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| **NO CHARGE ON THIS DOCUMENT PER CALIFORNIA GOVERNMENT CODE SECTION 6103**  **Recording Requested By**  **And When Recorded Mail To:**  City Clerk  City of Chula Vista  276 Fourth Avenue  Chula Vista, CA 91910 |  |

**REGULATORY AGREEMENT - AFFORDABLE HOUSING DENSITY BONUS**

**(Insert Project Title/Address)**

THIS REGULATORY AGREEMENT - AFFORDABLE HOUSING DENSITY BONUS (“Agreement”) is dated as of the \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 2020, between by and between the CITY OF CHULA VISTA, a political subdivision of the State of California (the “City”), acting by and through its Development Services Department Housing Division, and Insert Name, , a (“Developer”).

**RECITALS**

1. Developer owns and is developing real property in the City of Chula Vista, County of San Diego, California (“Property”) described in Exhibit “A” attached hereto and incorporated herein by reference.
2. The Property is generally located at \_\_\_\_\_\_\_\_\_ in Chula Vista, California. Developer has acquired title to the Property and will be constructing a [insert general description of the Project (e.g. three story building totaling 37,780 square feet consisting of xx apartments with associated parking and open space)] (the “Project”), of which xx dwelling units will be operated as rental housing for [insert target households] (the “\_\_\_\_\_\_ Units”). One (1) of the units will be occupied as manager’s unit, and will not be age, income or rent restricted.
3. Under the applicable land use regulations for the Property, Developer would be allowed to construct **[INSERT** Number of Units in Alpha Format] ([**INSERT** number of units in numerical format**]**) units on the Property and required to provide **[INSERT** number of parking spaces in alpha format**]** (**[INSERT** number of parking spaces in numerical format]) **[INSERT** all other required land use regulations that will be provided as concessions/incentives]. Developer has applied for and the City has granted a insert all concessions, waivers or incentives as recommended by Planning Commission (“Parking Ratio Concession”) pursuant to the applicable provisions of Chapter 19.90 of the Chula Vista Municipal Code (the “Affordable Housing Incentives” law) and California Government Code Section 65915, specifically Section 65915(p) (the State “Density Bonus” law). Said resolution is attached as Exhibit “B” and is incorporated herein.
4. In order to obtain the density bonus, Developer has agreed to restrict the occupancy of ­­\_\_\_\_ (\_\_) of the dwelling units (“Affordable Units”), so that the Affordable Units are affordable to very low- and/or low-income households, defined as households earning 50 percent and/or 80 percent or below of the Area Median Income (“AMI”), at a rent (the rent will also include a utility adjustment based upon the “County of San Diego Utility Allowance Schedule,” as adjusted from time to time, a copy of which is available on the City of Chula Vista Housing Division website at ), that does not exceed thirty percent (30%) of \_\_\_ percent (\_\_%) of area median income, pursuant to State Density Bonus Law and as provided in this Agreement.
5. Development of the Property is also governed by the City of Chula Vista’s Balanced Communities General Plan Housing Element Policy (also known as “Inclusionary Housing Policy”), which requires inclusion of affordable housing for low and moderate income persons or payment of an Inclusionary Affordable Housing Fee at the discretion of the City. The Inclusionary Housing Policy and Inclusionary Affordable Housing Fee are not applicable to those residential developments that contain at least ten percent (10%) of the pre-density bonus dwelling units in the proposed project as affordable to households with household incomes below specified levels for a period of not less than 55 years. **[May not be applicable based upon location of project and Balanced Communities policy]**
6. The City has delegated to the City Manager of the City of Chula Vista or his designee (the “City Manager”) the authority to execute this Agreement concerning the Property. The City Manager is authorized to grant a **INSERT** all concessions, waivers or incentives as recommended by Planning Commission to Developer authorizing the construction of \_\_\_ dwelling units on the Property upon Developer agreeing to ensure occupancy of the \_\_\_\_ (\_\_) Affordable Units subject to the terms, covenants, and conditions contained in this Agreement. Developer acknowledges that the density bonus would not be granted in the absence of Developer’s express covenant to restrict the usage of the Affordable Units, as more fully set forth herein below.
7. To meet the applicable provisions of Chapter 19.90 of the Chula Vista Municipal Code and California Government Code Section 65915, the Developer has agreed to enter into and record this Agreement concerning the Property. The purpose of this Agreement is to regulate and restrict the occupancy and rent restrictions of the Affordable Units and to implement controls on the ownership, operation, and management of the Affordable Units. The covenants in this Agreement are intended to run with the land and be binding on the Developer and its successors and assigns in the Property for a total of fifty-five (55) years measured from the issuance of the first certificate of occupancy.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, Developer hereby declares that the Property shall be subject to the covenants, conditions and restrictions set forth below:

**AGREEMENT**

1. Restrictive Covenants. In consideration for the Density Bonus and the exemption from the Inclusionary Housing Policy, Developer agrees and covenants on behalf of itself and its successors and assigns, and each successor in interest to the Property, that at all times during the term of this Agreement set forth herein \_\_\_ (\_\_) residential units at the Property shall be set aside and reserved as “Affordable Units.” As used herein the term “Affordable Units” shall refer to those residential units at the Property which are held and leased strictly in accordance with the terms and conditions set forth below.

(a) Affordable Unit Restrictions. The following restrictions shall apply to the \_\_\_\_\_\_ (\_\_) Affordable Units. The restrictions set forth in the Table below shall establish the maximum rental rate, which shall be adjusted for family size appropriate for the Affordable Unit, from which a utility allowance, as approved by the City and adjusted from time to time, shall be deducted. Should Developer receive any consideration, including any rental subsidies or assistance, in excess of the allowable maximum rent set forth in the Table below, Developer agrees to immediately notify City and reimburse the City for any such overpayment. Acceptance by Developer or its successors in interest, of any consideration in excess of the maximum rent set forth in the Table below shall constitute a material breach of this Agreement. The family size appropriate for the Affordable Unit for purposes of establishing the maximum rental rate shall be 1 person per bedroom plus 1 additional person:

TABLE 1: RENT, INCOME AND OCCUPANCY RESTRICTION CRITERIA

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 | 6 |
| UNIT DESCRIPTION | NUMBER OF AFFORDABLE UNITS | MAXIMUM % OF  AREA MEDIAN  INCOME OF  ELIGIBLE TENANTS  “Income Limit” | MAXIMUM MONTHLY RENTS AS PERCENTAGE OF AREA MEDIAN  INCOME ADJUSTED FOR FAMILY SIZE APPROPRIATE FOR THE UNIT | YEARS OF RENT  RESTRICTION | MINIMUM UNIT OCCUPANCY |
| 1 – Bdrm/1 Ba | x | 50 or 80% of AMI | 1/12th of 30% of 50 or 60% of AMI | 55 | 1 person |
| 2 – Bdrms/1 Ba | x | 50 or 80% of AMI | 1/12th of 30% of 50 or 60% of AMI | 55 | 2 persons |
| 3 – Bdrms/1 Ba | x | 50 or 80% of AMI | 1/12th of 30% of 50 or 60% of AMI | 55 | 3 persons |
| 4 – Bdrms/2 Ba | x | 50 or 80% of AMI | 1/12th of 30% of 50 or 60% of AMI | 55 | 4 persons |
| TOTAL AFFORDABLE UNITS | x |  |  |  |  |

(b) Occupancy by Eligible Tenants. During the term of this Agreement all Affordable Units shall be occupied only by Eligible Tenants. “Eligible Tenants” are those tenants whose aggregate gross annual income does not exceed the respective percentages set forth in Table 1 above of the annual median income, as adjusted for household size. All the units shall be Affordable Units as referenced in the Table. The income of all co-tenants and/or non-dependent occupants shall be taken into account in determining whether a household is an Eligible Tenant hereunder. For purposes of this Agreement, the current annual median income shall be the median income defined by the State Department of Housing and Community Development (“HCD”) as the then current median income for the San Diego Standard Metropolitan Statistical Area, established periodically by HCD, as adjusted for household size. The rents and the occupancy restrictions shall be deemed adjusted, from time to time, in accordance with any adjustments that are authorized by HCD or any successor agency. In the event HCD ceases to publish an established median income as aforesaid, the City may, in their sole discretions, use any other reasonably com­parable method of computing adjustments in area median income. Notwithstanding anything contained herein to the contrary, to the extent any other restrictions applicable to the Property limit the rent and/or occupancy of the Property, the most restrictive shall apply.

(c) An adjustment of rents may be performed annually in accordance with the rents contained in the HCD rent schedules published by the City for the affected unit type and updated from time to time. Further, the rents charged shall be further limited as set forth in Section 1(a), hereof.

