 3.1.

“Title Company” is defined in Section 3.3.

“Title Report” is defined in Section 3.1.

“Transfer” is defined in Section 7.2.

1.2 Exhibits. The following Exhibits are attached hereto and incorporated into this Agreement by this reference:

- A-1 Legal Description of the Property
- A-2 Site Map
- A-3 Legal Description of the TIC Interest
- B Project Scope
- C Form of Regulatory Agreement
- D Form of Parking Agreement Amendment
- E Form of Certificate of Completion
- F Form of Memorandum of Option
- G Form of Grant Deed
- H Leases and Service Contracts
- I Description of Publicly Accessible Open Space
- J Form of Assignment of Intangible Property
- K Additional Permitted Transfers

ARTICLE II

REPRESENTATIONS; EFFECTIVE DATE; PROJECT SCOPE; FINANCING PLAN

2.1 Representations.

2.1.1 Developer’s Representations. Developer covenants that, until the issuance of a Certificate of Completion for the Project, upon reasonable discovery of any fact or condition that would cause any of the warranties and representations in this Section 2.1.1 to be untrue, Developer shall promptly 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. Developer hereby represents, warrants, and covenants that the following are true and correct as of the Effective Date.

(a) Organization. Developer is a limited partnership, duly organized and in good standing under the laws of the State of Delaware, and is authorized to do business in, and is in good standing under, the laws of the State of California. Developer's General Partner is a limited liability company, duly organized and in good standing under the laws of the State of Delaware.

(b) Authority of Developer. Developer has full power and authority to execute and deliver this Agreement and all other documents or instruments executed and delivered by Developer, or to be executed and delivered by Developer pursuant to or in connection with this Agreement, and to perform and observe the terms and provisions of all of the foregoing.

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

(d) Valid and Binding Agreements. This Agreement and all other documents or instruments that have been or that will be executed and delivered by Developer pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered, constitute legal, valid and binding obligations of Developer, enforceable in accordance with their respective terms, subject to laws affecting creditors' rights and principles of equity.

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

(f) Pending Proceedings. Except as disclosed in writing to City prior to execution of this Agreement, to the best knowledge of Developer neither Developer nor Developer's General Partner is in material default under or in material violation of any law or

regulation or under any order of any court, board, commission or agency, and to the best knowledge of Developer, there are no claims, actions, suits or proceedings pending or, to the best knowledge of Developer, threatened in writing against or affecting Developer or Developer's General Partner, at law or in equity, before or by any court, board, commission or agency, in any such case where such default or violation or claim, action, suit or proceeding is reasonably likely to have a material adverse effect on Developer's ability to perform its obligations under this Agreement. Neither Developer nor Developer's General Partner is the subject of any bankruptcy or insolvency proceeding, and no general assignment or arrangement for the benefit of creditors or the appointment of a trustee or receiver to take possession of all or substantially all of the assets of Developer or Developer's General Partner has been made.

2.1.2 City's Representations. City covenants that until the first to occur of the expiration or earlier termination of this Agreement or the Close of Escrow, upon reasonable discovery of any fact or condition that would cause any of the warranties and representations in this Section 2.1.2 to be untrue, City shall promptly 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. City hereby represents, warrants, and covenants that the following are true and correct as of the Effective Date.

(a) Organization. City is a municipal corporation, duly organized under the laws of the State of California.

(b) Authority of City. City has full power and authority to execute and deliver this Agreement and all other documents or instruments executed and delivered by City, or to be executed and delivered by City pursuant to or in connection with this Agreement, and to perform and observe the terms and provisions of all of the foregoing.

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

(d) Valid and Binding Agreements. This Agreement and all other documents or instruments that have been or that will be executed and delivered by City pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered, constitute legal, valid and binding obligations of City, enforceable in accordance with their respective terms, subject to laws affecting creditors' rights and principles of equity.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement or any other documents or instruments that have been or that will be executed

and delivered by City pursuant to or in connection with this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency binding on City, or any provision of the governing documents of City, or will conflict with or constitute a breach of or a default under any agreement to which City is a party, or will result in the creation or imposition of any lien upon any assets or property of City, other than liens established pursuant hereto.

(f) Pending Proceedings. Except as disclosed in writing to Developer prior to execution of this Agreement, neither City nor the Subject Property is in default under or in violation of any law or regulation or under any order of any court, board, commission or agency, and to the best knowledge of City, there are no claims, actions, suits or proceedings pending or, to the best knowledge of City, threatened in writing against or affecting City or the Subject Property, at law or in equity, before or by any court, board, commission or agency, in any such case where such default or violation or claim, action, suit or proceeding is reasonably likely to have a material adverse effect on the Subject Property or any portion thereof or the City's ability to perform its obligations under this Agreement. City is not the subject of any bankruptcy or insolvency proceeding, and no general assignment or arrangement for the benefit of creditors or the appointment of a trustee or receiver to take possession of all or substantially all of City's assets has been made.

(g) Condemnation. No condemnation proceedings relating to the Subject Property or its access to or from public streets or utilities are pending nor has the City received written notice of any threatened condemnation proceedings relating to the foregoing.

(h) Other Agreements. Except as disclosed in writing to Developer, and except for matters of public record or matters shown as exceptions to title to the Subject Property in the Title Report or the TIC Interest Title Report, City has not made any commitment or entered into any agreement of any kind with any governmental authority, or any adjoining property owner or other third party, which would be binding on Developer or all or any portion of the Subject Property after the Close of Escrow.

(i) Environmental. Except as disclosed in the Property Information, City has no knowledge of any violation of Environmental Laws related to the Subject Property or the presence or release of Hazardous Material on or from the Property. City has not used the Property or any part thereof for the generation, treatment, storage, handling or disposal of any Hazardous Material in violation of any Environmental Laws.

(j) No Tenants. Except as disclosed in Exhibit H attached hereto, there are no leases or occupancy agreements or licenses affecting the Property or any portion thereof, or conferring on any person or entity the right to use, occupy or enter onto the Property.

(k) No Service Contracts. Except as disclosed in Exhibit H attached hereto, there are no service contracts or other agreements affecting the Property or any portion thereof that will remain in effect after Close of Escrow.

(l) Property Information. To the best of City's knowledge, the items of Property Information delivered to Developer are true and complete copies of such items and such items contain no material information actually known by City to be false.

2.2 Effective Date. The obligations of Developer and City hereunder shall be effective as of the Effective Date which date is set forth in the preamble to this Agreement.

2.3 Project Scope. The Project will include the construction of up to 170 units of multi-family rental housing on the Property, common areas and public art, and will include residential units that would be subject to affordability and occupancy restrictions in accordance with the Regulatory Agreement. The Project scope, including a description of the publicly accessible open space and public art components, is described in Exhibit B attached hereto.

2.3.1 Public Art. At Developer's expense, Developer will install and maintain public art that may consist of sculpture, fountains, and/or artistic installations (the "**Public Art**") within Publicly Accessible Open Space (as hereinafter defined) on the northernmost portion of the Property. The total cost to create and install the Public Art shall not exceed \$100,000. Prior to issuance of building permits for the Project, Developer will participate in a study session before the Daly City Arts and Culture Commission ("**Art Commission**") and the Design Review Committee established pursuant to Daly City Municipal Code Section 17.45.020 ("**Design Review Committee**") at which Developer will present artists or art concepts to the Art Commission and the Design Review Committee, which will provide feedback on such artists and art concepts to Developer. After incorporating the feedback provided by the Art Commission and the Design Review Committee, Developer will present the proposed Public Art concept to the City Council for its consideration and approval pursuant to Daly City Municipal Code Section 17.45.130. As presented to the City Council, the proposed Public Art must take into account the feedback of the Art Commission and the Design Review Committee, all applicable provisions of the Daly City Municipal Code, and all applicable City regulations. Developer shall install the Public Art consistent with the City Council's approval prior to, and as a condition of, City's issuance of final certificates of occupancy for the first phase of the Project. Subject to Section 7.5.1, Developer shall maintain the Public Art in good condition and repair for the life of the Project. After installation of the Public Art, any proposed changes to the Public Art shall be processed through Design Review conducted pursuant to Daly City Municipal Code Section 17.45.070.

2.3.2 Publicly Accessible Open Space. Developer shall construct publicly accessible open space on the northernmost portion of the Property in the location described in Exhibit I attached hereto (the "**Publicly Accessible Open Space**") consistent with Conditions of Approval prior to, and as a condition of, City's issuance of final certificates of occupancy for the first phase of the Project. Subject to Section 7.5.1, Developer shall maintain the Publicly Accessible Open Space in good condition and repair for the life of the Project, keeping the area clean and free of litter. The Publicly Accessible Open Space shall be accessible by the public between sunrise and sunset, seven days per week, but Developer may exclude from the Publicly Accessible Open Space persons who are creating a nuisance. Any proposed changes to the Publicly Accessible Open Space shall be processed through Design Review conducted pursuant to Daly City Municipal Code Section 17.45.070.

2.4 Environmental Review; Design Review; Conditions of Approval. Following its approval of this Agreement, the City Council will determine whether the Project CEQA Documentation has adequately considered the environmental effects of the Project, and whether further analysis of the Project is required under CEQA. Developer will use commercially reasonable efforts to submit to the Planning Commission, for its approval: (i) a site plan, elevations, and schematic drawings for the Project ("**Design Documents**"), (ii) applications for the Entitlements, and (iii) an application for the Development Agreement. Following the approval of such matters by the Planning Commission, the City Council will take action with respect to approving the Design Documents, the Entitlements, and the Development Agreement. Developer shall have the right to terminate this Agreement prior to the Close of Escrow by delivery of written notice to City if City fails to adopt approvals of the Design Documents, the Entitlements, the Development Agreement or the CEQA Determinations, subject only to such terms and conditions as are reasonably acceptable to Developer.

In the event that, following a determination by the City Council that the Project CEQA Documentation has adequately considered the environmental effects of the Project and that no further analysis of the Project is required under CEQA (the "**CEQA Determinations**"), the proposed Project is modified or other circumstances arise that would require additional review of the Project pursuant to CEQA, prior to submitting an application for any modified approvals for the Project, City shall cause to be performed, at Developer's expense, any additional environmental studies required by City in connection with environmental review of the Project in accordance with CEQA. Developer acknowledges that approval or disapproval of the Project following completion of any such additional required environmental review is within the sole and absolute discretion of City without limitation by or consideration of the terms of this Agreement, and that City makes no representation regarding the ability or willingness of City to approve a modified Project at the conclusion of any supplemental environmental review process required by CEQA, or regarding the imposition of any mitigation measures required as a result thereof. Prior to the Close of Escrow, Developer shall have the right to terminate this Agreement by delivery of written notice to City if City disapproves the Project following completion of any required supplemental environmental review or Developer determines that implementation of any additional environmental mitigation measures required as a result of such supplemental review or the Conditions of Approval would cause development of the Project to become economically infeasible.

2.5 Financing Plan. Developer has submitted to City information and data sufficient to establish the financial capacity of Developer to perform its obligations under this Agreement.

ARTICLE III DISPOSITION OF THE PROPERTY; CONDITIONS PRECEDENT TO CLOSING

3.1 Purchase and Sale of Property; Review of Title; Parking Rights. Developer acknowledges receipt of a preliminary title report for the Property issued by Title Company and dated November 8, 2019, updated as of _____, 20__ (the "**Title Report**"), and a preliminary title report for the TIC Interest issued by the Title Company dated _____, 20__ (the "**TIC Interest Title Report**"). Provided that all conditions precedent set forth in this Agreement have been satisfied or waived, City shall sell to Developer, and Developer shall purchase from City,

the fee interest in the Property and the TIC Interest in accordance with and subject to the terms, covenants and conditions of this Agreement subject to: (a) the provisions and effects of the City Documents, (b) applicable building and zoning laws and regulations, (c) any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of the Grant Deed, (d) exception number ____ through ____ as shown on the Title Report, (e) liens and encumbrances created or permitted by Developer or Developer's Affiliates, employees, or agents, (f) the Parking Agreements, (g) the Development Agreement, (h) exception number ____ through ____ as shown on the TIC Interest Title Report, (i) City's reservation of public parking rights pursuant to the Parking Agreements, and (j) such other conditions, liens, encumbrances, restrictions, easements and exceptions as Developer may approve in writing, which approval shall not be unreasonably withheld. All of the foregoing are collectively hereinafter referred to as "**Developer's Permitted Exceptions.**" Conveyance of the Property and the TIC Interest shall be effectuated by a grant deed or grant deeds substantially in the form attached hereto as Exhibit G (collectively, the "**Grant Deed**"). Concurrently with the Close of Escrow, the Parking Easement Agreement will be amended by an amendment in the form attached hereto as Exhibit D (the "**Parking Agreement Amendment**"). Developer acknowledges that City shall retain certain public parking rights granted under the Parking Agreements.

3.2 Purchase Price. City shall sell the Subject Property to Developer for the sum of Five Hundred Forty Thousand Dollars (\$540,000) (the "**Purchase Price**") which is the fair market value of the Subject Property as determined by an appraisal approved by City. The Purchase Price shall be paid in full to City at the Close of Escrow; provided, however, if any portion of the Good Faith Deposit has not been drawn upon prior to the Close of Escrow, then such undrawn portion of the Good Faith Deposit will be applied to the Purchase Price at the Close of Escrow. The Parties acknowledge and agree that Developer is paying fair market value for the Property, and is not receiving any subsidies or fee discounts or waivers from the City, and nothing in this Agreement shall be construed as making the Project a Public Work within the definition of the Prevailing Wage Laws.

3.3 Escrow. City and Developer shall open escrow at the office of First American Title Insurance Company located at 30 North LaSalle Street, Suite 2700, Chicago, Illinois 60602, or such other title company as the Parties may agree upon ("**Escrow Agent**" or "**Title Company**") in order to consummate the conveyance of the Subject Property to Developer and the closing of escrow for the transactions contemplated hereby.

3.4 Costs of Closing and Escrow; Legal Fees. Developer shall pay all title insurance premiums for policies Developer elects to purchase in connection with the acquisition of the Subject Property and the financing of the Project. All recording fees, transfer taxes, escrow fees and closing costs incurred in connection with the conveyance of the Subject Property by City to Developer pursuant to this Agreement shall be allocated in accordance with the custom in San Mateo County, California for allocating costs between property buyers and sellers. City shall be responsible for the costs involved in removing any encumbrances which City removes pursuant to this Agreement, including, without limitation, recording fees and title insurance costs related thereto. Developer shall be responsible for all costs, if any, incurred by Developer in connection with financing of the Project. Property taxes and assessments shall be prorated as of the Closing Date. City and Developer shall provide Escrow Agent with a copy of this Agreement, which together with such supplemental instructions as City or Developer may provide and which are

consistent with the intent of this Agreement or which are otherwise mutually agreed upon by City and Developer, shall serve as escrow instructions for the Close of Escrow. By not later than the Close of Escrow, Developer shall pay City's legal fees and consulting fees incurred in connection with the transactions contemplated by this Agreement, including without limitation, attorneys' fees incurred in connection with the negotiation and preparation of this Agreement, the Development Agreement, and the City Documents, and other documents required in connection with the conveyance of the Subject Property and the Close of Escrow. Payment for City's legal and consulting fees may be drawn from the Good Faith Deposit, and Developer shall pay any additional amount due to City in cash at Close of Escrow.

3.5 Closing. The Closing Date shall be a date that is mutually acceptable to the Parties, consistent with Section 5.1, and which shall occur within thirty (30) days following the Developer's satisfaction or City's waiver of all conditions precedent to conveyance of the Property as set forth in Section 3.7 and City's satisfaction or Developer's waiver of all conditions precedent to acquisition of the Property as set forth in Section 3.8. Prior to the Close of Escrow, and provided all conditions precedent to Close of Escrow have been satisfied or waived, Developer shall deposit into escrow the City Documents, executed and acknowledged as applicable, and Developer's share of closing costs. Provided that all conditions precedent to Close of Escrow have been satisfied or waived, City shall deposit into escrow the executed Grant Deed and executed copies of the City Documents. On the Closing Date, the Escrow Agent shall cause the Grant Deed, the Memorandum, the Regulatory Agreement and the Parking Agreement Amendment to be recorded in the Official Records.

3.6 City's Delivery of Specified Documents. City represents and warrants that it has delivered to Developer the following items relating to the Subject Property (the "**Property Information**"), to the extent in City's possession or control: (i) any environmental reports and a schedule listing any such reports; (ii) all existing and currently effective plans, specifications, permits, approvals, maps and surveys (including, without limitation, archaeological, boundary, topographic and tree surveys); (iii) any subdivision reports; (iv) any soils and engineering reports; (v) all currently effective agreements with any governmental authority with respect to any zoning modification, variance, exception, platting or other matter relating to the zoning, use, development, subdivision or platting of the Subject Property; (vi) copies of all agreements, studies, reports, correspondence and other documents relating to the presence or absence of any endangered species or environmentally sensitive areas on the Property; and (vii) any leases, contracts or agreements relating to the Subject Property or services being provided or to be provided to the Subject Property, including, without limitation, any agreements with electric, cable, gas, telephone or other utility providers. City shall provide to Developer any documents described above and coming into City's possession or control or produced by City after the initial delivery above and prior to the Close of Escrow.

3.7 City's Conditions to Closing. City's obligation to convey the Subject Property to Developer is conditioned upon the satisfaction of the terms and conditions set forth in this Section 3.7, unless any such condition is waived in writing by City acting in the discretion of its Authorized Representative.

(a) No Default. There shall exist no condition, event or act which constitutes a material breach or default under this Agreement or any other City Document, or which, upon the

giving of notice or the passage of time, or both, would constitute such a material breach or default.

(b) Representations. All representations and warranties of Developer contained herein or in any other City Document or certificate delivered in connection with the transactions contemplated by this Agreement shall be true and correct in all material respects as of the Close of Escrow.

(c) Due Authorization and Good Standing. Developer shall have delivered to City copies of all of the following, including updated versions of any of the following that have been amended or modified since the date of any prior delivery to City: (i) a certificate of good standing, certified by the applicable Secretary of State, indicating that Developer is (x) properly organized and in good standing under the laws of its state of formation, and (y) authorized to do business in, and in good standing under the laws of the State of California; (ii) a copy of Developer's certificate of formation (or equivalent) certified by the Secretary of State of the state of its formation; and (iii) resolutions certified by an authorized officer of the applicable entity authorizing Developer's execution of and performance under this Agreement and the other City Documents.

(d) Execution, Delivery and Recordation of Documents. Developer shall have executed, acknowledged as applicable, and delivered into escrow this Agreement, and all other documents required in connection with the transactions contemplated hereby, including without limitation, an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants substantially in the form attached hereto as Exhibit C (the "**Regulatory Agreement**"), a Memorandum of Option substantially in the form attached hereto as Exhibit F (the "**Memorandum**"), an Assignment of Intangible Property in the form attached hereto as Exhibit J (the "**Assignment of Intangible Property**"), the Parking Agreement Amendment and a counter-signed original of the Grant Deed. Concurrently with the Close of Escrow, the Grant Deed, the Memorandum, the Parking Agreement Amendment and the Regulatory Agreement shall be recorded in the Official Records. The Development Agreement shall be recorded in the Official Records following its effective date in accordance with Government Code Section 65868.5.

(e) Permits and Land Use Approvals. Developer shall have delivered evidence satisfactory to City that Developer has obtained all land use approvals and all permits (including without limitation building permits) required to construct the Project, or that the receipt of such permits is subject only to such conditions as City shall reasonably approve.

(f) Payment of Fees. Developer shall have paid when due all fees and charges in connection with the processing of all applicable City permits and approvals, and Developer shall have paid City's legal fees and consulting fees pursuant to Section 3.4.

(g) Insurance; Payment and Performance Bonds. Developer shall have provided evidence satisfactory to City that Developer has obtained insurance coverage meeting the requirements set forth in Article X. If Developer obtains payment and performance bonds in connection with construction of the Project, City shall be named as co-obligee thereunder in

which event Developer shall provide City with copies of such bonds promptly after the same are obtained.

(h) Mechanics' Liens. No mechanics' liens or stop notices related to the Subject Property or the Project shall have been filed against the Subject Property and remain outstanding as a result of activities of Developer or its employees, contractors, or agents, and Developer shall have provided such waivers or releases of lien claims as may reasonably be required by City with respect to the activities of Developer's contractors or consultants on the Property.

(i) Other Documents. Developer's delivery to City and City approval of such other documents related to the development of the Project as City may reasonably request in connection with the transactions contemplated by this Agreement.

(j) Deposit of Funds. Developer shall have deposited into escrow the Purchase Price and funds in the amount of all other costs and expenses required to be paid by Developer through escrow.

(k) Settlement Statement. City shall have approved and executed the final settlement statement for the Close of Escrow.

3.8 Developer's Conditions to Closing. Developer's obligation to proceed with the acquisition of the Subject Property is conditioned upon the satisfaction of the terms and conditions set forth in this Section 3.8, unless any such condition is waived in writing by Developer:

(a) No Default; Representations. City shall not be in default under the terms of this Agreement or any other City Document, and all representations and warranties of City contained herein or in any other City Document shall be true and correct in all material respects as of the Close of Escrow.

(b) Due Authorization and Good Standing. City shall have delivered to Developer resolutions or other evidence certified by an authorized officer or agent of City authorizing City's execution of and performance under this Agreement and the other City Documents.

(c) Execution of Documents. City shall have executed and acknowledged as applicable this Agreement, the Grant Deed, the Memorandum, the Assignment of Intangible Property, the Parking Agreement Amendment, the Regulatory Agreement, and all other City Documents to which City is a party, and shall have delivered such documents into escrow.

(d) Owner's Title Policy. The Title Company shall, upon payment of the premium therefor, be ready to issue an Owner's Title Insurance Policy for the benefit and protection of Developer ("**Owner's Title Policy**") showing title to the Subject Property vested in Developer, subject only to Developer's Permitted Exceptions and containing such endorsements as Developer may reasonably require, with the cost of such Owner's Title Policy to be paid by Developer.

(e) Permits and Land Use Approvals. The Development Agreement shall have been executed and delivered and Developer shall have obtained the Entitlements and all other land use

approvals required to construct the Project (excluding building permits), subject only to such conditions as are reasonably acceptable to Developer, and all such approvals shall have been given by all required actions conducted in accordance with all applicable laws, ordinances, statutes, rules and regulations, and all appeal periods or periods within which such approvals can be challenged shall have expired without any appeal or challenge having been filed or any appeal or challenge filed has been resolved to Developer's satisfaction and such resolution has become final and nonappealable (the "**Final Approval Date**").

(f) Settlement Statement. Developer shall have approved and executed the final settlement statement for the Close of Escrow.

(g) Certificate of Representations and Warranties. City shall have executed and shall have delivered into escrow a certificate stating, for the benefit of Developer, that all of the representations and warranties of City contained in the City Documents are true and correct in all material respects on and as of the Closing Date.

3.9 Items Remaining Following Close of Escrow. The Parties agree that, following the Close of Escrow, any improvements or fixtures or personal property that remained on the Property at the Close of Escrow may, at the option of Developer, be retained, re-used, demolished or disposed of by Developer at such time or times and in such manner as Developer shall determine, at Developer's cost but without any additional consideration paid or payable to City with respect thereto.

ARTICLE IV

[Intentionally omitted.]

ARTICLE V

DEVELOPMENT AND USE OF THE PROPERTY

5.1 Development Schedule. Subject to Force Majeure, Developer shall commence construction of the Project by not later than the Construction Commencement Date, and shall diligently prosecute to completion the construction of the Project to enable City to issue temporary certificates of occupancy or equivalents for all residential units in the Project within thirty-six (36) months following commencement of construction. Developer shall use diligent and commercially reasonable efforts to commence and complete construction of the Project within the time periods set forth in this Section 5.1. Subject to Force Majeure, Developer's failure to commence or complete construction of the Project in accordance with the time periods specified in this Section 5.1 shall be an Event of Developer Default hereunder.

5.2 Cost of Acquisition and Construction. Developer shall be solely responsible for all direct and indirect costs and expenses incurred in connection with the acquisition of the Subject Property, including without limitation appraisal fees, title reports and any environmental assessments Developer elects to undertake. All costs of designing, developing and constructing the Project and compliance with the Conditions of Approval, including without limitation all off-site and on-site improvements required by City in connection therewith, shall be borne solely by Developer and shall not be an obligation of City.

5.3 Permits and Approvals; Payment of Fees; Cooperation. Developer acknowledges that the execution of this Agreement by City does not constitute City approval for the purpose of the issuance of building permits, does not limit in any manner the discretion of City in such approval process, and does not relieve Developer from the obligation to apply for and to obtain from City and all other agencies with jurisdiction over the Subject Property, all necessary approvals, entitlements, and permits for the development of the Subject Property and 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 development of the Subject Property (if any), and the approval of the Project in compliance with CEQA and if applicable, NEPA), nor does it limit in any manner the discretion of City or any other agency in the approval process. Prior to the Close of Escrow for the Project, Developer shall have obtained all entitlements, permits, licenses and approvals required for the construction of the Project to the extent required to satisfy the conditions set forth in Sections 3.7 and 3.8, including, without limitation, building permits and use permits or shall provide evidence satisfactory to City that receipt of such permits and approvals is subject only to such conditions as City may reasonably approve. Developer shall pay when due all customary and usual fees and charges in connection with the processing of all applicable permits and approvals. Developer shall not commence construction work on the Project prior to issuance of building permits required for such work. City staff shall work cooperatively with Developer to assist in coordinating the expeditious processing and consideration of all permits, entitlements and approvals necessary for the development and operation of the Project as contemplated by this Agreement.

5.4 Conditions of Approval. Developer shall develop the Subject Property in accordance with the terms and conditions of this Agreement and in compliance with the terms and conditions of all approvals, entitlements and permits that City or any other governmental body or agency with jurisdiction over the Project or the Subject 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 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"**).

5.5 Fees. Subject to any applicable limitations set forth in the Development Agreement, Developer shall be solely responsible for, and shall promptly pay when due, all customary and usual fees and charges of City and all other agencies with jurisdiction over development of the Subject Property 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.

5.6 Construction Plans. Developer shall submit to City's Building Department detailed construction plans for the Project (the **"Construction Plans"**). As used herein **"Construction Plans"** means all construction documents upon which Developer and Developer's contractors shall rely in developing the Subject Property and constructing the

Project (including the landscaping, parking, and common areas) and shall include, without limitation, the site development plan, final architectural drawings, landscaping, exterior lighting and signage plans and specifications, materials specifications, final elevations, and building plans and specifications. The Construction Plans shall be based upon the scope of development set forth in this Agreement and in the Development Agreement, as the same may be updated and approved pursuant to the approvals issued by City for the Project pursuant to City's standard plan review procedures.

5.7 Construction Pursuant to Plans. Developer shall develop each component of the Project in accordance with the approved Construction Plans, the Conditions of Approval, and all other permits and approvals granted by City pertaining to 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 Subject 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.

5.8 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 relevant department or departments of City and Developer shall obtain any approvals therefrom required by City's standard plan review procedures. If any such change proposed by Developer shall cause the Project to no longer conform to the requirements of this Agreement in any material respect, the approval of City shall be required, which approval shall not be unreasonably withheld, conditioned or delayed. If City reasonably disapproves any such proposed change, City will do so in a writing that sets forth in reasonable detail the reasons for such disapproval. If City has not given such a disapproval notice to Developer within fifteen (15) days of Developer's request for City approval, City shall be deemed to have approved the change, provided Developer shall have obtained any approvals required under City's standard plan review procedures.

5.9 City Disclaimer. Developer acknowledges that City is under no obligation, and City neither undertakes nor 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 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 City as to the quality of the design or construction of the Project or otherwise.

5.10 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. To the greatest extent permitted by law, Developer shall indemnify, defend (with qualified counsel selected by Developer) and hold harmless the Indemnitees from and against all Claims arising out of, or resulting from, or alleged to arise out

of or result from 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 Close of Escrow and the expiration or termination of this Agreement. Developer's indemnification obligations pursuant to this Section shall not extend to Claims to the extent arising from the negligence or willful misconduct of the Indemnitees and are subject to the additional terms set forth in Section 10.2 below.

5.11 Certificate of Completion for Project. Promptly after completion of construction of the Project, City's issuance of a final Certificate of Occupancy or equivalent for all residential units in the Project, and the written request of Developer, City will provide a certificate substantially in the form attached hereto as Exhibit E ("**Certificate of Completion**") so certifying, provided that at the time such certificate is requested all applicable work has been completed for the Project. The Certificate of Completion shall be conclusive evidence that Developer has satisfied its obligations regarding the development of the Subject Property and construction of the Project. At Developer's option the Certificate of Completion 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.

5.12 Equal Opportunity. 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 work on the Subject Property, and Developer shall direct its contractors and subcontractors to refrain from discrimination on such basis.

5.13 Labor and Prevailing Wage Requirements.

5.13.1 On-Site Construction; Off-Site Fabrication. For the on-site construction and assembly of the Project, Developer intends to work closely with local unions to create blended crews of ironworkers, carpenters and laborers. It is Developer's present intention to engage a general contractor that is signatory to the carpenters and laborers unions, and it is anticipated such contractor will play an instrumental role in facilitating the creation of these crews and the execution of the onsite work. It is Developer's present intention that the majority of components for the Project will be fabricated and assembled in the greater Seattle and greater Portland areas. Several of Developer's manufacturing partners utilize union labor in their facilities, including the company that pursuant to Developer's present plans will fabricate the structural steel for the Project.

5.13.2 Prevailing Wage. Developer and its contractors, subcontractors and agents shall comply with California Labor Code Section 1720 *et seq.* and the regulations adopted pursuant thereto (and if applicable, the federal Davis Bacon Act and implementing regulations) (all of the foregoing, collectively, "**Prevailing Wage Laws**"), and shall be responsible for carrying out the requirements of such provisions to the extent applicable to the Project. To the

extent applicable to the Project, Developer shall submit to City a plan for monitoring payment of prevailing wages and at Developer's expense shall implement such plan and comply with all applicable reporting and recordkeeping requirements.

5.13.3 Indemnity. To the greatest extent permitted by law, Developer shall indemnify, defend (with qualified counsel selected by Developer) and hold the Indemnitees harmless from and against all Claims arising in connection with the breach of Developer's obligations set forth in Sections 5.13.2, whether or not any insurance policies shall have been determined to be applicable to any such Claims. The provisions of this Section 5.13.3 shall survive the Close of Escrow and the expiration or termination of this Agreement. Developer's indemnification obligations set forth in this Section shall not apply to Claims to the extent arising from the negligence or willful misconduct of the Indemnitees, and are subject to the additional terms set forth in Section 10.2 below.

5.14 Compliance with Laws. Developer shall carry out and shall cause its contractors and subcontractors to carry out the construction of the Project in conformity with all applicable federal, state and local laws, rules, ordinances and regulations ("**Applicable Laws**"), including, without limitation, all applicable Environmental Laws, all applicable federal and state labor laws and standards, Section 3 of the Housing and Community Development Act of 1974, as amended (if applicable pursuant to financing sources used for the Project), applicable provisions of the California Public Contracts Code, City's zoning and development standards, building, plumbing, mechanical and electrical codes, all other provisions of 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.*

To the greatest extent permitted by law, Developer shall indemnify, defend (with qualified counsel selected by Developer) and hold harmless the Indemnitees from and against any and all Claims arising in connection with the breach of Developer's obligations set forth in this Section 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 not apply to Claims to the extent arising from the negligence or willful misconduct of the Indemnitees. Developer's obligations set forth in this Section 5.14 shall survive the Close of Escrow and the expiration or termination of this Agreement, and shall be subject to the additional terms set forth in Section 10.2 below.

5.15 Liens and Stop Notices. Until a Certificate of Completion has been issued, if a claim of a lien or stop notice is given or recorded affecting the Project or the Property or any part thereof prior to the issuance of the Certificate of Completion, Developer shall within sixty (60) days of such recording or service: (a) pay and discharge (or cause to be paid and discharged) the same; or (b) effect the release thereof by recording and delivering (or causing to be recorded and delivered) to the party entitled thereto a surety bond in sufficient form and amount; or (c) provide other assurance reasonably satisfactory to City that the claim of lien or stop notice will be paid or discharged.

5.16 Right of City to Satisfy Liens on the Property. Until a Certificate of Completion has been issued, if Developer fails to satisfy or discharge any lien or stop notice on the Property or any part thereof pursuant to and within the time period set forth in Section 5.15 above, City shall have the right, but not the obligation, to satisfy any such liens or stop notices at Developer's expense upon notice to Developer and all sums advanced by City for such purpose shall be an indebtedness owed by Developer to City. In such event Developer shall be liable for and shall immediately reimburse City for such paid lien or stop notice. Alternatively, City may require Developer to immediately deposit with City the amount necessary to satisfy such lien or claim pending resolution thereof. 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 work on the Subject Property for a continuous period of sixty (60) days or more and shall take all other reasonable steps to forestall the assertion of claims or liens against the Subject Property. City may (but has no obligation to) record any notices of completion or cessation of labor, or any other notice that City deems necessary or desirable to protect its interest in the Subject Property.

5.17 Insurance Requirements. Until a Certificate of Completion has been issued, Developer shall maintain and shall cause its contractors to maintain all applicable insurance coverage specified in Article X.

5.18 Affordable Housing. Developer covenants and agrees for itself, its successors and assigns that the Property will be subject to recorded covenants that will impose affordability restrictions on a portion of the residential units in the Project as provided in the Regulatory Agreement. Notwithstanding the foregoing, Developer shall comply with rent and occupancy restrictions imposed by all applicable financing sources and regulatory agencies having jurisdiction if such agencies impose requirements on the Project that are more stringent than those set forth in this Agreement.

As more particularly set forth in the Regulatory Agreement, Developer shall be obligated to pay to City an annual compliance monitoring fee in connection with the affordability requirements set forth therein.

5.19 Maintenance. Commencing upon Developer's acquisition of the Subject Property and until a Certificate of Completion has been issued, Developer shall, at its own expense, maintain the Subject Property and the Improvements, including the landscaping and common areas, in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all Applicable Laws. Without limiting the foregoing, Developer agrees to maintain the Subject Property and the Improvements (including, without limitation, 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 Subject Property. Developer shall prevent and/or rectify any material physical deterioration of the Improvements and shall make all repairs, renewals and replacements reasonably necessary to keep the Subject Property and the Improvements in good condition and repair.

5.20 Taxes and Assessments. Commencing upon Developer's acquisition of the Subject Property, 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 Subject Property and/or the Improvements accruing from and after the Closing Date, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Subject Property or Improvements; provided, however, Developer shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event Developer exercises its right to contest any tax, assessment, or charge, Developer, on final determination of the proceeding or contest, shall promptly pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

5.21 Obligation to Refrain from Discrimination. Developer shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Subject Property or the Project, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, gender identity, 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 Subject Property or the Improvements, 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 Subject Property or Improvements, or part thereof. Developer shall include such provision in all deeds and leases executed by Developer or Developer's Affiliates with respect to the Subject Property, as provided below, and shall enforce the same diligently and in good faith.

All deeds and leases made or entered into by Developer or its Affiliates as to any portion of the Subject Property or the Improvements shall contain the following language:

(a) In deeds, the following language, or substantially similar language prohibiting discrimination and segregation, shall appear:

"Grantee herein covenants for itself and all persons claiming under or through it, 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 herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land."

(b) In leases (other than residential leases for units in the Project), the following language, or substantially similar language prohibiting discrimination and segregation, shall appear:

"The lessee herein covenants for the lessee and lessee's heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased."

(c) In the construction contract with the general contractor engaged to construct the Project and in any property management agreement for the Project or any portion thereof, the following language, or substantially similar language prohibiting discrimination and segregation, shall appear:

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

ARTICLE VI CONDITION OF THE SITE; ENVIRONMENTAL MATTERS

6.1 Access to Site; Inspections. Prior to the Close of Escrow, Developer and Developer's authorized representatives may enter upon and conduct reviews and assessments of the physical and environmental condition of the Subject Property and the condition of the existing improvements. City may require Developer to execute a right of entry agreement satisfactory to City prior to entry onto the Subject Property for such purpose and shall require Developer to provide proof of liability insurance acceptable to City. Developer's inspection, examination, survey and review of the Subject Property shall be at Developer's sole expense. Developer shall provide City with copies of all reports and test results prepared by third-party consultants for or commissioned by Developer with respect to the Project or the Subject Property upon request following completion of such reports and testing, without representation or warranty; provided, however, Developer shall not be obligated to provide proprietary or financial information. Developer hereby agrees to notify the City twenty-four (24) hours in advance of its

intention to enter the Subject Property prior to the Close of Escrow, and will provide workplans, drawings, and descriptions of any intrusive sampling it intends to do. Developer must exercise care not to cause any unsafe condition to exist on the Subject Property during its entry. In the event of any damage to the Subject Property caused by the activities of Developer or Developer's agents, employees, consultants, contractors or subcontractors on the Subject Property prior to the Close of Escrow, Developer shall repair, restore and return the Subject Property to its condition immediately preceding Developer's entry thereon at Developer's sole expense. Developer will not permit any mechanics liens, stop notices or other liens or encumbrances to be placed against the Subject Property as a result of Developer's activities on the Subject Property prior to Close of Escrow. Without limiting any other indemnity provisions set forth in this Agreement, to the greatest extent permitted by law, Developer shall indemnify, defend (with counsel reasonably approved by City) and hold the Indemnitees harmless from and against all Claims resulting from or arising in connection with activities conducted by Developer or its agents, employees, consultants, contractors or subcontractors during their entry upon the Subject Property pursuant to this Section 6.1 except to the extent arising from pre-existing conditions on the Subject Property to the extent not exacerbated by the activities undertaken by Developer or its agents, employees, consultants, contractors or subcontractors and except to the extent arising from the negligence or willful misconduct of the Indemnitees. Developer's indemnification obligations set forth in this Section 6.1 shall survive the Close of Escrow and the expiration or termination of this Agreement and shall be subject to the additional terms and conditions set forth in Section 10.2 below.

6.2 Environmental Disclosure. City represents and warrants that it has provided to Developer copies of all investigation reports and duties concerning the Subject Property in City's possession or control. By execution of this Agreement, Developer: (i) acknowledges that it will have an opportunity to conduct its own independent review and investigation of the Subject Property prior to the Close of Escrow, and (ii) agrees to rely solely on its own experts in assessing the environmental condition of the Subject Property and its sufficiency for its intended use, except for City's representations and warranties contained in this Agreement.

6.3 Property Sold and Conveyed "AS IS". Developer specifically acknowledges that City is selling and Developer is purchasing the Subject Property and City is conveying and Developer is assuming City's rights and obligations under the Parking Agreements on an "AS IS", "WHERE IS" and "WITH ALL FAULTS" basis and that Developer is not relying on any representations or warranties of any kind whatsoever, express or implied, from City, its employees, board members, agents, or brokers as to any matters concerning the Subject Property, the Parking Garage, or City's rights and obligations under the Parking Agreements, except for the representations and warranties of City contained in this Agreement or any documents delivered by City at the Close of Escrow. Except as set forth in this Agreement or any documents delivered by City at the Close of Escrow, City makes no representations or warranties as to any matters concerning the Subject Property, the Parking Garage, or City's rights and obligations under the Parking Agreements, including without limitation: (i) the quality, nature, adequacy and physical condition of the Subject Property or the improvements located thereon, including, but not limited to, the structural elements, foundation, roof, appurtenances, access, landscaping, parking facilities, and the electrical, mechanical, HVAC, plumbing, sewage, and utility systems, facilities and appliances, (ii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical

condition of utilities serving the Property or the Parking Garage, (iv) the development potential of the Property and the Parking Garage and the use, habitability, merchantability, or fitness, suitability, value or adequacy of the Property or the Parking Garage for any particular purpose, (v) the zoning or other legal status of the Property or any other public or private restrictions on use of the Property or the Parking Garage, (vi) the compliance of the Property and the Parking Garage or its operation with any Environmental Laws, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity, (vii) the presence or removal of Hazardous Material, substances or wastes on, under or about the Property, the Parking Garage, or the adjoining or neighboring property, (viii) the quality of any labor and materials used in any improvements on the Property or the Parking Garage, (ix) the condition of title to the Property or the Parking Garage, (x) the leases, service contracts, or other agreements affecting the Property or the Parking Garage, or (xi) the economics of the operation of the Property or the Parking Garage.

6.4 Developer to Rely on Own Experts. Developer understands that notwithstanding the delivery by City to Developer of any materials, including, without limitation, third party reports, except for the representations and warranties of City set forth in this Agreement or any documents delivered by City at the Close of Escrow, Developer will rely entirely on Developer's own experts and consultants and its own independent investigation in proceeding with the acquisition of the Subject Property and City's rights and obligations under the Parking Agreements.

6.5 Release by Developer. Effective upon the Close of Escrow for the Subject Property, Developer WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES the Indemnitees and any person acting on behalf of City, from any and all Claims, direct or indirect, known or unknown, foreseen or unforeseen, which Developer now has or which may arise in the future on account of or in any way arising out of or in connection with the physical condition of the Property or the Parking Garage, the presence of Hazardous Material in, on, under or about the Property or the Parking Garage, or any law or regulation applicable thereto including, without limiting the generality of the foregoing, all Environmental Laws; provided, however, that the foregoing release shall not apply to (i) City's fraudulent acts or omissions; (ii) material breach of any of the representations and warranties of City under this Agreement or any document delivered at the Close of Escrow; and/or (iii) any third-party Claims brought against Developer arising from events occurring during the period of City's ownership of the Subject Property.

Notwithstanding anything to the contrary contained herein, the provisions of this Section 6.5 shall not be applicable to Developer's right to implead or otherwise seek joinder of City with respect to any claims brought against Developer by a governmental authority relating to Hazardous Material disposed of or released in, on or under the Property during City's period of ownership of the Property and for which City shall be liable under any statute concerning liability for contamination by Hazardous Material.

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

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

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

Developer's initials: _____

6.6 Developer's Post-Closing Obligations. Developer hereby covenants and agrees that, until the Certificate of Completion is issued:

(1) Developer shall not knowingly permit the Property or the Parking Garage, or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Material or otherwise knowingly permit the presence or release of Hazardous Material in, on, under, about or from the Property or the Parking Garage with the exception of limited amounts of cleaning supplies and other materials customarily used in construction, use, maintenance or operation of residential properties and related parking facilities and amenities similar in nature to the Project, and used, stored and disposed of in compliance with Environmental Laws.

(2) Developer shall keep and maintain the Property and the Parking Garage and each portion thereof in compliance with, and shall not cause or permit the Project, the Property, or the Parking Garage, or any portion of the foregoing to be in violation of, any Environmental Laws.

(3) Upon receiving actual knowledge of the same, Developer shall promptly advise City in writing of: (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened in writing against Developer, or the Property or the Parking Garage pursuant to any applicable Environmental Laws; (ii) any and all claims made or threatened in writing by any third party against Developer or the Property or the Parking Garage relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Material; (iii) the presence or release of any Hazardous Material in, on, under, about or from the Property or the Parking Garage in violation of applicable Environmental Laws; or (iv) Developer's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Project classified as "Border Zone Property" under the provisions of California Health and Safety Code, Sections 25220 *et seq.*, or any regulation adopted in connection therewith, that may in any way affect the Subject Property pursuant to any Environmental Laws or cause it or any part thereof to be designated as Border Zone Property. The matters set forth in the foregoing clauses (i)

through (iv) are hereinafter referred to as "**Hazardous Materials Claims**"). The City shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claim.

(4) Without the City's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, Developer shall not take any remedial action in response to the presence of any Hazardous Material in, on, under, or about the Property or the Parking Garage (other than in emergency situations or as required by governmental agencies having jurisdiction in which case the City's consent shall not be required), nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claim. City shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Developer.

6.7 Environmental Indemnity. To the greatest extent permitted by law, Developer shall indemnify, defend (with qualified counsel selected by Developer) and hold Indemnitees harmless from and against all Claims resulting, arising, or based directly or indirectly in whole or in part, upon (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Material on, under, in or about the Property or the Parking Garage, or the transportation of any such Hazardous Material to or from, the Property or the Parking Garage which first occurs following the Close of Escrow, or (ii) the failure of Developer, Developer's employees, agents, invitees, tenants, lessees, contractors, subcontractors, or any person acting on behalf of or as the invitee of any of the foregoing to comply with Environmental Laws, except in each case to the extent caused by the City's negligence or willful misconduct or arising as a result of Hazardous Materials present on, under, in, or about the Subject Property prior to the Close of Escrow. The foregoing indemnity shall further apply 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 Material following the Close of Escrow, and irrespective of whether any of such activities are undertaken in accordance with Environmental Laws. The provisions of this Section 6.7 shall be in addition to any and all other obligations and liabilities that Developer may have under applicable law, and each Indemnitee shall be entitled to indemnification under this Section without regard to whether City or that Indemnitee has exercised any other rights available under the City Documents or applicable law, except to the extent caused by the City's negligence or willful misconduct. Developer's indemnification obligations under this Section shall not apply to Claims to the extent arising from (a) Hazardous Materials present on the Subject Property prior to the Close of Escrow, (b) the negligence or willful misconduct of the Indemnitees, or (c) matters not released pursuant to Section 6.5. The obligations of Developer to indemnify the Indemnitees under this Section shall survive the Close of Escrow and the expiration or termination of this Agreement and are subject to the additional terms set forth in Section 10.2 below.

6.8 No Limitation. Developer hereby acknowledges and agrees that Developer's duties, obligations and liabilities under this Agreement are in no way limited or otherwise affected by any information City may have concerning the Subject Property or the Parking Garage and/or the presence in, on, under or about the Subject Property or the Parking Garage of

any Hazardous Material, whether City obtained such information from Developer or from its own investigations, subject to City's representations and warranties set forth in this Agreement.

6.9 Definitions.

6.9.1 "**Hazardous Material**" means any chemical, compound, material, mixture, or substance that is now or may in the future be defined or listed in, or otherwise classified pursuant to any Environmental Laws (defined below) as a "hazardous substance", "hazardous material", "hazardous waste", "extremely hazardous waste", "infectious waste", "toxic substance", "toxic pollutant", or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity. The term "hazardous material" shall also include asbestos or asbestos-containing materials, radon, chrome and/or chromium, polychlorinated biphenyls, petroleum, petroleum products or by-products, petroleum components, oil, mineral spirits, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable as fuel, perchlorate, and methyl tert butyl ether, whether or not defined as a hazardous waste or hazardous substance in the Environmental Laws.

6.9.2 "**Environmental Laws**" means any and all federal, state and local statutes, ordinances, orders, rules, regulations, guidance documents, judgments, governmental authorizations or directives, or any other requirements of governmental authorities, as may presently exist, or as may be amended or supplemented, or hereafter enacted, relating to the presence, release, generation, use, handling, treatment, storage, transportation or disposal of Hazardous Material, or the protection of the environment or human, plant or animal health, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 *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. § 1251 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), the Oil Pollution Act (33 U.S.C. § 2701 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq.*), the Porter-Cologne Water Quality Control Act (Cal. Water Code § 13000 *et seq.*), the Toxic Mold Protection Act (Cal. Health & Safety Code § 26100, *et seq.*), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 *et seq.*), the Hazardous Waste Control Act (Cal. Health & Safety Code § 25100 *et seq.*), the Hazardous Materials Release Response Plans & Inventory Act (Cal. Health & Safety Code § 25500 *et seq.*), and the Carpenter-Presley-Tanner Hazardous Substances Account Act (Cal. Health and Safety Code, Section 25300 *et seq.*).

ARTICLE VII LIMITATIONS ON CHANGE IN OWNERSHIP, MANAGEMENT AND CONTROL OF DEVELOPER

7.1 Identity of Developer; Changes Only Pursuant to this Agreement. Developer has represented that it and its parent company possess the necessary expertise, skill and ability to carry out the development of the Project pursuant to this Agreement. The qualifications, experience, financial capacity and expertise of Developer and its parent company are of

particular concern to City. It is because of these qualifications, experience, financial capacity and expertise that 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 City's issuance of final certificates of occupancy or equivalent for the Project, Developer shall not, except as expressly permitted by this Agreement, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, encumbrance, assignment (including, without limitation, any assignment for security purposes) or lease (collectively, "**Transfer**") of the whole or any part of the Subject Property, the Project, the Improvements, or this Agreement, without the prior written approval of City which approval shall not be unreasonably withheld. Any such attempt to assign this Agreement without 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 City's issuance of final certificates of occupancy or equivalent for the Project, 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 or non-managing member, nor the transfer by the investor limited partner or non-managing member to subsequent limited partners or non-managing members 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 Subject Property; (ii) the dedication of any property required pursuant to this Agreement; (iii) the lease of individual dwelling units to tenants and the lease or rental of commercial and retail space in the Project; (iv) assignments creating security interests for the purpose of financing the acquisition, construction or permanent financing of the Project or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest, subject to the applicable requirements of Article VIII; (v) a Transfer to an entity under the direct or indirect control of or under common control with Developer; (vi) a Transfer to a limited partnership (or a limited liability company) in which Developer or an Affiliate of Developer is the managing general partner (or managing member); (vii) the admission of limited partners (or non-managing members), and any transfer of limited partnership (or non-managing member) interests in accordance with Developer's agreement of limited partnership or limited liability company operating agreement, as applicable; (viii) the removal of the general partner (or managing member) of Developer by the investor limited partners (or non-managing members) for a default under Developer's partnership agreement (or limited liability company operating agreement), provided that the replacement general partner (or managing member) is an entity reasonably satisfactory to City, or (ix) the Transfers described in Exhibit K attached hereto.

7.4 Requirements for Proposed Transfers. City will consent to a proposed Transfer of this Agreement, the Subject Property, the Improvements or part 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 Section 7.3):

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

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

(iii) The proposed transferee shall expressly assume all of the rights and obligations of Developer under this Agreement and the other 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. The assumption of such obligations shall be documented in an assignment and assumption agreement in form approved by City, such approval not to be unreasonably withheld.

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

(v) The final form of the partnership agreement/operating agreement, and other organizational documents of the proposed transferee and its general partner(s)/manager/managing member, and any subsequent amendments that affect City's economic interests under this Agreement or the City Documents shall be subject to City's review and reasonable approval.

Consent to any proposed Transfer may be given by City's Authorized Representative unless the Authorized Representative, in his or her discretion, refers the matter of approval to the City Council. If City has not rejected a proposed Transfer or requested additional information regarding a proposed Transfer in writing within thirty (30) days following City's receipt of written request by Developer, the proposed Transfer shall be deemed approved.

7.5 Effect of Transfer without City Consent.

7.5.1 Except for a Transfer permitted by the terms of this Agreement, in the absence of specific written agreement by City, no Transfer by Developer shall be deemed to relieve the Developer or any other party from any obligation under this Agreement. Following the issuance of final certificates of occupancy or equivalent for the Project, upon Developer's Transfer of the Project to a third party that is not an Affiliate of Developer the transferring Developer shall have no further obligations or liabilities under this Agreement except with respect to matters arising during such Developer's period of ownership of the Subject Property, which matters expressly survive the termination or expiration of this Agreement.

7.5.2 It shall be an Event of Developer Default hereunder entitling City to pursue remedies including, without limitation, termination of this Agreement, if without the prior

written approval of City, Developer assigns or Transfers this Agreement, the Improvements, or the Subject Property, or any part thereof or interest therein, or undertakes any other Transfer (including without limitation any assignment for security or encumbrance of the Subject Property or any part thereof) in violation of Article VII. This Section 7.5.2 shall not apply to Transfers permitted by the terms of this Agreement.

7.6 Recovery of City Costs. Within ten (10) days following City's delivery to Developer of an invoice detailing such costs, Developer shall reimburse City for all reasonable City costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to effect a Transfer of this Agreement, the Subject Property or the Improvements, or part thereof or interest therein, and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee, except in the case of a Transfer permitted pursuant to Section 7.3.

ARTICLE VIII SECURITY FINANCING AND RIGHTS OF MORTGAGEES

8.1 Mortgages and Deeds of Trust for Development. Until the Certificate of Completion has been issued, mortgages and deeds of trust, or any other reasonable security instrument, are permitted to be placed upon the Subject Property or the Improvements only for the purpose of securing loans for the purpose of financing the acquisition of the Subject Property, the design and construction of the Improvements, and other expenditures reasonably necessary for the development of the Project pursuant to this Agreement. 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.

8.2 No Subordination of Regulatory Agreement. Developer acknowledges that the Regulatory Agreement shall be senior in priority to all deeds of trust and other security instruments recorded or to be recorded against the Subject Property and that the affordability and rent restrictions set forth in the Regulatory Agreement shall survive the foreclosure of any such instrument.

8.3 Holder Not Obligated to Construct. The holder of any mortgage or deed of trust authorized by this Agreement (a "**Permitted Mortgagee**") shall not be obligated to complete construction of the Project or to guarantee such completion. Nothing in this Agreement shall be deemed to permit or authorize any such holder to devote the Subject 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.

8.4 Notice of Default and Lender Right to Cure. Whenever City delivers any notice of default hereunder, City shall concurrently deliver a copy of such notice to each Permitted Mortgagee, provided that City has been provided with the address for delivery of such notice. City shall have no liability to any Permitted Mortgagee for any failure by City to provide such notice to such Permitted Mortgagee. Each such Permitted Mortgagee shall have the right, but not the obligation, at its option, to cure or remedy any such default or breach within the cure period provided to Developer. In the event that possession of the Subject Property or the Improvements (or any portion thereof) is required to effectuate such cure or remedy, the

Permitted Mortgagee shall be deemed to have timely cured or remedied the default if it commences the proceedings necessary to obtain possession of the Subject Property or Improvements, as applicable, within the applicable cure period, diligently pursues such proceedings to completion, and after obtaining possession, diligently completes such cure or remedy. A Permitted Mortgagee who chooses to exercise its right to cure or remedy a default or breach shall first notify City of its intent to exercise such right prior to commencing to cure or remedy such default or breach. Nothing contained in this Agreement shall be deemed to permit or authorize such Permitted Mortgagee to undertake or continue the construction of the Project (beyond the extent necessary to conserve or protect the same) without first having expressly assumed in writing Developer's obligations to City under this Agreement arising after such assumption of obligations. The Permitted Mortgagee in that event must agree to complete, in the manner provided in this Agreement, the Project and the Improvements and submit evidence reasonably satisfactory to City that it has the development capability on staff or retainer and the financial capacity necessary to perform such obligations. Any such Permitted Mortgagee properly completing the Project pursuant to this Section shall assume all rights and obligations of Developer under this Agreement arising after such Permitted Mortgagee's assumption of Developer's obligations under this Agreement.

8.5 Failure of Permitted Mortgagee to Complete Improvements. In any case where, six (6) months after default by Developer in completion of construction of the Project, the Permitted Mortgagee of record of any mortgage or deed of trust has not exercised its option to construct the Project, or having first exercised such option, has not proceeded diligently with such work, City shall be afforded those rights against such Permitted Mortgagee that it would otherwise have against Developer under this Agreement.

8.6 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 Subject Property or the Improvements, City may cure the default, prior to completion of any foreclosure 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.

8.7 Permitted Mortgagee to be Notified. Developer agrees to use best efforts to ensure that each term contained herein dealing with security financing and rights of Permitted Mortgagees shall be either inserted into the relevant deed of trust or mortgage or acknowledged and accepted in writing by the holder prior to its creating any security right or interest in the Property or the Improvements.

8.8 Modifications to Agreement. City shall not unreasonably withhold its 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.

8.9 Estoppel Certificates. Either Party shall, at any time, and from time to time, within fifteen (15) 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) to the delivering Party's knowledge, 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 DEFAULTS, REMEDIES AND TERMINATION

9.1 Event of Developer Default. The following events shall constitute an event of default on the part of Developer hereunder ("**Event of Developer Default**"):

(a) Developer fails to commence or complete construction of the Project within the time period set forth in Section 5.1, subject to extension of such time period due to events of Force Majeure, or Developer abandons or suspends construction of the Project prior to completion for a period of sixty (60) days or more for reasons other than the occurrence of events of Force Majeure;

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

(c) Developer fails to maintain insurance as required pursuant to this Agreement, and Developer fails to cure such default within fifteen (15) days after City shall have given written notice of the default to Developer;

(d) Subject to Developer's rights pursuant to Article V above, Developer fails to pay prior to delinquency taxes or assessments due on the Subject Property or the Improvements, or fails to pay when due any other charge that may result in a lien on the Subject Property or the Improvements, and Developer fails to cure such default within twenty (20) days after City shall have given written notice of the delinquency to Developer, but in all events prior to the date upon which the holder of any such lien has the right to foreclose thereon;

(e) A default arises under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Subject 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;

(f) Any representation or warranty of Developer contained in this Agreement proves to have been incorrect in any material and adverse respect when made and continues to be materially adverse to City;

(g) 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 or Developer's General Partner: (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against such entity in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for such entity; (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;

(h) A court of competent jurisdiction shall have made or entered any decree or order with respect to Developer or Developer's General Partner (1) adjudging such entity to be

bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of such entity seeking any arrangement for such entity 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 such entity in bankruptcy or insolvency or for any of its properties, or (4) directing the winding up or liquidation of such entity, in each case if such decree, order, petition, or appointment is not removed or rescinded within ninety (90) days;

(i) Developer or Developer's General Partner 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 ninety (90) days after such event (unless a lesser time period is permitted for cure pursuant to any mortgage on the Subject 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;

(j) Developer or Developer's General Partner shall have voluntarily suspended its business or such entity shall have been dissolved or terminated;

(k) An event of default on the part of Developer arises under any City Document and remains uncured beyond any applicable notice and cure period; or

(l) Developer defaults in the performance of any term, provision, covenant or agreement contained in this Agreement other than an obligation enumerated in this Section 9.1 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 sixty (60) days in the event of a nonmonetary default in each case 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 with due diligence be cured within sixty (60) days, an Event of Developer Default shall not arise hereunder if Developer commences to cure the default within sixty (60) days of such notice and thereafter prosecutes the curing of such default with due diligence and in good faith to completion.

9.2 City Default. An event of default on the part of City ("**Event of City Default**") shall arise hereunder if (a) City fails to keep, observe, or perform any of its covenants, duties, or obligations under this Agreement or any of the other City Documents, and the default continues for a period of sixty (60) days after written notice thereof from Developer to City, or in the case of a default which cannot with due diligence be cured within sixty (60) days, City fails to commence to cure the default within sixty (60) days of such notice or thereafter fails to prosecute the curing of such default with due diligence and in good faith to completion, or (b) any representation or warranty of City contained in this Agreement proves to have been incorrect in any material and adverse respect when made and continues to be materially adverse to Developer.

9.3 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, subject to the provisions of Article VIII. 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 and obligations of Developer under this Agreement shall expire and terminate, except those that are expressly stated to survive such expiration or termination.

9.4 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 the following remedies:

9.4.1 Following Close of Escrow. Following the Close of Escrow, City shall have all remedies available to it under this Agreement or under law or equity, including, but not limited to, the following, and 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 the City Documents, exercise one or more of the following remedies:

- (a) Bring an action for equitable relief seeking the specific performance of the terms of this Agreement and/or enjoining, abating or preventing any violation of such terms;
- (b) Terminate this Agreement pursuant to Section 9.3, subject to the provisions of Article VIII; and
- (c) Pursue any and all other remedies available under this Agreement or under law or equity to enforce the terms of this Agreement and City's rights hereunder.

9.4.2 Prior to Close of Escrow. **NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, PRIOR TO THE CLOSE OF ESCROW CITY'S SOLE AND EXCLUSIVE REMEDIES IN THE EVENT OF AN EVENT OF DEVELOPER DEFAULT SHALL BE TO TERMINATE THIS AGREEMENT PURSUANT TO SECTION 9.3 AND TO BE PAID THE SUM OF FIFTY THOUSAND DOLLARS (\$50,000) (WHICH SUM SHALL INCLUDE ANY PORTION OF THE GOOD FAITH DEPOSIT NOT YET APPLIED TO EXPENSES TO WHICH THE SAME IS CONTEMPLATED TO BE APPLIED, AND THE ADDITIONAL SUM NECESSARY TO PROVIDE TO CITY SUCH \$50,000 PAYMENT) AS LIQUIDATED DAMAGES. THE PARTIES ACKNOWLEDGE THAT, IN THE EVENT OF AN EVENT OF DEVELOPER DEFAULT UNDER THIS AGREEMENT PRIOR TO CLOSE OF ESCROW, CITY'S ACTUAL DAMAGES BY REASON OF SUCH EVENT OF DEVELOPER DEFAULT WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THE ABOVE LIQUIDATED DAMAGES HAS BEEN AGREED UPON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE, AS OF THE EFFECTIVE DATE, OF CITY'S DAMAGES IN THE EVENT AN EVENT OF DEVELOPER DEFAULT OCCURS UNDER THIS AGREEMENT PRIOR TO CLOSE OF ESCROW. THE PARTIES ACKNOWLEDGE THAT THE PAYMENT OF SUCH LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED**

DAMAGES TO CITY PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. IN CONSIDERATION OF CITY RECEIVING THE LIQUIDATED DAMAGES, CITY WILL BE DEEMED TO HAVE WAIVED ALL OF ITS CLAIMS AGAINST DEVELOPER FOR DAMAGES ARISING FROM ANY EVENT OF DEVELOPER DEFAULT OCCURRING PRIOR TO CLOSE ESCROW. WITHOUT LIMITING THE FOREGOING, CITY WAIVES ANY RIGHT THAT IT MAY HAVE UNDER RELEVANT STATUTORY LAW, INCLUDING, WITHOUT LIMITATION, CALIFORNIA CIVIL CODE SECTION 3389, TO SEEK SPECIFIC PERFORMANCE OR ANY OTHER REMEDY AT LAW OR IN EQUITY OTHER THAN RECEIPT OF THE LIQUIDATED DAMAGES SPECIFIED HEREIN.

City's Initials: _____

Developer's Initials: _____

9.5 Developer's Remedies Upon an Event of City Default. Upon the occurrence of an Event of City Default, Developer may, at its election, exercise one or more of the following remedies: (a) bring an action for equitable relief seeking the specific performance of the terms of this Agreement and/or enjoining, abating, or preventing any violation of such terms, (b) terminate this Agreement, and/or (c) pursue any and all other remedies available under this Agreement or under law or equity to enforce the terms of this Agreement and Developer's rights hereunder.

9.6 Remedies Cumulative; No Consequential or Punitive Damages. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either 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 contained in this Agreement, the Parties expressly waive all rights to seek or recover consequential or punitive damages under this Agreement or otherwise in connection with any default by either Party.

9.7 Inaction Not a Waiver of Default. No failure or delay by either 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 either 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.

9.8 Power of Termination. If following conveyance of the Subject Property to Developer, Developer (i) fails to begin construction of the Project within the time specified in Section 5.1 as such date may be extended pursuant to the terms hereof, (ii) fails to complete construction of the Project by the time specified in Section 5.1 as such date may be extended pursuant to the terms hereof, or (iii) abandons or suspends construction work for a period of sixty (60) days after written notice from City for reasons other than the occurrence of events of Force Majeure, (iv) directly or indirectly, voluntarily or involuntarily Transfers the Subject Property or part thereof or this Agreement in violation of Article VII, City may re-enter and take possession of the Subject Property or any portion thereof with all improvements thereon without payment or compensation to Developer, and revert in City the estate theretofore conveyed to Developer, and upon such re-entry and taking possession by the City the obligations of Developer under this

Agreement and the other City Documents shall thereupon terminate. The interest created pursuant to this Section 9.8 shall be a "power of termination" as defined in California Civil Code Section 885.010, and shall be separate and distinct from City's option to purchase the Subject Property under the same or similar conditions specified in Section 9.9. City's rights pursuant to this Section 9.8 shall not defeat, render invalid or limit any mortgage or deed of trust permitted by this Agreement or any rights or interests provided in this Agreement for the protection of the holders of such mortgages or deeds of trust.

Upon revesting in City of title to the Subject Property or any portion thereof as provided in this Section 9.8, City shall use its best efforts to resell the Subject Property or applicable portion thereof and as soon as possible, in a commercially reasonable manner to a qualified and responsible party or parties (as reasonably determined by City) who will assume the obligation of completing and operating the Project in accordance with the uses specified for such property in this Agreement and in a manner satisfactory to City. Upon such resale of the Subject Property or any portion thereof, the sale proceeds shall be applied as follows:

(a) First, to reimburse City for all costs and expenses incurred by City, including but not limited to salaries of personnel and legal fees incurred in connection with the recapture and resale of the Property; all taxes and assessments payable prior to resale, and all applicable water and sewer charges; any payments necessary to discharge any encumbrances or liens on the Property at the time of revesting of title thereto in City or to discharge or prevent from attaching any subsequent encumbrances or liens due to obligations, defaults, or acts of Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the completion of the Project or any part thereof on the Property; and any other amounts owed to City by Developer and its successors or transferee pursuant to the City Documents or otherwise.

(b) Second, to reimburse the City for damages to which it is entitled under this Agreement by reason of the occurrence of a Developer default specified above in this Section 9.8.

(c) Third, to reimburse Developer, its successor or transferee, up to the amount equal to:

(1) The payment made to City for the Subject Property; plus

(2) The fair market value of any new improvements constructed by Developer and existing on the Subject Property at the time of City's exercise of its rights under this Section; less

(3) Any gains or income withdrawn or made by Developer from the Subject Property or applicable portion thereof or the improvements thereon.

Notwithstanding the foregoing, the amount calculated pursuant to this subsection (c) shall not exceed the fair market value of the Subject Property or applicable portion thereof, together with the improvements thereon as of the date of the default or failure specified above in this Section 9.8 which gave rise to City's exercise of the power of termination.

(d) Any balance remaining after such reimbursements shall be retained by City.

The rights established in this Section 9.8 are to be interpreted in light of the fact that City will convey the Subject Property to Developer for completion of the Project as specified herein and not for speculation.

9.9 Option to Purchase, Enter and Possess Upon Default. City shall have the additional right at its option to purchase, enter and take possession of the Subject Property with all improvements thereon (the "**Repurchase Option**"), if after conveyance of the Subject Property, Developer (i) fails to begin construction of the Project within the time specified in Section 5.1 as such date may be extended pursuant to the terms hereof, (ii) fails to complete construction of the Project by the time specified in Section 5.1 as such date may be extended pursuant to the terms hereof, or (iii) directly or indirectly, voluntarily or involuntarily Transfers the Subject Property or part thereof or this Agreement in violation of Article VII. If it exercises the Repurchase Option, Developer's obligations under this Agreement and the other City Documents shall thereupon terminate and City shall pay to Developer cash in an amount equal to:

- (i) The Purchase Price; plus
- (ii) The fair market value of any new improvements constructed on the Subject Property by Developer and existing on the Subject Property at the time of exercise of the Repurchase Option; less
- (iii) Any gains or income withdrawn or made by the Developer from the applicable portion of the Subject Property or the improvements thereon; less
- (iv) The value of any liens or encumbrances on the applicable portion of the Subject Property which City assumes or takes subject to; less
- (v) Any amounts owed to City by Developer and its successors or transferee pursuant to the City Documents or otherwise; less
- (vi) To the extent not previously paid, all taxes, assessments and utility charges payable with respect to the Subject Property for the period following the Close of Escrow and prior to the date City acquires title to the Subject Property; less
- (vii) The amount of any payments necessary to discharge or prevent from attaching any subsequent encumbrances or liens due to obligations, defaults, or acts of Developer, its successors or transferees; less
- (viii) Any damages to which City is entitled under this Agreement by reason of Developer's default specified above in this Section 9.9.

In order to exercise the Repurchase Option, City shall give Developer written notice of such exercise, and Developer shall, within thirty (30) days after receipt of such notice, provide City with a summary of all of Developer's costs incurred as described in this Section 9.9. Within thirty (30) days of City's receipt of such summary, City shall pay into an escrow established for such purpose cash in the amount of all sums owing pursuant to this Section 9.9, and Developer shall execute and deposit into such escrow a grant deed transferring to City all of Developer's

interest in the Subject Property, or portion thereof, as applicable, and the improvements located thereon.

9.10 Memorandum of Power of Termination/Option to Purchase. The Parties shall cause a memorandum of the rights granted City in Sections 9.8 and 9.9 of this Agreement to be recorded in the Official Records at the time of the Close of Escrow for conveyance of the Subject Property to Developer. Promptly following issuance of the Certificate of Completion City shall record in the Official Records a termination of the Memorandum, in form and substance reasonably satisfactory to Developer.

9.11 Rights of Mortgagees. Any rights of City under this Article IX shall not defeat, limit or render invalid any mortgage or deed of trust permitted by this Agreement or any rights provided for in this Agreement for the protection of holders of such instruments. Any conveyance or return of the Subject Property to City pursuant to this Article IX shall be subject to mortgages and deeds of trust permitted by this Agreement.

9.12 Assignment. City shall not have the right to assign the Repurchase Option to any party.

9.13 Rights of Affiliates. Whenever City delivers any notice of default hereunder, City shall concurrently deliver a copy of such notice to all of Developer's notice parties in accordance with Section 11.3. The Affiliates of Developer ("**Developer Parties**") shall have the same right as Developer to cure or remedy any default hereunder within the cure period provided to Developer; provided however, if the default is of such nature that the Developer Parties reasonably determine that it is necessary to replace Developer's Manager in order to cure such default, then the cure period shall be extended by an additional sixty (60) days after the removal and replacement of Developer's Manager, provided that the Developer Parties have promptly commenced and diligently proceeded with all requisite actions to effect such removal and replacement.

ARTICLE X INDEMNITY AND INSURANCE

10.1 Developer Indemnity. To the greatest extent permitted by law, Developer shall indemnify, defend (with qualified counsel selected by Developer) and hold the Indemnitees harmless from and against any and all Claims (including, without limitation, Claims arising from any injury, death, illness, property damage, or loss of property) arising directly or indirectly, in whole or in part, as a result of or in connection with the development, construction, improvement, operation, ownership or maintenance of the Project or the Subject Property, or any part thereof, by Developer or Developer's contractors, subcontractors, agents, employees or any other party acting for or on behalf of Developer, or otherwise arising out of or in connection with Developer's performance or failure to perform under this Agreement, occurring on or after the Closing Date. Developer's indemnification obligations under this Section 10.1 shall not extend to Claims to the extent arising from the negligence or willful misconduct of Indemnitees and are subject to the additional terms set forth in Section 10.2 below. The provisions of this Section 10.1.1 shall survive the Close of Escrow and the expiration or termination of this Agreement.

10.2 Terms Applicable to Indemnity Provisions. The terms set forth in this Section 10.2 shall apply to all provisions of this Agreement that pertain to Developer's obligations to indemnify City and the other Indemnitees, including without limitation, Sections 5.10, 5.13.3, 5.14, 6.1, 6.7, 10.1 and 11.1. In connection with each such provision, all of the following shall apply:

(a) City does not and shall not waive any rights against Developer that it may have by reason of any indemnity and hold harmless provision set forth in this Agreement because of the acceptance by City, or the deposit with City by Developer, of any of the insurance policies described in this Agreement.

(b) Developer's obligation to indemnify the Indemnitees shall not be limited or impaired by any of the following: (i) any amendment or modification of any City Document; (ii) any extensions of time for performance required by any City Document; (iii) the accuracy or inaccuracy of any representation and warranty made by Developer under this Agreement or by Developer or any other party under any City Document, and (iv) the release of any party other than Developer from performance of any obligation under any City Document.

10.3 Liability, Workers Compensation, and Property Insurance.

(a) Commercial General Liability. Developer (and until issuance of the final certificate of occupancy or equivalent for the Project all contractors working on behalf of Developer on the Project) shall maintain a commercial general liability policy including coverage for bodily injury, property damage, products, completed operations and contractual liability coverage with coverage limits in the greater of: (a) the amounts required by the construction and permanent lenders for the Project, or (b) Two Million Dollars (\$2,000,000) each occurrence, Two Million Dollars (\$2,000,000) annual aggregate, together with Five Million Dollars (\$5,000,000) excess liability coverage, or such other policy limits as City may require in its reasonable discretion. Such policy or policies shall be written on an occurrence basis and shall name the Indemnitees as additional insureds.

(b) Automobile. Developer (and until issuance of the final certificate of occupancy or equivalent for the Project all contractors working on behalf of Developer on the Project) shall maintain a comprehensive automobile liability coverage in the amount of Two Million Dollars (\$2,000,000), combined single limit including coverage for owned and non-owned vehicles brought onto the Subject Property. Automobile liability policies shall name the Indemnitees as additional insureds.

(c) Worker's Compensation; Employer's Liability. Developer and Developer's general partners shall furnish or cause to be furnished to City evidence satisfactory to City that Developer and its general partners, and any contractor with whom Developer has contracted for the performance of work on the Subject Property or otherwise pursuant to this Agreement, carries statutory Workers' Compensation insurance and Employer's Liability insurance in a minimum amount of One Million Dollars (\$1,000,000) per accident.

(d) Builder's Risk. Upon commencement of construction work and continuing until issuance of the final certificate of occupancy or equivalent for the Project, 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 loss payee as its interests may appear.

(e) Professional Liability/Errors and Omissions. Professional Liability/Errors and Omissions insurance as appropriate for design/build operations with limits not less than One Million Dollars (\$1,000,000) each claim. If the professional liability/errors and omissions insurance is written on a claims made form: (i) the retroactive date must be shown and must be before the Effective Date, (ii) insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of Project construction, and (iii) if coverage is cancelled or non-renewed and not replaced with another claims made policy form with a retroactive date prior to the Effective Date, Developer must purchase extended period coverage for a minimum of three (3) years after completion of construction.

(f) Insurance Providers. Companies writing the insurance required hereunder shall be authorized to do business in the State of California. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A: VII.

(g) Evidence of Insurance; Endorsements; Policies. Prior to the Effective Date of this Agreement, Developer shall furnish City with certificates of insurance in form acceptable to City evidencing the insurance coverage required under paragraphs (a), (b) and (c) above, duly executed endorsements evidencing the Indemnitees' status as additional insured, and all other endorsements and coverage required hereunder pertaining to such coverage. Prior to commencement of Project construction, Developer shall furnish City with certificates of insurance in form acceptable to City evidencing the insurance coverage required under paragraphs (d) and (e) above. Prior to City's issuance of a final certificate of occupancy or equivalent for the Project, Developer shall furnish City with certificates of insurance in form acceptable to City evidencing the insurance coverage required under paragraph (f) above.

All insurance 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 ten (10) days in advance of the effective date of any such material adverse change, cancellation, termination or non-renewal. Upon City's request, Developer shall, within thirty (30) days of the request, provide or arrange for the insurer to provide to City, complete certified copies of all insurance policies required under this Agreement. City's failure to make such request shall not constitute a waiver of the right to require delivery of the policies in the future.

(h) Additional Insured Endorsements. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01, in each case to the extent such endorsements are available and commercially reasonable; but shall not use the following forms: CG 20 10 10 93 or 03 94.

(i) Reinstatement. If any insurance policy or coverage required hereunder is canceled or reduced, Developer shall procure the required insurance by reinstating the prior coverage or arranging coverage through another insurance company or companies. Developer shall file with City a certificate showing that the required insurance has been reinstated or

provided through another insurance company or companies promptly after such reinstatement or such alternate coverage has become effective, and in any event prior to the effective date of the cancellation or reduction in coverage. Upon failure to so file such certificate in a timely manner, City may, upon notice to Developer 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.

(j) Primary Coverage; Waiver of Subrogation; Annual Aggregate Limits. All coverage shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by City, and the policies shall so provide. Each insurance policy shall contain a waiver of subrogation for the benefit of the City. If any of the required insurance is provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs are included in such annual aggregate limit, such annual aggregate limit shall be three times the occurrence limits specified above.

(k) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to City's Risk Manager. At the option of and upon request by City's Risk Manager if the Risk Manager reasonably determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects the Indemnitees or Developer shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses. Notwithstanding the foregoing, City agrees that Developer may at Developer's option self-insure for earthquake losses.

(l) Adjustments. The limits of the liability coverage and, if necessary, the terms and conditions of insurance, shall be reasonably adjusted from time to time (not less than every ten (10) years after the Effective Date nor more than once in every five (5) year period) to address changes in circumstance, including, but not limited to, changes in inflation and the litigation climate in California. City shall give written notice to Developer of any such adjustments, and Developer shall provide City with amended or new insurance certificates or endorsements evidencing compliance with such adjustments within thirty (30) days following receipt of such notice.

(m) Additional Insured Coverage; Liability Limits. This Agreement requires Developer to obtain and provide for the benefit of the Indemnitees additional insured coverage in the same amount of insurance carried by Developer, but in no event less than the minimum amounts specified in this Agreement. In the event that Developer obtains insurance policies that provide liability coverage in excess of the amounts specified in this Agreement, the coverage provided by such policies shall, for purposes of this Agreement and as between the Indemnitees and Developer, be deemed to be limited to the amounts required under this Agreement.

ARTICLE XI MISCELLANEOUS PROVISIONS

11.1 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 Close of Escrow and the expiration or termination of this Agreement.

11.2 Enforced Delay; Extension of Times of Performance. The time for performance of provisions of this Agreement by either Party shall be extended for a period equal to the period of any delay directly affecting the Project or this Agreement which is caused by any of the following ("**Force Majeure**"): war, insurrection, strikes, lockouts or other labor disturbances, riots, floods, earthquakes, fires, casualties, acts of God, acts of a public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, court order, suits or litigation filed by unrelated third parties concerning or arising out of this Agreement, provided the Party subject to such litigation is actively mounting a defense to such litigation; unusually severe weather conditions; inability to secure necessary materials, provided that the Party claiming such as an event of Force Majeure has taken reasonable action to obtain such materials on a timely basis; delays resulting from changes in Applicable laws or the imposition of a development moratorium, as defined in section 66452.6(f) of the California Government Code; subject to the limitations set forth below, delays resulting from Economic Force Majeure or Hazardous Material Delay; and any other causes affecting the development and/or construction of the Project which are beyond the reasonable control of the Party claiming any extension of time.

11.2.1 Notice; Duration of Force Majeure Delay. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the Party claiming such extension is sent to the other Party within sixty (60) calendar days after Developer obtains actual knowledge of the commencement of the cause. In the event that the period of Force Majeure exceeds twelve (12) months, City and Developer shall meet and confer in good faith regularly for the duration of the event to discuss mutually acceptable changes to the Project that will allow development of the Project to proceed to the extent possible notwithstanding the event or events causing such Force Majeure.

11.2.2 Economic Force Majeure; Hazardous Material Delay. "**Economic Force Majeure**" means a significant decline in the residential real estate market, as measured by a decline of more than four percent (4%) in the House Price Index during the preceding twelve (12) month period, measured on a quarterly basis. Economic Force Majeure shall commence upon Developer's delivery of written notice to City of the Economic Force Majeure (together with appropriate backup evidence). Economic Force Majeure shall continue prospectively on a quarterly basis and remain in effect until the House Price Index increases for three (3) successive quarters during the preceding twelve (12) month period; provided that the cumulative total Economic Force Majeure shall not exceed sixty (60) months. "**House Price Index**" means the quarterly "purchase only" index published by the Federal Housing Finance Agency representing home price trends for the Metropolitan Statistical Area comprising San Francisco – Redwood City – South San Francisco. If the House Price Index is discontinued, Developer and City shall approve a substitute index that tracks the residential market with geographic boundaries as close to the San Francisco – Redwood City – South San Francisco Metropolitan Statistical Area as possible.

City and Developer acknowledge that, with the exception of Economic Force Majeure as defined above, 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 Project shall not constitute grounds of Force Majeure pursuant to this Section. Each Party expressly assumes the risk of such adverse economic or market changes and/or financial inability (not constituting Economic Force Majeure), whether or not foreseeable as of the Effective Date. Without limiting the generality of the foregoing, Developer's inability or failure to obtain financing shall not be deemed to be a cause outside the reasonable control of the Developer and shall not be the basis for an excused delay unless such inability, failure, or delay is a result of Economic Force Majeure or another event of Force Majeure.

"Hazardous Material Delay" means delay caused by (1) the requirement by an environmental regulatory agency to perform investigation or remedial action beyond the segregation, characterization and proper disposal (including reuse) required by any applicable Site Management Plan for any Hazardous Materials (A) not previously identified at the Subject Property (based on information included in the Hazardous Materials documents obtained by Developer prior to the Effective Date), (B) previously identified at the Subject Property, but that are encountered in a previously unidentified location or in concentrations in excess of those previously identified (each based on information included in the Hazardous Materials documents obtained by Developer prior to the Effective Date), or (C) encountered in the construction of any off-site infrastructure or other improvements and not previously identified at the Property as described in clause (A) or clause (B) preceding; (2) the requirement by an environmental regulatory agency to perform investigation or remedial action for Hazardous Materials beyond the preparation of work plans for additional sampling or investigation, the implementation of such approved work plans and the preparation of closure reports necessary to address or obtain closure for non-CERLCA Hazardous Materials located at the Subject Property to the extent such investigation or remedial action is necessary to permit the uses identified in the Development Agreement; or (3) the requirement by and environmental regulatory agency to perform investigation or remedial action for Hazardous Materials that are the result of any additional remediation required at a formerly closed site by any regulatory agency due to resolution in accordance with Applicable Law by any regulatory agency of the applied remediation strategy or any change in law or regulation related to remediation standards, including without limitation any change in risk screening levels.

11.2.3 Agreement to Extend Time of Performance. 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 the Authorized Representative unless he or she determines in his or her discretion to refer such matter to the City Council).

11.3 Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement or any other City Document 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; or (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 Daly City
333 90th Street
Daly City, CA 94015
Attention: Director of Economic and Community
Development

With copy to: City of Daly City
333 90th Street, Third Floor
Daly City, CA 94015
Attention: City Attorney

Developer: EQR-Hillside II LP
c/o Equity Residential
333 Third Street, Suite 210
San Francisco, CA 94107
Attention: Drew Sullins

With copy to: Equity Residential
Two North Riverside Plaza, Suite 400
Chicago, IL 60606
Attention: Tiffany Higgins

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

11.5 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 Party granting the extension. This Agreement may be amended or modified only by a written instrument executed by the Parties.

11.6 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.

11.7 Survival. Developer's obligations pursuant to Sections 5.10, 5.13.3, 5.14, 6.1, 6.5, 6.7, 10.1 and 11.1, and City's rights under Section 9.8 and 9.9, and all other provisions that expressly so state, shall survive the Close of Escrow and the expiration or termination of this Agreement. Except as otherwise expressly provided in this Agreement, Developer's obligations under this Agreement shall cease to be effective upon the issuance of the Certificate of Completion.

11.8 Headings; Interpretation; Statutory References. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it. All references in the City Documents to particular statutes, regulations, ordinances or resolutions of the United States, the State of California, or the City of Daly City shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

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

11.10 Entire Agreement. This Agreement, including Exhibits A through G attached hereto and incorporated herein by this reference, together with the other 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. If the Exhibits to this Agreement are inconsistent with this Agreement, the more restrictive requirements shall control. In the event of a conflict between this Agreement and the other City Documents, the more restrictive requirements shall control.

11.11 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 Party. Any executed counterpart of this Agreement may be delivered to the other Party by facsimile or by .pdf or other electronic means and shall be deemed as binding as if an originally signed counterpart was delivered.

11.12 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.

11.13 No Third-Party Beneficiaries. Except as expressly set forth herein, 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.

11.14 Parties Not Co-Venturers; Independent Contractor; No Agency Relationship. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another. The relationship of Developer and City is and shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership or any other relationship. City neither undertakes nor assumes any responsibility or duty to Developer (except as expressly provided in this Agreement) or to any third party with respect to the Project or the City financing described herein. Developer and its employees are not employees of City but rather are, and shall always be considered independent contractors. Furthermore, Developer and its employees shall at no time hold themselves out as employees or agents of City. Except as City may specify in writing, Developer shall not have any authority to act as an agent of City or to bind City to any obligation.

11.15 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 the State of California.

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

11.17 Maintenance and Inspection of Books and Records. Developer shall keep and maintain full, complete, and adequate books, records and accounts relating to the Project, including such books, records, and accounts necessary to document Developer's compliance with this Agreement and the City Documents, including without limitation, the records required to substantiate compliance with the Regulatory Agreement.

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

11.19 Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no person described in subsection (b) below who exercises or has exercised any functions or

responsibilities with respect to the activities funded pursuant to this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during, or at any time after, such person's tenure. Developer acknowledges the provisions of this Section 11.19 and will not knowingly permit a violation of this Section 11.19.

(b) In accordance with Government Code Section 1090 and the Political Reform Act, Government Code Section 87100 *et seq.*, no person who is a director, officer, partner, trustee or employee or consultant of Developer, or immediate family member of any of the preceding, shall make or participate in a decision, made by City or a City board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Developer. Interpretation of this Section shall be governed by the definitions and provisions used in the Political Reform Act, Government Code Section 87100 *et seq.*, its implementing regulations manual and codes, and Government Code Section 1090.

SIGNATURES ON FOLLOWING PAGES.

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

DEVELOPER:

EQR-Hillside II LP, a Delaware limited partnership

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

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

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

By: _____

Name: _____

Its: _____

CITY:

City of Daly City, a municipal corporation

By: _____
Shawwna Maltbie, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

Rose Zimmerman, City Attorney

Exhibit A-1

LEGAL DESCRIPTION OF THE PROPERTY
(Attach legal description of the Property.)

DRAFT

LEGAL DESCRIPTION

Real property in the City of Daly City, County of San Mateo, State of California, described as follows:

ALL OF LOT 2, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "LANDMARK PLAZA A SUBDIVISION FOR RESIDENTIAL AND RETAIL CONDOMINIUM PURPOSES LANDS OF LANDMARK DALY CITY, LLC AS DESCRIBED IN DOCUMENT NO. 2006-090082 AND DOCUMENT 2006-159625, OFFICIAL RECORDS OF SAN MATEO COUNTY, CITY OF DALY CITY, SAN MATEO COUNTY, CALIFORNIA", FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA ON JULY 10, 2008 IN BOOK 136 OF MAPS AT PAGES 46 & 47 INCLUSIVE.

APN: **003-224-100**

Exhibit A-2

SITE MAP
(Attach map.)

DRAFT

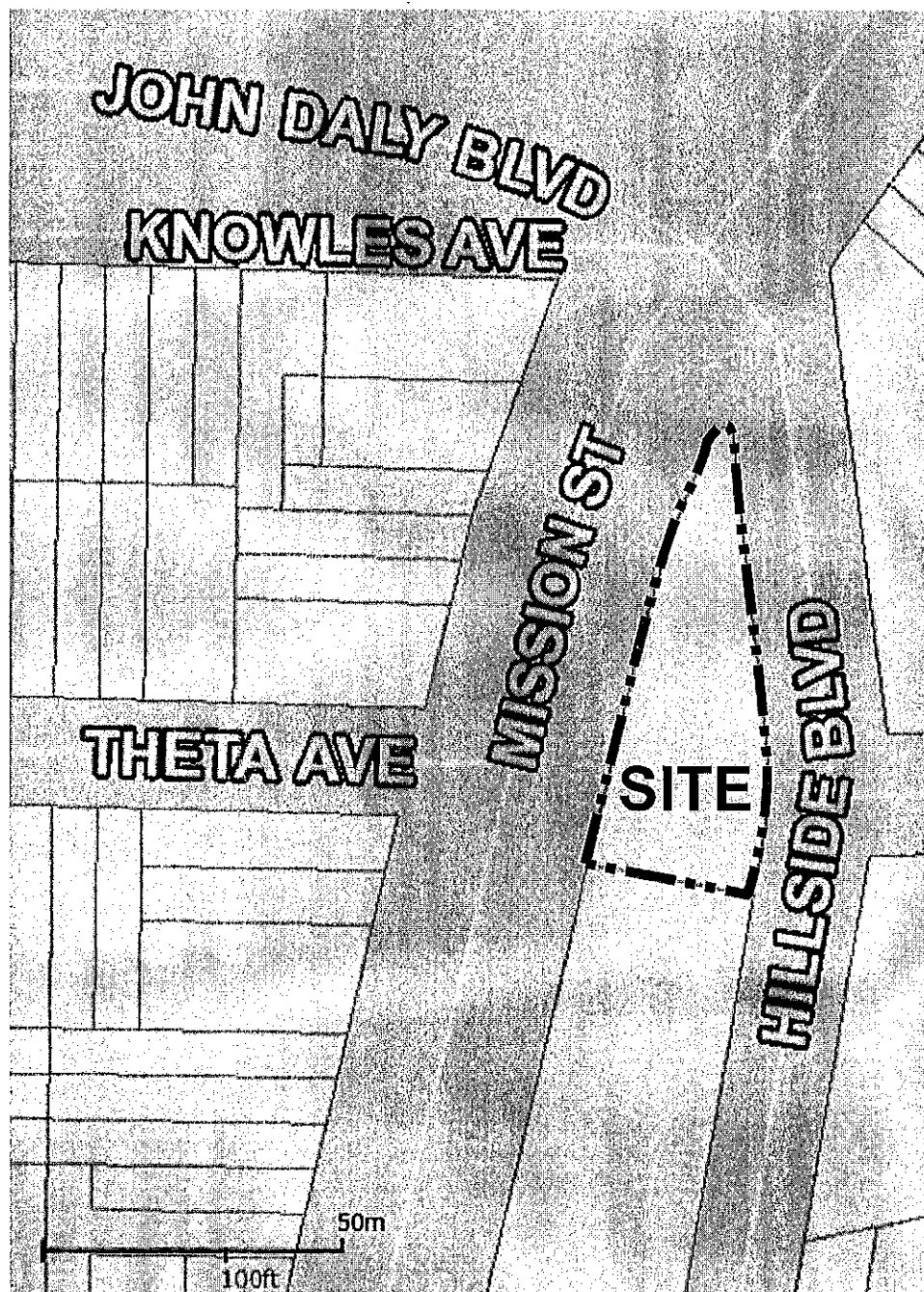


Exhibit A-3

LEGAL DESCRIPTION OF THE TIC INTEREST
(Attach legal description of the TIC Interest.)

DRAFT

Exhibit B

PROJECT SCOPE

The project consists of a 10-story, 167 unit, multifamily residential apartment building with tenant amenities on level 1, level 2 and at the roof. The improvements include a new drive ramp connecting to the existing garage at 88 Hillside Phase I.

DRAFT

Exhibit C

FORM OF REGULATORY AGREEMENT
(Attach form of Regulatory Agreement.)

DRAFT

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

City of Daly City
333 90th Street
Daly City, CA 94015
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 DALY CITY

and

EQR-HILLSIDE II LP

6401 Mission Street

_____, 2020

This Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this "**Agreement**") is entered into effective as of _____, 2020 ("**Effective Date**") by and between the City of Daly City, a California municipal corporation ("**City**") and EQR-HILLSIDE II LP, a Delaware limited partnership ("**Owner**"). The City and the Owner are collectively referred to herein as the "**Parties**."

RECITALS

A. Owner is the owner of, or has the right to acquire, the real property located in the City of Daly City, San Mateo County, California, at 6401 Mission Street, known as San Mateo County Assessor's Parcel No. 003-224-100, and more particularly described in Exhibit A attached hereto (the "**Property**").

B. Owner intends to develop, own, and operate a multi-family residential development on the Property consisting of up to 170 apartments and related improvements (the "**Project**") in accordance with that certain Disposition and Development Agreement (the "**DDA**") dated as of _____, 2020, and executed by and between the City and Owner. Capitalized terms used without definition herein shall have the meaning ascribed to such terms in the DDA. A Memorandum of the DDA will be recorded in the Official Records substantially concurrently herewith.

C. The DDA provides, among other things, that Owner enter into this Agreement as a condition to City's conveyance of the Property to Owner.

D. The purpose of this Agreement is to satisfy the affordability requirements of the City's affordable housing program and to regulate and restrict the occupancy and rents of the Project's Restricted Units for the benefit of the Project occupants as set forth herein. 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.

"**Actual Household Size**" means the actual number of persons in the applicable household.

"**Adjusted for Family Size Appropriate for the Unit**" shall be determined consistent with Section 50052.5(h) of the California Health and Safety Code, subject to the application of federal rules and regulations applicable to Project financing sources, including Section 42(g)(2) of the Internal Revenue Code of 1986 as amended (or successor provision) if applicable.

"**Affordable Rent**" means a monthly rent plus utility allowance (as currently defined in Daly City Municipal Code section 17.47.030) that does not exceed one-twelfth of thirty percent

(30%) of seventy percent (70%) of Area Median Income, Adjusted for Family Size Appropriate for the Unit.

"Area Median Income" or "AMI" means the median income for San Mateo County, California, adjusted for Actual Household Size, as determined by HUD pursuant to Section 8 of the United States Housing Act of 1937 and as published from time to time by the State of California Department of Housing and Community Development ("HCD") in Section 6932 of Title 25 of the California Code of Regulations or successor provision published pursuant to California Health and Safety Code Section 50093(c).

"Below Market Rate Implementation Guidelines and Operational Manual" means the document that describes the guidelines for the City's implementation and monitoring of its inclusionary and affordable housing programs attached hereto as Exhibit D.

"City's Authorized Representative" means the City Manager of the City of Daly City.

"City Documents" means the DDA, the Development Agreement, and this Agreement.

"Claims" means collectively, all actual liabilities, losses, costs, expenses (including without limitation reasonable attorneys' fees and costs of litigation), claims, demands, actions, suits, judicial or administrative proceedings, penalties, deficiencies, fines, orders and damages.

"DDA" is defined in Recital B.

"Development Agreement" means that certain Development Agreement dated as of _____, 2020, executed by and between the Parties, and recorded in the Official Records on _____, 20__ as Instrument No. _____.

"Eligible Household" means a household for which household Gross Income upon initial occupancy does not exceed the maximum income level for a Restricted Unit as specified in Section 2.2 and Exhibit B.

"Gross Income" shall have the meaning set forth in Section 6914 of Title 25 of the California Code of Regulations as such section may be revised from time to time.

"Indemnitees" means the City and its elected and appointed officers, officials, employees, agents, consultants, contractors and representatives.

"Marketing and Management Plan" is defined in Section 6.5.

"Official Records" means the Official Records of San Mateo County.

"Rent Restricted" is defined in Section 2.2.

"Restricted Unit" means a dwelling unit that is reserved for occupancy at an Affordable Rent by Eligible Households of specified household income levels as set forth in Section 2.2 and

Exhibit B.

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 operation of a multifamily residential housing development in compliance with the DDA, the Development Agreement, and the requirements set forth in this Agreement. 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.

2.1 Intentionally omitted.

2.2 Affordability and Occupancy Requirements. Throughout the term of this Agreement (as defined in Section 4.1 below): (i) not less than ten percent (10%) of the residential units in the Project shall be both Rent Restricted and occupied (or if vacant, available for occupancy) by Eligible Households whose household Gross Income is no greater than seventy percent (70%) of AMI. A dwelling unit shall qualify as "**Rent Restricted**" if the gross rent charged for such unit does not exceed the Affordable Rent for the applicable household income category as specified in this Section.

Without limiting the generality of the foregoing, if any residential units in the Project are subsidized with Section 8 project-based vouchers through a Housing Assistance Payment Contract with HUD, the rules and regulations applicable to such program shall prevail with respect to the setting of rents (such vouchers shall provide for rents at least equal to the Affordable Rent), implementation of occupancy requirements, and determination of household Gross Income for such units (Owner shall provide documentation of a resident's participation in the Section 8 Program when a Restricted Unit is subsidized with Section 8 but shall not be required to perform income certifications, as set forth herein, for residential units subsidized with such vouchers).

2.3 Rents for Restricted Units. For all Restricted Units, rents shall be limited to Affordable Rents for households of the applicable income limit in accordance with Section 2.2 and Exhibit B. In general, any additional mandatory fees for non-elective services are specifically prohibited and Developer may not impose such charges on any Affordable Rental Unit.

The Restricted Units shall be allocated among unit types as set forth in Section 2.2 and Exhibit B. 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 household income increases to exceed the qualifying limit for such Restricted Unit. A household which at initial occupancy qualifies in a particular income category shall be treated as continuing to be of such income category so long as the household's Gross Income does not exceed one hundred forty percent (140%) of the applicable income limit.

In the event that recertification of tenant incomes indicates that the number of Restricted Units actually occupied by Eligible Households falls below the number reserved for each income group as specified in this Section 2.2 and Exhibit B, Owner shall rectify the condition by renting the next available dwelling unit(s) in the Project to Eligible Household(s) until the required income mix is achieved.

Rent increases for Restricted Units shall be limited to the lesser of five percent (5%) per year or the percentage increase in the Area Median Income as further described in the Below Market Rate Implementation Guidelines and Operational Manual.

2.4 Intentionally omitted.

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

2.6 Non-Discrimination; Compliance with Fair Housing Laws.

2.6.1 Intentionally Omitted.

2.6.2 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, prospective tenants who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing Section 8 program or any successor thereto.

2.6.3 Non-Discrimination. Owner 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, gender identity, disability, marital status, ancestry, or national origin of any person. 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.

3. Reporting Requirements; Access to Information; Inspections; Annual Monitoring Fee.

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 all of the following in such format and with such supporting

documentation as outlined in the Below Market Rate Implementation Guidelines and Operational Manual: (i) the identity of each household member; and (ii) the total household Gross Income. Owner shall retain such certificates for not less than three (3) years, and upon City's request, shall provide copies of such certificates to City and make the originals available for City inspection.

During the initial lease-up of the Restricted Units, Owner shall submit complete documentation of applicant income and eligibility and allowable rent calculations to the City for review and approval. During the initial lease-up, Owner cannot lease a Restricted Unit until the City provides the final approval of applicants. City shall provide its approval or objection within ten (10) business days from receipt of the above referenced tenant documentation. If the City fails to respond within such timeframe, such applicant shall be deemed approved.

3.2 Annual Report; Inspections. Following completion of construction of the Project, by not later than March 1 of each year during the term of this Agreement, 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 affordability restrictions and occupancy 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 Gross Income of residents; (vii) lease commencement and termination dates, (viii) initial move-in date, and (ix) the information required by Section 3.1.

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 state or federal low-income housing tax credits or tax-exempt bond financing, Owner may satisfy the requirements of this Section that pertain to tenant income certification and rents by providing City with a copy of compliance reports required in connection with such financing.

In addition to the information described above, the Annual Report shall include information on the status of the waiting list for units, including the number of households on the list.

3.3. Maintenance of Records.

3.3.1 Owner shall maintain tenant leases, income certifications and other matters related to the leasing of the Restricted Units for a period of three (3) years after the final date of occupancy by the tenant.

3.3.2 Records must be kept accurate and up-to-date. City shall notify Owner of any records it deems insufficient. Owner shall have fifteen (15) calendar days from such notice to correct any specified deficiency in the records, or, if more than fifteen (15) days shall be reasonably necessary to correct the deficiency, Owner shall begin to correct the deficiency within fifteen (15) days and diligently pursue the correction of the deficiency as soon as reasonably possible.

3.4 Access to Records; Inspections.

3.4.1 With at least 48-hours' notice, during normal business hours, Owner shall provide City and its authorized agents and representatives access to the books, documents, papers and records of the Project for the purpose of making audits, examinations, excerpts and transcriptions for the purpose of confirming compliance with this Agreement.

3.4.2 With at least 48-hours' notice, during normal business hours and as often as may be deemed necessary, City and its authorized agents and representatives shall be permitted access to and the right to examine the Project and the Property and to interview tenants and employees of the Project, for the purpose of verifying compliance with this Agreement and the other City Documents.

3.5 Monitoring Fee. Owner shall be obligated to pay to City an annual fee (the "**Affordable Housing Monitoring Fee**") in the amount of One Hundred Dollars (\$100) per unit for each Restricted Unit. The Affordable Housing Monitoring Fee is payable annually on the same date that the Annual Report is submitted pursuant to Section 3.2 above. City shall have the right to file a lien against the Property if the Affordable Housing Monitoring Fee is not paid when due and remains unpaid thirty (30) days following the date that City provides written notice of the delinquency.

4. Term of Agreement.

4.1 Term of Restrictions. This Agreement shall remain in effect until the fifty-fifth (55th) anniversary of the date upon which the City issues a final certificate of occupancy or equivalent for the Project. If such date cannot be ascertained, the term of this Agreement shall end on the fifty-seventh (57th) anniversary of the Effective Date of this Agreement.

4.2 Effectiveness Succeeds Conveyance of Property. This Agreement shall remain effective and fully binding for the full term hereof regardless of any sale, assignment, transfer, or conveyance of the Project or the Property, or any part thereof or interest therein.

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.

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 and 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 deed, ground lease or other instrument conveying the Property or the Project or any part thereof ("Conveyance Document"), 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 deed, ground lease or Conveyance Document. If any such deed, ground lease or Conveyance Document 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 deed, ground lease or Conveyance Document 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 Subleases. Notwithstanding anything in the Below Market Rate Implementation Guidelines and Operational Manual to the contrary, Owner shall have the right to prohibit subleases and subletting dwelling units at the Property so long as such prohibition applies to all dwelling units at the Property and not just Restricted Units.

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, meeting rooms, 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 measures for the Project, including without limitation, the installation of adequate lighting.

6.3.1 Additional Requirements. All construction work and professional services for the Project shall be performed by persons or entities licensed or otherwise authorized to perform the applicable work or service in the State of California and shall have a current City of Daly City business license if required under local law.

6.4 City's Right 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) 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), provided, however, if the default is of a nature that it cannot with due diligence be cured within thirty (30) days, then if Owner fails to commence to cure the default within thirty (30) days of such written notice or fails to prosecute the curing of such default with due diligence and in good faith to completion, 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 owed to City and shall be paid by Owner to City within thirty (30) days following delivery of City's invoice therefor. All such sums remaining unpaid thirty (30) days following delivery of City's invoice therefor shall bear interest at the lesser of 10% per annum or the highest rate permitted by applicable law. City shall have a lien against the Property for the amount of such unpaid sums, and shall have the right to record a Notice of Claim of Lien against the Property.

6.5 Marketing and Management Plan. Not later than ninety (90) days following commencement of construction work on the Project, Owner shall submit for City review and approval, a plan for marketing and managing the Project ("**Marketing and Management Plan**" or "**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. 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. 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 review and approval.

In addition to the foregoing, the Marketing and Management Plan shall address the following with respect to the Restricted Units:

(a) The actions to be taken by Owner to affirmatively market units in compliance with fair housing laws and in compliance with City's policies and procedures, including the policies described in Section 2.6 above;

(b) Criteria for determining tenant eligibility for Restricted Units, including certification of household income and size, and establishing reasonable occupancy standards (which shall not exceed standards established by state and federal fair housing laws and state housing and building codes), and procedures for screening prospective tenants, including obtaining credit reports, unlawful detainer reports, landlord references, and criminal background investigations;

(c) A requirement that eligible tenants be selected based on order of application, lottery or other reasonable method approved by City;

(d) A requirement that eligible applicants be notified of eligibility and be provided an estimate regarding when a unit may be available;

(e) A requirement that ineligible applicants be notified of the reason for their ineligibility;

(f) Specific procedures through which applicants deemed to be ineligible may appeal this determination;

(g) Maintenance of a waiting list of eligible applicants;

(h) Specific procedures for obtaining documentation regarding prospective tenants' incomes, as necessary, to certify that such income does not exceed income limits;

(i) Specific procedures for certification and recertification of household incomes and procedures for handling over-income tenants; and

(j) A requirement that a written rental agreement be executed with each eligible household selected to occupy a unit.

(k) A description of additional fees required by the Owner, both mandatory and voluntary. For example, rental insurance and pet fee.

6.6 Approval of Amendments. If City has not responded to any submission of the Management and Marketing Plan, the proposed management entity, the proposed management agreement, or a proposed amendment or change to any of the foregoing within thirty (30) days following City's receipt of such plan, proposal, agreement or amendment, the plan, proposal, agreement, or amendment shall be deemed approved by City.

6.7 Fees, Taxes, and Other Levies. Owner shall be responsible for payment of all fees, assessments, taxes, charges, liens and levies applicable to the Property or the Project, including without limitation possessory interest taxes, if applicable, imposed by any public entity, 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. The foregoing is not intended to impair Owner's ability to apply for any applicable exemption from property taxes or other assessments and fees.

6.8 Insurance Coverage. Throughout the term of this Agreement Owner shall comply with the insurance requirements set forth in Exhibit C, and shall, at Owner's expense, maintain in full force and effect insurance coverage as specified in Exhibit C.

6.9 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 as soon as reasonably practicable after the damage or loss occurs and shall be completed within eighteen (18) months thereafter or as soon as reasonably practicable, 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. Owner acknowledges that this Agreement shall be senior in priority to all deeds of trust and other security instruments recorded or to be recorded against the Property, and that the affordability and rent restrictions set forth in this Agreement shall survive the foreclosure of any such instrument.

8. Transfer and Encumbrance.

8.1 Restrictions on Transfer and Encumbrance. Prior to City's issuance of final certificates of occupancy or equivalent for the Project, Owner shall not, except as expressly permitted pursuant to the DDA or this Agreement, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, encumbrance, assignment (including, without limitation, any assignment for security purposes) or lease (collectively, "Transfer") of the whole or any part of the Property, the Project, or the Improvements (as defined in the DDA), without the prior written approval of City which approval shall not be unreasonably withheld. Any such attempt to assign this Agreement without 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 City's issuance of final certificates of occupancy or equivalent for the Project, except as expressly permitted by this Agreement or the DDA, Owner 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 Owner, taking all transfers into account on a cumulative basis; provided, however, neither the admission of an investor limited partner or non-managing member, nor the transfer by the investor limited partner or non-managing member to subsequent limited partners or non-managing members shall be restricted by this provision. The restrictions on Transfers shall terminate upon City's issuance of final certificates of occupancy or equivalent for the Project.

8.2 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 Subject Property; (ii) the dedication of any property required pursuant to the DDA; (iii) the lease of individual dwelling units to tenants and the lease or rental of commercial and retail space in the Project; (iv) assignments creating security interests for the purpose of financing the acquisition, construction or permanent financing of the Project or the Property or Transfers directly resulting from the foreclosure of, or

granting of a deed in lieu of foreclosure of, such a security interest, subject to the applicable requirements of the DDA; (v) a Transfer to an entity under the direct or indirect control of or under common control with Owner; (vi) a Transfer to a limited partnership (or a limited liability company) in which Owner or an Affiliate of Owner is the managing general partner (or managing member); (vii) the admission of limited partners (or non-managing members), and any transfer of limited partnership (or non-managing member) interests in accordance with Owner's agreement of limited partnership or limited liability company operating agreement, as applicable; (viii) the removal of the general partner (or managing member) of Owner by the investor limited partners (or non-managing members) for a default under Owner's partnership agreement (or limited liability company operating agreement), provided that the replacement general partner (or managing member) is an entity reasonably satisfactory to City, (ix) the Transfers described in Exhibit K of the DDA, or (x) Transfers occurring from and after City's issuance of final certificates of occupancy or equivalent for the Project.

8.3 Requirements for Proposed Transfers. City will consent to a proposed Transfer of this Agreement, the Property, the Improvements or part thereof if all of the following requirements are met (provided, however, the requirements of this Section 8.3 shall not apply to Transfers described in Section 8.2):

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

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

(iii) The proposed transferee shall expressly assume all of the rights and obligations of Owner under this Agreement and the other City Documents arising after the effective date of the Transfer and all obligations of Owner arising prior to the effective date of the Transfer (unless Owner expressly remains responsible for such obligations), and shall agree to be subject to and assume all of Owner's obligations pursuant to the Conditions of Approval (as defined in the DDA) and all other conditions, and restrictions set forth in this Agreement. The assumption of such obligations shall be documented in an assignment and assumption agreement in form approved by City, such approval not to be unreasonably withheld.

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

Consent to any proposed Transfer may be given by City's Authorized Representative unless the Authorized Representative, in his or her discretion, refers the matter of approval to the City Council. If City has not rejected a proposed Transfer or requested additional information regarding a proposed Transfer in writing within thirty (30) days following City's receipt of written request by Owner, the proposed Transfer shall be deemed approved.

8.4 Effect of Transfer without City Consent.

8.4.1 Except for a Transfer permitted by the terms of this Agreement, in the absence of specific written agreement by the City, no Transfer of the Property or the Project shall be deemed to relieve the Owner or any other party from any obligation under this Agreement. Following the issuance of final certificates of occupancy or equivalent for the Project, upon Owner's Transfer of the Project to a third party that is not an Affiliate of Owner, the transferring Owner shall have no further obligations or liabilities under this Agreement except with respect to matters arising during such Owner's period of ownership of the Property.

8.4.2 It shall be an Event of Default hereunder entitling City to pursue remedies if, without the prior written approval of the City, Owner assigns or Transfers this Agreement, the Improvements, or the Property in violation of the DDA or this Agreement. This Section 8.4.2 shall not apply to Transfers permitted by the terms of the DDA or this Agreement.

8.5 Recovery of City Costs. Within ten (10) days following City's delivery to Owner of an invoice detailing such costs, Owner shall reimburse City for all reasonable City costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to effect a Transfer of this Agreement, the Property or the Improvements, or part thereof or interest therein, and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee, except in the case of a Transfer permitted pursuant to Section 8.2.

8.6 Intentionally omitted.

8.7 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**"):

- (i) The occurrence of a Transfer in violation of the DDA or this Agreement;
- (ii) 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 five (5) business days following receipt of written notice from City ;

(iii) Subject to Owner's rights pursuant to Section 6.7 hereof, Owner's failure to pay taxes or assessments due on the Property or the Project or failure to pay any other undisputed charge that may result in a lien on the Property or the Project, and Owner's failure to cure such default within twenty (20) days of receipt of notice of such delinquency, but in all events prior to the date upon which the holder of any such lien has the right to foreclose thereon;

(iv) A default arises 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;

(v) A default arises under the DDA or the Development Agreement and remains uncured beyond the expiration of any applicable cure period; or

(vi) Owner's default in the performance of any term, provision or covenant under this Agreement (other than an obligation enumerated in this Section 9.1), and unless such provision specifies a shorter cure period for such default, the continuation of such default for thirty (30) days 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 thirty (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 to completion.

9.2 Remedies. Upon the occurrence of an Event of Default and its continuation beyond any applicable cure period, City may proceed with any of the following remedies:

- (i) 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;
- (ii) For violations of obligations with respect to rents for Restricted Units, impose a charge in an amount equal to the actual amount collected in excess of the Affordable Rent; and
- (iii) Pursue any other remedy allowed under the City Documents or 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 it 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. To the greatest extent permitted by law, Owner shall indemnify, defend (with qualified counsel selected by Owner) and hold the Indemnitees harmless from and against all Claims arising directly or indirectly, in whole or in part, as a result of or in connection with Owner's (or Owner's employees', agents', contractors', or subcontractors') construction, management, or operation of the Property and the Project or any failure to perform any obligation as and when required by this Agreement. Owner's indemnification obligations under this

Section 10 shall not extend to Claims to the extent resulting from the negligence or willful misconduct of Indemnitees. The provisions of this Section 10 shall survive the expiration or earlier termination of this Agreement. City does not and shall not waive any rights against Owner that it may have by reason of any indemnity and hold harmless provision set forth in this Agreement because of the acceptance by City, or the deposit with City by Owner, of any of the insurance policies described in this Agreement. Owner's obligation to indemnify the Indemnitees shall not be limited or impaired by any of the following: (i) any amendment or modification of any City Document; (ii) any extensions of time for performance required by any City Document; (iii) the accuracy or inaccuracy of any representation and warranty made by Owner under this Agreement or by Owner or any other party under any City Document; and (iv) the release of any party other than Owner from performance of any obligation under any City Document.

11. Miscellaneous.

11.1 Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties and recorded in the Official Records.

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; or (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 Daly City
333 90th Street
Daly City, CA 94015
Attention: Director of Economic and Community Development

With copy to: City of Daly City
333 90th Street, Third Floor
Daly City, CA 94015
Attention: City Attorney

Owner: EQR-Hillside II LP
c/o Equity Residential
333 Third Street, Suite 210
San Francisco, CA 94107
Attention: Investment Officer

With copy to: Equity Residential
Two North Riverside Plaza, Suite 400
Chicago, IL 60606
Attention: General Counsel

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; Independent Contractor; No Agency Relationship. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another. The relationship of Owner and City shall not be construed as a joint venture, equity venture, partnership or any other relationship. City neither undertakes nor assumes any responsibility or duty to Owner (except as expressly provided in this Agreement) or to any third party with respect to the Project. Owner and its employees are not employees of City but rather are, and shall always be considered independent contractors. Furthermore, Owner and its employees shall at no time pretend to be or hold themselves out as employees or agents of City. Except as City may specify in writing, Owner shall not have any authority to act as an agent of City or to bind City to any obligation.

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's Authorized Representative or by any person who shall have been designated by the City's Authorized Representative, 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; Statutory References. 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. All references in this Agreement to particular statutes, regulations, ordinances or resolutions of the United States, the State of California, or the City of Daly City shall be deemed to include the same statute, regulation, ordinance or resolution

as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

11.9 Time is of the Essence. Time is of the essence in the performance 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 the State of California.

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

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 DDA and the Development Agreement, 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. Exhibits A through C, attached hereto are incorporated herein by this reference.

11.14 Survival. Owner's obligations pursuant to Section 10, and all other provisions that expressly so state, shall survive the expiration or termination of this Agreement.

11.15 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(S).

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

OWNER:

EQR-Hillside II LP, a Delaware limited partnership

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

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

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

By: _____

Name: _____

Its: _____

CITY:

City of Daly City, a municipal corporation

By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

Rose Zimmerman, City Attorney

SIGNATURES MUST BE NOTARIZED.

ACKNOWLEDGMENT

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)
) ss
County of _____)

On _____, before me, _____,
(Name of Notary)

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

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

WITNESS my hand and official seal.

(Notary Signature)

ACKNOWLEDGMENT

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)
) ss
County of _____)

On _____, before me, _____,
(Name of Notary)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

(Notary Signature)

Exhibit A

LEGAL DESCRIPTION OF THE PROPERTY

Real property in the City of Daly City, County of San Mateo, State of California, described as follows:

ALL OF LOT 2, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "LANDMARK PLAZA A SUBDIVISION FOR RESIDENTIAL AND RETAIL CONDOMINIUM PURPOSES LANDS OF LANDMARK DALY CITY, LLC AS DESCRIBED IN DOCUMENT NO. 2006-090082 AND DOCUMENT 2006-159625, OFFICIAL RECORDS OF SAN MATEO COUNTY, CITY OF DALY CITY, SAN MATEO COUNTY, CALIFORNIA", FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA ON JULY 10, 2008 IN BOOK 136 OF MAPS AT PAGES 46 & 47 INCLUSIVE.

APN: **003-224-100**

Exhibit B

Number of Restricted Units by Unit Size

(*To be completed once unit mix has been finalized.)

Maximum Household Income	70% AMI
Studio	
1-Bedroom	
Total	

Exhibit C

**CITY OF DALY CITY
INSURANCE REQUIREMENTS**

General Liability Coverage. Owner shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage cover any negligent acts or omissions. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit.

Policy Endorsements. Commercial General Liability insurance shall include endorsements that:

- a. Identify the policy number;
- b. Include a statement that "the City of Daly City, including its officer, employees and volunteers are additional insureds;
- c. Include a statement that the insurance shall be primary;
- d. The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by the City or ten (10) days for non-payment of premium
- e. CG 20 10 11 85 Form is preferred for the General Liability additional insured Endorsement, but alternative endorsements may, for good cause (such as not being commercially reasonably available or not being carried by a majority of owners of similarly situated properties), be substituted with prior approval by the City;
- f. Endorsements must be signed by the insurance company or broker, and provided to the City;
- g. Any deviations from the above insurance requirements must be approved by the City Attorney's Office.

Exhibit D

**BELOW MARKET RATE IMPLEMENTATION
GUIDELINES AND OPERATIONAL MANUAL**

Recording requested by
and when recorded mail to:

City of Daly City
333 90th Street
Daly City, CA 94015
Attention: City Clerk

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use.

CERTIFICATE OF COMPLETION

This Certificate of Completion (this "**Certificate**") is made by the City of Daly City, a California municipal corporation ("**City**") effective as of _____, 20__.

RECITALS

A. City and EQR-Hillside II LP, a Delaware limited partnership ("**Developer**"), entered into that certain Disposition and Development Agreement dated as of _____, 2020 (the "**DDA**") concerning the development of certain real property located in the City of Daly City, San Mateo County, California and more particularly described in Exhibit A attached hereto (the "**Property**"). A Memorandum of the DDA was recorded in the Official Records of San Mateo County ("**Official Records**") on _____, 20__ as Instrument No. _____. Capitalized terms used herein without definition shall have the meaning ascribed to such terms in the DDA.

B. Pursuant to Section 5.11 of the DDA, the City is required to furnish the Developer or its successors with a Certificate of Completion upon completion of development of the Project in accordance with the DDA.

C. The City has determined that the development of the Project has been satisfactorily completed in accordance with the DDA.

NOW, THEREFORE, City hereby certifies as follows:

1. Development of the Project has been satisfactorily completed in conformance with the DDA.

2. All indemnity, use, maintenance, and nondiscrimination covenants contained in the DDA shall remain in effect and enforceable in accordance with the DDA. This Certificate does not constitute evidence of Developer's compliance with those covenants in the DDA that survive the issuance of this Certificate, including, without limitation, compliance with the Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants entered into pursuant to the DDA and recorded in the Official Records on _____, 20__ as Instrument No. _____.

3. This Certificate does not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a deed of trust securing

EXHIBIT A

PROPERTY

(Attach legal description)

Recording Requested by
and when Recorded, return to:

City of Daly City
333 90th Street
Daly City, CA 94015
Attention: City Clerk

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

MEMORANDUM OF OPTION AND DISPOSITION AND DEVELOPMENT AGREEMENT

This Memorandum of Option and Disposition and Development Agreement (this "**Memorandum**"), dated as of _____, 2020, is entered into by and between the City of Daly City, a California municipal corporation ("**City**") and EQR-Hillside II LP, a Delaware limited partnership ("**Developer**"). City and Developer are hereinafter collectively referred to as the "**Parties**."

1. Agreement; Conveyance. Pursuant to that certain Disposition and Development Agreement (the "**Agreement**") dated as of _____, 2020, executed by and between City and Developer, the City has agreed to convey to Developer, and Developer has agreed to develop, certain real property located at 6401 Mission Street in Daly City, California, known as San Mateo County Assessor's Parcel No. 003-224-100, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "**Property**").
2. Schedule for Construction. Among other conditions, the Agreement provides that Developer shall have commenced and completed, by dates set forth in the Agreement as such dates may be extended pursuant to the terms of the Agreement, construction of a multi-family residential project (the "**Project**") on the Property which will be subject to rent restrictions pursuant to an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants ("**Regulatory Agreement**") that shall be executed by the Parties and recorded in the Official Records of San Mateo County substantially concurrently herewith.
3. Certificate of Completion. Promptly following completion of construction of the improvements comprising the Project (the "**Improvements**") and the issuance of a final certificate of occupancy or equivalent for the Improvements, the City will furnish Developer with an instrument so certifying (a "**Certificate of Completion**"). Such Certificate of Completion shall constitute conclusive determination of satisfactory completion of construction of the Improvements and compliance with the covenants in the Agreement and in the Grant Deed executed pursuant thereto regarding the dates for the commencement and completion of such construction.
4. Restrictions on Transfer. The Agreement provides that the Property will be used for the purposes of timely development as set forth in the Agreement and not for speculation in landholding. Developer recognizes that the City entered into the Agreement and agreed to

convey the Property to Developer in reliance on the qualifications and identity of Developer, and that the qualifications of Developer are of particular concern to the City in view of the reliance by the City upon the unique qualifications and ability of Developer to develop, operate and manage the Property. The Agreement further provides that (i) except as permitted by the Agreement, prior to the issuance of final certificates of occupancy or equivalent for the Project, Developer shall not voluntarily or involuntarily make or attempt any total or partial sale, transfer, conveyance, assignment or lease of the whole or any part of the Property or the Project without the prior written approval of the City; and (ii) any transferee of all or part of the Property shall be subject to and shall expressly assume all of the covenants, obligations and restrictions of the Agreement which pertain to the portion of the Property transferred, including, without limitation, the provisions of the Regulatory Agreement.

5. Power of Termination. Subject to and in accordance with the procedures and provisions of Section 9.8 of the Agreement, the City has the right, at its option, to re-enter and take possession of the Property, or portion thereof, with all Improvements thereon, and revert in the City the estate conveyed to Developer, in the event of a default arising under and specifically described in Section 9.8 of the Agreement.

6. Option to Repurchase. Subject to and in accordance with the procedures and provisions of Section 9.9 of the Agreement, the City has the right, at its option, to purchase and take possession of the Property, or portion thereof, with all Improvements thereon, and revert in the City the estate conveyed to Developer, in the event of a default arising under and specifically described in Section 9.9 of the Agreement.

7. Agreement Controls. The Parties have executed and recorded this instrument to give notice of the Agreement and the respective rights of the Parties thereunder. Copies of the unrecorded Agreement are available at the offices of the City, 333 90th Street Daly City, CA 94015, and such document is incorporated by reference in its entirety in this Memorandum. This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the Agreement. In the event of any inconsistency between this Memorandum and the Agreement, the Agreement shall control.

8. Interpretation; Counterparts. This Memorandum shall be interpreted and enforced in accordance with California law without regard to principles of conflict of laws. This Memorandum may be executed in counterparts, each of which shall be an original and all of which together shall constitute one instrument.

9. Binding Effect. The Agreement shall bind and inure to the benefit of the Parties and their respective successors and assigns, subject to the provisions of the Agreement concerning assignment.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum as of the date first set forth above.

CITY:

CITY OF DALY CITY, a municipal corporation

By: _____
Shawna Maltbie, City Manager

ATTEST:

K. Annette Hipona, City Clerk

APPROVED AS TO FORM:

Rose Zimmerman, City Attorney

DEVELOPER:

EQR-HILLSIDE II LP, a Delaware
limited partnership

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

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

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

By: _____

Name: _____

Its: _____

SIGNATURES MUST BE NOTARIZED.

ACKNOWLEDGMENT

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)
) ss
County of _____)

On _____, before me, _____,
(Name of Notary)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.
WITNESS my hand and official seal.

(Notary Signature)

ACKNOWLEDGMENT

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)
) ss
County of _____)

On _____, before me, _____,
(Name of Notary)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.
WITNESS my hand and official seal.

(Notary Signature)

EXHIBIT A

PROPERTY

(Attach legal description.)

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

EQR-Hillside II LP
c/o Equity Residential
Two North Riverside Plaza, Suite 400
Chicago, IL 60606
Attention: Tiffany Higgins

MAIL TAX STATEMENTS TO:

EQR-R.E. Tax Department
P.O. Box 87407 (Ledger No. ____)
Chicago, IL 60680

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

THE UNDERSIGNED GRANTOR DECLARES:

DOCUMENTARY TRANSFER TAX IS \$ _____

- ☒ Computed on full value of property conveyed, or
____ Computed on full value less liens and encumbrances remaining at time of sale.
____ Unincorporated area ☒ City of Daly City

GRANT DEED

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City of Daly City, a California municipal corporation (the "**Grantor**") hereby grants and conveys to EQR-Hillside II LP, a Delaware limited partnership (the "**Grantee**"), the real property (the "**Property**") located at 6401 Mission Street in the City of Daly City, County of San Mateo, California, known as San Mateo County Assessor's Parcel No. 003-224-100, and more particularly described in Exhibit A attached hereto and incorporated in this grant deed ("**Grant Deed**") by this reference. This Grant Deed is made and accepted subject to the matters listed on Exhibit B attached hereto and incorporated herein by this reference.

1. Development Requirements. The Property is conveyed subject to that certain Disposition and Development Agreement entered into by and between the Grantor and Grantee, dated as of _____, 2020 (the "**Agreement**"). The Grantor and the Grantee have executed a Memorandum of the Agreement dated as of the date hereof (the "**Memorandum**") which will be recorded in the Official Records of San Mateo County ("**Official Records**") substantially concurrently herewith.
2. Development of Improvements. The Grantee hereby acknowledges and agrees, for itself and its successors and assigns, that the Property is being conveyed to Grantee in accordance with and subject to the requirements of the Agreement, including without limitation in accordance with the provisions of the Agreement that specify the required number of residential units to be constructed on the Property and the time period within

which construction of such improvements (the "**Improvements**") must be completed, as such time period may be extended pursuant to the terms of the Agreement. The Property is conveyed subject to the requirements of that certain Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants that will be recorded substantially concurrently herewith (the "**Regulatory Agreement**").

3. Non-Discrimination. Grantee 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. Grantee covenants for itself and all persons claiming under or through it, and this Grant Deed 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 Grantee or any person claiming under or through Grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property or part thereof.

4. Duration of Covenants. The covenants against discrimination contained in Section 3 shall remain in effect in perpetuity.

5. Mortgagee Protection. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument permitted by the Agreement; provided, however, that any successor of Grantee to the Property and Improvements shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

6. Binding on Successors. The covenants contained in Sections 3 of this Grant Deed, without regard to technical or legal classification or designation specified in this Grant Deed or otherwise, shall to the fullest extent permitted by law and equity, be binding upon Grantee and any successor in interest to the Property and Improvements or any part thereof, for the benefit of Grantor, and its successors and assigns, and such covenants shall run in favor of and be enforceable by the Grantor and its successors and assigns for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. In the event of any breach of any of such covenants, the Grantor and its successors and assigns shall have the right to exercise all rights and remedies available under law or in equity to enforce the curing of such breach.

7. Amendments. Only the Grantor, its successors and assigns, and the Grantee and the successors and assigns of the Grantee in and to all or any part of the fee title to the Property and Improvements shall have the right to consent and agree to changes or to eliminate in

whole or in part any of the covenants contained in this Grant Deed. For purposes of this Section, successors and assigns of the Grantee shall be defined to include only those parties who hold all or any part of the Property and Improvements in fee title, and shall not include a tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under deed of trust, or any other person or entity having an interest less than a fee in the Property and Improvements.

8. Conflict Among Documents. In the event there is a conflict between the provisions of this Grant Deed and the Agreement, it is the intent of the parties that the Agreement shall control.

9. Grantee's Acknowledgement. By its execution of this Grant Deed, Grantee has acknowledged and accepted the provisions hereof.

10. Counterparts. This Grant Deed may be executed in counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument.

SIGNATURES ON FOLLOWING PAGES.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Grant Deed as of _____, 20__.

GRANTOR:

CITY OF DALY CITY, a municipal corporation

By: _____
Shawna Maltbie, City Manager

ATTEST:

K. Annette Hipona, City Clerk

APPROVED AS TO FORM:

Rose Zimmerman, City Attorney

GRANTEE:

EQR-HILLSIDE II LP, a Delaware
limited partnership

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

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

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

By: _____

Name: _____

Its: _____

SIGNATURES MUST BE NOTARIZED.

ACKNOWLEDGMENT

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) ss

On _____, before me, _____
(Name of Notary)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

(Notary Signature)

ACKNOWLEDGMENT

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)
) ss
County of _____)

On _____, before me, _____,
(Name of Notary)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

(Notary Signature)

Exhibit A

PROPERTY

All that certain real property situated in the County of San Mateo, State of California, described as follows:

[insert legal description.]

Exhibit D

FORM OF PARKING AGREEMENT AMENDMENT
(Attach form of Parking Agreement Amendment.)

DRAFT

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City of Daly City
333 90th Street
Daly City, CA 94105
Attn: City Attorney

AMENDED AND RESTATED PARKING EASEMENT AGREEMENT
(LANDMARK PLAZA PARKING GARAGE)

THIS AMENDED AND RESTATED PARKING EASEMENT AGREEMENT ("Agreement") is entered into as of _____, 20____, by and among EQR-HILLSIDE LIMITED PARTNERSHIP, a Delaware limited partnership ("Phase I Owner"), EQR-HILLSIDE II LP, a Delaware limited partnership ("Phase II Owner"), and the CITY OF DALY CITY, a municipal corporation ("City"). The Parties agree as follows:

ARTICLE 1. BACKGROUND AND GENERAL.

1.1. Original DDA. The Agency and Phase I Owner are parties to that certain Disposition and Development Agreement dated as of September 14, 2004, and recorded on September 21, 2005 in the Official Records of the County of San Mateo (the "Official Records") as Document No. 2005-165059 (as amended to the date hereof, the "Original DDA"), which provides for the acquisition and development of certain real property commonly known as the "Landmark Plaza Project," which is more particularly described in the Original DDA.

1.2. Phase I. Phase I Owner is the owner of that portion of the Landmark Plaza Project commonly known as the "Phase I Property" as described in a certain Grant Deed dated as of September 11, 2011, and recorded on September 16, 2011 in the Official Records as Document No. 2011-106704, and in Exhibit A attached hereto and incorporated herein (the "Phase I Property"). The Phase I Property includes an eighty seven percent (87%) undivided interest in certain real property that is subject to a Tenancy in Common Agreement, by and between OliverMcMillan Daly City One, LLC, a Delaware limited liability company, Phase I Owner's predecessor in interest, and the redevelopment Agency of the City of Daly City ("Agency"), predecessor in interest of the City, which is dated February 24, 2011, and was recorded in Official Records on February 25, 2011 as Document No. 2011-023668 (the "Tenancy in Common Agreement" and such undivided interest is referred to herein as the "Phase I Tenancy in Common Property"). As used herein, "Tenancy In Common Property" refers to the real property described in the Tenancy in Common Agreement, consisting of an approximately 59,900 square foot parcel of real property, including the improvements thereon. The Phase I Property has been improved with 95 residential units, approximately 15,350 net square feet of commercial space. In addition, the Tenancy in Common Property is improved with a parking structure containing an approximately a four level parking structure containing approximately

three hundred eighty-eight (388) parking spaces¹, as well as certain common utility facilities for the use of each of the Phase I Property and the Phase II Property (as defined herein) (the "Landmark Plaza Parking Garage").

1.3. Phase II Property. The City and Phase II Owner have entered into a certain Disposition and Development Agreement dated as of _____, 2020 (the "Phase II DDA"), covering a portion of the Landmark Plaza Project described on Exhibit B attached hereto and incorporated herein (the "Phase II Property"). The Phase II Property includes a thirteen percent (13%) undivided interest in the Tenancy in Common Property (the "Phase II Tenancy in Common Property"). The Phase II DDA provides that the Phase II Property will be improved with an approximately 170 unit residential project, parking for which will be provided in the Landmark Plaza Parking Garage. Concurrently herewith and pursuant to the Phase II DDA, Phase II Owner is acquiring the Phase II Property. The Phase II DDA provides that this Agreement shall be recorded concurrently with the acquisition of the Phase II Property by Phase II Owner from the City.

1.4. Parking Easement. The Tenancy in Common Property is subject to a certain Parking Easement Agreement by and between Landmark Daly City, a California limited liability company and Agency, dated September 14, 2004, which was recorded in Official Records on October 31, 2005, as Document No. 2005-190456 (the "Original Parking Agreement"). The Original Parking Agreement was amended pursuant to a certain Amendment to Parking Agreement by and between Agency and OliverMcMillan Daly City One, LLC, a Delaware limited liability company, dated as of September 13, 2011, which and was recorded in Official Records on September 16, 2011 as Document No. 2011-0160544 (the "First Amendment"; and the Original Parking Agreement and First Amendment are collectively referred to herein as the "Existing Parking Agreement." The Existing Parking Agreement provides that the City has certain War Memorial Parking Rights (as defined in the Existing Parking Agreement) in the Tenancy in Common Property and Landmark Plaza Parking Garage, for the benefit of users of the adjacent City real property described on Exhibit C attached hereto and incorporated herein, (the "City Property") which rights are appurtenant to the City Property.

1.5. Landmark Plaza CC&Rs. The Phase I Property is also subject to the Landmark Plaza Enabling Declaration Establishing a Plan for Condominium Ownership, recorded in Official Records on August 8, 2008, as Document No. 2008-091364, as amended by the Declaration of Annexation recorded in Official Records on June 22, 2009 as Document No. 2009-081685, and as further amended by a certain Declaration of Annexation recorded in Official Records on June 22, 2009, as Document No. 2009-081686 (collectively, the "Landmark Plaza CC&R's"). The Landmark Plaza CC&R's were assumed by Phase I Owner pursuant to a certain Assignment of Declarant Rights Under Landmark Plaza Enabling Declaration Establishing a Plan for Condominium Ownership dated as of September 16, 2011 and recorded September 16, 2011 in the Official Records as Document No. 2011-106705. Pursuant to the Landmark Plaza CC&Rs, the Phase I Owner (or any owner's association succeeding the Phase I Owner) has the power and duty to manage, operate, maintain, control, insure and repair the Landmark Plaza Parking Garage in accordance with the terms and conditions of the Landmark Plaza CC&Rs, subject to the right of Phase I Owner (or any owner's association succeeding the

¹ Number of spaces to be confirmed.

Phase I Owner) to delegate any or all of the Phase I Owner's (or any owner's association succeeding the Phase I Owner) duties with respect to the Landmark Plaza Parking Garage, as provided in the Landmark Plaza CC& R's.

1.6. Purpose. The purpose of this Agreement is to amend and restate the Existing Parking Agreement in its entirety to reflect the acquisition of the Phase II Property by Phase II Owner, and the right of Phase II Owner to use the Landmark Parking Garage, and to provide for the War Memorial Parking Rights, as defined herein.

ARTICLE 2. EASEMENTS AND USE OF THE GARAGE.

2.1. Certain Defined Terms. Defined terms used in this Agreement are listed in Schedule I hereof.

2.2. War Memorial Parking Rights. As used herein, subject to the terms and conditions of this Agreement, Phase I Owner and Phase II Owner hereby confirm any prior grant to City under the Existing Parking Agreement, and to the extent not previously granted, hereby grant to City solely for the use and benefit of the City Property, and invitees of the City Property, in common with others entitled to use the same, a non-exclusive easement for the ingress, egress and parking of motor vehicles (excluding recreational and other oversized vehicles), in, on, over, across and through the Tenancy in Common Property for the purposes of accessing and using the War Memorial Parking Spaces and for the exclusive use of such War Memorial Parking Spaces in connection with the use by such invitees of the City Property. Such rights are referred to herein as the "War Memorial Parking Rights."²

2.3. Grant of Exclusive Easement Rights Among Phase I Owner and Phase II Owner. Phase I Owner hereby grants to Phase II Owner, a perpetual, exclusive easement appurtenant to the Phase II Property in, on, over, across and through the Tenancy in Common Property, for the purposes of maintaining within the area delineated on the Parking Map, as the "Phase II Mechanical Utility Area," for a mechanical room that may be used to locate trash disposal facilities and to locate mechanical and utility equipment and facilities that shall service the Phase II Property. Phase II Owner hereby grants to Phase I Owner, a perpetual, exclusive easement appurtenant to the Phase I Property in, on, over, across and through the Tenancy in Common Property, for the purposes of maintaining within the area delineated on the Parking Map as the "Phase I Mechanical Utility Area," for a mechanical room that may be used to locate trash disposal facilities and to locate mechanical and utility equipment and facilities that shall service the Phase I Property.³

2.4. Grant of Mutual Easement and Rights Among Phase I Owner and Phase II Owner. Phase I Owner hereby grants to Phase II Owner a perpetual, nonexclusive easement, in, on over, across and through the Tenancy in Common Property, as necessary for Phase II Owner and Phase II Owner's tenants, invitees employees and contractors to (i) access and use the Phase II Exclusive Spaces in connection with the use by Phase II Owner and tenants, invitees employees

² Parking Map may need to be revisited. The Original Parking Agreement provided for part time use by the Phase I residents of the commercial spaces on level two. To be discussed- do the Phase I Owner and Phase II Owner have the right to use the City's spaces after hours, as provided in the Original Agreement?

³ Use of exclusive areas to be confirmed with the client.

and contractors of the Phase II Property; and (ii) access and use the Phase II Mechanical Utility Area in connection with the use by Phase II Owner and tenants, invitees employees and contractors of the Phase II Property, including the use thereof for trash disposal. Phase II Owner hereby grants to Phase I Owner a perpetual, nonexclusive easement, in, on over, across and through the Tenancy in Common Property, as necessary for Phase I Owner and Phase I Owner's tenants, invitees employees and contractors to (i) access and use the Phase I Exclusive Spaces in connection with the use by Phase I Owner and the tenants, invitees employees and contractors of the Phase I Property; and (ii) access and use the Phase I Mechanical Utility Area in connection with the use by Phase I Owner and tenants, invitees employees and contractors of the Phase I Property, including the use thereof for trash disposal. In exercising rights hereunder, each Party will take measures to reasonably minimize interference by such Party and its tenants, invitees employees and contractors, with the use of the Tenancy in Common Property by the other Parties and their respective its tenants, invitees employees and contractors.

2.5. Maintenance of Landmark Plaza Parking Garage. Phase I Owner and Phase II Owner shall conduct all repair and maintenance necessary or desirable to maintain the Landmark Plaza Parking Garage in good, sanitary and attractive condition and in accordance with the Garage Operating Standards. Such maintenance may be delegated to a Garage Manager. All costs and expenses incurred in connection with such maintenance and repair to the Landmark Plaza Parking Garage shall be included in Garage Expenses.

2.6. No Interference. The use and enjoyment by a Party of any easement granted hereunder shall not materially; unreasonably interfere with the use and enjoyment by another party of the Tenancy in Common Property for the purposes authorized in this Agreement.

2.7. No Merger. Notwithstanding the union of (a) fee simple or tenant in common title to the Phase I Property and the Phase II Property, or any portion thereof, and (b) any right, title or interest in the easements granted by Phase I Owner or Phase II Owner pursuant to this Agreement, it is the intention of the Parties that the separation of such estate and such right, title or interest in such easements shall be maintained, and that a merger shall not take place without the express prior written consent of the Party that would be affected by the merger of any such rights.

2.8. Relationship with Landmark Plaza CC&Rs. The Phase I Owner and Phase II Owner hereby acknowledge and agree that in the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of the Landmark Plaza CC&Rs solely with respect to the use of the parking facilities by the tenants or owners of the Phase I Property, the provisions of this Agreement shall control. The Landmark Plaza CC&Rs shall at all times expressly provide that none of its provisions are binding upon the City (except to the extent that the City acquires title to any real property that is subject to the Landmark Plaza CC&Rs). City and Phase I Owner hereby acknowledge and agree that: (1) the Landmark Plaza CC&Rs are subordinate to the City's rights under this Agreement solely with respect to the use of the War Memorial Parking Spaces (except to the extent that the City acquires title to any real property that is subject to the Landmark Plaza CC&Rs); and (2) the expiration, termination, amendment or modification of this Agreement shall not affect the Landmark Plaza CC&Rs; and (3) in the event of any conflict or inconsistency between the provisions of this Agreement and the

provisions of the Landmark Plaza CC&Rs solely with respect to the use of the War Memorial Parking Spaces, this Agreement shall control.

2.9. Completion of Unfinished Parking Spaces and Access to Spaces. The Agency shall have the right and not the obligation to finish the Unfinished Parking Spaces prior to the construction of Phase 2. This right shall include, as necessary, the construction of an ingress/egress ramp that may enter Landmark Plaza from the south and may require the temporary removal of leasable commercial space to accommodate the ramp. If any revisions or corrections of plans are the finishing of the parking and provision of temporary access to those spaces, the Developer shall cooperate with the Agency by revising plans and facilitating the completion of the Unfinished Parking Spaces and access thereto. The Agency agrees to cooperate with the necessary easements and permits.⁴

2.10. Rights of Lenders.

2.10.1. Rights of Parking Garage Lenders. This Agreement shall be and remain senior in priority to any and all fee or leasehold deeds of trust or mortgages hereafter recorded against all or any portion of the Tenancy in Common Property (a "Tenancy in Common Property Mortgage"); provided, however, that no breach of the terms or conditions contained in this Agreement shall affect, impair, defeat or render invalid the lien, charge or priority of any Tenancy in Common Property Mortgage made in good faith and for value encumbering all or any portion of the Tenancy in Common Property. Any beneficiary or mortgagee under a Tenancy in Common Property Mortgage or mezzanine loan to the owner of all or any portion of the Tenancy in Common Property (a "Tenancy in Common Property Mortgage") or other person or entity whose title to all or any portion of the Tenancy in Common Property is derived through foreclosure, trustee's sale or deed in lieu of foreclosure, shall take title to such portion of the Tenancy in Common Property subject to, and shall be bound by, all the terms and conditions set forth in this Agreement.

2.10.2. Notices of Default. Each Tenancy in Common Property Mortgagee, upon filing a written request with the Phase I Owner and Phase II Owner, is entitled to written notification of any default under this Agreement, which default is not cured within thirty (30) days after the date a Party gives written notice thereof to another Party. Each Tenancy in Common Property Mortgagee, upon filing such a written request, is entitled to written notification of any default under this Agreement.

2.10.3. Request for Notices. No Tenancy in Common Property Mortgagee shall be entitled to receive any notice from an Owner under this Agreement unless and until such Tenancy in Common Property Mortgagee has delivered to such Owner a written request therefor. A Tenancy in Common Property Mortgagee's rights pursuant to this Agreement (and the priority of the lien of its Tenancy in Common Property Mortgage) shall not be affected by the failure by such Tenancy in Common Property Mortgagee to request notice. Any request for notice delivered pursuant to this Section 2.10.3 shall remain effective with respect to the portions of the Tenancy in Common Property for which notice was requested without any further action by the

⁴ Client to confirm whether this should be deleted.

person or entity thereby entitled to receive such notice for so long as such person or entity continues to be a Tenancy in Common Property Mortgagee.

2.10.4. Curing Defaults. A Mortgagee, or the immediate transferee of such Mortgagee, who acquires title to all or any portion of the Tenancy in Common Property by judicial foreclosure, a trustee's sale, a deed in lieu of foreclosure or otherwise, shall not be liable for any default under this Agreement which occurred prior to the date on which such Tenancy in Common Property Mortgagee or transferee acquired title to such portions of the Tenancy in Common Property, provided that (a) such default is either not curable or of a type which is not practical or feasible to cure, and (b) such Tenancy in Common Property Mortgagee did not have notice of such default at the time such Mortgagee acquired a lien or security interest in such portions of the Tenancy in Common Property.

2.10.5. Good Faith Purchaser or Encumbrancer. Notwithstanding anything to the contrary contained in this Agreement, a purchaser or encumbrancer in good faith and for value shall not be liable for any default under this Agreement which occurred prior to the date on which such purchaser or encumbrancer acquired an interest in all or any portion of the Tenancy in Common Property.

ARTICLE 3. OPERATION OF THE GARAGE.

3.1. General. Phase I Owner and Phase II Owner shall be required to cause the Landmark Plaza Parking Garage and all improvements thereto to be operated in a manner and to a standard (the "Garage Operating Standards") which: (a) is consistent with a "first-class" urban parking garage; and (b) complies with all statutes, ordinances and regulations as of the effective date of this Agreement. The Landmark Plaza Parking Garage shall, at all times, be operated in a clean, safe, lawful and business-like manner.

3.2. Parking Control, Parking Charges. An Owner may initiate a parking control system which may include a parking charge for members of the public (as such charge may be increased or decreased from time to time) for parking in the Landmark Plaza Parking Garage, subject to the other Owner's prior approval, which approval shall not be unreasonably conditioned, withheld or delayed. However in no event will any charge be levied on members of the general public who shall use War Memorial Parking Spaces, without the written consent of the City.⁵

3.3. Signage. No Owner shall permit within the Landmark Plaza Parking Garage any sign that creates a hazard by protruding, overhanging or that creates other dangerous conditions. Phase I Owner and Phase II Owner may, with City's consent not to be unreasonably withheld, install signage that shall identify that spaces that are Phase I Exclusive Spaces, Phase II Exclusive Spaces and War Memorial Parking Spaces.

3.4. Rules and Regulations. So long as the rights granted to Agency by this Agreement are not diminished thereby, Phase I Owner and Phase II Owner shall have the right to impose reasonable rules and regulations from time to time with respect to all users of the Landmark Plaza Parking Garage. These rules and regulations shall include reasonable measures to prevent

⁵ Client to confirm if use free of charge by the City is acceptable.

the tenants and invitees of the Phase I Property and Phase II Property from using the War Memorial Parking Spaces, and the use by tenants or invitees of a Property of the spaces allocated to the other Property, which measures may include towing and/or removal of any vehicles that shall violate the rights granted a Party hereunder.

ARTICLE 4. MAINTENANCE; TAXES.

4.1. General. Phase I Owner and Phase II Owner shall agree on a party, which may be Phase I Owner, Phase II Owner or any party appointed by them, who shall repair and maintain according to the Garage Operating Standards (taking into account reasonable wear and tear) all nonstructural portions of the Landmark Plaza Parking Garage (the "Garage Manager"). Phase I Owner and Phase II Owner shall provide sufficient funds to allow Garage Manager to use commercially reasonable efforts to promptly repair and maintain in good order and condition (reasonable wear and tear excepted) all structural portions of the Landmark Plaza Parking Garage. Phase I Owner and Phase II Owner shall agree on any alterations, additions, improvements or repairs to the Landmark Plaza Parking Garage which are deemed advisable or necessary by Phase I Owner and Phase II Owner, in their sole and absolute discretion, provided no such alterations, improvements or repairs that would permanently interfere in any material way with the War Memorial Parking Rights may be made without the written consent of the City. If any portion of the War Memorial Parking Spaces are unavailable for use by the City and its invitees in connection with any alterations or repairs of the Landmark Plaza Parking Garage, Phase I Owner and Phase II Owner shall be required to use commercially reasonable efforts to relocate such unavailable War Memorial Parking Spaces to another area within the Landmark Plaza Parking Garage until such repairs or alterations have been completed.

4.2. Allocation of Maintenance Costs.

4.2.1. Allocation. Each of Phase I Owner and Phase II Owner shall each pay their respective "Allocable Shares" (as defined below) of the "Garage Expenses" (as defined below). The "Allocable Share" of each party shall be determined by dividing the number of Non-Public Spaces by the number of Parking Spaces allocated to each party hereunder.⁶

4.2.2. Garage Expenses. "Garage Expenses" means all reasonable costs and expenses, to the extent actually paid or incurred in connection with the operation, maintenance, repair and/or restoration of the Landmark Plaza Parking Garage, including, without limitation, sums paid to contractors, including Garage Manager, under management contracts, maintenance contracts and/or repair contracts for maintenance, repair and/or restoration work, the costs of any laborers not included in the contracts previously described, including, without limitation, any capital improvement work, the costs of materials incorporated into the Landmark Plaza Parking Garage with respect to maintenance, repair and/or restoration work, fees for permits, licenses, inspections and any other fees imposed by governmental entities, all utilities necessary to manage and operate the Landmark Plaza Parking Garage (i.e., gas, water, sewerage, garbage, electricity, light and power, and telephone (local), management fees, taxes, insurance and other

⁶ This assumes that the City will not be bearing any portion of the cost of maintenance and insurance- client to confirm.

parking related costs, but excluding any costs solely relating to the initial construction and development of the Landmark Plaza Parking Garage).

4.2.3. Invoicing; Payment. Phase I Owner and Phase II Owner will use commercially reasonable efforts to on or before December 31 of each calendar year, agree on an annual budget that sets forth the estimate of Phase I Owner and Phase II Owner, in consultation with Garage Manager, of Garage Expenses for the next calendar year, a calculation of the Allocable Share of each party of such estimated Garage Expenses, and the timing of the payments required to pay Garage Expenses. Phase I Owner and Phase II Owner may update such annual budget from time to time as required to reflect actual Garage Expenses incurred for any calendar year.

4.3. Taxes; Assessments.

4.3.1. Real Property Taxes. Each Party will pay its Allocable Share of real property taxes, general and special assessments, special taxes and other charges of every description levied on or assessed against the Landmark Plaza Parking Garage and all such amounts shall be deemed to be included within the definition of Garage Expenses.

4.3.2. Personal Property Taxes. Each Party will pay all personal property taxes, general and special assessments and other charges of every description levied on or assessed against all personal property of such party located in the Landmark Plaza Parking Garage. In the event that any personal property is used for the operation of the Landmark Plaza Parking Garage, each party will pay its Allocable Share of such personal property taxes, provided such amounts shall be deemed to be included within the definition of Garage Expenses.

ARTICLE 5. INSURANCE; INDEMNITY AND EXCULPATION.

5.1. Insurance. Phase I Owner and Phase II Owner will cause Garage Manager to insure the Landmark Plaza Parking Garage and Garage Manager's operations thereon to be adequately insured, and will at all times and carry and maintain such standard insurance in amounts which are customarily carried and against such standard risks as are customarily insured against by others in connection with the ownership and operation of a parking facility of similar character and size (the "Garage Insurance"), including, without limitation, (a) standard all-risk property insurance with replacement cost coverage in an amount equal to one hundred percent (100%) of full insurable replacement cost of the Landmark Plaza Parking Garage, in a form that includes either (1) a standard extended coverage endorsement or (2) the perils insured under the ISO special causes of-loss form CP 10 30, (b) comprehensive general liability insurance in a form that provides coverage against claims of bodily injury, personal injury or property damage arising out of (1) the use or occupation of the Landmark Plaza Parking Garage by Garage Manager and employees, guests and invitees of Garage Manager, Phase I Owner, Phase II Owner or the City, and/or (2) the operations, assumed liabilities or contractual liabilities of Garage Manager, (c) workers' compensation and employer liability insurance in a form that provides coverage for all persons employed by Garage Manager in connection with the operation of the Landmark Plaza Parking Garage, and with respect to whom death or bodily injury claims could be asserted against a Party, and (d) automobile liability insurance (bodily injury and property damage liability) in a form that provides coverage for owned, hired, and non-owned

automobiles; provided, however, that the forms, coverage amounts and types of Garage Insurance shall not be less than the forms, coverage amounts and types of insurance required to be carried by Phase I Owner pursuant to the Landmark Plaza CC&Rs. The insurance policies required to be maintained in this Section 5.1 shall be carried by stock, reciprocal or mutual insurance companies authorized to do business (or subject to service of process) in the State of California that are financially responsible and capable of fulfilling the requirements of such policies. All such insurance policies shall name the Phase I Owner, Phase II Owner and City as additional insureds, beneficiaries; or loss payees as their interests may appear. Each such insurance policy shall be in such form and contain such provisions as are generally considered standard for the type of insurance involved and shall contain: (a) a provision to the effect that the insurer shall not cancel or substantially modify the policy provisions without first giving at least 30 days' written notice thereof to the Owners and to the City, provided, however, that in the event of nonpayment, such policy shall provide that such policy shall not be cancelled unless a minimum of ten (10) days prior written notice shall have been given to Owners and to City; and (b) a severability of interests (cross-liability) provision. In the event that any of the insurance policies required to be carried and maintained pursuant to this Section 5.1 are cancelled by the insurer and not promptly replaced, an Owner shall have the right to obtain a replacement of each such cancelled insurance policy at the cost and expense of Garage Manager, to be included as a Garage Expense, as appropriate. In lieu of obtaining separate insurance policies, Garage Manager may maintain blanket policies that cover any one or more risks required to be insured against so long as the minimum coverage required herein is met. Garage Manager shall not modify Garage Insurance in a manner that reduces the amount of insurance coverage required to be carried under this Section 5.1, without the prior written consent of the City.

5.2. Party Insurance. The City will at all times maintain such insurance, including general commercial liability coverage, as may be customary for municipalities of similar size in California. Each Owner shall maintain such commercial general liability insurance as may be customary for owners of projects similar in size and scope of operations of the improvements maintained on the Phase I Property or Phase II Property, as the case may be, provided in the case of Phase I Owner, any insurance requirements specified in the Landmark Plaza CC&R's shall be deemed to satisfy the foregoing.⁷

5.3. Indemnification. Garage Manager shall indemnify, defend and hold harmless, each of Phase I Owner, Phase II Owner and the City and each such party's officers, directors, employees, agents, partners, members, shareholders, managers, heirs, successors and assigns (collectively, the "Owner Indemnitee Parties"), and any agreement whereby a third party Garage Manager is retained to manage the Landmark Plaza Parking Garage shall provide for indemnification by Garage Manager of the Owner Indemnitee Parties from and against any loss, cost, damage, liability, claims, costs and expenses, including without limitation, reasonable attorneys' fees (collectively, "Claims") arising out of or connected with any accident, occurrence, injury, loss or damage whatsoever caused to any person or entity or to the property of any persons or entities as shall occur in the Landmark Plaza Parking Garage, to the extent such Claims arise from the acts or omissions of Garage Manager, or Garage Manager's employees, agents or contractors, but not to the extent caused in whole or in part by any Owner Indemnitee

⁷ May need to send to the City with insurance and indemnity provisions to be finalized at a later date, based on input from risk managers.

Parties, and (2) each Owner shall indemnify, defend and hold harmless the other Owner and Garage Manager and such Owner's and Garage Manager's officers, directors, employees, agents, partners, members, shareholders, managers, heirs, successors and assigns (collectively, the "Manager Indemnitee Parties"), from and against any Claims arising out of or connected with any accident, occurrence, injury, loss or damage whatsoever caused to any person or entity or to the property of any persons or entities as shall occur in the Landmark Plaza Parking Garage, to the extent such Claims arise from the acts or omissions of the indemnifying Owner, but not to the extent caused in whole or in part by any Manager Indemnitee Parties.⁸

5.4. Mortgagee's Use of Casualty Insurance Proceeds. Notwithstanding anything to the contrary in this Agreement, in the event of any damage to or destruction of all or any portion of the Landmark Plaza Parking Garage, which damage or destruction is covered by the standard all-risk property insurance with replacement costs coverage in an amount equal to one hundred percent (100%) of full insurable replacement cost of the Landmark Plaza Parking Garage maintained or required to be maintained pursuant to Section 5.1 of this Agreement, the Tenancy in Common Property Mortgagee(s) of the damaged or destroyed portion of the Landmark Plaza Parking Garage shall allow the proceeds of such casualty insurance to be utilized for the restoration and rebuilding of such damaged or destroyed portion of the Landmark Plaza Parking Garage. As used herein, the term "Insurable Casualty" means a casualty or peril that is covered or coverable under the standard all-risk property insurance with replacement costs coverage in an amount equal to one hundred percent (100%) of full insurable replacement cost of the Landmark Plaza Parking Garage maintained or required to be maintained pursuant to Section 5.1 of this Agreement. As used herein, the term "Uninsurable Casualty" means a casualty that is not covered or coverable under the standard all-risk property insurance with replacement costs coverage in an amount equal to one hundred percent (100%) of full insurable replacement cost of the Landmark Plaza Parking Garage maintained or required to be maintained pursuant to Section 5.1 of this Agreement.

ARTICLE 6. DAMAGE AND DESTRUCTION.

6.1. Repair of Damage by Owners. If the Landmark Plaza Parking Garage is damaged by an Uninsurable Casualty, none of Garage Manager, Phase I Owner or Phase II Owner shall be obligated to restore the Landmark Plaza Parking Garage. If the Landmark Plaza Parking Garage is damaged by an Insurable Casualty, and if this Agreement is not terminated under this Article 6, Garage Manager shall promptly and diligently cause the Landmark Plaza Parking Garage to be restored to substantially the same condition as existed before the Insurable Casualty (including any modifications required by then applicable building codes and other applicable laws), to the extent of the then existing proceeds of standard all-risk property insurance carried with respect to the Landmark Plaza Parking Garage. In this regard, each of Phase I Owner and Phase II Owner shall assure that any new Tenancy in Common Property Mortgagees shall not have any right to apply the proceeds of the standard all-risk property insurance with respect to the Landmark Plaza Parking Garage to repayment of their loans with Phase I Owner or Phase II Owner, as the case may be, and such insurance proceeds shall only be used for the reconstruction of the Landmark

⁸ See earlier comment – may need to modify to align indemnities with insurance coverages to be maintained. Please note that no City indemnity of Owners is included in this draft. Need for such an indemnity to be evaluated by risk managers.

Plaza Parking Garage. Notwithstanding the preceding sentence to the contrary, the City hereby acknowledges that (i) as of the date of this Agreement, the existing Tenancy in Common Property Mortgagees have the right to apply the proceeds of the standard all-risk property insurance with respect to the Landmark Plaza Parking Garage to repayment of their loans, and (2) with respect to such existing Tenancy in Common Property Mortgagees, the sole obligation of each Owner shall be to use commercially reasonable efforts to cause such existing Tenancy in Common Property Mortgagees to apply the proceeds of the standard all-risk property insurance with respect to the Landmark Plaza Parking Garage to the reconstruction of the Landmark Plaza Parking Garage.⁹

6.2. Option to Terminate. If at any time Phase I Owner and Phase II Owner shall decide not to use commercially reasonable efforts to undertake the restoration or repair of the Landmark Plaza Parking Garage or if repair is not required hereunder, then Phase I Owner and Phase II Owner shall have the right, within ninety (90) days after the date the casualty occurs, to terminate this Agreement on account of such Casualty by delivering written notice of termination to the City.

6.3. Agency's Right to Parking if Restoration is Not Done. If all or any portion of the Landmark Plaza Parking Garage is damaged or destroyed by a casualty and Phase I Owner and Phase II Owner deliver a notice of termination, City may provide notice to Phase I Owner and Phase II Owner that it wishes to retain parking rights on the Tenancy in Common Property, and Phase I Owner and Phase II Owner will provide, at the sole cost and expense of each of them in accordance with their Allocable Shares, paved parking for a number of cars equal to the number of War Memorial Parking Spaces, together with access to such parking from the City Property.

ARTICLE 7. CONDEMNATION.

7.1. Definition of "Condemnation". As used in this Agreement, the term "Condemnation" means a permanent taking through (a) the exercise of any government power (by legal proceedings or otherwise) by any public or quasi-public authority or by any other party having the right of eminent domain ("Condemnor"), or (b) a voluntary sale or transfer to any Condemnor, either under threat of exercise of eminent domain by a Condemnor or while legal proceedings for Condemnation are pending.

7.2. Effect on Rights and Obligations. If there is any Condemnation of all or any portion of the Landmark Plaza Parking Garage, the rights and obligations of the parties shall be determined under this Article 7. If Phase I Owner, Phase II Owner or City is made a party in any Condemnation, such party shall notify the other in writing of such Condemnation within 30 days after the filing of a complaint by Condemnor. Except as expressly provided in Section 6.1 of this Agreement, none of Garage Manager, Phase I Owner or Phase II shall be obligated to restore all or any portion of the Landmark Plaza Parking Garage after any Condemnation of such portion of the Landmark Plaza Parking Garage.

7.3. Allocation of Parking Spaces and Condemnation Award. If there is any Condemnation of all or any portion of the Landmark Plaza Parking Garage, then the following

⁹ Insurance provisions may be subject to further review.

shall apply: (a) with respect to the portion(s) of the Landmark Plaza Parking Garage that is the subject of such Condemnation, the number of War Memorial Parking Spaces, Phase I Exclusive Spaces and Phase II Exclusive Spaces in such portion(s) shall be reduced accordingly on a pro rata basis based upon the total number of parking spaces that were contained in such portion(s) prior to such Condemnation and the number of parking spaces that are contained in such portion(s) after such Condemnation; and (b) each shall have the right to participate in the Condemnation and represent their respective interests in the portion of the Landmark Plaza Parking Garage that is the subject of such Condemnation.

ARTICLE 8. MISCELLANEOUS PROVISIONS.

8.1. Notices. Any notices, requests, demands or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally (FedEx and similar services shall be considered to be personal service), and upon receipt, if mailed to the party to whom notice is to be given, by first-class mail, registered or certified, postage prepaid, return receipt requested, and properly addressed as follows (electronic notice is not authorized unless otherwise agreed in writing by the Parties):

PHASE I OWNER:

EQR-Hillside LP
c/o Equity Residential
333 Third Street, Suite 210
San Francisco, CA 94107

With a copy to:

Equity Residential
Two North Riverside Plaza, Suite 400
Chicago, IL 60606
Attention: Office of the General Counsel

PHASE II OWNER

EQR-Hillside II LP
c/o Equity Residential
333 Third Street, Suite 210
San Francisco, CA 94107

With a copy to:

Equity Residential
Two North Riverside Plaza, Suite 400
Chicago, IL 60606
Attention: Office of the General Counsel¹⁰

CITY:

City of Daly City
333 90th Street
Daly City, CA 94015
Attention: Director of Economic and Community
Development

¹⁰ Addresses to be confirmed.

With a copy to:

City of Daly City
333 90th Street, Third Floor
Daly City, CA 94015
Attention: City Attorney

Any party may change its address for purposes of this section by giving the other party written notice of the new address in the manner set forth above.

8.2. Legal; Interpretation. The parties hereto agree that venue for any dispute arising under this Agreement shall be San Mateo County, California. The headings and captions of articles and sections used in this Agreement are for convenience only, and this Agreement shall be interpreted without reference to any headings or captions. Similarly, the presence or absence of language in prior drafts of this document shall not be used to interpret any provision hereof. This Agreement has been prepared and revised by attorneys for both parties, so any rule of law or construction that ambiguities are to be construed against the party responsible shall not apply. This Agreement shall be governed by the laws of the State of California.

8.3. Time of Essence. Time is of the essence of this Agreement and of the performance required of each party under this Agreement.

8.4. Amendment. Prior to the time that the Certificate of Completion is issued, this Agreement may not be amended unless by a written amendment executed and acknowledged by all Parties. After the Certificate of Completion is issued, the Owners may amend this Agreement by a writing executed and acknowledged by all Owners, provided that a written consent of the City will be required to be recorded for any amendment that would (i) reduce the number of War Memorial Parking Spaces, or would relocate such spaces or would eliminate the right of the City to use such spaces, or would prevent access to such spaces or impose any conditions on the City's use of such War Memorial Parking Spaces that were not existing prior to any such amendment; (ii) modify the insurance or indemnity provisions of Article 5 to reduce the insurance obligations of a Party or of Garage Manager, or would increase the insurance obligations of the City; or (iii) modify the Damage and Destruction provisions of Article 6 or the Condemnation provisions of Article 7.

8.5. Additional Documents. Each Party shall execute and deliver such instruments of transfer and other documents as may be reasonably requested by another Party to carry out the purpose and intent of this Agreement.

8.6. Dependency and Survival of Provisions. The respective warranties, representations, covenants, agreements, obligations and undertakings of each Party under this Agreement shall be construed as dependent upon and given in consideration of those of the other Parties.

8.7. Counterparts; Facsimile Signatures. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but which together shall constitute a single document. Signatures transmitted by pdf or other electronic method shall be binding; provided, however, that any person transmitting his or her signature by an electronic method shall promptly send an original signature to the other parties in accordance with Section 8.1.

8.8. Estoppel Certificates. At any time and from time to time City and/or any Owner shall, upon the request of another Party, execute, acknowledge and deliver an instrument, stating, if the same is true, that this Agreement is a true and correct copy of the Agreement by and among the Parties hereto, including any successors or assigns as permitted herein, that there are no amendments (or stating what amendments there are), that the Agreement is in full force and effect and that, to the best knowledge of the person providing the certificate, that there are no defaults under this Agreement by any Party hereto, including permitted successors or assigns, and that there are no offsets, defenses or counterclaims in the performance of terms, covenants, conditions hereof on the part of the Parties, including permitted successors or assigns, to be performed.

8.9. Financing. Each Party, or any permitted successor or assignee thereof, shall have absolute right, from time to time, without the consent of the other party, to grant or assign a mortgage or other security interest in such party's interest, right and title in this Agreement. Each Party shall execute such amendments, confirmation, certificates and other documents as the other Party may reasonably request in connection with their financing such Party's property; provided, however, that such amendments, confirmation, certificates and other documents shall not increase any Party's duties, obligations or liabilities under this Agreement.

8.10. Waiver. Failure by any Party to enforce any covenant, restriction or other provision of this Agreement or to seek redress for the breach of or default in performance under any such covenant, restriction or other provision shall in no way constitute a waiver by such Party of the right to enforce such covenant, restriction or provision or seek redress for the breach thereof or constitute a waiver by such party of the right to enforce any other covenant, restriction or provision of this Agreement or seek redress for the breach thereof.

8.11. Remedies. This Agreement shall not be construed to limit the legal rights and remedies available to any Party to the extent that such rights and remedies are not inconsistent with the provisions of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, no Party may exercise any remedy hereunder unless, after the failure of the defaulting Party to cure a breach within the applicable cure period, such non-defaulting Party delivers notice of the breach to each Tenancy in Common Mortgagee of which the non-defaulting Party has received notice under Section 2.10.3, above, and provides such Tenancy in Common Mortgagee with the opportunity to cure such breach within a reasonable period not to exceed the length of the cure period applicable to the defaulting Party.

8.12. Limitation on Owner Liability. No constituent member in, partner in, manager of, shareholder of or agent of any Owner or of Garage Manager, nor any partner, member, trustee, director, officer, manager, employee, beneficiary, shareholder, participant, representative, advisor or agent of any entity that is or becomes a constituent member in, partner in, manager of or shareholder of any Owner or Garage Manager shall have any personal liability, directly or indirectly, under or in connection with this Agreement.

8.13. Multiple Owners. If fee title to portions of the Landmark Plaza Parking Garage are owned by more than one (1) owner, then solely for the purposes of determining each such owner's responsibility for satisfying the relevant Owner's obligations under this Agreement, such obligations shall be collectively performed by the owners of fee title to the Landmark Plaza

Parking Garage as such obligations are allocated between them pursuant to the Original DDA or Phase II DDA, and any other agreements between them with respect to the ownership and operation of the Landmark Plaza Parking Garage.

8.14. Attorneys' Fees. In the event any of the Parties shall commence legal proceedings for the purpose of enforcing any provision or condition hereof, or by reason of any breach arising under the provisions hereof, then the successful party in such proceeding shall be entitled to court costs and reasonable attorneys' fees to be determined by the applicable court or arbitrator. Without limiting the generality of the foregoing, the prevailing Party shall be entitled to recover its attorneys' fees and other legal expenses incurred in connection with a bankruptcy or other insolvency-related proceeding of another Party (and including such fees and expenses incurred in efforts, whether successful or not, to obtain adequate protection, annulment, modification or termination of the automatic stay). The Parties also agree that: (a) any attorneys' fees incurred in connection with the enforcement or collection of any judgment obtained in any suit or other proceeding with respect to the subject matter or enforcement of this Agreement shall be recoverable as a separate item; (b) the provisions of this Section 8.14 shall survive the entry of any judgment with respect to this Agreement; and (c) the provisions of this Section 8.14 shall not merge or be deemed to have merged into any such judgment.

8.15. City Restrictions. The Original DDA and Phase II DDA restrictions regarding discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry shall apply in full to the Tenancy in Common Property. During the term of this Agreement, Any deed or other instrument of transfer, and any contract covering the leasing or use of the Tenancy in Common Property shall include such recitals and/or provisions as are required to be included with respect Phase I Property or Phase II Property pursuant to the relevant provisions of the Original DDA or Phase II DDA as applicable, and in any grant deed recorded pursuant to either of such agreements.

8.16. Duration. This Agreement shall be effective to amend and restate the Existing Parking Agreement as of the date of its recordation in the Official Records and shall continue in full force and effect for ninety-nine (99) years following the date of recordation of the Original Parking Agreement. Thereafter, this Agreement shall be automatically extended for successive periods often (10) years each, unless (a) terminated pursuant to Section 6.2 hereof, or (b) otherwise terminated pursuant to a written instrument signed by the Parties and recorded in the Official Records. Upon termination of this Agreement, all rights and privileges derived from, and all duties and obligations created and imposed by, the provisions of this Agreement, shall terminate and have no further force or effect; provided, however, that the termination of this Agreement shall not limit or affect any remedy at law or in equity of any party against any other party with respect to any liability or obligation arising or to be performed under this Agreement prior to the date of such termination.

8.17. Constructive Notice and Acceptance. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Landmark Plaza Parking Garage or Tenancy in Common Property is and shall be conclusively deemed to have consented and agreed to every covenant, condition, restriction and provision contained in this Agreement, whether or not any reference to this Agreement is contained in the instrument by which such

person or entity acquired an interest in the Landmark Plaza Parking Garage or Tenancy in Common Property.

8.18. Enforcement. Subject to the restrictions set forth in this Agreement and those imposed by law, the violation or breach of any covenant, condition, restriction or provision contained in this Agreement shall give the non-defaulting Party the right to prosecute a proceeding at law or in equity, against any defaulting Party or any other persons or entities who have violated, or who have attempted to violate, any of the provisions, covenants, conditions, and restrictions set forth in Agreement, to enjoin or prevent them from doing so, to cause said violation or breach to be remedied or to recover damages for said violation or breach. The failure of any Party to enforce any covenant, condition, restriction or provision herein contained shall in no event be deemed to be a waiver of the right to thereafter do so nor of the right to enforce any other covenant, condition, restriction or provision set forth in this Agreement.

8.19. No Public Dedication. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Landmark Plaza Parking Garage or Tenancy in Common Property to the general public or for the benefit of the general public or for any public purposes whatsoever, it being the intent of the Parties that this Agreement shall be strictly limited to and for the purposes expressed in this Agreement. The right of the public or any person or entity to make any use whatsoever of the Landmark Plaza Parking Garage or Tenancy in Common Property or any portion thereof (other than any use expressly allowed by a written or recorded map, agreement, deed or dedication) is by permission and subject to control of the Owners.

8.20. Recordation. This Agreement shall be recorded in the Official Records. Upon the recordation of this Agreement or any amendment of this Agreement in the Official Records, the Tenancy in Common Property shall be held, conveyed, hypothecated, encumbered, leased, used, occupied and improved, subject to the terms and conditions of this Agreement. All of the terms and conditions of this Agreement shall run with each of the Phase I Property and Phase II Property, including, without limitation, any interest in the Tenancy in Common Property included therein, and except as expressly provided herein, shall be binding upon, and shall benefit each of the Parties their respective heirs, successors and assigns.

8.21. Amendment and Restatement. This Agreement is an amendment and restatement of the Existing Parking Agreement and upon recordation thereof will supersede the Existing Parking Agreement in its entirety.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth above.

PHASE I OWNER

EQR-HILLSIDE LP, a Delaware
limited partnership

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

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

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

By: _____

Name: _____

Its: _____

PHASE II OWNER

EQR-HILLSIDE II LP, a Delaware
limited partnership

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

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

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

By: _____

Name: _____

Its: _____

CITY

CITY OF DALY CITY, a municipal corporation

By: _____
Shawwna Maltbie, City Manager

ATTEST:

K. Annette Hipona, City Clerk

APPROVED AS TO FORM:

Rose Zimmerman, City Attorney

DRAFT

SCHEDULE I

Definitions

As used in this Agreement the following terms have the following meaning:

"Agency" is defined in Section 1.2.

"Agreement" is defined in the opening paragraph.

"Allocable Share" is defined in Section 4.2.1.

"Certificate of Completion" means the Certificate of Completion referred to in Section 5.11 of the Phase II DDA.

"City" is defined in the opening paragraph.

"City Property" is defined in Section 1.4.

"Claims" is defined in Section 5.3.

"Condemnation" is defined in Section 7.1.

"Condemnor" is defined in Section 7.1.

"Existing Parking Agreement" is defined in Section 1.4.

"First Amendment" is defined in Section 1.4.

"Garage Expenses" is defined in Section 4.2.2.

"Garage Insurance" is defined in Section 5.1.

"Garage Manager" is defined in Section 4.1.

"Garage Operating Standards" is defined in Section 3.1

"Insurable Casualty" is defined in Section 5.4

"Landmark Plaza CC&R's" is defined in Section 1.5.

"Landmark Plaza Parking Garage" is defined in Section 1.4.

"Manager Indemnatee Parties" is defined in Section 5.3.

"Non Public Spaces" means the total number of parking spaces in the Landmark Plaza Parking Garage, from time to time, less the number of War Memorial Parking Spaces.

"Official Records" is defined in Section 1.1.

"Original DDA" is defined in Section 1.1.

"Original Parking Agreement" is defined in Section 1.4.

"Owner" shall refer individually to Phase I Owner or Phase II Owner, as the context requires.

"Owner Indemnatee Parties" is defined in Section 5.3.

"Owners" shall refer collectively to Phase I Owner and Phase II Owner.

"Parking Map" is the map of the Landmark Plaza Parking Garage attached hereto as Exhibit D and incorporated herein, which shows the location of the numbered spaces in the Landmark Plaza Parking Garage, as well as the location of the Phase I Mechanical Utility Area and the Phase II Mechanical Utility Area.

"Parking Spaces" means in the case of Phase I Owner, the number of Phase I Exclusive Spaces, and in the case of Phase II Owner, the number of Phase II Exclusive Spaces.

"Party" and "Parties" refers in the singular to Phase I Owner, Phase II Owner or City, and collectively to Phase I Owner, Phase II Owner and City.

"Phase I Exclusive Spaces" means all of Level Three and Level Four and 27 spaces on Level Two identified as Phase I Exclusive Spaces on the Parking Map, for the exclusive use of the Phase I Owner and tenants, invitees and contractors of Phase I Owner.¹¹

"Phase I Mechanical Utility Area" means a certain area of the Landmark Parking Garage for the exclusive use of the Phase I Owner for the location of trash disposal and mechanical facilities used in connection with Phase I, which is defined and described in Section 2.3 hereof and in the Parking Map.

"Phase I Owner" is defined in the opening paragraph.

"Phase I Property" is defined in Section 1.2.

"Phase I Tenancy in Common Property" is defined in Section 1.2.

"Phase II DDA" is defined in Section 1.3.

"Phase II Exclusive Spaces" shall mean spaces 28-38, 54-64 and 68-93 on Level Two of the Landmark Parking Garage and shown as the Phase II Exclusive Spaces on the Parking Map, for the exclusive use of the Phase I Owner and tenants, invitees and contractors of Phase I Owner.¹²

"Phase II Mechanical Utility Area" means a certain area of the Landmark Parking Garage for the exclusive use of the Phase II Owner for the location of trash disposal and mechanical facilities

¹¹ Location of spaces to be confirmed.

¹² Location of spaces to be confirmed.

used in connection with Phase II, which is defined and described in Section 2.3 hereof and in the Parking Map.

"Phase II Owner" is defined in the opening paragraph.

"Phase II Property" is defined in Section 1.3.

"Phase II Tenancy in Common Property" is defined in Section 1.3

"Tenancy in Common Agreement" is defined in Section 1.2.

"Tenancy in Common Property" is the real property described in the Tenancy in Common Agreement.

"Tenancy in Common Property Mortgage" is defined in Section 2.10.1.

"Tenancy in Common Property Mortgagee" is defined in Section 2.10.1.

"Uninsurable Casualty" is defined in Section 5.4.

"War Memorial Parking Rights" is defined in Section 2.2.

"War Memorial Parking Spaces" means fifteen (15) spaces located on Level Two of the Landmark Parking Garage as depicted on the Parking map, as spaces 39-50 and 51-53 for exclusive use of the City and invitees of the City Property.¹³

¹³ Location of spaces to be confirmed.

ACKNOWLEDGMENT

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)
) ss
County of _____)

On _____, before me, _____,
(Name of Notary)

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

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

WITNESS my hand and official seal.

(Notary Signature)

ACKNOWLEDGMENT

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)
) ss
County of _____)

On _____, before me, _____,
(Name of Notary)

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

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

WITNESS my hand and official seal.

(Notary Signature)

ACKNOWLEDGMENT

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)
) ss
County of _____)

On _____, before me, _____,
(Name of Notary)

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

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

WITNESS my hand and official seal.

(Notary Signature)

Exhibit E

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

DRAFT

Recording requested by
and when recorded mail to:

City of Daly City
333 90th Street
Daly City, CA 94015
Attention: City Clerk

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use.

CERTIFICATE OF COMPLETION

This Certificate of Completion (this "**Certificate**") is made by the City of Daly City, a California municipal corporation ("**City**") effective as of _____, 20__.

RECITALS

A. City and EQR-Hillside II LP, a Delaware limited partnership ("**Developer**"), entered into that certain Disposition and Development Agreement dated as of _____, 2020 (the "**DDA**") concerning the development of certain real property located in the City of Daly City, San Mateo County, California and more particularly described in Exhibit A attached hereto (the "**Property**"). A Memorandum of the DDA was recorded in the Official Records of San Mateo County ("**Official Records**") on _____, 20__ as Instrument No. _____. Capitalized terms used herein without definition shall have the meaning ascribed to such terms in the DDA.

B. Pursuant to Section 5.11 of the DDA, the City is required to furnish the Developer or its successors with a Certificate of Completion upon completion of development of the Project in accordance with the DDA.

C. The City has determined that the development of the Project has been satisfactorily completed in accordance with the DDA.

NOW, THEREFORE, City hereby certifies as follows:

1. Development of the Project has been satisfactorily completed in conformance with the DDA.

2. All indemnity, use, maintenance, and nondiscrimination covenants contained in the DDA shall remain in effect and enforceable in accordance with the DDA. This Certificate does not constitute evidence of Developer's compliance with those covenants in the DDA that survive the issuance of this Certificate, including, without limitation, compliance with the Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants entered into pursuant to the DDA and recorded in the Official Records on _____, 20__ as Instrument No. _____.

3. This Certificate does not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a deed of trust securing

EXHIBIT A

PROPERTY

(Attach legal description)

Exhibit F

FORM OF MEMORANDUM OF OPTION
(Attach form of Memorandum.)

DRAFT

Recording Requested by
and when Recorded, return to:

City of Daly City
333 90th Street
Daly City, CA 94015
Attention: City Clerk

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

MEMORANDUM OF OPTION AND DISPOSITION AND DEVELOPMENT AGREEMENT

This Memorandum of Option and Disposition and Development Agreement (this "**Memorandum**"), dated as of _____, 2020, is entered into by and between the City of Daly City, a California municipal corporation ("**City**") and EQR-Hillside II LP, a Delaware limited partnership ("**Developer**"). City and Developer are hereinafter collectively referred to as the "**Parties**."

1. Agreement; Conveyance. Pursuant to that certain Disposition and Development Agreement (the "**Agreement**") dated as of _____, 2020, executed by and between City and Developer, the City has agreed to convey to Developer, and Developer has agreed to develop, certain real property located at 6401 Mission Street in Daly City, California, known as San Mateo County Assessor's Parcel No. 003-224-100, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "**Property**").

2. Schedule for Construction. Among other conditions, the Agreement provides that Developer shall have commenced and completed, by dates set forth in the Agreement as such dates may be extended pursuant to the terms of the Agreement, construction of a multi-family residential project (the "**Project**") on the Property which will be subject to rent restrictions pursuant to an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants ("**Regulatory Agreement**") that shall be executed by the Parties and recorded in the Official Records of San Mateo County substantially concurrently herewith.

3. Certificate of Completion. Promptly following completion of construction of the improvements comprising the Project (the "**Improvements**") and the issuance of a final certificate of occupancy or equivalent for the Improvements, the City will furnish Developer with an instrument so certifying (a "**Certificate of Completion**"). Such Certificate of Completion shall constitute conclusive determination of satisfactory completion of construction of the Improvements and compliance with the covenants in the Agreement and in the Grant Deed executed pursuant thereto regarding the dates for the commencement and completion of such construction.

4. Restrictions on Transfer. The Agreement provides that the Property will be used for the purposes of timely development as set forth in the Agreement and not for speculation in landholding. Developer recognizes that the City entered into the Agreement and agreed to

convey the Property to Developer in reliance on the qualifications and identity of Developer, and that the qualifications of Developer are of particular concern to the City in view of the reliance by the City upon the unique qualifications and ability of Developer to develop, operate and manage the Property. The Agreement further provides that (i) except as permitted by the Agreement, prior to the issuance of final certificates of occupancy or equivalent for the Project, Developer shall not voluntarily or involuntarily make or attempt any total or partial sale, transfer, conveyance, assignment or lease of the whole or any part of the Property or the Project without the prior written approval of the City; and (ii) any transferee of all or part of the Property shall be subject to and shall expressly assume all of the covenants, obligations and restrictions of the Agreement which pertain to the portion of the Property transferred, including, without limitation, the provisions of the Regulatory Agreement.

5. Power of Termination. Subject to and in accordance with the procedures and provisions of Section 9.8 of the Agreement, the City has the right, at its option, to re-enter and take possession of the Property, or portion thereof, with all Improvements thereon, and revert in the City the estate conveyed to Developer, in the event of a default arising under and specifically described in Section 9.8 of the Agreement.

6. Option to Repurchase. Subject to and in accordance with the procedures and provisions of Section 9.9 of the Agreement, the City has the right, at its option, to purchase and take possession of the Property, or portion thereof, with all Improvements thereon, and revert in the City the estate conveyed to Developer, in the event of a default arising under and specifically described in Section 9.9 of the Agreement.

7. Agreement Controls. The Parties have executed and recorded this instrument to give notice of the Agreement and the respective rights of the Parties thereunder. Copies of the unrecorded Agreement are available at the offices of the City, 333 90th Street Daly City, CA 94015, and such document is incorporated by reference in its entirety in this Memorandum. This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the Agreement. In the event of any inconsistency between this Memorandum and the Agreement, the Agreement shall control.

8. Interpretation; Counterparts. This Memorandum shall be interpreted and enforced in accordance with California law without regard to principles of conflict of laws. This Memorandum may be executed in counterparts, each of which shall be an original and all of which together shall constitute one instrument.

9. Binding Effect. The Agreement shall bind and inure to the benefit of the Parties and their respective successors and assigns, subject to the provisions of the Agreement concerning assignment.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum as of the date first set forth above.

CITY:

CITY OF DALY CITY, a municipal corporation

By: _____
Shawna Maltbie, City Manager

ATTEST:

K. Annette Hipona, City Clerk

APPROVED AS TO FORM:

Rose Zimmerman, City Attorney

DEVELOPER:

EQR-HILLSIDE II LP, a Delaware
limited partnership

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

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

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

By: _____

Name: _____

Its: _____

SIGNATURES MUST BE NOTARIZED.

ACKNOWLEDGMENT

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)
) ss
County of _____)

On _____, before me, _____,
(Name of Notary)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

(Notary Signature)

ACKNOWLEDGMENT

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)
) ss
County of _____)

On _____, before me, _____,
(Name of Notary)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

(Notary Signature)

EXHIBIT A

PROPERTY

(Attach legal description.)

Exhibit G

GRANT DEED
(Attach form of Grant Deed.)

DRAFT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

EQR-Hillside II LP
c/o Equity Residential
Two North Riverside Plaza, Suite 400
Chicago, IL 60606
Attention: Tiffany Higgins

MAIL TAX STATEMENTS TO:

EQR-R.E. Tax Department
P.O. Box 87407 (Ledger No. ____)
Chicago, IL 60680

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

THE UNDERSIGNED GRANTOR DECLARES:

DOCUMENTARY TRANSFER TAX IS \$ _____

- ☒ Computed on full value of property conveyed, or
☐ Computed on full value less liens and encumbrances remaining at time of sale.
☐ Unincorporated area ☒ City of Daly City

GRANT DEED

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City of Daly City, a California municipal corporation (the "**Grantor**") hereby grants and conveys to EQR-Hillside II LP, a Delaware limited partnership (the "**Grantee**"), the real property (the "**Property**") located at 6401 Mission Street in the City of Daly City, County of San Mateo, California, known as San Mateo County Assessor's Parcel No. 003-224-100, and more particularly described in Exhibit A attached hereto and incorporated in this grant deed ("**Grant Deed**") by this reference. This Grant Deed is made and accepted subject to the matters listed on Exhibit B attached hereto and incorporated herein by this reference.

1. Development Requirements. The Property is conveyed subject to that certain Disposition and Development Agreement entered into by and between the Grantor and Grantee, dated as of _____, 2020 (the "**Agreement**"). The Grantor and the Grantee have executed a Memorandum of the Agreement dated as of the date hereof (the "**Memorandum**") which will be recorded in the Official Records of San Mateo County ("**Official Records**") substantially concurrently herewith.
2. Development of Improvements. The Grantee hereby acknowledges and agrees, for itself and its successors and assigns, that the Property is being conveyed to Grantee in accordance with and subject to the requirements of the Agreement, including without limitation in accordance with the provisions of the Agreement that specify the required number of residential units to be constructed on the Property and the time period within

which construction of such improvements (the "**Improvements**") must be completed, as such time period may be extended pursuant to the terms of the Agreement. The Property is conveyed subject to the requirements of that certain Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants that will be recorded substantially concurrently herewith (the "**Regulatory Agreement**").

3. **Non-Discrimination.** Grantee 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. Grantee covenants for itself and all persons claiming under or through it, and this Grant Deed 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 Grantee or any person claiming under or through Grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property or part thereof.

4. **Duration of Covenants.** The covenants against discrimination contained in Section 3 shall remain in effect in perpetuity.

5. **Mortgagee Protection.** No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument permitted by the Agreement; provided, however, that any successor of Grantee to the Property and Improvements shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

6. **Binding on Successors.** The covenants contained in Sections 3 of this Grant Deed, without regard to technical or legal classification or designation specified in this Grant Deed or otherwise, shall to the fullest extent permitted by law and equity, be binding upon Grantee and any successor in interest to the Property and Improvements or any part thereof, for the benefit of Grantor, and its successors and assigns, and such covenants shall run in favor of and be enforceable by the Grantor and its successors and assigns for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. In the event of any breach of any of such covenants, the Grantor and its successors and assigns shall have the right to exercise all rights and remedies available under law or in equity to enforce the curing of such breach.

7. **Amendments.** Only the Grantor, its successors and assigns, and the Grantee and the successors and assigns of the Grantee in and to all or any part of the fee title to the Property and Improvements shall have the right to consent and agree to changes or to eliminate in

whole or in part any of the covenants contained in this Grant Deed. For purposes of this Section, successors and assigns of the Grantee shall be defined to include only those parties who hold all or any part of the Property and Improvements in fee title, and shall not include a tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under deed of trust, or any other person or entity having an interest less than a fee in the Property and Improvements.

8. Conflict Among Documents. In the event there is a conflict between the provisions of this Grant Deed and the Agreement, it is the intent of the parties that the Agreement shall control.

9. Grantee's Acknowledgement. By its execution of this Grant Deed, Grantee has acknowledged and accepted the provisions hereof.

10. Counterparts. This Grant Deed may be executed in counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument.

SIGNATURES ON FOLLOWING PAGES.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Grant Deed as of _____, 20__.

GRANTOR:

CITY OF DALY CITY, a municipal corporation

By: _____
Shawwna Maltbie, City Manager

ATTEST:

K. Annette Hipona, City Clerk

APPROVED AS TO FORM:

Rose Zimmerman, City Attorney

GRANTEE:

EQR-HILLSIDE II LP, a Delaware
limited partnership

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

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

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

By: _____

Name: _____

Its: _____

SIGNATURES MUST BE NOTARIZED.

ACKNOWLEDGMENT

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)
) ss
County of _____)

On _____, before me, _____,
(Name of Notary)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

(Notary Signature)

ACKNOWLEDGMENT

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)
) ss
County of _____)

On _____, before me, _____,
(Name of Notary)

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

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

WITNESS my hand and official seal.

(Notary Signature)

Exhibit H

LEASES AND SERVICE CONTRACTS

Leases:

Service Contracts:

DRAFT

Exhibit I

DESCRIPTION OF PUBLICLY ACCESSIBLE OPEN SPACE
(Attach Description of Publicly Accessible Open Space.)

DRAFT

Description of Publicly Accessible Open Space[illegible]

Exhibit J

FORM OF ASSIGNMENT OF INTANGIBLE PROPERTY
(Attach Form of Assignment of Intangible Property.)

DRAFT

ASSIGNMENT OF INTANGIBLE PROPERTY

This Assignment of Intangible Property (this "Assignment") is executed and delivered as of _____, 20__ pursuant to that certain Disposition and Development Agreement (the "Agreement") dated _____, 2020, by and between the City of Daly City, California municipal corporation ("Assignor"), and EQR-Hillside II LP, a Delaware limited partnership ("Assignee"), covering the real property described in Exhibit A attached hereto (the "Real Property").

FOR VALUE RECEIVED, Assignor hereby conveys, assigns, transfers, and sets over unto Assignee all the right, title and interest of Assignor in and to any and all intangible property relating to the Real Property, including, without limitation: all licenses, approvals, authorizations, permits and entitlements issued by any governmental authority or otherwise now or hereafter in effect with respect to the Real Property; all warranties, indemnities and guaranties relating to the Real Property or any of the other Intangible Property described herein; all agreements relating to the development of the Real Property; all plans, specifications, maps, drawings and renderings relating to the Real Property; all development rights benefiting the Real Property; all rights to receive a reimbursement, credit or refund of any deposits or fees paid in connection with the Real Property; all claims, counterclaims, defenses or actions, whether at common law or pursuant to federal, state or local laws or regulations, against third parties relating to the existence of any Hazardous Materials in, at, on or under the Real Property; all rights as "declarant" under any covenants, conditions and restrictions affecting the Real Property; all contracts and agreements relating to services provided with respect to the Real Property; all of the foregoing being, collectively, the "Intangible Property"; provided, however, that the Intangible Property does not include any service contracts or other contracts or agreements except those listed on Exhibit B attached hereto (the "Assumed Contracts"). Assignee hereby assumes all of the obligations and liabilities arising after the date of this Assignment under the Assumed Contracts, if any. Assignor agrees that it will perform all of the obligations under, and be responsible for all of the liabilities arising under, the Assumed Contracts prior to the date of this Assignment.

This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns; shall be governed by and construed in accordance with the laws of the State of California applicable to agreements made and to be wholly performed within said State without regard to any choice of law principles; and may not be modified or amended in any manner other than by a written agreement signed by the party to be charged therewith. Venue for all court proceedings or alternative forms of dispute resolution proceedings shall be San Mateo County, California. In the event of any litigation or arbitration proceeding between Assignor and Assignee arising out of this Assignment, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in any such action. If any term or provision of this Assignment or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Assignment or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Assignment shall be valid and enforced to the fullest extent permitted by law.

This Assignment may be executed in counterparts, each of which shall be an original and all of which taken together shall constitute one and the same agreement; signatures may be delivered by facsimile transmission or by e-mail in portable document format (pdf) or another electronic format. In the event either party hereto now or hereafter shall consist of more than one person, firm, or corporation, then and in such event, all such persons, firms, or corporations shall be jointly and severally liable as parties under this Assignment.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment of Intangible Property as of _____, 20__, which instrument is effective as of such date.

ASSIGNOR

CITY OF DALY CITY, a municipal corporation

By: _____
Shawwna Maltbie, City Manager

ATTEST:

K. Annette Hipona, City Clerk

APPROVED AS TO FORM:

Rose Zimmerman, City Attorney

ASSIGNEE

EQR-HILLSIDE II LP, a Delaware limited partnership

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

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

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

By: _____

Name: _____

Its: _____

Exhibit "A" to Assignment of Intangible Property

REAL PROPERTY

(Attach legal description.)

Exhibit "B" to Assignment of Intangible Property

ASSUMED CONTRACTS

[Assumed Contracts to be Set Forth Prior to Execution if any]

1. Tenancy-In-Common Agreement dated as of February 24, 2011.

Exhibit A

PROPERTY

All that certain real property situated in the County of San Mateo, State of California, described as follows:

[insert legal description.]

Exhibit B

PERMITTED ENCUMBRANCES

[Attach description of permitted encumbrances.]

ASSIGNMENT OF INTANGIBLE PROPERTY

This Assignment of Intangible Property (this "Assignment") is executed and delivered as of _____, 20__ pursuant to that certain Disposition and Development Agreement (the "Agreement") dated _____, 2020, by and between the City of Daly City, California municipal corporation ("Assignor"), and EQR-Hillside II LP, a Delaware limited partnership ("Assignee"), covering the real property described in Exhibit A attached hereto (the "Real Property").

FOR VALUE RECEIVED, Assignor hereby conveys, assigns, transfers, and sets over unto Assignee all the right, title and interest of Assignor in and to any and all intangible property relating to the Real Property, including, without limitation: all licenses, approvals, authorizations, permits and entitlements issued by any governmental authority or otherwise now or hereafter in effect with respect to the Real Property; all warranties, indemnities and guaranties relating to the Real Property or any of the other Intangible Property described herein; all agreements relating to the development of the Real Property; all plans, specifications, maps, drawings and renderings relating to the Real Property; all development rights benefiting the Real Property; all rights to receive a reimbursement, credit or refund of any deposits or fees paid in connection with the Real Property; all claims, counterclaims, defenses or actions, whether at common law or pursuant to federal, state or local laws or regulations, against third parties relating to the existence of any Hazardous Materials in, at, on or under the Real Property; all rights as "declarant" under any covenants, conditions and restrictions affecting the Real Property; all contracts and agreements relating to services provided with respect to the Real Property; all of the foregoing being, collectively, the "Intangible Property"; provided, however, that the Intangible Property does not include any service contracts or other contracts or agreements except those listed on Exhibit B attached hereto (the "Assumed Contracts"). Assignee hereby assumes all of the obligations and liabilities arising after the date of this Assignment under the Assumed Contracts, if any. Assignor agrees that it will perform all of the obligations under, and be responsible for all of the liabilities arising under, the Assumed Contracts prior to the date of this Assignment.

This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns; shall be governed by and construed in accordance with the laws of the State of California applicable to agreements made and to be wholly performed within said State without regard to any choice of law principles; and may not be modified or amended in any manner other than by a written agreement signed by the party to be charged therewith. Venue for all court proceedings or alternative forms of dispute resolution proceedings shall be San Mateo County, California. In the event of any litigation or arbitration proceeding between Assignor and Assignee arising out of this Assignment, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in any such action. If any term or provision of this Assignment or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Assignment or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Assignment shall be valid and enforced to the fullest extent permitted by law.

This Assignment may be executed in counterparts, each of which shall be an original and all of which taken together shall constitute one and the same agreement; signatures may be delivered by facsimile transmission or by e-mail in portable document format (pdf) or another electronic format. In the event either party hereto now or hereafter shall consist of more than one person, firm, or corporation, then and in such event, all such persons, firms, or corporations shall be jointly and severally liable as parties under this Assignment.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment of Intangible Property as of _____, 20__, which instrument is effective as of such date.

ASSIGNOR

CITY OF DALY CITY, a municipal corporation

By: _____
Shawwna Maltbie, City Manager

ATTEST:

K. Annette Hipona, City Clerk

APPROVED AS TO FORM:

Rose Zimmerman, City Attorney

ASSIGNEE

EQR-HILLSIDE II LP, a Delaware limited partnership

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

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

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

By: _____

Name: _____

Its: _____

Exhibit "A" to Assignment of Intangible Property

REAL PROPERTY

(Attach legal description.)

Exhibit "B" to Assignment of Intangible Property

ASSUMED CONTRACTS

[Assumed Contracts to be Set Forth Prior to Execution if any]

1. Tenancy-In-Common Agreement dated as of February 24, 2011.

Exhibit K

ADDITIONAL PERMITTED TRANSFERS

(i) Transfers of direct or indirect interests in Developer, provided (A) after any such Transfer, Equity Residential, a Maryland real estate investment trust (the "**REIT**") (or any Permitted REIT Survivor (hereinafter defined)), holds, directly or indirectly, at least a 51% economic ownership interest in Developer and controls, directly or indirectly, management and decision making over Developer;

(ii) Transfer of shares of common stock, limited partnership interests or other beneficial or ownership interests or other forms of securities, directly or indirectly, in the REIT, a Permitted REIT Survivor, ERP Operating Partnership, an Illinois limited partnership (the "**Operating Partnership**"), or a Permitted OP Survivor (as defined below), and the issuance of all varieties of convertible debt, equity and other similar securities, directly or indirectly, of the REIT, Permitted REIT Survivor, Operating Partnership or Permitted OP Survivor, and the subsequent direct or indirect Transfer of such securities; provided, however, that in all events the REIT (or Permitted REIT Survivor) shall remain the sole trustee, sole general partner, managing general partner, sole member or sole managing member of the Operating Partnership (or Permitted OP Survivor);

(iii) The issuance by the REIT, Permitted REIT Survivor, Operating Partnership or Permitted OP Survivor of additional shares, limited partnership interests or other beneficial or ownership interests, convertible debt, preferred equity, equity and other similar securities, and the subsequent Transfer of such convertible debt, preferred equity or securities; provided, however, that in all events the REIT (or Permitted REIT Survivor) shall remain the sole trustee, sole general partner, managing general partner, sole member or sole managing member of the Operating Partnership (or Permitted OP Survivor);

(iv) (A) A merger or consolidation of the REIT or a Permitted REIT Survivor into another entity or of another entity into the REIT or a Permitted REIT Survivor, or (B) the reconstitution of the REIT or a Permitted REIT Survivor from one type of entity to another type of entity; provided, however, that if the REIT (including a Permitted REIT Survivor) is not the survivor of any such merger or consolidation between the REIT (including a Permitted REIT Survivor) and another entity, such merger, consolidation or reconstitution shall be permitted only if the net worth of the survivor in any such merger, consolidation, reorganization (a "**Permitted REIT Survivor**," which may not be a real estate investment trust) (calculated on a consistent basis) is, immediately following such merger, consolidation or reorganization, at least \$50,000,000; provided, however, that in all events the REIT (or Permitted REIT

Survivor) shall remain the sole trustee, sole general partner, managing general partner, sole member or sole managing member of the Operating Partnership (or Permitted OP Survivor) of the Operating Partnership (or Permitted OP Survivor);

(v) A merger or consolidation of the Operating Partnership or a Permitted OP Survivor into another entity or of another entity into the Operating Partnership or a Permitted OP Survivor, or the reconstitution of the Operating Partnership or a Permitted OP Survivor from one type of entity to another type of entity; provided, however, that if the Operating Partnership (including a Permitted OP Survivor) is not the survivor of any merger, consolidation or reorganization between the Operating Partnership (including a Permitted OP Survivor) and another entity, then the surviving entity in any such merger, consolidation or reorganization permitted by this clause (v), if Operating Partnership is not the surviving entity, is referred to as a "**Permitted OP Survivor**"; provided, however, that in all events the REIT (or Permitted REIT Survivor) shall remain the sole trustee, sole general partner, managing general partner, sole member or sole managing member of the Operating Partnership (or Permitted OP Survivor); and/or

(vi) the sale of all or substantially all of the assets of REIT (or a Permitted REIT Survivor) or the Operating Partnership (or a Permitted OP Survivor) to a single entity in a single transaction or series of related transactions (and such surviving entity shall also be deemed a Permitted REIT Survivor hereunder).

LEGAL DESCRIPTION

Real property in the City of Daly City, County of San Mateo, State of California, described as follows:

ALL OF LOT 2, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "LANDMARK PLAZA A SUBDIVISION FOR RESIDENTIAL AND RETAIL CONDOMINIUM PURPOSES LANDS OF LANDMARK DALY CITY, LLC AS DESCRIBED IN DOCUMENT NO. 2006-090082 AND DOCUMENT 2006-159625, OFFICIAL RECORDS OF SAN MATEO COUNTY, CITY OF DALY CITY, SAN MATEO COUNTY, CALIFORNIA", FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA ON JULY 10, 2008 IN BOOK 136 OF MAPS AT PAGES 46 & 47 INCLUSIVE.

APN: **003-224-100**



City Council Meeting Agenda Report

Item # _____

Meeting Date: January 27, 2020

Subject: ADOPTING RESOLUTION AUTHORIZING CITY'S PARTICIPATION IN THE STATEWIDE COMMUNITY INFRASTRUCTURE PROGRAM WITH THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY

Recommended Action

Staff recommends that the City Council adopt a Resolution authorizing the City's participation in the Statewide Community Infrastructure Program ("SCIP") with the California Statewide Communities Development Authority ("CSCDA") in order to enable property owners to finance public capital improvement and/or development impact fees imposed on new developments in the City.

Background

CSCDA is a joint powers authority sponsored by the League of California Cities and the California State Association of Counties. The member agencies of CSCDA include approximately 390 cities and 57 counties throughout California. SCIP was instituted by CSCDA to allow owners of property in participating cities to finance the development impact fees that would be payable by property owners upon receiving development entitlements or building permits.

The City desires to allow the owners of property being developed within its jurisdiction ("Participating Developers") to participate in SCIP and to allow the Authority to conduct assessment proceedings under the 1913 Act and to issue Local Obligations under the 1915 Act to finance Fees levied on such properties and Improvements, provided that such Participating Developers voluntarily agree to participate and consent to the levy of such assessments. The Point Martin Developer is specifically requesting the City's participation in the SCIP Program in order to facilitate the financing of development impact fees.

If a property owner chooses to participate, the selected public capital improvements and the development impact fees owed to the City will be financed by the issuance of tax-exempt bonds by CSCDA. CSCDA will impose a special assessment on the owner's property to repay the portion of the bonds issued to finance the fees paid with respect to the property. With respect to impact fees, the property owner will either pay the impact fees at the time of permit issuance and will be reimbursed from the SCIP bond proceeds when the SCIP bonds are issued; or the fees will be funded directly from the proceeds of the SCIP bonds. In the former case, the City is required to pay the fees over to SCIP, and in the latter case, SCIP holds the bond proceeds representing the fees. In both cases the fees are subject to requisition by the City *at any time* to make authorized fee expenditures. But by holding and investing the money until it is spent, SCIP can monitor the investment earnings (which come to the City) for federal tax law arbitrage purposes. SCIP encourages the City to spend those amounts *before* any other fee revenues of the City. If the fees are paid by the property owner and bonds are never issued, the fees are returned to the City by SCIP. In this way, the City is never at risk for the receipt of the impact fees. Since its inception, SCIP has financed approximately \$600 million of bonds for local projects.

City Council Agenda Report

Subject: ADOPTING RESOLUTION AUTHORIZING CITY'S PARTICIPATION IN THE STATEWIDE COMMUNITY INFRASTRUCTURE PROGRAM WITH THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY

Meeting Date: Page 2 of 3

The benefits to the property owner include:

- Only property owners who choose to participate in the program will have assessments imposed on their property.
- Instead of paying cash for public capital improvements and/or development impact fees, the property owner receives low-cost, long-term tax-exempt financing of those fees, freeing up capital for other purposes.
- The property owner can choose to pay off the special assessments at any time. Because SCIP is a fixed lien assessment payments will not escalate over time and no property owner is in any way responsible for another properties assessment.
- For home buyers, paying for the costs of public infrastructure through a special assessment is superior to having those costs “rolled” into the cost of the home. Although the tax bill is higher, the amount of the mortgage is smaller. Moreover, because the special assessment financing is at tax-exempt rates, it can come at a lower cost than mortgage rates.
- Owners of smaller projects, both residential and commercial, can have access to tax-exempt financing of infrastructure. Before the inception of SCIP, only projects large enough to justify the formation of an assessment or communities facilities district had access to tax-exempt financing. SCIP can finance project amounts as low as \$500,000.

The benefits to the City include:

- As in conventional assessment financing, the City is not liable to repay the bonds issued by CSCDA or the assessments imposed on the participating properties.
- CSCDA handles all district formation, district administration, bond issuance and bond administration functions. A participating county can provide tax-exempt financing to property owners through SCIP while committing very little staff time to administer the program. At its discretion, the local agency can charge an administrative fee to cover staff time taken to review the SCIP application and request for funding.
- Providing tax-exempt financing helps participating cities and counties cushion the impact of rising public capital improvements costs and development impact fees on property owners.
- The availability of financing can encourage developers to pull permits and pay fees in larger blocks, giving the participating city immediate access to revenues for public infrastructure, rather than receiving a trickle of revenues stretched out over time. As part of the entitlement negotiation process, the possibility of tax-exempt financing of fees can be used to encourage a developer to pay fees up front.
- In some cases, the special assessments on successful projects can be refinanced through refunding bonds. Savings achieved through refinancing will be directed back to the participating county for use on public infrastructure, or credits to property owners, subject to applicable federal tax limitations.
- SCIP is an important tool for developers in determining the overall feasibility of a project and in certain instances the decision to purchase land.

City Council Agenda Report

Subject: ADOPTING RESOLUTION AUTHORIZING CITY'S PARTICIPATION IN THE STATEWIDE COMMUNITY INFRASTRUCTURE PROGRAM WITH THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY

Meeting Date: Page 3 of 3

The proposed resolution authorizes CSCDA to accept applications from owners of property within our planning jurisdiction to apply for tax-exempt financing of public capital improvements and development impact fees through SCIP. It also authorizes CSCDA to form assessment districts within our City's boundaries, conduct assessment proceedings and levy assessments against the property of participating owners. It approves the form of an Acquisition Agreement, attached to the resolution as Exhibit B, to be entered into between the City and the participating property owner/developer, if applicable, to provide the terms and conditions under which financing for public capital improvements will be provided and to establish the procedure for disbursement of bond proceeds to pay for completed facilities. It also authorizes miscellaneous related actions and makes certain findings and determinations required by law.

Summary/Conclusion

Staff recommends that the City Council adopt a Resolution authorizing the the City's participation in the Statewide Community Infrastructure Program ("SCIP") with the California Statewide Communities Development Authority ("CSCDA") in order to enable property owners to finance to finance public capital improvement and/or development impact fees imposed on new developments in the City.

Staff is available to provide any additional information desired by the Mayor or Councilmembers.

Respectfully submitted,



Rose Zimmerman
City Attorney



Tatum Mothershead
Director, Economic and Community
Development

Attachment: Draft Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DALY CITY
AUTHORIZING THE CITY TO JOIN THE STATEWIDE COMMUNITY
INFRASTRUCTURE PROGRAM; AUTHORIZING THE CALIFORNIA STATEWIDE
COMMUNITIES DEVELOPMENT AUTHORITY TO ACCEPT APPLICATIONS FROM
PROPERTY OWNERS, CONDUCT SPECIAL ASSESSMENT PROCEEDINGS AND LEVY
ASSESSMENTS WITHIN THE TERRITORY OF THE CITY OF DALY CITY;
APPROVING FORM OF ACQUISITION AGREEMENT FOR USE WHEN APPLICABLE;
AND AUTHORIZING RELATED ACTIONS

WHEREAS, the California Statewide Communities Development Authority (the “Authority”) is a joint exercise of powers authority the members of which include numerous cities and counties in the State of California, including the City of Daly City (the “City”); and

WHEREAS, the Authority has established the Statewide Community Infrastructure Program (“SCIP”) to allow the financing of certain development impact fees (the “Fees”) levied in accordance with the Mitigation Fee Act (California Government Code Sections 66000 and following) and other authority providing for the levy of fees on new development to pay for public capital improvements (collectively, the “Fee Act”) through the levy of special assessments pursuant to the Municipal Improvement Act of 1913 (Streets and Highways Code Sections 10000 and following) (the “1913 Act”) and the issuance of improvement bonds (the “Local Obligations”) under the Improvement Bond Act of 1915 (Streets and Highways Code Sections 8500 and following) (the “1915 Act”) upon the security of the unpaid special assessments; and

WHEREAS, SCIP will also allow the financing of certain public capital improvements to be constructed by or on behalf of property owners for acquisition by the City or another public agency (the “Improvements”); and

WHEREAS, the City desires to allow the owners of property being developed within its jurisdiction (“Participating Developers”) to participate in SCIP and to allow the Authority to conduct assessment proceedings under the 1913 Act and to issue Local Obligations under the 1915 Act to finance Fees levied on such properties and Improvements, provided that such Participating Developers voluntarily agree to participate and consent to the levy of such assessments; and

WHEREAS, in each year in which eligible property owners within the jurisdiction of the City elect to be Participating Developers, the Authority will conduct assessment proceedings under the 1913 Act and issue Local Obligations under the 1915 Act to finance Fees payable by such property owners and Improvements and, at the conclusion of such proceedings, will levy special assessments on such property within the territory of the City;

WHEREAS, there has been presented to this meeting a proposed form of Resolution of Intention to be adopted by the Authority in connection with such assessment proceedings (the “ROI”), a copy of which is attached hereto as Exhibit A, and the territory within which assessments may be levied for SCIP (provided that each Participating Developer consents to

such assessment) shall be coterminous with the City's official boundaries of record at the time of adoption of each such ROI (the "Proposed Boundaries"), and reference is hereby made to such boundaries for the plat or map required to be included in this Resolution pursuant to Section 10104 of the Streets and Highways Code; and

WHEREAS, there has also been presented to this meeting a proposed form of Acquisition Agreement (the "Acquisition Agreement"), a copy of which is attached hereto as Exhibit B, to be approved as to form for use with respect to any Improvements to be constructed and installed by a Participating Developer and for which the Participating Developer requests acquisition financing as part of its SCIP application; and

WHEREAS, the City will not be responsible for the conduct of any assessment proceedings; the levy or collection of assessments or any required remedial action in the case of delinquencies in such assessment payments; or the issuance, sale or administration of the Local Obligations or any other bonds issued in connection with SCIP; and

WHEREAS, pursuant to Government Code Section 6586.5, notice was published at least five days prior to the adoption of this resolution at a public hearing, which was duly conducted by this Council concerning the significant public benefits of SCIP and the financing of the Improvements and the public capital improvements to be paid for with the proceeds of the Fees;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Daly City as follows:

Section 1. The City hereby consents to the conduct of special assessment proceedings by the Authority in connection with SCIP pursuant to the 1913 Act and the issuance of Local Obligations under the 1915 Act on any property within the Proposed Boundaries; provided, that

(1) Such proceedings are conducted pursuant to one or more Resolutions of Intention in substantially the form of the ROI; and

(2) The Participating Developers, who shall be the legal owners of such property, execute a written consent to the levy of assessment in connection with SCIP by the Authority and execute an assessment ballot in favor of such assessment in compliance with the requirements of Section 4 of Article XIID of the State Constitution.

Section 2. The City hereby finds and declares that the issuance of bonds by the Authority in connection with SCIP will provide significant public benefits, including without limitation, savings in effective interest rate, bond preparation, bond underwriting and bond issuance costs and the more efficient delivery of local agency services to residential and commercial development within the City.

Section 3. The Authority has prepared and will update from time to time the "SCIP Manual of Procedures" (the "Manual"), and the City will handle Fee revenues and funds for Improvements for properties participating in SCIP in accordance with the procedures set forth in the Manual.

Section 4. The form of Acquisition Agreement presented to this meeting is hereby approved, and the [Mayor] is authorized to execute and the City Clerk is authorized to attest the execution of a completed Acquisition Agreement in substantially said form and pertaining to the Improvements being financed on behalf of the applicable Participating Developer.

Section 5. The appropriate officials and staff of the City are hereby authorized and directed to make SCIP applications available to all property owners who are subject to Fees for new development within the City and/or who are conditioned to install Improvements and to inform such owners of their option to participate in SCIP; provided, that the Authority shall be responsible for providing such applications and related materials at its own expense. The staff persons listed on the attached Exhibit C, together with any other staff persons chosen by the City Manager from time to time, are hereby designated as the contact persons for the Authority in connection with the SCIP program.

Section 6. The appropriate officials and staff of the City are hereby authorized and directed to execute and deliver such closing certificates, requisitions, agreements and related documents, including but not limited to such documents as may be required by Bond Counsel in connection with the participation in SCIP of any districts, authorities or other third-party entities entitled to own Improvements and/or to levy and collect fees on new development to pay for public capital improvements within the jurisdiction of the City, as are reasonably required by the Authority in accordance with the Manual to implement SCIP for Participating Developers and to evidence compliance with the requirements of federal and state law in connection with the issuance by the Authority of the Local Obligations and any other bonds for SCIP. To that end, and pursuant to Treasury Regulations Section 1.150-2, the staff persons listed on Exhibit C, or other staff person acting in the same capacity for the City with respect to SCIP, are hereby authorized and designated to declare the official intent of the City with respect to the public capital improvements to be paid or reimbursed through participation in SCIP.

Section 7. This Resolution shall take effect immediately upon its adoption. The City Clerk is hereby authorized and directed to transmit a certified copy of this resolution to the Secretary of the Authority.

I hereby certify the foregoing to be a true copy of a Resolution adopted by the City Council of Daly City, California, at a regular meeting thereof held on the _____ day of _____, 2020, by the following vote of the members thereof:

AYES, and in favor thereof, Councilmembers: _____

NOES, Councilmembers: _____

Absent, Councilmembers: _____

CITY CLERK OF THE CITY OF DALY CITY

APPROVED:

MAYOR OF THE CITY OF DALY CITY

* * *

EXHIBIT A TO THE RESOLUTION

FORM OF RESOLUTION OF INTENTION
TO BE ADOPTED BY CSCDA

RESOLUTION NO. __ SCIP-

**RESOLUTION OF INTENTION OF THE CALIFORNIA STATEWIDE
COMMUNITIES DEVELOPMENT AUTHORITY TO FINANCE CAPITAL
IMPROVEMENTS AND/OR THE PAYMENT OF DEVELOPMENT IMPACT
FEES FOR PUBLIC CAPITAL IMPROVEMENTS IN THE PROPOSED
STATEWIDE COMMUNITY INFRASTRUCTURE PROGRAM ASSESSMENT
DISTRICT NO. __ (CITY OF DALY CITY, COUNTY OF SAN MATEO,
CALIFORNIA), APPROVING A PROPOSED BOUNDARY MAP, MAKING
CERTAIN DECLARATIONS, FINDINGS AND DETERMINATIONS
CONCERNING RELATED MATTERS, AND AUTHORIZING RELATED
ACTIONS IN CONNECTION THEREWITH**

WHEREAS, under the authority of the Municipal Improvement Act of 1913 (the “1913 Act”), being Division 12 (commencing with Sections 10000 and following) of the California Streets and Highways Code (the “Code”), the Commission (the “Commission”) of the California Statewide Communities Development Authority (the “Authority”) intends to finance, through its Statewide Community Infrastructure Program, the payment of certain development impact fees for public improvements (the “Improvement Fees”) and/or to finance certain public capital improvements to be constructed by or on behalf of the property owner(s) and to be acquired by the City of Daly City or another local agency (the “Improvements”) as described in Exhibit A attached hereto and by this reference incorporated herein, all of which are of benefit to the property within the proposed Statewide Community Infrastructure Program Assessment District No. __ (City of Daly City, County of San Mateo, California) (the “Assessment District”);

WHEREAS, the Commission finds that the land specially benefited by the Improvements and/or the Improvement Fees is shown within the boundaries of the map entitled “Proposed Boundaries of California Statewide Communities Development Authority Statewide Community Infrastructure Program Assessment District No. __ (City of Daly City, County of San Mateo,) State of California,” a copy of which map is on file with the Secretary and presented to this Commission meeting, and determines that the land within the exterior boundaries shown on the map shall be designated “Statewide Community Infrastructure Program Assessment District No. __ (City of Daly City, County of San Mateo,) State of California”;

WHEREAS, the City of Daly City is a member of the Authority and has approved the adoption on its behalf of this Resolution of Intention and has consented to the levy of the assessments in the Assessment District;

NOW, THEREFORE, BE IT RESOLVED that the Commission of the California Statewide Communities Development Authority hereby finds, determines and resolves as follows:

Section 1. The above recitals are true and correct.

Section 2. Pursuant to Section 2961 of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (the "1931 Act"), being Division 4 (commencing with Section 2800) of the Code, the Commission hereby declares its intent to comply with the requirements of the 1931 Act by complying with Part 7.5 thereof.

Section 3. The Commission has designated a registered, professional engineer as Engineer of Work for this project, and hereby directs said firm to prepare the report containing the matters required by Sections 2961(b) and 10204 of the Code, as supplemented by Section 4 of Article XIII D of the California Constitution.

Section 4. The proposed boundary map of the Assessment District is hereby approved and adopted. Pursuant to Section 3111 of the Code, the Secretary of the Authority is directed to file a copy of the map in the office of the County Recorder of the County of San Mateo within fifteen (15) days of the adoption of this resolution.

Section 5. The Commission determines that the cost of financing the Improvements and/or the payment of the Improvement Fees shall be specially assessed against the lots, pieces or parcels of land within the Assessment District benefiting from the financing of the Improvements and/or the payment of the Improvement Fees. The Commission intends to levy a special assessment upon such lots, pieces or parcels in accordance with the special benefit to be received by each such lot, piece or parcel of land, respectively, from the financing of the Improvements and/or the payment of the Improvement Fees.

Section 6. The Commission intends, pursuant to subparagraph (f) of Section 10204 of the Code, to provide for an annual assessment upon each of the parcels of land in the proposed Assessment District to pay various costs and expenses incurred from time to time by the Authority and not otherwise reimbursed to the Authority which result from the administration and collection of assessment installments or from the administration or registration of the improvement bonds and the various funds and accounts pertaining thereto.

Section 7. Bonds representing unpaid assessments, and bearing interest at a rate not to exceed twelve percent (12%) per annum, will be issued in the manner provided by the Improvement Bond Act of 1915 (Division 10 of the Code), and the last installment of the bonds shall mature not to exceed twenty-nine (29) years from the second day of September next succeeding twelve (12) months from their date.

Section 8. The procedure for the collection of assessments and advance retirement of bonds under the Improvement Bond Act of 1915 shall be as provided in Part 11.1 thereof.

Section 9. Neither the Authority nor any member agency thereof will obligate itself to advance available funds from its or their own funds or otherwise to cure any deficiency which may occur in the bond redemption fund. A determination not to obligate itself shall not prevent the Authority or any such member agency from, in its sole discretion, so advancing funds.

Section 10. The amount of any surplus remaining in the improvement fund after acquisition of the Improvements and/or payment of Improvement Fees and all other claims shall be distributed in accordance with the provisions of Section 10427.1 of the Code.

Section 11. To the extent any Improvement Fees are paid to the Authority in cash with respect to property within the proposed Assessment District prior to the date of issuance of the bonds, the amounts so paid shall be reimbursed from the proceeds of the bonds to the property owner or developer that made the payment.

PASSED AND ADOPTED by the California Statewide Communities Development Authority
this ____ day of _____, 20__.

I, the undersigned, an Authorized Signatory of the California Statewide Communities Development Authority, DO HEREBY CERTIFY that the foregoing resolution was duly adopted by the Commission of the Authority at a duly called meeting of the Commission of the Authority held in accordance with law on _____, 20__.

By _____
Authorized Signatory
California Statewide Communities
Development Authority

EXHIBIT A TO THE RESOLUTION OF INTENTION

DESCRIPTION OF WORK

The payment of development impact fees levied within the Assessment District and/or public capital improvements to be acquired and owned by the City of Daly City or another local agency upon or for the benefit of parcels within the Assessment District, for the project known as [Project Name], which are authorized to be financed pursuant to the Municipal Improvement Act of 1913 and as to which the owners of the applicable parcels within the Assessment District have applied for participation in SCIP, as more particularly described below.

PAYMENT OF IMPACT FEES

CAPITAL IMPROVEMENTS*

**Capital improvements includes funding for incidental costs associated with the capital improvements, including but not limited to, contingency, design, engineering, and construction management*

[End of Form of Resolution of Intention]

EXHIBIT B TO THE RESOLUTION
FORM OF ACQUISITION AGREEMENT

CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY
STATEWIDE COMMUNITY INFRASTRUCTURE PROGRAM

ACQUISITION AGREEMENT

BY AND BETWEEN

CITY OF DALY CITY

AND

[DEVELOPER]

Dated as of _____, 20__

ACQUISITION AGREEMENT

Recitals

A. The parties to this Acquisition Agreement (the “Agreement”) are the CITY OF DALY CITY, (the “Local Agency”), and [DEVELOPER], a [here indicate type of legal entity] (the “Developer”).

B. The effective date of this Agreement is _____, 20__.

C. The Developer has applied for financing of certain public capital improvements (the “Acquisition Improvements”) and capital facilities fees through the Statewide Community Infrastructure Program (“SCIP”) administered by the California Statewide Communities Development Authority (the “Authority”) and such application has been approved by the Local Agency.

D. The administration, payment and reimbursement of the capital facilities fees is agreed to be governed by the provisions of the SCIP Manual of Procedures as it may be amended from time to time. The administration, payment and reimbursement of the Acquisition Improvements shall be as provided herein.

E. Under SCIP, the Authority intends to issue bonds to fund, among other things, all or a portion of the costs of the Acquisition Improvements, and the portion of the proceeds of such bonds allocable to the cost of the Acquisition Improvements to be constructed and installed by the Developer, together with interest earned thereon prior to such acquisition, is referred to herein as the “Available Amount”.

F. SCIP will provide financing for the acquisition by the Local Agency of the Acquisition Improvements and the payment of the Acquisition Price (as defined herein) of the Acquisition Improvements from the Available Amount. Attached hereto as Exhibit A are descriptions of the Acquisition Improvements, which descriptions are subject to modification by written amendment of this Agreement, subject to the approval of the Authority.

G. The parties anticipate that, upon completion of the Acquisition Improvements and subject to the terms and conditions of this Agreement, the Local Agency will acquire such completed Acquisition Improvements with the Available Amount.

H. Any and all monetary obligations of the Local Agency arising out of this Agreement are the special and limited obligations of the Local Agency payable only from the Available Amount, and no other funds whatsoever of the Local Agency shall be obligated therefor.

I. In consideration of Recitals A through H, inclusive, and the mutual covenants, undertakings and obligations set forth below, the Local Agency and the Developer agree as stated below.

Agreement

ARTICLE I

DEFINITIONS; ASSESSMENT DISTRICT FORMATION AND FINANCING PLAN

Section 1.01. Definitions. As used herein, the following capitalized terms shall have the meanings ascribed to them below:

“Acceptable Title” means free and clear of all monetary liens, encumbrances, assessments, whether any such item is recorded or unrecorded, and taxes, except those items which are reasonably determined by the Local Agency Engineer in his sole discretion not to interfere with the intended use and therefore are not required to be cleared from the title.

“Acquisition Improvements” shall have the meaning assigned to such term in Recital C and are described in Exhibit A.

“Acquisition Price” means the amount paid to the Developer upon acquisition of all of the Acquisition Improvements as provided in Section 2.03.

“Actual Cost” means the cost of construction of all of the Acquisition Improvements, as documented by the Developer to the satisfaction of the Local Agency, as certified by the Local Agency Engineer in an Actual Cost Certificate.

“Actual Cost Certificate” shall mean a certificate prepared by the Developer detailing the Actual Cost of all of the Acquisition Improvement to be acquired hereunder, as revised by the Local Agency Engineer pursuant to Section 2.03.

“Agreement” means this Acquisition Agreement, dated as of _____, 20__.

“Assessment District” means the assessment district established by the Authority pursuant to SCIP which includes the Developer's property for which the Acquisition Improvements are being funded.

“Authority” means the California Statewide Communities Development Authority.

“Available Amount” means the amount of funds deposited in the Developer Acquisition Account by the Authority pursuant to SCIP, together with any interest earnings thereon.

“Code” means the Streets and Highways Code of the State of California.

“Developer” means [Developer], a [here indicate type of legal entity].

“[Developer] Acquisition Account” means the account by that name established by the Authority pursuant to SCIP for the purpose of paying the Acquisition Price of the Acquisition Improvements.

“Local Agency” means the City of Daly City.

“Local Agency Engineer” means the Director of Public Works of the Local Agency (the “Director”) or the designee of the Director, who will be responsible for administering the acquisition of the Acquisition Improvements hereunder.

“Project” means the land development program of the Developer pertaining to the Developer’s property in the Assessment District, including the design and construction of the Acquisition Improvements and the other public and private improvements to be constructed by the Developer within or adjacent to the Assessment District.

“SCIP” means the Statewide Community Infrastructure Program of the Authority.

“SCIP Requisition” means a requisition for payment of funds from the [Developer] Acquisition Account in substantially the form attached hereto as Exhibit B.

“SCIP Trust Agreement” means the Trust Agreement entered into by the Authority and the SCIP Trustee in connection with the financing for the Acquisition Improvements.

“SCIP Trustee” means Wilmington Trust, National Association, as trustee under the SCIP Trust Agreement.

“Title Documents” means, for each Acquisition Improvement acquired hereunder, a grant deed or similar instrument necessary to transfer title to any real property or interests therein (including easements) necessary or convenient to the operation, maintenance, rehabilitation and improvement by the Local Agency of that Acquisition Improvement (including, if necessary, easements for ingress and egress) and a Bill of Sale or similar instrument evidencing transfer of title to that Acquisition Improvement (other than said real property interests) to the Local Agency, where applicable.

Section 1.02. Participation in SCIP. Developer has applied for financing through SCIP of the Acquisition Improvements, and such application has been approved by the Local Agency. Developer and Local Agency agree that until and unless such financing is completed by the Authority and the Available Amount is deposited in the Developer Acquisition Account, neither the Developer nor the Local Agency shall have any obligations under this agreement. Developer agrees to cooperate with the Local Agency and the Authority in the completion of SCIP financing for the Acquisition Improvements.

Section 1.03. Deposit and Use of Available Amount.

(a) Upon completion of the SCIP financing, the Available Amount will be deposited by the Authority in the [Developer] Acquisition Account.

(b) The Authority will cause the SCIP Trustee to establish and maintain the [Developer] Acquisition Account for the purpose of holding all funds for the Acquisition Improvements. All earnings on amounts in the [Developer] Acquisition Account shall remain in the [Developer] Acquisition Account for use as provided herein and pursuant to SCIP. The amounts in the [Developer] Acquisition Account shall be withdrawn by the Local Agency in

accordance with SCIP procedures upon completion of the Acquisition Improvements within 30 days (or as soon thereafter as reasonably practicable) of receipt by the Local Agency of the certification of the Local Agency Engineer required by Section 2.03 of this Agreement, and subject to satisfaction of all other conditions precedent to such acquisition pursuant to Section 2.04 of this Agreement, to pay the Acquisition Price of such completed Acquisition Improvements, as specified in Article II hereof. Upon completion of all of the Acquisition Improvements and the payment of all costs thereof, any remaining funds in the [Developer] Acquisition Account (less any amount determined by the Local Agency as necessary to reserve for claims against such account) (i) shall be applied to pay the costs of any additional improvements eligible for acquisition with respect to the Project as approved by the Authority and, to the extent not so used, thereafter (ii) shall be applied by the Authority as provided in Section 10427.1 of the Code to pay a portion of the assessments levied on the Project property in the Assessment District.

Section 1.04. No Local Agency Liability; Local Agency Discretion; No Effect on Other Agreements. In no event shall any actual or alleged act by the Local Agency or any actual or alleged omission or failure to act by the Local Agency with respect to SCIP subject the Local Agency to monetary liability therefor. Further, nothing in this Agreement shall be construed as affecting the Developer's or the Local Agency's duty to perform their respective obligations under any other agreements, public improvement standards, land use regulations or subdivision requirements related to the Project, which obligations are and shall remain independent of the Developer's and the Local Agency's rights and obligations under this Agreement.

ARTICLE II

DESIGN, CONSTRUCTION AND ACQUISITION OF ACQUISITION IMPROVEMENTS

Section 2.01. Letting and Administering Design Contracts. The parties presently anticipate that the Developer has awarded and administered or will award and administer engineering design contracts for the Acquisition Improvements to be acquired from Developer. All eligible expenditures of the Developer for design engineering and related costs in connection with the Acquisition Improvements (whether as an advance to the Local Agency or directly to the design consultant) shall be reimbursed at the time of acquisition of such Acquisition Improvements. The Developer shall be entitled to reimbursement for any design costs of the Acquisition Improvements only out of the Acquisition Price as provided in Section 2.03 and shall not be entitled to any payment for design costs independent of or prior to the acquisition of Acquisition Improvements.

Section 2.02. Letting and Administration of Construction Contracts. State law requires that all Acquisition Improvements shall be constructed as if they were constructed under the direction and supervision of the Local Agency. In order to assure compliance with those provisions, except for any contracts entered into prior to the date hereof, Developer agrees to comply with the guidelines of the Local Agency for letting and administering said contracts. The Developer agrees that all such contracts shall call for payment of prevailing wages as required by the Labor Code of the State of California.

Section 2.03. Sale of Acquisition Improvements. The Developer agrees to sell to the Local Agency the Acquisition Improvements to be constructed by Developer (including any rights-of-way or other easements necessary for the operation and maintenance of the Acquisition Improvements, to the extent not already publicly owned) when such Acquisition Improvements are completed to the satisfaction of the Local Agency for an amount not to exceed the lesser of (i) the Available Amount or (ii) the Actual Cost of the Acquisition Improvements. Exhibit A, attached hereto and incorporated herein, contains a list of each Acquisition Improvement. At the time of completion of each Acquisition Improvement, the Developer shall deliver to the Local Agency Engineer a written request for acquisition, accompanied by an Actual Cost Certificate and executed Title Documents for the transfer of the Acquisition Improvement, where necessary. In the event that the Local Agency Engineer finds that the supporting paperwork submitted by the Developer fails to demonstrate the required relationship between the subject Actual Cost and the related Acquisition Improvement, the Local Agency Engineer shall advise the Developer that the determination of the Actual Cost (or the ineligible portion thereof) has been disallowed and shall request further documentation from the Developer. If such further documentation is still not adequate, the Local Agency Engineer may revise the Actual Cost Certificate to delete any disallowed items, and such determination shall be final and conclusive.

In the event that the Actual Cost is in excess of the Available Amount, the Local Agency shall withdraw the Available Amount from the [Developer] Acquisition Account and transfer said amount to the Developer. In the event that the Actual Cost is less than the Available Amount, the Local Agency shall withdraw an amount from the [Developer] Acquisition Account equal to the Actual Cost, and shall transfer said amount to the Developer. Any amounts then remaining in the [Developer] Acquisition Account shall be applied as provided in Section 1.03.

In no event shall the Local Agency be required to pay the Developer more than the amount on deposit in the [Developer] Acquisition Account at the time such payment is requested.

Section 2.04. Conditions Precedent to Payment of Acquisition Price. Payment by the Local Agency to the Developer from the [Developer] Acquisition Account of the Acquisition Price for an Acquisition Improvement shall be conditioned first upon the determination of the Local Agency Engineer, pursuant to Section 2.03, that such Acquisition Improvement is all complete and ready for acceptance by the Local Agency, and shall be further conditioned upon prior satisfaction of the following additional conditions precedent:

(a) The Developer shall have provided the Local Agency with lien releases or other similar documentation satisfactory to the Local Agency as evidence that the property which is subject to the special assessment liens of the Assessment District is not subject to any prospective mechanics lien claim respecting the Acquisition Improvements.

(b) All due and payable property taxes, and installments of special assessments shall be current on property owned by the Developer or under option to the Developer that is subject to the special assessment liens of the Assessment District.

(c) The Developer shall certify that it is not in default with respect to any loan secured by any interest in the Project.

(d) The Developer shall have provided the Local Agency with Title Documents needed to provide the Local Agency with title to the site, right-of-way, or easement upon which the subject Acquisition Improvements are situated. All such Title Documents shall be in a form acceptable to the Local Agency (or applicable governmental agency) and shall convey Acceptable Title. The Developer shall provide a policy of title insurance as of the date of transfer in a form acceptable to the Local Agency Engineer insuring the Local Agency as to the interests acquired in connection with the acquisition of any interest for which such a policy of title insurance is not required by another agreement between the Local Agency and the Developer. Each title insurance policy required hereunder shall be in the amount equal to or greater than the Acquisition Price.

Section 2.05. SCIP Requisition. Upon a determination by the Local Agency Engineer to pay the Acquisition Price of the Acquisition Improvements pursuant to Section 2.04, the Local Agency Engineer shall cause a SCIP Requisition to be submitted to the Program Administrator. The Program Administrator will review the SCIP Requisition and forward it with instructions to the SCIP Trustee and the SCIP Trustee shall make payment directly to the Developer of such amount pursuant to the SCIP Trust Agreement. The Local Agency and the Developer acknowledge and agree that the SCIP Trustee shall make payment strictly in accordance with the SCIP Requisition and shall not be required to determine whether or not the Acquisition Improvements have been completed or what the Actual Costs may be with respect to such Acquisition Improvements. The SCIP Trustee shall be entitled to rely on the SCIP Requisition on its face without any further duty of investigation.

ARTICLE III

MISCELLANEOUS

Section 3.01. Indemnification and Hold Harmless. The Developer hereby assumes the defense of, and indemnifies and saves harmless the Local Agency, the Authority, and each of its respective officers, directors, employees and agents, from and against all actions, damages, claims, losses or expenses of every type and description to which they may be subjected or put, by reason of, or resulting from or alleged to have resulted from the acts or omissions of the Developer or its agents and employees in the performance of this Agreement, or arising out of any contract for the design, engineering and construction of the Acquisition Improvements or arising out of any alleged misstatements of fact or alleged omission of a material fact made by the Developer, its officers, directors, employees or agents to the Authority's underwriter, financial advisor, appraiser, district engineer or bond counsel or regarding the Developer, its proposed developments, its property ownership and its contractual arrangements contained in the official statement relating to the SCIP financing (provided that the Developer shall have been furnished a copy of such official statement and shall not have objected thereto); and provided, further, that nothing in this Section 3.01 shall limit in any manner the Local Agency's rights against any of the Developer's architects, engineers, contractors or other consultants. Except as set forth in this Section 3.01, no provision of this Agreement shall in any way limit the extent of the responsibility of the Developer for payment of damages resulting from the operations of the Developer, its agents and employees. Nothing in this Section 3.01 shall be understood or construed to mean that the Developer agrees to

indemnify the Local Agency, the Authority or any of its respective officers, directors, employees or agents, for any negligent or wrongful acts or omissions to act of the Local Agency, Authority its officers, employees, agents or any consultants or contractors.

Section 3.02. Audit. The Local Agency shall have the right, during normal business hours and upon the giving of ten days' written notice to the Developer, to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer (for which the Developer seeks reimbursement) in constructing the Acquisition Improvements.

Section 3.03. Cooperation. The Local Agency and the Developer agree to cooperate with respect to the completion of the SCIP financing for the Acquisition Improvements. The Local Agency and the Developer agree to meet in good faith to resolve any differences on future matters which are not specifically covered by this Agreement.

Section 3.04. General Standard of Reasonableness. Any provision of this Agreement which requires the consent, approval or acceptance of either party hereto or any of their respective employees, officers or agents shall be deemed to require that such consent, approval or acceptance not be unreasonably withheld or delayed, unless such provision expressly incorporates a different standard. The foregoing provision shall not apply to provisions in the Agreement which provide for decisions to be in the sole discretion of the party making the decision.

Section 3.05. Third Party Beneficiaries. The Authority and its officers, employees, agents or any consultants or contractors are expressly deemed third party beneficiaries of this Agreement with respect to the provisions of Section 3.01. It is expressly agreed that, except for the Authority with respect to the provisions of Section 3.01, there are no third party beneficiaries of this Agreement, including without limitation any owners of bonds, any of the Local Agency's or the Developer's contractors for the Acquisition Improvements and any of the Local Agency's, the Authority's or the Developer's agents and employees.

Section 3.06. Conflict with Other Agreements. Nothing contained herein shall be construed as releasing the Developer or the Local Agency from any condition of development or requirement imposed by any other agreement between the Local Agency and the Developer, and, in the event of a conflicting provision, such other agreement shall prevail unless such conflicting provision is specifically waived or modified in writing by the Local Agency and the Developer.

Section 3.07. Notices. All invoices for payment, reports, other communication and notices relating to this Agreement shall be mailed to:

If to the Local Agency:

City of Daly City
[Address to Come]

If to the Developer:

[Developer]
[Address to Come]

Either party may change its address by giving notice in writing to the other party.

Section 3.08. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

Section 3.09. Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California.

Section 3.10. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement.

Section 3.11. Singular and Plural; Gender. As used herein, the singular of any word includes the plural, and terms in the masculine gender shall include the feminine.

Section 3.12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 3.13. Successors and Assigns. This Agreement is binding upon the heirs, assigns and successors-in-interest of the parties hereto. The Developer may not assign its rights or obligations hereunder, except to successors-in-interest to the property within the District, without the prior written consent of the Local Agency.

Section 3.14. Remedies in General. It is acknowledged by the parties that the Local Agency would not have entered into this Agreement if it were to be liable in damages under or with respect to this Agreement or the application thereof, other than for the payment to the Developer of any (i) moneys owing to the Developer hereunder, or (ii) moneys paid by the Developer pursuant to the provisions hereof which are misappropriated or improperly obtained, withheld or applied by the Local Agency.

In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that the Local Agency shall not be liable in damages to the Developer, or to any assignee or transferee of the Developer other than

for the payments to the Developer specified in the preceding paragraph. Subject to the foregoing, the Developer covenants not to sue for or claim any damages for any alleged breach of, or dispute which arises out of, this Agreement.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year written above.

CITY OF DALY CITY

ATTEST:

By _____
[Raymond A. Buenaventura, Mayor]

By _____
[K. Annette Hipona, City Clerk]

[DEVELOPER],
a [here indicate type of legal entity]

By _____
(Signature)

(Print Name)

EXHIBIT A TO THE ACQUISITION AGREEMENT

DESCRIPTION OF ACQUISITION IMPROVEMENTS AND BUDGETED AMOUNTS

<u>ACQUISITION IMPROVEMENTS</u>	<u>BUDGETED AMOUNTS</u>
1.	\$
2.	
3.	
4.	

EXHIBIT B TO THE ACQUISITION AGREEMENT

FORM OF SCIP REQUISITION

To: BLX Group LLC
SCIP Program Administrator
777 S. Figueroa St., Suite 3200
Los Angeles, California 90017
Attention: Vo Nguyen
Fax: 213-612-2499

Re: Statewide Community Infrastructure Program

The undersigned, a duly authorized officer of the CITY OF DALY CITY hereby requests a withdrawal from the [DEVELOPER] ACQUISITION ACCOUNT, as follows:

Request Date: [Insert Date of Request]

Name of Developer: [Developer]

Withdrawal Amount: [Insert Acquisition Price]

Acquisition Improvements: [Insert Description of Acquisition Improvement(s) from Ex. A]

Payment Instructions: [Insert Wire Instructions or Payment Address for Developer]

The undersigned hereby certifies as follows:

1. The Withdrawal is being made in accordance with a permitted use of such monies pursuant to the Acquisition Agreement, and the Withdrawal is not being made for the purpose of reinvestment.
2. None of the items for which payment is requested have been reimbursed previously from other sources of funds.
3. If the Withdrawal Amount is greater than the funds held in the [Developer] Acquisition Account, the SCIP Program Administrator is authorized to amend the amount requested to be equal to the amount of such funds.
4. To the extent the Withdrawal is being made prior to the date bonds have been issued on behalf of SCIP, this withdrawal form serves as the declaration of official intent of the CITY OF DALY CITY, pursuant to Treasury Regulations 1.150-2, to reimburse with respect expenditures made from the Developer Acquisition Account listed above in the amount listed above.

CITY OF DALY CITY

By : _____

Title: _____

EXHIBIT C TO THE RESOLUTION

CITY OF DALY CITY CONTACTS FOR SCIP PROGRAM

Primary Contact

Name:

Title:

Mailing Address:

Delivery Address (if different):

E-mail:

Telephone:

Fax:

Secondary Contact

Name:

Title:

Mailing Address:

Delivery Address (if different):

E-mail:

Telephone:

Fax:

[Add additional contacts as needed]

CERTIFICATION OF RESOLUTION

I, the undersigned, the duly appointed and qualified City Clerk of the City of Daly City, do hereby certify that the foregoing Resolution No. _____ was duly adopted at a regular meeting of the City Council of the City of Daly City duly and regularly held at the regular meeting place thereof on the _____ day of _____, 20__, of which meeting all of the members of said City Council had due notice and at which a majority thereof were present.

An agenda of said meeting was posted at least 72 hours before said meeting at _____, a location freely accessible to members of the public, and a brief description of said resolution appeared on said agenda.

I have carefully compared the foregoing with the original minutes of said meeting on file and of record in my office, and the foregoing is a full, true and correct copy of the original resolution adopted at said meeting and entered in said minutes.

Said resolution has not been amended, modified or rescinded since the date of its adoption and the same is now in full force and effect.

Dated: _____, 20__

K. Annette Hipona, City Clerk
City of Daly City

By: _____

[Seal]



City Council Agenda Report

Item # _____

Meeting Date: January 27, 2020

Subject: Appropriate Funds and Award Construction Contract for the Police Parking Lot Security Fence Project

Recommended Action

Staff recommends that the City Council accept all bids, award a construction contract to Golden Bay Construction of Hayward, California, in the amount of \$544,321 for the Police Parking Lot Security Fence Project and authorize the City Manager to execute all necessary contracts to complete the project. Staff further recommends that the City Council approve the design documents, affirm the CEQA determination of Categorical Exemption, appropriate \$170,000 of AB1600 Police Funds, and appropriate \$260,000 of Federal Asset Forfeiture Funds (DEA) to fully fund the Police Parking Lot Security Fence Project.

Background

On June 26, 2017, the City Council approved the Police Parking Lot Security Fence project as a mid-cycle adjustment to the 2017/2018 Capital Improvement Program budget for 2018. This project was approved to be funded with \$225,000 from AB1600 Police Funds and \$75,000 from Asset Forfeiture Funds for a total budget of \$300,000.

The Police Parking Lot Security Fence project proposes to install a security fence and CMU wall around the Police Department's existing parking lot. An automated gate, manual gate, pedestrian gates along with landscaping and irrigation will also be installed.

Discussion

The project was advertised on October 23, 2019 and two (2) bids were received on December 18, 2019 with total bids ranging from \$544,321 to \$817,818. The bids and the Engineer's Estimate are summarized as follows:

Bidder	Total Bid	Comments
1. Golden Bay Construction	\$544,321	Responsive Bid
2. CF Contracting Inc.	\$817,818	Responsive Bid
Engineer's Estimate	\$217,592	

Determination of the lowest bidder was based on the lowest total bid. Golden Bay Construction of Hayward, California, has been in business since 1983. This bidder holds the required Class A contractor's license, which is current and in good standing. Golden Bay Construction has successfully completed the Walnut Creek BART Parking Lot, the Brewster Avenue Road Modifications and Improvement Project in Redwood City, and the Oregon Expressway Improvements for the County of Santa Clara.

The low bid for this project is 150% higher than the Engineer's estimate. In the Bay Area's current construction industry market, increased cost for skilled labor and raw materials has resulted in higher bid prices from qualified contractors. Another factor contributing to the high cost is the additional effort needed to coordinate multiple sub-contractors. The project was bid during the winter to try and attract a wider pool

Award of Construction Contract for Police Parking Lot Security Fence Project

Meeting Date: January 27, 2020

Page 2 of 2

of available contractors, re-bidding the project would unlikely result in lower bids as the re-bid will compete with other work during the summer.

If the project is awarded as recommended, construction is anticipated to commence in April 2020 and be completed in September 2020.

Fiscal Impact

The total estimated cost for the Police Parking Lot Security Fence Project is \$730,000. This amount includes \$75,000 for design, \$544,321 for the contract award and an additional 20% (\$110,679) for contingency, construction inspection and contract administration. An additional \$430,000, above the \$300,000 previously allocated in the FY2018 Capital Improvement Program Budget Update is required to fully fund this project.

This action will allocate and transfer additional \$170,000 of AB1600 Police Funds and \$260,000 of Federal Asset Forfeiture Funds (DEA) to fully fund this project.

Summary/Conclusion

Staff recommends that the City Council accept all bids, award a construction contract to Golden Bay Construction of Hayward, California, in the amount of \$544,321 for the Police Parking Lot Security Fence Project and authorize the City Manager to execute all necessary contracts to complete the project. Staff further recommends that the City Council approve the design documents, affirm the CEQA determination of Categorical Exemption, appropriate \$170,000 of AB1600 Police Funds, and appropriate \$260,000 of Federal Asset Forfeiture Funds (DEA) to fully fund the Police Parking Lot Security Fence Project.

Staff is available to provide any additional information desired by the Mayor or Councilmembers.

Respectfully submitted,



Roland Yip
Senior Civil Engineer



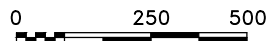
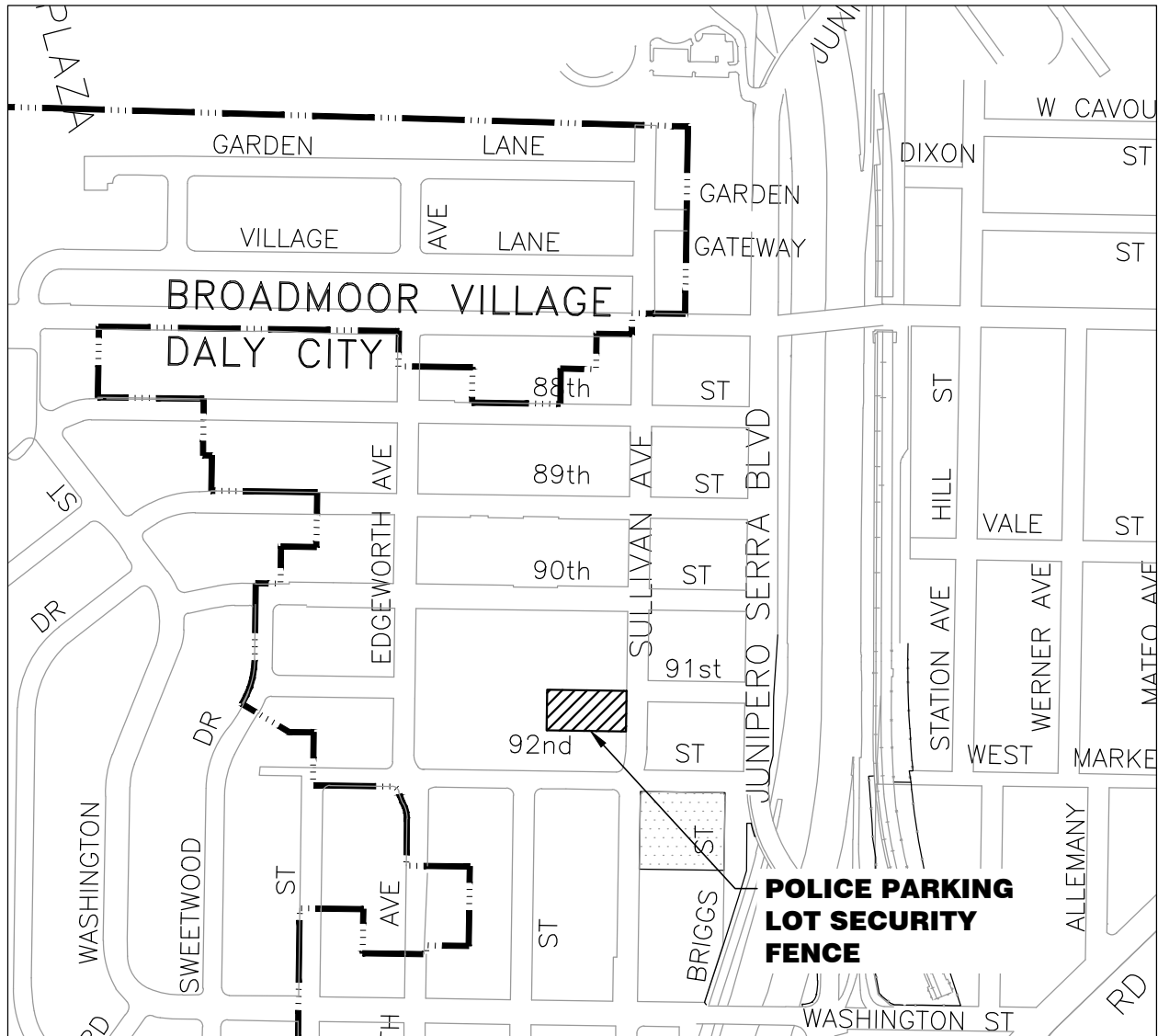
Richard Chiu, Jr.
Director of Public Works

Attachment: Location Map (Full set of plans and specifications available at the City Clerk's Office)

CITY OF DALY CITY
SAN MATEO COUNTY, CALIFORNIA

PROJECT LOCATION MAP

POLICE PARKING LOT SECURITY FENCE





City Council Agenda Report

Item # _____

Meeting Date: January 27, 2020

Subject: Award of Construction Contract for Westlake Library HVAC and Roof Replacement Project

Recommended Action

Staff recommends that the City Council accept all bids, waive minor irregularities, and award a construction contract to Roofing & Solar Construction, Inc. of Novato, California, in the amount of \$952,000 for the Westlake Library HVAC and Roof Replacement project and authorize the City Manager to execute all necessary contracts to complete the project. Staff further recommends that the City Council approve the design documents, affirm the CEQA determination of Categorical Exemption, and authorize the transfer of \$840,000 from the Doelger Senior Center Complex Roof Replacement Project to fully fund the Westlake Library HVAC and Roof Replacement project.

Background

On January 28, 2019, the City Council authorized an agreement with IMEG Corporation to provide professional design services, prepare contract documents, and provide construction support for the Westlake Library HVAC and Roof Replacement project. IMEG Corporation prepared plans, specifications, and a construction cost estimate (PS&E) for the project.

The HVAC system at the Westlake Library is antiquated and deteriorated to the point that repairs have become costly and air circulation throughout the building is poor. Certain components of the HVAC system are not serviceable due to inaccessibility. The project will replace all four (4) HVAC units, four exterior roof enclosures, associated ductwork and piping, exhaust fans, Direct Digital Control (DDC) temperature control system, guard rail, and associated structural and electrical work.

In addition to the HVAC replacement, the Westlake Library roof requires replacement. The built up roof is in poor condition and is past the suggested manufacturer's life span. As the HVAC replacement work will result in a substantial amount of foot and equipment traffic, this will cause further wear and tear to the existing roof.

The HVAC and roof replacement were both identified in the Facility Assessment Report prepared for Westlake Library.

Discussion

The project was advertised on December 15, 2019 and three (3) bids were received on January 16, 2020 with total bids ranging from \$952,000 to \$1,540,000. The bids and the Engineer's Estimate are summarized as follows:

Bidder	Total Bid	Comments
1. Roofing & Solar Construction, Inc.	\$952,000	Responsive Bid
2. Stronger Building Services	\$1,520,000	Responsive Bid
3. Sea Pac Engineering, Inc.	\$1,540,000	Responsive Bid

**Award of Construction Contract
for the Westlake Library HVAC and Roof Replacement Project
Meeting Date: January 27, 2020
Page 2 of 3**

Engineer's Estimate	\$1,010,000	
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Determination of the lowest bidder was based on the lowest total bid. Roofing & Solar Construction, Inc. of Novato, California, has been in business since 2016. This bidder holds the required Class B contractor's license, which is current and in good standing. The contractor's references for work performed for other public agencies are acceptable including the Santa Cruz County Office of Education and Grant Elementary School in San Lorenzo.

The engineer's estimate was performed by a third party consultant which specializes in construction estimates. Although the low bid for this project was under the engineer's estimate, it is significantly higher than originally estimated when the project was conceived in the Biennial FY 2017 and FY 2018 CIP budget. In the Bay Area's current construction industry market, increased cost for skilled labor and raw materials has resulted in higher bid prices from qualified contractors. It is anticipated that construction costs will continue to increase. Therefore, staff is recommending to move forward with the project.

Additional funds are available from the Doelger Senior Center Complex Roof Replacement Project. On December 10, 2018, City Council accepted and appropriated State of California grant funds totaling \$1,500,000 to fully fund the Doelger Senior Center Complex Roof Replacement Project, which was previously approved and funded for \$975,000. If approved, the Westlake Library HVAC and Roof Replacement project will utilize the unexpended funds from the Doelger Senior Center Complex Roof Replacement Project.

If the project is awarded as recommended, construction is anticipated to commence in March 2020 and be completed in August 2020.

Fiscal Impact

The total estimated cost for the Westlake Library HVAC and Roof Replacement project is \$1,320,000, including \$126,000 for design, \$952,000 for the contract award, as well as an additional 25% (\$242,000) for contingency, construction inspection and contract administration costs. An additional \$840,000, above the previously adjusted budget of \$480,000 in the adopted FY 2017 and FY 2018 CIP budget is required to fully fund this project.

This action will transfer \$840,000.00 of unexpended funds from FY 2019-20 CIP Account 31-313-558 Doelger Senior Center Roof Replacement Project to FY 2017-18 CIP Account 31-313-526 Westlake Library HVAC and Roof Replacement to fully fund this project.

Summary/Conclusion

Staff recommends that the City Council accept all bids, waive minor irregularities, and award a construction contract to Roofing & Solar Construction, Inc. of Novato, California, in the amount of \$952,000 for the Westlake Library HVAC and Roof Replacement project and authorize the City Manager to execute all necessary contracts to complete the project. Staff further recommends that the City Council approve the design documents, affirm the CEQA determination of Categorical Exemption, and authorize the transfer of \$840,000 from the Doelger Senior Center Complex Roof Replacement Project to fully fund the Westlake Library HVAC and Roof Replacement project.

**Award of Construction Contract
for the Westlake Library HVAC and Roof Replacement Project
Meeting Date: January 27, 2020
Page 3 of 3**

Staff is available to provide any additional information desired by the Mayor or Councilmembers.
Respectfully submitted,



Roland Yip
Senior Civil Engineer



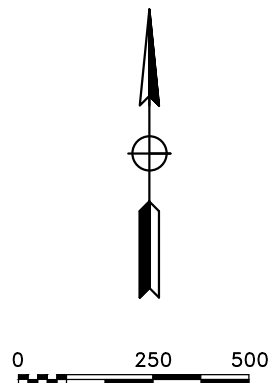
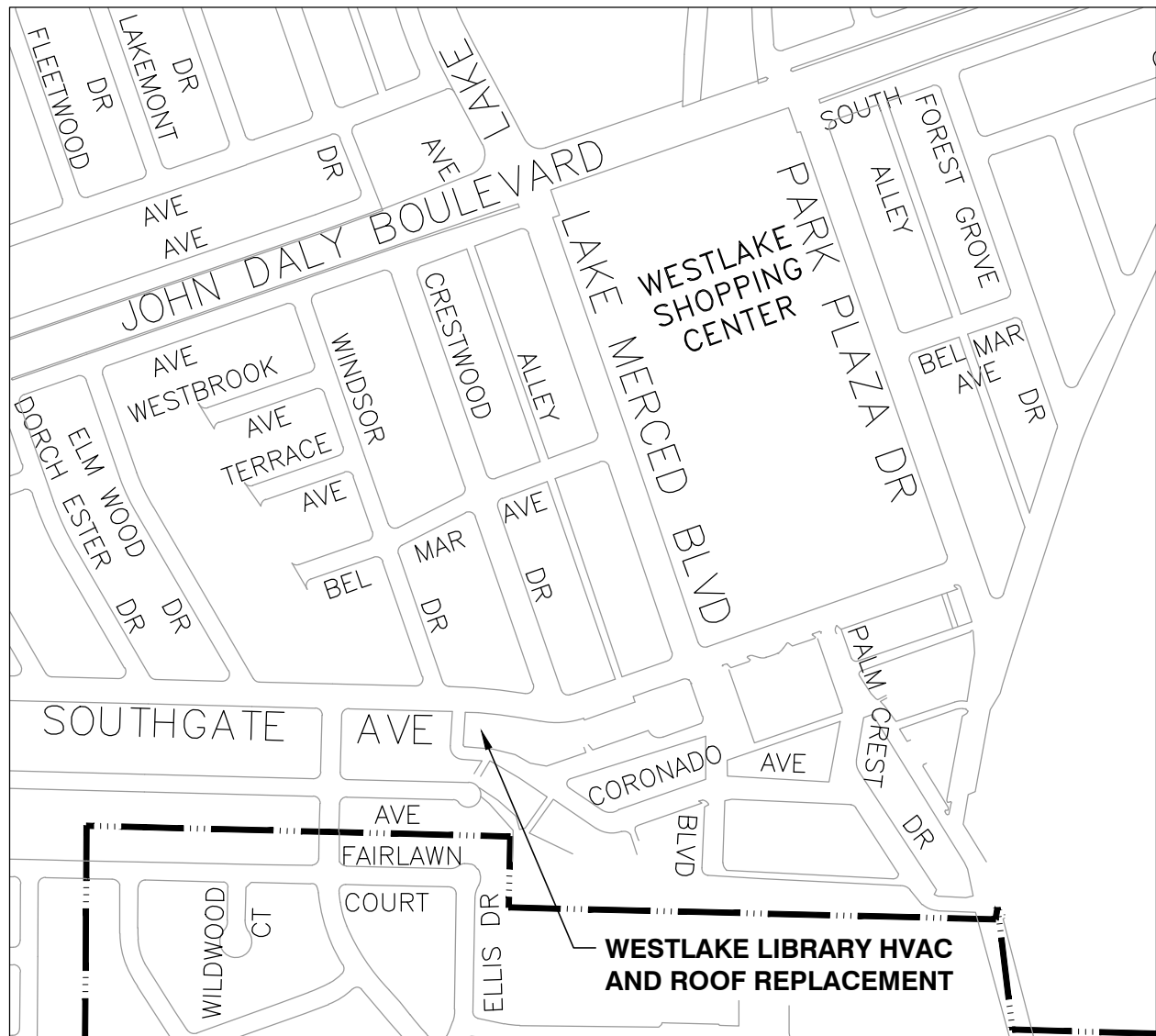
Richard Chiu, Jr.
Director of Public Works

Attachment: Location Map (Full set of plans and specifications available at the City Clerk's Office)

CITY OF DALY CITY
SAN MATEO COUNTY, CALIFORNIA

PROJECT LOCATION MAP

**WESTLAKE LIBRARY HVAC AND ROOF
REPLACEMENT**



ORDINANCE NO. 1435

AN ORDINANCE OF THE CITY OF DALY CITY ADDING
CHAPTER 2.58 OF TITLE 2 OF THE DALY CITY MUNICIPAL CODE
RE: SMALL BUSINESS COMMISSION

The City Council of the City of Daly City, DOES ORDAIN as follows:

SECTION 1: Chapter 2.58 of the Daly City Municipal Code is hereafter added to the Daly City Municipal Code to read as follows:

Chapter 2.58

SMALL BUSINESS COMMISSION

Sections:

- 2.58.010 Definitions**
- 2.58.020 Creation – Appointment**
- 2.58.030 Membership – Term - Expenses**
- 2.58.040 Duties**
- 2.58.050 Qualification of Commissioners**
- 2.58.060 Meetings**
- 2.58.070 Rules**
- 2.58.080 Removal of Members-Vacancy**
- 2.58.090 Gross Receipts Escalation:**

2.58.010 Definitions.

The following definitions shall apply to this ordinance:

- A. “Small business” means a privately-owned corporation, partnership, or sole proprietorship with reported annual gross receipts not exceeding one million US dollars (\$1,000,000).
- B. “Brick-and-mortar establishment” means a building or other structure (including residential structures) that represents the primary place of business for one or multiple active businesses.

2.58.020 Creation-Appointment.

A small business commission is created and shall consist of five members who shall be appointed by the City Council and serve at the Council's pleasure, none of whom shall hold any paid office or employment in the City government.

2.58.030 Membership-Term-Expenses.

Each commission member shall serve for a term of four years. The four-year terms of the commission members shall be staggered. In order to achieve staggered terms, two of the members first appointed to the commission shall be assigned by lot a term for two years and the remaining commission members shall be assigned by lot a term for four years. The members shall not receive any compensation for their attendance of commission meetings, or any other services rendered as a commission member.

Any actual and necessary expenses incurred by a commission member in the performance of their duties on the commission may be reimbursed if funds are available in the budget approved by the City Council and the individual expenses are approved by the City Manager or designee.

2.58.040 Duties.

The small business commission shall have the following duties:

- A. Advise the City Council on all matters affecting the small business community within the City and to advise and assist other City boards and commissions as it pertains to small businesses;
- B. Encourage strategies that support the functioning of small businesses in the City;
- C. Foster programs that promote and celebrate the small business community;
- D. Support the formation of new businesses within the City;
- E. Provide local businesses with economic, demographic, and land-use related analytics to eliminate information gaps in the small business community;
- F. Create a collaborative environment for local businesses to voice their desires, concerns, and hopes in connection with business ownership/management in the City;
- G. Establish an effective liaison between the City, local businesses, and small business groups;
- H. Undertake and carry-out all functions reasonably necessary to accomplish the objectives and to discharge the functions of the commission;
- I. Exercise such other functions as may be prescribed by the City Council.

2.58.050 Qualification of Commissioners.

Commissioners shall be small business owners with active business licenses in the City of Daly City who have demonstrated a strong commitment to Daly City's small business community through individual ownership and/or management, education, professional experience, or knowledge of a particular field related to small business support mechanisms, business management, or entrepreneurship. At least three of the five commission members must be qualified small business owners with existing brick-and-mortar establishments in the City of Daly City. The remaining two commission members are not required to own/manage a brick-and-mortar establishment within the City, however, they must be small business owners with active business licenses in the City of Daly City. Commission members who were small business owners within the City of Daly City at time of appointment must remain owners of the same business within the City while serving on the small business commission.

Efforts should be made to include commissioners of varied and diverse backgrounds. Commissioners shall commit to volunteering time to serve on the board which meets once every two months, and on an ad hoc basis as needed. In selecting commissioners, City Council members shall evaluate whether candidates would be able to effectively and ethically serve, considering any foreseeable conflicts of interest.

2.58.060 Meetings.

The small business commission shall hold a minimum of six regular meetings in each calendar year at the City Council Chambers located in City Hall, 333 90th Street, Daly City, California. The commission shall meet on the second Thursday of every other month (i.e., February, April, June, August, October, December) at six p.m. of such day. If at any time any regular meeting falls on a holiday, such regular meeting shall be held on the following business day.

Three members of the commission shall constitute a quorum for the transaction of business. A majority of the quorum shall have the authority to act on any matter regularly coming before the commission. Meetings may be adjourned or special meetings called in compliance with the provisions of the Ralph M. Brown Act (commencing with Government Code Section 54950) or as may hereafter be amended.

2.58.070 Rules.

Except as provided in this chapter, the proceedings of the small business commission shall be governed by the latest edition of Robert's Rules of Order on all matters pertaining to parliamentary law, but no ordinance, proceedings or other action of the small business commission shall be invalidated, or the legality thereof otherwise affected by the failure or omission to observe or follow such rules.

2.58.080 Removal of Members-Vacancy.

Any member of the small business commission may be removed from office upon the approval of such removal by a majority vote of the City Council. Any vacancy occurring other than by expiration of a term of office shall be filled by City Council appointment for the unexpired portion of the term.

2.58.090 Gross Receipts Escalation.

In order to ensure Daly City's definition of small businesses pursuant to this ordinance is representative of local economic conditions overtime, the Economic and Community Development Department will make annual adjustments to the gross receipts threshold (currently set at \$1,000,000) that defines small businesses by linking future adjustments to changes in the Consumer Price Index for All Urban Consumers (CPI-U) for the San Francisco-Oakland-Hayward, CA metropolitan area. Adjustments will be calculated in January of each calendar year.

SECTION 2. Severability. If any section, subsection, provision or part of this Ordinance, or its application to any person or circumstance, is held to be unconstitutional or otherwise invalid, the remainder of this Ordinance, and the application of such provision to other person or

circumstances, shall not be affected thereby and shall remain in full force and effect and, to that end, the provisions of this Ordinance are severable.

SECTION 3. Environmental Determination. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15378, that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project as provided by the Act, in that it does not have a potential for resulting in a detrimental physical change in the environment, directly or ultimately, as provided in Title 14, Section 15378(a), and that it is also exempt under the definition of "project" in Section 15378(b)(3) in that it concern general policy and procedure making.

SECTION 4. Publication and Effective Date. Pursuant to the provisions of Government Code Section 36933, a summary of this ordinance shall be prepared by the City Attorney. At least five (5) days prior to the Council meeting at which this ordinance is scheduled to be adopted, the City Clerk shall (1) publish the summary, and (2) post it in the City Clerk's Office a certified copy of this ordinance. Within fifteen (15) days after the adoption of this ordinance, the City Clerk shall (1) publish the summary and (2) post in the City Clerk's Office a certified copy of the full text of this ordinance along with the names of those City Council members voting for and against this ordinance or otherwise voting.

Introduced this 13th day of January, 2020

Passed and adopted as an Ordinance of the City of Daly City at a regular meeting of the City Council of the City of Daly City held on the _____ day of _____, 2020, by the following vote:

AYES, Councilmembers: _____

NOES, Councilmembers: _____

Absent, Councilmembers: _____

CITY CLERK OF THE CITY OF DALY CITY

APPROVED:

MAYOR OF THE CITY OF DALY CITY

ORDINANCE NO. 1436

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DALY CITY
AMENDING THE DALY CITY ZONING MAP BY AMENDING ORDINANCE NO. 1048 TO
PLANNED DEVELOPMENT ZONE (PD -31A) AND ESTABLISHING PLANNED
DEVELOPMENT STANDARDS

(699 Serramonte Boulevard, Daly City, APN 091-211-230)

BE IT ORDAINED by the City Council of the City of Daly City, as follows:

Section 1. Findings. The City Council of the City of Daly City finds that, as conditioned, Planned Development ZC-9-18-13662 (Precise Plan) for Planned Development PD-31A, is in compliance with Title 17 of the Daly City Municipal Code (Zoning Ordinance), as well as the General Plan of the City of Daly City, as amended and as to each element of the Daly City General Plan. Approval of the zone change will not be detrimental to the health, safety, morals, comfort and general welfare of persons residing in or working in the neighborhood or be injurious or detrimental to the property and improvements in the neighborhood or the general welfare of the City of Daly City.

Section 2. Environmental Compliance – Mitigation Monitoring Program.

The City Council has reviewed the proposal under the requirements of the California Environmental Quality Act (CEQA) and has determined the project will not have a significant impact on the environments. The Daly City Planning Commission and City staff recommend that a Mitigated Negative Declaration per Section 15070(a) of the CEQA Guidelines be adopted for this project.

The City Council approves a Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program and finds that it complies and conforms with the California Environmental Quality Act and the Guidelines implementing the Act.

Section 2. Zoning Reclassification. The zoning as designated upon the “Official Zoning Map” of the City of Daly City, as adopted by Daly City Ordinance No. 635, and thereafter amended from time to time, is hereby changed as to the parcel identified on the attached map incorporated herein by this reference, to Planned Development Zoning PD-31A, which hereinafter provides for a change of boundary on the “Official Zoning Map” and the establishment of specific standards for development on the subject property. All improvement shall comply with the Planned Development Standards hereinafter adopted for Planned Development PD-31A.

PLANNED DEVELOPMENT STANDARDS

PLANNED DEVELOPMENT ZONE PD-31A

The purpose and intent of these Planned Development Standards for PD-31A is to establish a Planned Development Zoning District for property located at 699 Serramonte Boulevard, Daly City, consisting of Assessor's Parcel Number 091-211-230, which encompasses the entire project site

I. GENERAL

- A. When these planned development standards conflict with other sections of the Zoning Ordinance, these standards prevail only to the extent of the conflict. Where these planned development standards do not provide regulations, the Zoning Ordinance shall apply as to the most similar land use or standard.
- B. Any modifications to plans approved by the City Council shall require an amendment of the original PD approval and shall be subject to separate approval by the Planning Commission and City Council. The Planning Division may approve minor changes of the approved plans due to code requirements or conditions of approval.
- C. All structures, landscape areas, required facilities and amenities shall be maintained in a neat, safe, and healthful condition, subject to improvement and upgrading of plans as required by this Planned Development approval.

II. PERMITTED USES

The sole permitted use of the subject site shall be multi-residential housing, with a maximum limit of 122 dwelling units.

III. DEVELOPMENT STANDARDS

- A. **Unit Maximum:** The number of dwelling units shall not exceed 122;
- B. **Parking:** A minimum of 310 parking spaces shall continually be provided on the property: 170 off-street parking spaces and 13 on-street parking spaces along Campus Drive for residents of the apartment building and 127 off-street parking spaces for other uses on the property as shown on the approved plans. An automated car lift system within a car barn shall be constructed in the western parking lot and continually provide 78 parking spaces. If determined to be necessary by the Planning Division, the applicant shall provide additional parking on the property as stipulated in the Zoning Ordinance or provide a parking analysis prepared by a third-party parking provision consultant to assess the parking situation and determine the number of parking spaces that should be

required. A parking management plan shall be continually in effect at the site and shall be effective to all site occupants;

- C. **Additions to Structures:** No structural expansions or additions shall be permitted;
- D. **Project Affordability:** The project shall be subject to the requirements of the Affordable Housing Plan (AHP) as approved by the City Manager, and provides for the construction of 12 affordable units which will be subject to the details set forth in the AHP;
- E. **Building Area Limit:** There shall be no additional square footage allowed in PD-31A beyond what is permitted by the Design Review Committee. Prior to construction, the Planning Division is authorized to approve minor additions or alterations to square footage for the proposed project, if such changes are to meet specific code requirements and do not affect the overall mass of the building;
- F. **Building Height Limit:** The maximum height allowed for PD-31A is 55 feet inclusive of any stair enclosures on the roof of the building;
- G. **Architecture/ Site Design:** Architectural design of all structures and facades (including car barn), all materials and colors, and all landscaping shall comply with the approved plans.
 - a. Any major architectural modifications shall be subject to approval by a Design Review Committee, except that minor changes may be approved administratively by the Planning Division.
 - b. All stucco applications to the building shall be medium dash stucco finish
 - c. All roof equipment shall be screened from the view of all adjacent public rights-of-way by screenwalls, painting, and similar treatments
 - d. All ground- and roof-mounted appurtenances, such as transformers or air conditioning units shall be fully screened with decorative screening.
 - e. All mechanical equipment shall be continuously painted the color of the adjacent wall.
 - f. Site lighting shall be directed downward to protect adjacent residential neighborhoods from glare.

H. Landscaping: All landscaping improvements shall conform to the approved landscaping plan and with Section 17.41 (Water Conservation in Landscaping) of the Zoning Ordinance.

- a. Street trees shall be installed twenty feet on center, sized as 24-inch box, receive triple staking at installation, and receive establishment irrigation. The tree staking and establishment irrigation shall be identified in building plans submitted for a building permit. All irrigation shall be tied to the building's water system and maintenance of the street trees shall be Property Owner's responsibility.
- b. All street trees shall receive decorative tree grates and be consistent with the approved plan set and approved by the Planning and Engineering Divisions.
- c. Backflow preventers shall be concealed and/or screened from public view to the satisfaction of the Daly City Community and Economic Development Director prior to issuance of building permit.

I. Site Maintenance:

- a. The site shall be maintained in a safe, sanitary, and litter free condition at all times.
- b. No outside storage shall be allowed, except in the approved trash enclosure area.
- c. Doors to the trash enclosure area shall be kept closed except when necessary to dispose of trash or to store material to be recycled.
- d. All sidewalks, walkways, driveways, parking lot facilities, and easements within and adjacent to the property, including weeds, shall be maintained in a safe, sanitary, and litter free condition at all times.
- e. Garbage storage areas are to be kept sanitary and free of litter and debris.

J. Compliance with Mitigation Monitoring and Reporting Program: The project shall continually comply with the Mitigation Monitoring and Reporting

Program (MMRP) adopted by the City Council for the apartment building on January 13, 2020.

Section 3. Summary Publication: Pursuant to the provisions of Government Code Section 36933, a summary of this Ordinance shall be prepared by the City Attorney. At least five (5) days prior to the Council meeting at which this Ordinance is scheduled to be adopted, the City Clerk shall (1) publish the summary, and (2) post in the City Clerk's office a certified copy of this Ordinance. Within fifteen (15) days after the adoption of this ordinance, the City Clerk shall (1) publish the summary, and (2) post in the City Clerk's office a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against this ordinance or otherwise voting. This Ordinance shall become effective thirty (30) days from and after its adoption.

Section 4. Environmental Determination: The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15378, that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project as provided by the Act, in that it does not have a potential for resulting in a detrimental physical change in the environment, directly or ultimately, as provided in Title 14, Section 15378(a), and that it is also exempt under the definition of "project" in Section 15378(b)(3) in that it concern general policy and procedure making.

Section 5. Severability: If any section, subsection or sentence of this Ordinance is found by a court of competent jurisdiction to be invalid or unlawful, the City Council finds and declares that the remainder of this Ordinance would be and is enforceable and would have been adopted notwithstanding the finding of invalidity as to any section, subsection or sentence.

Introduced this 13th day of January 2020.

Passed and adopted as an Ordinance of the City of Daly City at a regular meeting of the City Council of the City of Daly City held on the _____ day of _____ 2020 by the following vote:

AYES, Councilmembers _____

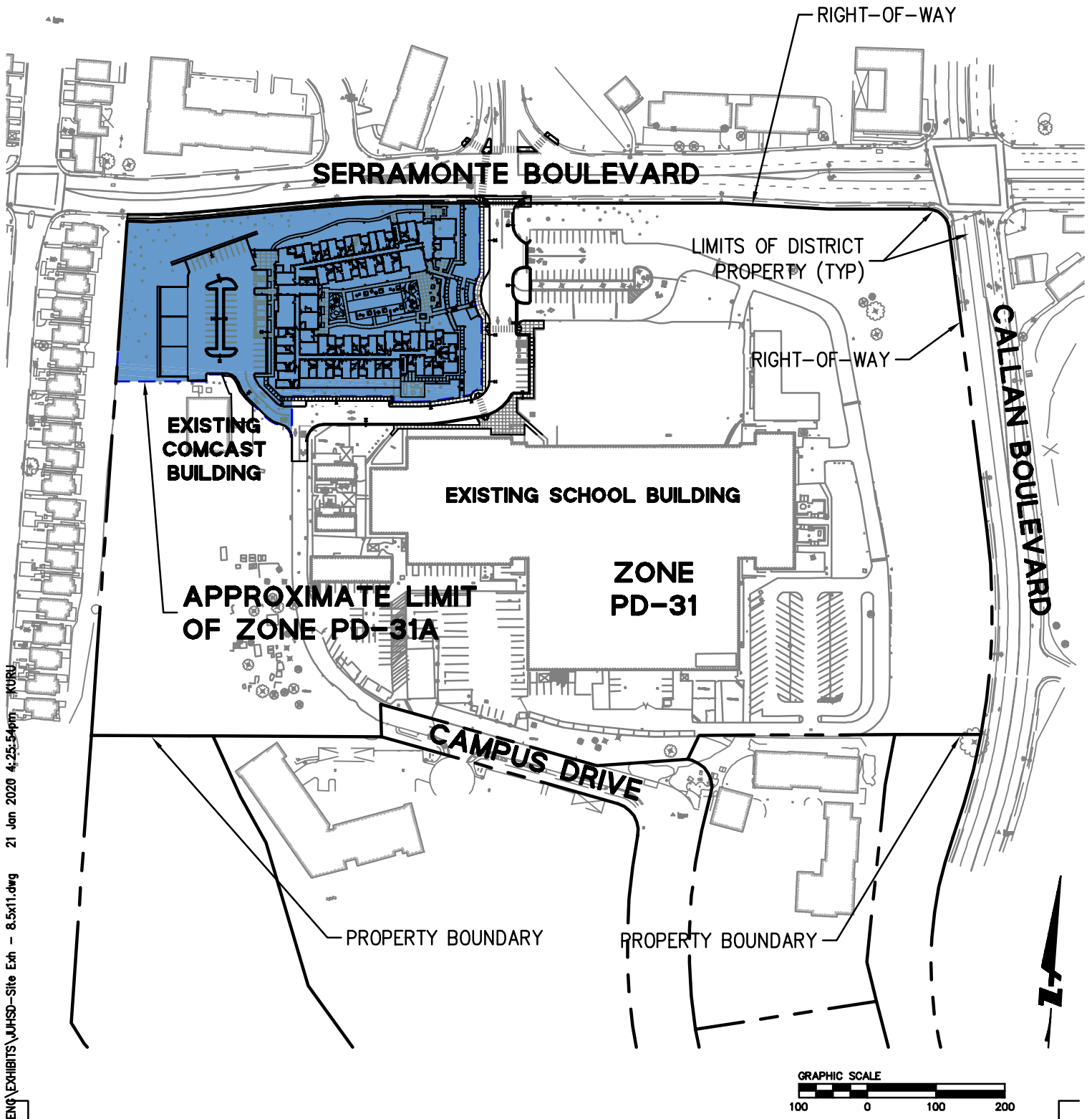
NOES, Councilmembers _____

Absent, Councilmembers: _____

CITY CLERK OF THE CITY OF DALY CITY

APPROVED:

DRAFT



PD-31A ZONING LIMITS EXHIBIT

Job No.	RFI NUMBER	
	20180823	--
Drawn By	TH	Date
		01.21.2020
Scale	Sheet No.	
	1"=200'	
Ref. Sheet		



City Council Meeting Agenda Report

Item # _____

Meeting Date: January 27, 2020

To: Honorable City Council

From: Angie Padilla, City Manager's Office

Date: January 27, 2020

Subject: Council Committee Meetings January 10-January 27, 2020

<u>Date of Meeting:</u>	<u>Meeting:</u>	<u>In Attendance:</u>
January 10, 2020	Jefferson Union High School Continuation- Development Plans on JUHSD Property	Sylvester Manalo Maltbie Zimmerman Mothershead
January 15, 2020	Affordable Housing Draft Inclusionary Rental Housing Program Guidelines Extension of E. Moltke Conditional Loan Agreement Request from HEART to Borrow Daly City Housing Trust Funds	Sylvester Manalo Stolte Zimmerman Mothershead Zobell Suliguin



CITY OF DALY CITY INTER-OFFICE MEMORANDUM

DATE: January 8, 2020

TO: See Below

FROM: Angie Padilla, City Manager's Office

SUBJECT: MEETING NOTICE

RE: Jefferson Union High School District (JUHSD) Council Committee
- CONTINUATION - DEVELOPMENT PLANS ON JUHSD PROPERTY

DATE: Friday, January 10, 2020

TIME: 4:00 p.m. (HARD STOP at 5:00 p.m.)

PLACE: Administrative Conference Room
City Hall

ATTENDING:

City Participants:

- Glenn Sylvester, Mayor
- Juslyn Manalo, Vice Mayor
- Shawna Maltbie, City Manager
- Rose Zimmerman, City Attorney
- Tatum Mothershead, Dir. of ECD
-
-

Other Participants:

- Kalimah Salahuddin, JUHSD Board of Trustee
- Andrew Lie, JUHSD Board of Trustee
- Dr. Terry Ann Deloria, Superintendent
-
-
-
-

cc: City Council



CITY OF DALY CITY INTER-OFFICE MEMORANDUM

DATE: Jan 2, 2020

TO: See Below

FROM: Angie Padilla, City Manager's Office

SUBJECT: MEETING NOTICE

Revised

RE: Affordable Housing Council Committee Meeting—
-Draft Inclusionary Rental Housing Program Guidelines
-Extension of E. Moltke Conditional Loan Agreement
-Request from HEART to Borrow Daly City Housing Trust Funds

DATE: Wednesday, January 15, 2020

TIME: 6:30 p.m.

PLACE: Administrative Conference Room
City Hall

ATTENDING:

City Participants:

Glenn R. Sylvester, Mayor

Juslyn C. Manalo, Vice Mayor

Stephen Stolte Assistant to the
Shawna Maltbie, City Manager City MGR.

Rose Zimmerman, City Attorney

Tatum Mothershead, Dir. of ECD

Betsy Zobell, HCD Supervisor

Lenelle Suliguin, Housing Coordinator

Other Participants:
