

From: [Phan, Johnny](#)
To: [Downtown West Project](#)
Subject: FW: Existing Form IHO Agreement
Date: Tuesday, May 18, 2021 11:57:00 AM
Attachments: [Inclusionary Housing Agreement - FY20-21.doc](#)

From: Phan, Johnny
Sent: Wednesday, April 14, 2021 10:04 AM
To: Miller, J. Gregg <gmler@coblenzlaw.com>
Cc: Straka, Stephanie <ssraka@coblenzlaw.com>
Subject: Existing Form IHO Agreement

Hi – Here is the existing form agreement. This is the template that was used to update for the updated IHO.

Thanks. Johnny

Johnny V. Phan

Chief Deputy City Attorney
Office of the City Attorney
City of San Jose
200 East Santa Clara Street
San Jose, CA 95113-1905
Main Ph: (408) 535-1900
Direct No.: (408) 535-1981
Fax No. (408) 998-3131

NOTICE TO RECIPIENT: This communication is intended **only** for the person to whom it is addressed, and may be protected by law. If you receive this in error, any review, use, dissemination, distribution, or copying is strictly prohibited. Please notify us immediately of the error and delete this communication and any attached documents from your system. Thank you for your cooperation.

RECORDING REQUESTED BY:
WHEN RECORDED MAIL TO:

City of San José
Housing Department
200 East Santa Clara Street, T-12
San José, CA 95113
Attention: Inclusionary Housing
Project: _____

APN: _____

No fee for recording pursuant to Government Code Section 27383
(Space above for Recorder's Use)

INCLUSIONARY HOUSING AGREEMENT

(Covenant for the Benefit of the City of San José)
[Insert name of Project]

NOTICE: THIS AGREEMENT CONTAINS SUBORDINATION REQUIREMENTS TO
PRESERVE THE PRIORITY OF LAND USE AND AFFORDABLE HOUSING REGULATORY
COVENANTS RESTRICTING SALE OR RENTAL OF DWELLING UNITS

This INCLUSIONARY HOUSING AGREEMENT ("Agreement") is entered into as of this ____ day of _____, 20__, by and between the CITY OF SAN JOSE, a municipal corporation (the "City"), and _____, a _____ [Insert Name and entity type] (the "Developer"), with reference to the following facts:

A. Developer is the only owner of the fee interest in certain real property located at _____ [Insert addresses or if none, reference to cross streets] in the City of San José, California and more particularly described in the attached **Exhibit A** (the "**Property**") that is the subject of this Agreement. If Developer is not the only owner of the Property, both the Developer and the Owner (as defined in Section 1 below) must execute and record this Agreement.

B. The City's Inclusionary Housing Ordinance, San José Municipal Code Chapter 5.08, ("Chapter 5.08" or the "**Ordinance**") requires projects seeking a planning permit that create new, additional or modified rental or for-sale dwelling units to make fifteen percent (15%) of all such dwelling units available to income eligible households for purchase at an Affordable Housing Cost or for rental at Affordable Rent (as defined below) and that allows, under specified circumstances, alternative means of compliance (the "**Inclusionary Obligation**").

C. This Agreement, including the attached Exhibits, is intended to set forth the terms and conditions for the implementation of the Developer's agreement to meet the Inclusionary Obligation.

D. The Developer is developing a project requiring a planning permit that creates _____ (_____) new, additional or modified rental or for-sale dwelling units on the Property ("**Total Dwelling Units**"). The project has obtained planning permits designated _____ and _____ [list type of permit, permit number] which were approved by the City of San Jose on _____, 20____. The Developer's residential project (the "**Project**" or "**Residential Development**") is described in more detail on the approved Affordable Housing Compliance Plan ("**Compliance Plan**") dated _____, 20____ and approved on _____, 20____, on file with the City Housing Department a summary of which is attached as **Exhibit B** including the project's permit information, the total number of dwelling units, whether the units are rental or for-sale, the Developer's Inclusionary Obligation compliance option election, any exemptions claimed, any contiguous property under common ownership or control, timing of construction, and any requested project phasing.

E. This Agreement must be executed and recorded against the Property prior to the earlier of: approval of the first parcel or final subdivision map for the Project or issuance of the first Building Permit needed for the Project. This Agreement must be senior to all deeds of trust or other documents with a power of sale.

F. This Agreement includes a restriction on the Sale or Rental of new, additional

or modified rental or for-sale dwelling units on the Property.

COVENANTS

NOW, THEREFORE, it is mutually agreed by and between the Developer and the City (the "**Parties**") as follows:

Section 1. Definitions. All capitalized terms used in this Agreement but not defined shall have the meanings provided in the Ordinance or the guidelines adopted for its implementation. For the purpose of this Agreement, the following terms have the following meanings:

- a) "Affordable Housing Compliance Plan" means Compliance Plan as defined below.
- b) "Affordable Housing Cost" shall have the meaning provided by California Health & Safety Code section 50052.5 for owner-occupied housing.
- c) "Affordable Rent" means rent, which including a reasonable utility allowance, does not exceed:
 - 1. for very low-income households, the product of 30 percent times 50 percent of the area median income adjusted for family size appropriate for the unit ;
 - 2. for lower income households rents shall be set at an affordable rent as defined in Section 50053 of the Health & Safety Code (the product of 30 percent of 60 percent of the of the area median income adjusted for family size appropriate for the unit);
 - 3. for on-site moderate income Inclusionary Units rents shall be set at no more than thirty percent (30%) of eighty percent (80%) of Area Median Income adjusted for family size appropriate for unit.
- d) "Building Permit" includes full structural building permits as well as partial permits such as foundation-only permits.
- e) "Compliance Plan" means a plan prepared in compliance with Ordinance requirements for an Affordable Housing Plan and the Compliance Plan requirements in the Guidelines.
- f) "Dwelling Unit" shall have the meaning provided in Section 1.2 of the Guidelines.
- g) "For-Sale Development" means a Residential Development with a tentative map, final map, parcel map, condominium plan, or other similar documentation allowing for the creation of separately conveyable dwelling units or interests (such as condominiums, stock cooperatives, or community apartments), and demonstrating compliance with Subdivided Lands Act, including the formation of a Homeowner's Association prior to issuance of its Certificate of Occupancy.
- h) "Guidelines" means the guidelines for the implementation of the Ordinance adopted by City Manager and available for public inspection on the web site of the Department of Housing of the City of San José and in the Department of Housing at 200 E. Santa Clara Street, San Jose, CA 95113.
- i) "Inclusionary Unit" means a Dwelling Unit required by the Ordinance to be affordable to extremely low-, very low-, lower, or moderate income households.

- j) “In Lieu Fee” means the fee a Developer may elect to pay to the City in lieu of constructing the Inclusionary Units within the Residential Development consistent with the procedures in the Guidelines.
- k) “Owner” includes all persons and entities having fee ownership of the Property.
- l) “Rental Development” means any Residential Development that is not a For-Sale Development.
- m) “Residential Development” shall have the meaning provided in Section 5.08.250 of the Ordinance.
- n) “Surplus Inclusionary Units” shall have the meaning provided in Section 5.08.540 of the Ordinance.

Section 2. Affirmative Covenants and Warranties

The Developer warrants and covenants as follows:

- a) All of the Developers statements and representations in the Compliance Plan and this Agreement are true and correct.
- b) The Developer shall comply with compliance option selected in the Compliance Plan to meet the Inclusionary Housing Obligation.
- c) The Developer shall record the notice of completion issued for the Residential Development in the Official Records of the County of Santa Clara.
- d) If the Developer shall fail to comply with the requirements of that compliance option within the specified timing, the Developer will provide Inclusionary Units on-site as rental affordable units consistent with the Affordability Restriction attached hereto as **Exhibit C**.
- e) In the event that there is Contiguous Property under Common Ownership or Control, the Developer shall execute and record the City’s Covenant for Contiguous Property under Common Ownership or Control in the Official Records of the County of Santa Clara against such Contiguous Property concurrently herewith.
- f) If the compliance option selected by the Developer includes off-site units, credits or otherwise includes commitments regarding other property, the Developer shall execute and record this Agreement in the Official Records of the County of Santa Clara concurrently herewith against all other property required for the specific compliance election made in the Compliance Plan.

Section 3. Authority; Due Diligence Required Prior to Execution of the Agreement.

If the Developer is not the Owner of the Property, this Agreement must be executed by the Developer and the Owner, and the covenants hereunder shall apply to both such parties. Prior to the execution of this Agreement, ownership documentation satisfactory to the City is required and if the Developer or the Owner is not a natural person, documentation satisfactory to the City will be required to establish the existence of the entity, authority to operate in California and delegation of authority for the person(s) signing on behalf of the Developer or Owner.

Section 4. Compliance Option.

The Developer, by the signatures below affirms it has elected in its Compliance Plan to comply with the following Inclusionary Obligation as more specifically described in the Ordinance and Guidelines and summarized in **Exhibit B** [*Staff should select the option requested in the*

Compliance Plan and delete the others]:

- a) Provide 15% of Total Dwelling Units as dispersed rental Inclusionary Units on-site, consistent with the Affordability Restriction attached hereto as **Exhibit C**;
- b) Provide 15% of Total Dwelling Units as dispersed for-sale Inclusionary Units on-site, consistent with the Affordability Restriction(s) attached hereto as **Exhibit C**;
- c) Provide 20% of Total Dwelling Units as Inclusionary Units off-site consistent with the Affordability Restriction(s) attached hereto as **Exhibit C** which must be recorded in the Official Records of the County of Santa Clara against the off-site property;
- d) Pay the In Lieu Fee based on 20% of the Total Dwelling Units;
- e) Dedicate land to the City;
- f) Purchase credits for Surplus Inclusionary Units equal to 20% of the Total Dwelling Units;
- g) Acquisition and rehabilitation of existing units without affordability restrictions for conversion to units restricted to be affordable to Lower- or Very Low- Income Households equal to 40% of the Total Dwelling Units consistent with the Affordability Restriction(s) attached hereto as **Exhibit C** which must be recorded in the Official Records of the County of Santa Clara against the off-site property;
- h) Provision of units that are restricted to Affordable Rent for Lower- or Very Low- Income Households by agreement between the Applicant and the U.S. Department of Housing and Urban Development equal to 40% of the Total Dwelling Units;
- i) Providing the following combination of the above methods at substantially the same or greater level of affordability and the amount of affordable housing is as otherwise required consistent with the Inclusionary Housing Obligation:
 - 1. *[Staff to provide additional information listing approved methods selected, affordability, number of units];*
- j) Providing the following alternative method of meeting inclusionary housing requirements approved by the City Manager that will provide as much or more affordable housing at the same or lower income levels, and of the same or superior quality of design and construction:
 - 1. *[Staff to provide additional information listing approved methods selected, affordability, number of units];*

Section 5. Covenants to Run with the Land

The Developer hereby subjects the Property and the Project to the covenants and restrictions set forth in this Agreement. Developer hereby declares its express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Developer's successors in interest. All provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of Developer and the City, regardless of any voluntary or involuntary conveyance or transfer of the Property. Except as provided in any written agreement executed by City, each and every contract, deed, lease or other instrument covering, conveying or otherwise transferring the Property or improvements constructed on the Property or any portion thereof or interest therein (a "Contract") shall conclusively be held to have been executed, delivered and accepted subject to this Agreement regardless of whether the terms of this Agreement are set forth in such Contract and regardless of whether the other party or parties to such Contract have actual knowledge of this Agreement.

Developer and the City hereby declare their understanding and intent that:

- a) the covenants and restrictions contained in this Agreement shall be construed as covenants running with the land pursuant to California Civil Code section 1468 and not as conditions which might result in forfeiture of title by Developer; and
- b) the burden of the covenants and restrictions set forth in this Agreement touch and concern the Property in that the Developer's legal interest in the Property and all improvements thereon are rendered less valuable thereby; and
- c) the benefit of the covenants and restrictions set forth in this Agreement touch and concern the land by enhancing and increasing the potential enjoyment and use of the Property and Units by Moderate, Low and Very Low Income Households, the intended beneficiaries of such covenants and restrictions.

Section 6. Release of Project Units from Agreement. The covenants and conditions herein contained shall apply to and bind, during their respective periods of fee ownership, Developer and its heirs, executors, administrators, successors, transferees, and assignees having or acquiring any right, title or interest in or to any part of the Property and shall run with and burden such portions of the Property until rescinded in accordance with Section 12.

Except with respect to any portions of the Property which are released from the burdens of this Agreement by a rescission or partial rescission executed by the City; the Owner of the Property shall expressly make the conditions and covenants contained in this Agreement a part of any deed or other instrument conveying any interest in such property.

Section 7. Default. Failure of the Developer to cure any default in the Developer's obligations under the terms of this Agreement within thirty (30) days after the delivery of a notice of default from the City will constitute a default under this Agreement and a failure to satisfy the Conditions of Approval with respect to the Project and Property and the requirements of the Ordinance and Guidelines and, in addition to remedies for breach of this Agreement, the City may exercise any and all remedies available to it under the Subdivision Map Act, Chapter 5.08, or otherwise, with respect to the Developer's failure to satisfy the Conditions of Approval and the requirements of Chapter 5.08 including but not limited to:

- (a) withholding, conditioning, suspending or revoking any permit, license, subdivision approval or map, or other entitlement for the Developer's project including without limitation final inspections for occupancy and/or certificates of occupancy;
- (b) instituting against the Developer, or other parties, a civil action for declaratory relief, injunction or any other equitable relief, or relief at law, including without limitation an action to rescind a transaction and/or to require repayment of any funds received in connection with such a violation;
- (c) where one or more persons have received financial benefit as a result of violation of this Agreement or of any requirement imposed under Chapter 5.08, the City may assess, and institute legal action to recover as necessary,

a penalty in any amount up to and including the amount of financial benefit received, in addition to recovery of the benefit received;

- (d) prosecuting a misdemeanor against any person who has rented a residential unit at a rent exceeding the maximum allowed under this Agreement or to a household not qualified under this Agreement, or who has otherwise violated Chapter 5.08, or any other agreement, restriction or requirement authorized or imposed under Chapter 5.08;
- (e) remedies set forth in this Agreement; or
- (f) any other means authorized by state law or the City's Municipal Code.

Section 8. Remedies Cumulative. No right, power, or remedy given to the City by the terms of this Agreement, the Regulatory Agreement or Chapter 5.08 is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the City by the terms of any such document, Chapter 5.08, or by any statute or otherwise against Developer and any other person. Neither the failure nor any delay on the part of the City to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the City of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

Section 9. Hold Harmless. Developer will indemnify and hold harmless (without limit as to amount) City and its elected officials, officers, employees and agents in their official capacity (collectively, the "**Indemnitees**"), and any of them, from and against all loss, all risk of loss and all damage (including expense) sustained or incurred because of or by reason of any and all claims, demands, suits, actions, judgments and executions for damages of any and every kind and by whomever and whenever made or obtained, allegedly caused by, arising out of or relating in any manner to the Project, the Inclusionary Units, or Developer's performance or non-performance under this Agreement, and shall protect and defend Indemnitees, and any of them with respect thereto, except to the extent arising from the gross negligence or willful misconduct of the City. The provisions of this section shall survive expiration or other termination of this Agreement or any release of part or all of the Property from the burdens of this Agreement, and the provisions of this section shall remain in full force and effect.

Section 10. Notices. All notices required pursuant to this Agreement shall be in writing and may be given by personal delivery or by registered or certified mail, return receipt requested, to the party to receive such notice at the addressed set forth below:

TO THE CITY:

City of San José
Department of Housing
200 East Santa Clara Street, T-12
San José, CA 95113
Attn: Inclusionary Housing

cc:
City of San José
City Attorney's Office
200 East Santa Clara Street, T-16
San José, CA 95113
Attn: Housing Attorney

TO THE DEVELOPER:

Attn: _____

Any party may change the address to which notices are to be sent by notifying the other parties of the new address, in the manner set forth above.

Section 11. Integration. This Agreement with all of its recitals and exhibits, together with the Compliance Plan; any documents to be executed for the implementation of the Developer's Inclusionary Obligation including, but not limited to, documents to be recorded against any off-site property; and any covenant recorded on Contiguous Property under Common Ownership and Control embody the agreement between City and Developer for the Residential Development's compliance with the Inclusionary Housing Ordinance and its terms and conditions. No verbal agreements or conversations with any officer, agent or employee of City prior to the execution of this Agreement, shall affect or modify any of the terms or obligations contained in this Agreement.

Section 12. Duration and Amendment of Agreement: Rescission. This Agreement shall remain in effect until the fifty-fifth anniversary of the recording of the notice of completion for the Residential Development. It may be rescinded by the City after Developer's compliance with the Inclusionary Obligation. This Agreement, and any section, subsection, or covenant contained herein, may be amended only upon the written consent of the City Manager who shall have authority to approve or disapprove minor or technical amendments on behalf of the City consistent with the Ordinance and Guidelines. If the amendment makes a substantive or material change to this Agreement it shall be effective only if the change is consistent with the Ordinance and Guidelines and following approval of the City authority that gave the First Approval for the Project and the City Manager. This Agreement shall not be amended without any necessary amendments to applicable Planning Permits and payment of any transaction fees.

Section 13. Recitals and Exhibits Incorporated. All of the above Recitals, all Exhibits, and the Compliance Plan are hereby incorporated in this Agreement and made a part hereof.

Section 14. Applicable Law. This Agreement shall be governed by the law of the State of California.

Section 15. Waivers. Any waiver by the City of any obligation or condition in this Agreement

must be in writing. No waiver will be implied from any delay or failure by the City to take action on any breach or default of Developer or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Developer by the City Manager to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the City to any act or omission by the Developer shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the City's written consent to future waivers.

Section 16. Title of Parts and Sections. Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

Section 17. Multiple Originals; Counterpart. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Section 18. Recording of Agreement. The Developer shall cause this Agreement to be recorded against the Property and any other Property required for satisfaction of the compliance option in the Developer's Compliance Plan in the Official Records of the County of Santa Clara.

Section 19. Severability. In the event any limitation, condition, restriction, covenant, or provision contained in this Agreement is to be held invalid, void or unenforceable by any court of competent jurisdiction, the remaining portions of this Agreement shall nevertheless, be and remain in full force and effect.

Section 20. Exhibits. The following exhibits are attached to this Agreement:

- Exhibit A Legal Description of the Property
- Exhibit B Summary of the Project and Compliance Plan
- Exhibit C Affordability Restriction

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed

Developer:

_____,
a _____

By: _____

Name: _____

Its: _____

Date: _____

If the Developer is not the sole owner, the Owner consents to the recording of the Agreement:

Owner: *[List all parties on title]*

a _____

By: _____

Name: _____

Its: _____

Date: _____

_____,
a _____

By: _____

Name: _____

Its: _____

Date: _____

Signatures must be notarized. Signatures continue on following page(s)

City of San José, a municipal corporation

By: _____

Name: _____

Its: _____

Date: _____

Approved as to form:

Senior Deputy City Attorney

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 _____

County of _____

On _____ before me, _____, Notary Public, personally

DATE

NAME OF NOTARY

appeared _____

NAME(S) OF SIGNER(S)

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 acknowledge to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal

SIGNATURE OF NOTARY

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B
SUMMARY OF PROJECT AND
COMPLIANCE PLAN

This Exhibit summarizes and provides notice of the Compliance Plan executed by the Developer and on file with the Housing Department.

1.The Project's permit numbers, permit types, permit application and approval dates:

2.The total number of dwelling units: _____

3.Whether the project is anticipated to be rental or for-sale: _____

4.The Developer's Inclusionary Housing Ordinance Obligation compliance option election:

4.Any requirements that apply to other property based on the Developer's Inclusionary Housing Ordinance Obligation compliance option election: _____

5. List of any exemptions from the Inclusionary Housing Ordinance claimed in the Compliance Plan, any evidence submitted and whether the exemption was approved by City Manager. _____

5. List of any contiguous property under common ownership or control by address and APN _____

6. List any existing structures on the property, if the residential project includes any conversion or demolition _____

7. List any project phasing requested in the Compliance Plan._____, including the anticipated number of final maps.

8. Summarize the timetable submitted showing timing of construction. _____

EXHIBIT C

AFFORDABILITY RESTRICTION

1. Affordability Restriction (Rental).

(a) Restriction to Affordable Rent. For a period commencing upon the recordation of this Agreement and ending on the 55th anniversary of the recordation of the Notice of Completion for the Project, or, if no Notice of Completion is recorded on the Project, until the sixtieth (60th) anniversary of the recording of this Agreement, not less than nine percent (9%) of the Total Dwelling Units shall be rented or otherwise made available at Affordable Rent to Moderate Income Households and not less than six percent (6%) shall be rented or otherwise made available at Affordable Rent to Very Low Income Households.

(b) A person or family shall be determined to be eligible (an "Eligible Household") to rent an Inclusionary Unit if the household income does not exceed on the maximum income level for a Very Low Income Household or Moderate Income Household as required for that specific Inclusionary Unit.

(c) In adjusting for unit size to determine the maximum Affordable Rent, the following adjustments to the Area Median Income shall be made based on the number of bedrooms in the Inclusionary Unit: studio - one person, one bedroom - two persons, two bedrooms - three persons, three bedrooms - four persons, and four bedrooms - five persons. In the event that the Residential Development has or obtains Low Income Housing Tax Credits, after notice to the City these adjustments for assumed household size may be modified for new tenants to reflect federal unit size adjustments based on 1-1/2 persons per bedroom consistent with Health and Safety Code Section 50053. **EXHIBIT C-1 and EXHIBIT C-2** attached hereto and incorporated herein by this reference contain illustrations of the calculation of Affordable Rent for a rental unit for Moderate Income Households and Very Low Income Households.

(d) Developer shall prohibit any person or family who has not been determined to be an Eligible Household at the time of taking possession, renting or occupying any Inclusionary Unit and shall cause any such person or family to vacate any Inclusionary Unit so rented or occupied. When an Inclusionary Unit is vacated, for any reason whatsoever, the Inclusionary Unit shall then again be rented or otherwise made available at Affordable Rent to Moderate Income or Very Low Income Households as specified for the unit. For the purposes of this Agreement, "vacate" shall include, without limitation, departure from an Inclusionary Unit at the termination (whether at the end of a term or upon default) of the lease pursuant to which the Inclusionary Unit was occupied ("Lease"), abandonment of the Inclusionary Unit, sublease or assignment of an Inclusionary Unit (whether or not such sublease or assignment complied with the terms and conditions of the Lease).

(e) Recertification of Income. On an annual basis, Developer shall submit a report (the "Annual Report") to the City, which contains, with respect to each Inclusionary Unit, the rental rate and income and family size of the tenant household. The Annual Report shall be based on information supplied by the tenant or occupant of each Inclusionary Unit in a certified statement on a form provided or previously approved by the City.

2. **Definitions.** The definitions of Area Median Income, Lower (or Low) Income Household, Very Low Income Household, and Extremely Low Income Household shall have the definitions given

these terms in Health and Safety Code Sections 50052.5, 50053, 50079.5, 50105, 50106 and 50093, as amended from time to time.

3. Default and Remedies.

(a) Non-Complying Units. In addition to and without limitation of any other rights and remedies set forth in this Agreement or otherwise available to any party legally entitled to enforce this Agreement, in the event of any Default (as defined below), after thirty (30) day notice by City to Developer, and Developer's failure to cure within such thirty (30)-day period City shall have the right to lease and Developer shall lease to City on demand for a rental of \$1.00 per Inclusionary Unit per year any and all of the "Non-Complying Inclusionary Units" (as defined below) at such time as the Non-Complying Inclusionary Unit(s) is vacated. "Non-Complying Inclusionary Units" shall mean an Inclusionary Unit which is occupied and/or leased in violation of this Agreement. Determination of such a violation may be based on information provided in the Annual Report or determined by City in its reasonable discretion based on information otherwise available to it. Notwithstanding any term or condition of the lease under which the City leases a Non-Complying Inclusionary Unit pursuant to this subsection, Developer hereby consents to and grants City the right to assign such lease or sublet such Inclusionary Unit(s) to a Very Low Income Household or Moderate Income Household, as appropriate, at Affordable Rent or to any non-profit housing provider (a "Provider") in the community for \$1.00 per year on the condition that such Provider subleases such Inclusionary Unit(s) or assigns such lease(s) to Very Low Income Households or Moderate Income Household, as appropriate, at Affordable Rent. If the City assigns or sublets to any Provider, the Developer hereby consents to and grants such Provider the right to assign such lease or sublet such Inclusionary Unit to any Eligible Household at an Affordable Rent. If the City leases any Inclusionary Unit(s) or a Provider subleases any Inclusionary Unit(s) or is the assignee of any lease(s) from the City, the City or Provider, as the case may be, to the extent necessary to ensure compliance with this Agreement, shall sublease such Inclusionary Unit(s) or assign such lease(s) to any Eligible Household at Affordable Rent. Any rent paid under such a sublease or assignment shall be paid to the Developer after the City or Provider, as the case may be, has been reimbursed for any expenses incurred by it in connection with exercising the rights and remedies set forth in this subsection; provided, that if the Developer is in default under any loan documents in connection with the financing of the Property or any improvements thereon, such rent shall be paid to the party legally entitled thereto.

(c) Excess Rent. In the event that and to the extent that the Developer receives rents or other payments from the operation of the Inclusionary Units or other improvements constructed on the Property in excess of what is permitted to charge and receive pursuant to this Agreement, after thirty (30) day notice by City to Developer, Developer agrees and covenants to pay to the City the full amount of such excess immediately on demand by the City. Developer and the City agree and intend that the payment of such excess, absent other remedies described in this Agreement to ensure for the term hereof that rents or other payments do not exceed those Developer is permitted to charge and receive pursuant to this Agreement, shall not alone be an adequate remedy to accomplish the purposes of this Agreement

(d) All Remedies Available and Cumulative. In the event of any breach of any of the covenants or restrictions set forth herein (a "Default"), the City or members of the community (as defined in the Health and Safety Code) shall have the right to exercise all the rights and remedies, and to maintain any action at law or suits in equity or other real property proceedings, including without limitation, specific performance, to enforce the covenants and restrictions and the curing of any breach or violation

thereof. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of the City to enforce the provisions hereof in the future for any continuing or new breach or violation of any of the covenants or restrictions contained in this Agreement. All rights and remedies, including without limitation those set forth in paragraphs 3(a) through (c) above, of any party legally entitled to enforce this Agreement shall be cumulative and the exercise of any such right or remedy shall not impair or prejudice and shall not be a waiver of the right to exercise any other such rights and remedies.

4. **Reporting.** In addition to the Annual Report, Developer shall provide all information reasonably requested by the City with respect to the number of Units in the Property and the income levels of the persons or families renting or otherwise occupying the Units.

5. **Restriction to be Attached.** Developer shall attach a copy of this Exhibit C to any lease or purchase and sale contract with respect to any Inclusionary Unit.

6. **Transfer of Inclusionary Units.** During the term of this Agreement, Developer must give written notice to the City at least 90 days in advance of any sale, agreement to sell, assignment, conveyance, lease (other than the rental or lease of Inclusionary Units to Eligible Households), or transfer of the Inclusionary Units or any part thereof, including the sale of any general partnership interests, the removal of any general partner, or any substantial change in operational or management control over the Inclusionary Units.

7. **Monitoring.** The City shall have the right to take such actions to monitor compliance with this Agreement as it deems necessary, including but not limited to reasonable requests for documents.

8. **Monitoring Fees.** Developer shall pay annual monitoring fees to the City in advance on or prior to July 1 consistent with the amount set forth in the City's Schedule of Fees and Charges. As of 2020-2021, the fee is \$41.65 per Inclusionary Unit to City.

9. **Property Damage or Destruction.** If any of the Inclusionary Units or access thereto is damaged or destroyed, Developer must notify the City within 30 days and must at its own cost and expense, repair or restore the Inclusionary Units. Such work shall be commenced within 120 days after the damage or loss occurs and shall be completed within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration. In the event that the Inclusionary Units are not rentable during this time, the term of this Agreement shall be extended by the period of time that any of the Inclusionary Units were not rented to and occupied by eligible households.

10. **No Discrimination.** The Developer covenants and agrees for itself, its heirs, successors, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any 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. The foregoing covenants shall run with the land.

All deeds, leases, and contracts for the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, or any portion thereof made or entered into by Developer, its successors or assigns, shall contain therein the following language:

(a) In Deeds:

"The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any 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 premises herein conveyed. The foregoing covenants shall run with the land."

(b) In Leases:

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

(c) In Contracts:

"The contractor herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through it, and this contract is made and accepted upon and subject to the conditions that there shall be no discrimination against or segregation of any person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of

subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein transferred nor shall the contractor or any person claiming under or through it 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. The foregoing provisions shall be binding upon and shall obligate the contractor and any subcontracting parties, successors, assigns and other transferees under the contract."

EXHIBIT C-1

The following hypothetical illustrates the calculation of Affordable Rent **for a Moderate Income Households** (as defined in the Ordinance) who are **Renting** a Moderate Income Inclusionary one-bedroom unit with an assumed family size of 2 persons in Santa Clara County.

Assumptions.

1. Inclusionary Unit to be made available to Moderate Income Households.
2. Family Size = 2 Persons (for purposes of this example)
3. Person or Family need not have the maximum income for a Person or Family in the income category (adjusted for family size).
4. Electricity charges are separately metered and directly billed to the tenants by PG&E. A reasonable allowance for such charges based on the Utility Allowance Schedule published by the County of Santa Clara Housing Authority ("Allowance") is deducted.

As of December 2019, per 25 California Code of Regulations ("CCR") Section 6932, median income for a family of 2 is \$105,100.00 ("Area Median Income adjusted for family size") and the maximum income level for a Moderate Income Household with a family size of 2 in Santa Clara County is \$84,080 (80% of the Area Median Income adjusted for family size).

Pursuant to 25 CCR Section 6918, rent (for the purposes of this Exhibit defined as "Rent") includes, among other things, payment for use or occupancy of a housing unit and charges or fees charged or passed through by the landlord other than security deposits). Pursuant to Section 50053 of the Health and Safety Code and this Restriction, the Rent paid by a Moderate Income Household for a Moderate Income Inclusionary Unit shall not exceed 30% of 80% of the Area Median Income adjusted for family size.

CALCULATION OF RENT CHARGEABLE:

\$84,080.00	[80% of the area median income adjusted for family size (2 persons)]
X .30	[Rent cannot exceed 30% of 80% of area median income]
\$25,224.00	

\$ 2,102.00	divided by 12 [to calculate the maximum <u>monthly</u> Rent]
-\$ 74.00	[Assumed allowance for an all electric 1 bedroom apartment.]

\$ 2,028.00 [Maximum Rent after reasonable allowance for electric charges.]

As this hypothetical illustrates, as of December 2019, no Moderate Income Household with a family size of 2 that pays its own electric bill should be charged or pay Rent in excess of \$2,102.00 per month minus less the approved utility allowance; this amount may be adjusted as the CCR Sections above are amended or the reasonable allowance amount is adjusted.

EXHIBIT C-2

The following hypothetical illustrates the calculation of Affordable Rent **for Very Low Income Households** who are **Renting** a Very Low Income Inclusionary one-bedroom unit with an assumed family size of 2 persons in Santa Clara County.

Assumptions.

1. Inclusionary Unit to be made available to Very Low Income Households.
2. Family Size = 2 Persons (for purposes of this example)
5. Person or Family need not have the maximum income for a Person or Family in the income category (adjusted for family size).
6. Electricity charges are separately metered and directly billed to the tenants by PG&E. A reasonable allowance for such charges based on the Utility Allowance Schedule published by the County of Santa Clara Housing Authority ("Allowance") is deducted.

As of December 2019, per 25 California Code of Regulations ("CCR") Section 6932, median income for a family of 2 is \$105,100.00 ("Area Median Income adjusted for family size") and the maximum income level for a Very Low Income Household with a family size of 2 in Santa Clara County is \$58,550.

Pursuant to 25 CCR Section 6918, rent (for the purposes of this Exhibit defined as "Rent") includes, among other things, payment for use or occupancy of a housing unit and charges or fees charged or passed through by the landlord other than security deposits). Pursuant to Section 50053 of the Health and Safety Code and this Restriction, the Rent paid by a Very Low Income Household for a Very Low Income Inclusionary Unit shall not exceed 30% of 50% of the Area Median Income adjusted for family size.

CALCULATION OF RENT CHARGEABLE:

\$52,550.00	[50% of the area median income adjusted for family size (2 persons)]
X .30	[Rent cannot exceed 30% of 50% of area median income]
\$15,765.00	

\$ 1,313.75	divided by 12 [to calculate the maximum <u>monthly</u> Rent]
-\$ 74.00	[Assumed allowance for an all electric 1 bedroom apartment.]

\$ 1,239.75 [Maximum Rent after reasonable allowance for electric charges.]

As this hypothetical illustrates, as of December 2019, no Very Low Income Household with a family size of 2 that pays its own electric bill should be charged or pay Rent in excess of \$1,314.00 per month minus less the approved utility allowance; this amount may be adjusted as the CCR Sections above are amended or the reasonable allowance amount is adjusted.