2. Affordable Marketing Plan Compliance; Selection of Residents.

(a) Marketing Plan. Developer shall utilize the City’s standardized management and marketing plan for rental of all of the Affordable Units. The marketing plan, at a minimum, requires publicizing the availability of the Affordable Units within the City, such as notices in any City-sponsored newsletter, advertising in local newspapers and notice in City offices. Provided, however, all tenants of each Affordable Unit shall meet the income requirements set forth herein and tenancy and eligibility shall be in conformance with the terms and standards set forth in the management marketing plan and no preference may be used for the purpose or effect of delaying or otherwise denying admission to the Property or unit based on the race, color, ethnic origin, gender, religion, disability, or age of any member of an applicant household.

(b) Lottery. Selection of tenants shall be made randomly by lottery within the following levels of priority, subject in all circumstances to applicable limitations imposed by law, including, without limitation, the Fair Housing Act under Federal law:

(1) Priority. Households which are displaced from their primary residence as a result of an action of City or Agency, a condominium conversion involving the household’s residence, expiration of affordable housing covenants applicable to such residence, or closure of a mobile home or trailer park community in which the household’s residence was located, and the household resided in such housing as the household’s primary place of residence for at least two years prior to such action or event.

(2) Second Priority. Households which meet one of the following criteria: (i) households which are displaced from their primary residence as a result of an action of City or Agency, a condominium conversion involving the household’s residence, expiration of affordable housing covenants applicable to such residence, or closure of a mobile home or trailer park community in which the household’s residence was located, and the household resided in such housing as the household’s primary place of residence for at least one year but less than two years prior to such action or event; (ii) households with at least one member who resides within the City, as that person’s primary place of residence; (iii) households with at least one member who works or has been hired to work within the City, as that person’s principal place of full-time employment; or (iv) households with at least one member who is expected to live within the City as a result of a bona fide offer of employment within the City.

(3) Third Priority. Other Low Income Households who do not meet the criteria for first priority or second priority above.

(d) Screening. Nothing herein shall restrict Developer from screening tenants through the application of criteria which is lawful and customary in apartment management in San Diego County and otherwise consistent with federal, state and local regulations and restrictions related to the financing for the Project.

3. Determination; Annual Requalification. Developer shall obtain from each person to whom Developer leases an Affordable Unit a “Tenant Income Certification” (“TIC”) in the form of Exhibit “C”, attached hereto (or such other reasonable form as City may from time to time adopt). Developer shall be entitled to rely on the TIC and supporting documents thereto in determining whether a household is an “Eligible Tenant” as may be established in Developer’s application review guidelines. Developer shall retain the TIC and supporting documents for a period of not less than three (3) years after the applicant ceases to occupy an Affordable Unit. An Affordable Unit occupied by an Eligible Tenant, shall be treated as an Eligible Tenant until a recertification of such tenant’s income demonstrates that such tenant no longer qualifies as an “Eligible Tenant.”

Developer is required to recertify existing Eligible Tenants for continuing eligibility within 90 days of the annual renewal of each tenant lease. Developer shall require all existing Eligible Tenants to complete a Recertification TIC and review such TIC to determine eligibility for occupancy of an Affordable Unit.

4. Certification; Annual Recertification. Upon completion of construction of the Project (the occurrence of which shall be evidenced by the issuance of a temporary certificate of occupancy for all units within the Project) and annually each year during of the term of this Agreement, Developer shall certify to the City under penalty of perjury, utilizing such forms and providing such backup documentation as requested by the City. Failure to timely complete the annual certification process described in this Section 4 shall constitute a material default under this Agreement.

5. Increased Income of Tenants.

1. Non-Qualifying Household. If, upon recertification of the income of an Eligible Tenant of an Affordable Unit, the Developer determines that such Tenant’s income exceeds 140 percent of the AMI, such Tenant may be permitted to continue to occupy the unit at the then current market rate rent or be provided with a sixty (60) day notice of the lease non-renewal, effective from and after the date of such failure to requalify (i.e., the recertification date, provided the tenant was properly certified originally). Developer shall rent the next available unit of comparable size to the applicable Very Low- and/or Low-Income Household to meet the requirements of Section 1 above. Developer shall maintain the occupancy requirements set forth in Section 1(a) above and shall also be reported annually in accordance with monitoring requirements set forth in Section 9. Developer’s failure to provide such Affordable Unit to a household an Eligible Tenant hereunder shall constitute a material default under this Agreement.

6. Additional Limitations on Tenants. The following restrictions shall also be applicable to the Affordable Unit:

1. Relationship with Developer. The Affordable Unit shall not be occupied by or leased to Developer or any individuals who are partners or shareholders in Developer or in any entity having an interest in Developer or in the Property, officer, employee, agent or consultant of the Developer or any relative thereof (by blood or marriage).

1. Full Time Students. The Affordable Unit shall not be occupied by or leased to any household comprised exclusively of persons who are full-time students, unless such persons are married and eligible to file a joint federal income tax return and both of such persons reside in the Affordable Unit. The term “full-time student” shall be defined as any person who will be or has been a full-time student during five calendar months of the calendar year in question at an educational institution (other than a correspondence school) with regular faculty and students.
2. Student Dependents. Notwithstanding the provisions of Section 6(b), no Affordable Unit shall be occupied or leased to any student dependent as defined in the U.S. Internal Revenue Code, unless the taxpayer (upon whom the student in question is dependent) resides in the same unit.
3. Owners of Real Property. The Affordable Unit shall not be occupied by or leased to any person or any household comprised of one or more persons who own real property.
4. Liquid Asset Limitation. The Affordable Unit shall not be occupied by or leased to any person or household holding, directly or indirectly, liquid assets whose aggregate value exceeds, at the time of determination of eligibility, sixty-five percent (65%) of the then-current annual Area Median Income. As used herein, the term “liquid assets” refers to cash and assets which are readily convertible to cash within a reasonable period, including but not limited to savings and checking accounts, certificates of deposit of any term, marketable securities, money market and similar accounts, mutual fund shares, and insurance policy cash values. The term “liquid assets” shall not include retirement funds which are not readily accessible, or which cannot be accessed by the buyer without the buyer incurring a penalty.

7. Additional Lease Provisions/Annual Income Verification. Developer agrees that it will require each Eligible Tenant to execute an Authorization for Release of Information, in the form attached hereto as Exhibit “D.” Developer agrees that it will include the following provision in all of its leases:

Lessee agrees, upon written request from the Landlord or the City of Chula Vista (“City”), to certify under penalty of perjury the accuracy of all information provided in connection with the examination or reexamination of annual income of the tenant’s household. Further, tenant agrees that the annual income and other eligibility requirements are substantial and material obligations of the tenancy and that the tenant will comply promptly with all requests for information with respect to the tenancy from the Landlord and/or City. Further, tenant acknowledges that tenant’s failure to provide accurate information regarding such requirements (regardless of whether such inaccuracy is intentional or unintentional) or the refusal to comply with the request for information with respect thereto, shall be deemed a violation of this lease provision, and a material breach of the tenancy and shall constitute cause for immediate termination of the tenancy.

9. Non-Discrimination.

(a) Obligation to Refrain from Discrimination. Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Declarant or any person claiming under or through it establish or permit any such practice or practices of discrimination 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, with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property or the rental, lease sale of the Property and any dwelling unit thereon. The foregoing covenants shall run with the Property.

(b) Nondiscrimination Covenants

. Declarant agrees that neither it nor its agents shall unlawfully discriminate against any tenant or prospective tenant of any Affordable Unit on the basis of race, color, creed, religion, sex, sexual orientation, marital status, national origin, familial status, source of income or disability of any person. All such leases or contracts shall contain or be subject to nondiscrimination or nonsegregation clauses.

(1) Leases. In leases “The lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, religion, sex, sexual orientation, disability, medical condition, familial status, source of income, marital status, national origin or ancestry in the leasing, subleasing, renting, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall lessee itself, or any person claiming under or through it, establish or permit 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 land herein leased.”

(2) Contracts. In contracts “There shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, sexual orientation, disability, medical condition, familial status, source of income, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee itself 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, subtenants, sublessees or vendees of the land.”

11. Maintenance/Physical Condition of Affordable Units. After completion of the Affordable Units, Developer shall continually maintain the Affordable Units in a condition which satisfies the Uniform Physical Conditions Standards promulgated by the Department of Housing and Urban Development (24 CFR §5.705), as such standards are interpreted and enforced by City under their normal policies and procedures. City shall have the right to inspect the Affordable Units from time to time, on reasonable notice and at reasonable times, in order to verify compliance with the foregoing maintenance covenant. Further, each Affordable Unit shall be requalified annually, as to the foregoing maintenance covenant, as part of the annual tenant requalification process described in Section 3 above. Any deficiencies in the physical condition of an Affordable Unit shall be corrected by Developer at Developer’s expense within thirty (30) days of the identification of such deficiency by City and delivery of written notice of the same to Developer (unless such deficiency is not capable of being cured within such thirty (30) day period, then such amount of time as City determines is needed, not to exceed one hundred twenty (120) days, provided Developer commences cure within such thirty (30) day period and continues to diligently pursue cure).

12. Deed of Trust.

(a) Execution and Recordation. Developer shall, concurrently with the execution of this Agreement, execute, acknowledge and record a deed of trust on the Property ensuring timely performance of the obligations set forth in this Agreement (“Deed of Trust”). The Deed of Trust shall be subordinated to the construction deed(s) of trust and/or permanent financing in favor of institutional Lenders, as approved by the City Manager in his/her reasonable discretion. The subordination shall be upon such terms and conditions and for such periods of time as the City Manager may approve to protect the provision of affordable housing as required by this Agreement. City shall reconvey the Deed of Trust following the expiration of the fifty-five (55) year term of this Agreement.

(b) Foreclosure on the Property. In the event of a foreclosure on the Property which eliminates the Deed of Trust, the new owner, upon five (5) days written notice from the Commission, shall: (i) execute, acknowledge and deliver to City an Assignment and Assumption Agreement in a form as approved by City, in its reasonable discretion, for recordation; (ii) execute, acknowledge and deliver to City a deed of trust, in a form as approved by City, in its reasonable discretion, to be recorded against the Property, in a lien priority immediately junior to the Assignment and Assumption Agreement and securing the performance of this Agreement; and (iii) reimburse City for all of its attorneys’ fees and costs in connection with the foregoing, including all costs, attorneys’ fees, and expert witnesses fees incurred by City in obtaining compliance by the new owner, including those incurred in litigation, if any.

13. Title Insurance. Developer shall obtain and pay for an American Land Title Association City’s policy satisfactory to City in the amount of One Hundred Thousand Dollars ($100,000.00), insuring that the Deed of Trust is an encumbrance against the Property, subordinate only to any monetary liens to which the Deed of Trust has been subordinated as provided in Section 4 of this Agreement.

14. Design, Construction and Occupancy Schedule for the Affordable Units. The Affordable Units shall receive final inspection approval no later than the date that the market-rate units receive final inspection and approval. Time is of the essence in the occupancy of the Affordable Units.

15. Extension of Time Parameters for Good Cause. The City Manager may, in his/her sole discretion, extend one or more time deadlines for performance as referenced in this Agreement for good cause. “Good cause” shall include, but shall not be limited to, acts of God, labor strikes, war, riots, etc., as shall be determined by the City Manager in his/her sole discretion.

16. Indemnity. Developer agrees to indemnify, defend and hold harmless the City of Chula Vista, the Chula Vista Housing Authority, and any and all of their respective members, officers, agents, servants, or employees (the “Indemnitees”) from and against all claims, liens, claims of lien, losses, damages, costs, and expenses, whether direct or indirect, arising in any way from the construction, sale, rental or operation of the Property and/or any of the units, or from the default by Developer in the performance of its obligations under this Agreement; provided, however, that Developer shall not be required to indemnify, defend or hold harmless any of the Indemnitees from claims, losses, damages, costs and expenses related to the sole negligence or willful misconduct of the Indemnitees.

17. Covenants to Run With the Land. Developer agrees that all of its obligations hereunder shall constitute covenants, which shall run with the land and shall be binding upon the Property and upon every person having any interest therein at any time and from time to time during the term of this Agreement. Further, Developer agrees that, if a court of competent jurisdiction determines that the obligations set forth herein do not qualify as covenants running with the land, they shall be enforced as equitable servitudes.

18. Successors and Assigns. This Agreement shall inure to the benefit of, and be binding upon, the parties and their respective heirs, successors and assigns. Developer shall not sell, transfer or otherwise dispose of the Property, any portion thereof, or any interest therein unless the proposed transferee shall have executed and delivered to City an express written assumption of all of Developer’s obligations under this Agreement, on a form reasonably acceptable to City. Upon assignment and assumption by a successor entity, as approved by City, Developer shall be released from all prospective liability and responsibility under the terms of this Agreement.

19. Density Bonus, Incentives and Waivers. California Government Code Section 65915 requires that cities and counties provide a Developer of a housing development which meets the requirements defined in subsection 65915(b) with a density bonus and offer at least one additional concession or incentive to Developer to assist with the feasibility of the affordable housing project. Developer hereby acknowledges receipt of a density bonus, at least one additional concession or incentive, or waivers in exchange for Developer’s agreement to restrict the rents of the Affordable Units.

20. Term. Pursuant to California Government Code Section 65915, the Density Bonus Law, the term of this Agreement shall begin upon the completion of the construction of the Project, evidenced by the certificate of occupancy for the Affordable Units, and shall remain in full force and effect for a period of fifty-five (55) years therefrom.

21. Monitoring. It is contemplated that, during the term of this Agreement, the City will perform the following monitoring functions. Notwithstanding the following description of the City’s functions, Developer shall have no claim or right of action against the City based on any alleged failure to perform such function. In addition, the Developer shall cooperate with and utilize such forms, software, websites and third-party vendors as may be required by the City.

(a) Prepare and make available to Developer any general information that the City possesses regarding income limitations and restrictions which are applicable to the Affordable Units;

1. Review the documentation submitted by Developer in connection with the annual certification process for Eligible Tenants described in Section 3, above; and,
2. Review the documentation submitted by Developer in connection with the annual certification process for Eligible Tenants in accordance with Section 4, above; and (d) inspecting the Affordable Units to verify that they are being maintained in accordance with Section 9, above.

22. Developer Required to Pay Occupancy Monitoring Fees. Developer agrees to pay City, at the time the Certificate of Occupancy is issued by the City of Chula Vista, a set-up fee (the “Set-Up Fee”) in the amount of Five Hundred Dollars ($500.00). In addition, in each year during the term of this Agreement, Developer shall pay to City an annual monitoring fee of $65 per affordable unit, but not less than $500 in total, increased by three percent (3%) cumulative each year. The annual monitoring fee shall be paid to City annually within thirty (30) days after City provides a written invoice for the same. Failure to timely pay such fees shall constitute a material default under this Agreement. Both the set-up fee and annual monitoring fee shall be paid to City as a consideration for the approval of such density bonus, incentives, waivers and to ensure compliance with Government Code Section 65915.

23. Enforcement; Remedies; Security.

(a) Standing; Equitable Remedies; Remedies Cumulative. Developer expressly agrees and declares that City or any successor public agency shall be the proper party and shall have standing to initiate and pursue any and all actions or proceedings, at law or in equity, to enforce the provisions hereof and/or to recover damages for any event that is expressly stated to be a material default hereunder and which event remains uncured following sixty (60) days’ written notice to Developer by City (or up to one hundred twenty (120) days after notice, if actions to correct the material default have been timely initiated and are, in the reasonable opinion of City, being diligently pursued), notwithstanding the fact that such damages or the detriment arising from such a material default that remains uncured as aforesaid may have actually been suffered by some other person or by the public at large. Further, Developer expressly agrees that injunctive relief and specific performance are proper pre-trial and/or post-trial remedies hereunder to assure compliance with this Agreement. Nothing in this Section 23(a) and no recovery by City shall restrict or limit the rights or remedies of persons or entities other than City, including but not limited to the City, against Developer in connection with the same or related acts by Developer, provided that Developer shall not be subject to duplicate awards or recoveries. The remedies set forth in this Section 23 are cumulative and not mutually exclusive, except to the extent that their award is specifically determined to be duplicative by final order of a court of competent jurisdiction. Further, the award of damages hereunder shall not bar the exercise of police power or other governmental powers, or the pursuit of criminal, civil or administrative penalties by the City in connection with any material default under this Agreement that remains uncured as aforesaid. Developer acknowledges that a material default under this Agreement that remains uncured may constitute a violation of state law.

(b) Remedies At Law For Breach Of Rental Restrictions. In the event of any material default under the provisions hereof that remains uncured following sixty (60) days written notice to Developer by City (or up to ninety (90) days after notice, if actions to correct the material default have been timely initiated and are, in the reasonable opinion of City, being diligently pursued) regarding restrictions on rental of the Affordable Units, at the sole option of City, City shall be entitled to the following remedies at law to the extent they are not duplicative, the election of which shall not be required and may be revoked and/or modified until immediately prior to entry of judgment:

(1) Damages For Specific Breach. City shall be entitled to recover compensatory damages, at its sole option in the event of a material uncured default under the terms of this Agreement. If the material uncured default in question involves the violation of Section 23(a) above, the amount of such compensatory damages shall be the product of multiplying (A) the number of months that the material uncured default in question has continued (following expiration of Developer’s cure period) until the time of trial or cure, whichever occurs first, by (B) the result of subtracting (i) the rents properly chargeable hereunder for the Affordable Units at issue (ii) the rents actually collected by Developer for the Affordable Units at issue for the months in question, as reasonably determined by City. Developer and City agree that it would be extremely difficult or impracticable to ascertain the precise amount of actual damages accruing to City as a result of such a material uncured default and that the foregoing formula is a fair and reasonable method of approximating such damages. City shall be entitled to seek and to recover damages in separate actions for successive, separate breaches, which may occur during the term of this Agreement. Further, interest shall accrue on the amount of such damages from the date of the expiration of Developer’s cure period for the material uncured breach in question at the rate of ten percent (10%) per annum or the maximum rate then allowed by law, whichever is less. Nothing in this section shall preclude the award of exemplary damages as allowed by law.

(2) Acceleration and Liquidation of Future Performance. At the sole option of City, if any material default by Developer in the performance of its obligations under this Agreement remains uncured for more than ninety (90) days after written notice to Developer by City specifying such breach in reasonable detail (or such longer period of time, not to exceed six (6) months, as may reasonably be required for Developer to cure such breach exercising reasonable diligence), Developer’s obligation to perform hereunder may be accelerated by City and declared immediately due through the payment of a liquidated sum. Developer and City agree that it would be extremely difficult and impractical to predict the precise cost to City of (i) locating rental units equivalent to the Affordable Units, (ii) procuring such units (through purchase, lease or subsidies) at the rent discounts contemplated herein, (iii) performing the substantial administrative activities associated with replacing the Affordable Units, and (iv) inflation. Therefore, Developer and City agree that, in the event of a material default hereunder by Developer that remains uncured as aforesaid, and upon written notice from City to Developer that City has elected to exercise its option to accelerate and liquidate Developer’s performance hereunder in accordance with the provisions of this Section 23(b)(2), Developer shall pay, and City shall be entitled to receive, within sixty (60) days of City’s delivery of such written notice, in complete liquidation of City’s future monetary damages and Developer’s future obligations under this Agreement, a lump sum payment equal to: (A) the aggregate of the mathematical differences between the monthly rent for “Comparable Market Rate Unit” (as determined by City, using statistical data for units of the same size and location at the time of the breach) and the monthly rent allowable hereunder for the Affordable Units, at the date of delivery of the aforesaid written notice of election to accelerate, multiplied by (B) the number of months remaining in the term of this Agreement, from and after the date of delivery of the aforesaid written notice of election to accelerate. Developer and City agree that acceleration is a fair and reasonable remedy for non-compliance hereunder, and that the foregoing formula represents a fair and reasonable method of approximating and liquidating the future monetary obligations of Developer to City hereunder for purposes of any such optional acceleration by City. Further, such liquidated amount shall automatically commence to bear interest at the rate of ten percent (10%) per annum or the maximum rate then allowed by law, whichever is less, from and after the date that City delivers to Developer the aforesaid written notice of City’s election to accelerate Developer’s performance hereunder, until paid. Further, if Developer breaches this subparagraph 15(b)(2), City shall be entitled to receive all reasonable attorneys’ fees, costs of suit, title insurance charges, foreclosure costs and other out-of-pocket expenses reasonably incurred in recovering such liquidated amount.

24. General Provisions.

(a) Integration. The undersigned, and each of them, acknowledge and represent that no promise or inducement not expressed in this Agreement has been made in connection with this Agreement. This Agreement contains the entire agreement and understanding between the parties as to its subject matter.

(b) Waiver and Amendment. No provision of this Agreement, or breach of any provision, can be waived except in writing. Waiver of any provision or breach shall not be deemed to be a waiver of any other provision, or of any subsequent breach of the same or other provision. This Agreement may be amended, modified or rescinded only in writing signed by both parties hereto.

(c) Time of Essence. Time is expressly declared to be of the essence in this Agreement, and of every provision in which time is an element.

(d) Captions. Paragraph titles and captions contained in this Agreement are inserted as a matter of convenience and for reference and are not a substantive part of this Agreement.

(e) Additional Documents. The parties each agree to sign any additional documents, which are reasonably necessary to carry out this Agreement or to accomplish its intent.

(f) Benefit and Burden. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns. This Agreement is not intended to benefit any person other than the parties hereto.

(g) Governing Law. This Agreement has been entered into in the State of California and shall be interpreted and enforced under California law.

(h) Attorneys’ Fees. The prevailing party in any action, including, but not limited to, arbitration, a petition for writ of mandate, and/or an action for declaratory relief, brought to enforce, interpret or reform the provisions of this Agreement shall be entitled to reasonable attorneys’ fees and costs (including, but not limited to, experts’ fees and costs, and including “costs” regardless of whether recoverable as such under statute) incurred in such action.

(i) Counterparts. This Agreement may be executed in any number of counterparts and, as so executed, the counterparts shall constitute one and the same Agreement. The parties agree that each such counterpart is an original and shall be binding upon all the parties, even though all of the parties are not signatories to the same counterpart.

(j) Recordation. This Agreement shall be recorded in the Office of the County Recorder for the County of San Diego, California in first lien priority position. No provision of this Agreement, or breach of any provision, can be waived except in writing. Waiver of any provision or breach shall not be deemed to be a waiver of any other provision, or of any subsequent breach of the same or other provision. Except as otherwise provided herein, this Agreement may be amended, modified or rescinded only in writing signed by Developer and the City Manager. In the event the City consents to such an amendment, modification or rescission, the same shall be conditioned upon Developer’s payment of all fees and costs incurred by the City with respect to the same, including without limitation attorneys’ fees.

(k) Notices. All notices given pursuant to this Agreement shall be in writing and sent to the party at its address appearing below (a) by certified or registered U.S. mail, return receipt requested, (b) overnight by a nationally recognized overnight courier such as UPS Overnight or FedEx, or (c) by personal delivery. All notices shall be effective upon receipt (or refusal to accept delivery). These addresses may be changed by any party by written notice to all other parties.

City: City of Chula Vista

Attention: Chula Vista Housing Authority

276 Fourth Avenue

Chula Vista, Califor­nia, 91910

Copy to: City of Chula Vista

276 Fourth Avenue

Chula Vista, California 91910

Attention: City Attorney

Developer: [**INSERT** name and address]

(l) Exhibits and Recitals Incorporated. All exhibits referred to in this Agreement are hereby incorporated in this Agreement by this reference, regardless of whether or not the exhibits are actually attached to this Agreement. The Recitals to this Agreement are hereby incorporated in this Agreement by this reference.

(m) Further Assurances. If Developer does not receive all of the necessary permits and approvals to construct the Project, Developer and City agree that this Agreement and density bonus granted herein shall be null and void and of no further force and effect and Developer and City agree to take all reasonable steps and to execute and cause to be recorded all documents reasonably necessary to remove this Agreement and the Deed of Trust from the record chain of title to the Property.

(n) Title. Developer shall open a title order to ensure proper and timely recordation of this Agreement.

(o) Developer’s Notice to City. Developer shall provide Commission with written notification of obtaining the building permit for the Project, concurrently with the accomplishment of the same.

(p) Noticing Requirements Prior to Termination. Prior to termination of this Agreement, Developer shall comply with any and all noticing requirements required under any applicable laws or regulations, including without limitation, the requirements of California Government Code Sections 65863.10 and 65863.11, if applicable.

(o) Signature Authority. All individuals signing this Agreement for a party which is a corporation, limited liability company, partnership or other legal entity, or signing under a power of attorney, or as a trustee, guardian, conservator, or in any other legal capacity, covenant to the City that they have the necessary capacity and authority to act for, sign and bind the respective entity or principal on whose behalf they are signing.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the date first written above.

**DEVELOPER:**

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

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

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

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

**[SIGNATURES CONTINUED ON FOLLOWING PAGE]**

**CITY:**

City of Chula Vista

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

Maria V. Kachadoorian, City Manager

**Approved as to form**:

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

Glen R. Googins, City Attorney

**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 San Diego )

On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, before me, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 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 instrumentand acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Seal)

**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 San Diego )

On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, before me, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 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 instrumentand acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Seal)

**EXHIBIT “A”**

**Legal Description of the Property**

That certain real property located in the City of Chula Vista, County of San Diego, State of California more particularly described as follows: