



REGULAR MEETING AGENDA

Date: 2/7/2024
Time: 6:30 p.m.
Location: [Zoom.us/join](https://zoom.us/join) – ID# 865 4847 4804 and
Arrillaga Recreation Center, Oak Room
700 Alma St., Menlo Park, CA 94025

Members of the public can listen to the meeting and participate using the following methods.

How to participate in the meeting

- Access the meeting, in-person, at the Downtown Conference Room
- Access the meeting real-time online at:
[Zoom.us/join](https://zoom.us/join) – Meeting ID# 865 4847 4804
- Access the meeting real-time via telephone at:
(669) 900-6833
Meeting ID# 865 4847 4804
Press *9 to raise hand to speak

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Regular Session

- A. Call To Order**
- B. Roll Call**
- C. Public Comment**

Under “Public Comment,” the public may address the Commission on any subject not listed on the agenda. Each speaker may address the Commission once under public comment for a limit of three minutes. You are not required to provide your name or City of residence, but it is helpful. The Commission cannot act on items not listed on the agenda and, therefore, the Commission cannot respond to non-agenda issues brought up under public comment other than to provide general information.

D. Regular Business

- D1. Approve the Housing Commission meeting minutes for October 4, November 27, 2023, and January 18, 2024 ([Attachment](#))
- D2. Consider and make a recommendation to the Planning Commission to approve a Below Market Rate housing agreement with Farzad Ghafari for 1220 Hoover St. ([Staff Report #24-003-HC](#))

E. Reports and Announcements

- E1. Commissioner updates
- E2. Future agenda items
- E3. Staff updates and announcements

F. Adjournment

At every Regular Meeting of the Commission, in addition to the Public Comment period where the public shall have the right to address the Commission on any matters of public interest not listed on the agenda, members of the public have the right to directly address the Commission on any item listed on the agenda at a time designated by the Chair, either before or during the Commission's consideration of the item.

At every Special Meeting of the Commission, members of the public have the right to directly address the Commission on any item listed on the agenda at a time designated by the Chair, either before or during consideration of the item.

For appeal hearings, appellant and applicant shall each have 10 minutes for presentations.

If you challenge any of the items listed on this agenda in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Menlo Park at, or prior to, the public hearing.

Any writing that is distributed to a majority of the Commission by any person in connection with an agenda item is a public record (subject to any exemption under the Public Records Act) and is available by request by emailing the city clerk at jaherren@menlopark.gov. Persons with disabilities, who require auxiliary aids or services in attending or participating in Commission meetings, may call the City Clerk's Office at 650-330-6620.

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REGULAR MEETING MINUTES – DRAFT

Date: 10/4/2023
Time: 6:30 p.m.
Location: Teleconference and
Arrillaga Recreation Center, Oak Room
700 Alma St., Menlo Park, CA 94025

A. Call To Order

Chair Nguyen called the meeting to order at 6:30 p.m.

B. Roll Call

Present: Campos, Leitch, Merriman (arrived 6:35 p.m.), Onap, Portillo, Walker
Absent: Pimentel
Staff: Housing Manager Tim Wong, Management Analyst Adam Patterson

C. Public Comment

None.

D. Presentations and Proclamations

D1. Presentation: Project Sentinel/tenant resources

Dispute Resolution Program Director Isenia Macias, Fair Housing Coordinator Jakob Uriarte, and Housing and Event Coordinator Gianna Valero from Project Sentinel made the presentation (Attachment).

E. Committee and Subcommittee Reports

E1. Update on upcoming community outreach event

Housing Manager Tim Wong introduced the item.

The Commission received clarification on the requirements of the Brown Act and community events.

The Commission received an update from the Community Engagement Subcommittee on the details of an upcoming housing resources event, including attendees, programming, and funding.

The Commission received clarification on event sponsorship and marketing.

F. Reports and Announcements

F1. Commissioner updates

The Commission received updates on upcoming housing conferences and legislation.

F2. Future agenda items

The Commission discussed inviting speakers on pending housing legislation to a future meeting.

F3. Staff updates and announcements

Staff provided an update on current and proposed anti-displacement efforts and the status of Housing Element Program H4.G: Prioritize Affordable Housing on City-Owned Parking Lots Downtown.

The Commission received clarification on the anticipated timeline of Housing Element Program H4.G, request for proposals process, recent legislation concerning tenant displacement and status of the Housing Element.

G. Adjournment

Chair Nguyen adjourned the meeting at 7:27 p.m.

Adam Patterson, Management Analyst II



SAN MATEO COUNTY DISPUTE RESOLUTION CENTER

A program of

Project Sentinel's Dispute Resolution Program

WHO WE ARE

Project Sentinel is a non-profit organization with almost a half-century of experience striving to achieve equality and fairness in housing opportunities for the people of Northern California.

We are the largest housing agency in Northern California, consistently funded by local jurisdictions and by the U.S. Department of Housing and Urban Development (HUD).

We proudly serve 34 communities and partner with local, state and federal agencies, community-based organizations, legal entities and homeless prevention networks.



**We are very often the life-line,
last option for desperate
residents facing housing
insecurity.**

SERVICES OF THE SAN MATEO COUNTY DISPUTE RESOLUTION CENTER

- *Community Outreach and Education*
- *Limited-Scope Legal Consultations*
- *Conciliations/Mediations*
- *Social Services Support*
- *Multi-lingual Assistance*
- *Information and Resource Referrals*



SAN MATEO COUNTY DISPUTE RESOLUTION CENTER



Typical housing disputes
resolved by the DRC:

- Eviction
- Habitability
- Security Deposits
- Rent Increases
- Neighbor to Neighbor

DRC by the Numbers



- Year Projection: 205 Persons Served
- Over 48,000 recipients received information about the via email blasts from the Center
- 3 Education Presentations (one per quarter)
- 2 Partner Roundtables
- Legal Consultations and Mediations still building

FAIR HOUSING

When can discrimination occur?



- At any point in time during the housing process
- Advertising
- Sale or rental of housing
- Terms or conditions of housing
- Termination of tenancy

What does the Fair Housing Department do?



- Investigate FH complaints
- Conduct proactive and reactive audits in to deter discriminatory practices
- Educate, advise, and counseling both tenants and housing providers
 - ▶ 100% of our cases are tenant-based
 - ▶ We are tenant advocates

What laws cover discrimination in housing?



- Fair Housing Act
- Section 504 of the 1973 Rehabilitation Act
- ADA Title II and Title III
- Fair Employment and Housing Act (CA)

Discrimination must be based on...

- A protected category!

Federal:

- ▶ Race/Color
- ▶ National Origin
- ▶ Religion
- ▶ Sex
- ▶ Disability
- ▶ Familial Status

California:

- ▶ Material Status
- ▶ Sexual Orientation
- ▶ Gender Identity
- ▶ Age
- ▶ Source of Income
- ▶ Immigration Status
- ▶ Primary Language
- ▶ Arbitrary

What FH cases do we see here at Project Sentinel?



- All kinds! But there are some major themes...
 - ▶ Source of income discrimination
 - ▶ Disability discrimination
 - ▶ Familial status discrimination
 - ▶ Gender/domestic violence

HUD HOUSING COUNSELING

Counseling services for clients in all stages of homeownership



- First Time Homebuyer Education
 - HUD 8 Hour FTHB Certificate
- Pre-Purchase
- Post-Purchase
- Foreclosure Prevention
- Mortgage Default & Delinquency
- Reverse Mortgage
- Financial & Credit

THANK YOU!

Carole Conn, Executive Director

cconn@housing.org

Isenia Macias, Dispute Resolution Program Director

imacias@housing.org

San Mateo County Dispute Resolution Center

650-399-2149, <https://www.housing.org/>

HUD Housing Counseling

408-470-3730, homeownershipinfo@housing.org

Fair Housing Department

1-888-324-7468, fairhousing@housing.org

SPECIAL MEETING MINUTES – DRAFT



Date: 11/27/2023
Time: 6:30 p.m.
Location: Teleconference and
Arrillaga Recreation Center, Oak Room
700 Alma St., Menlo Park, CA 94025

A. Call To Order

Chair Nguyen called the meeting to order at 6:30 p.m.

B. Roll Call

Present: Campos, Leitch, Merriman, Onap, Portillo, Walker
Absent: Pimentel, Walker
Staff: Housing Manager Tim Wong, Management Analyst Adam Patterson

C. Presentations and Proclamations

C1. Presentation: Belle Haven Community Development Fund

Housing Manager Tim Wong introduced the item.

Belle Haven Community Development Fund Advisory Board Chair Juanita Croft and Administrative Assistant Marlene Santoyo made the presentation (Attachment).

- Eminent Domain spoke in support of relocation assistance for residents displaced during the construction.
- Julie Shanson spoke in support of the Belle Haven Community Development Fund's proposal.
- John Pimentel spoke in support of the presentation.

The Commission received clarification on program eligibility, assistance timeline, strategies for targeting assistance at different affordability levels, funding sources, and sustainability.

D. Regular Business

D1. Accept the Housing Commission meeting minutes for June 7, 2023 (Attachment)

ACTION: Motion and second (Campos/ Portillo), to accept the Housing Commission meeting minutes for June 7, 2023, passed 5-0-2 (Pimentel, Walker absent).

D2. Review and recommend to City Council approval of revisions to the Below Market Rate (BMR) Guidelines (Staff Report #23-007-HC)

Housing Manager Tim Wong introduced the item.

The Commission received clarification on first-time homebuyer's exceptions, homebuyer

protections, the BMR Ownership Legacy List, and Belle Haven Community Development Fund assistance to owners and renters.

- Kristen Leep emailed questions about the proposed updates to the BMR guidelines (Attachment).

The Commission received clarification on the transfer of BMR ownership.

ACTION: Motion and second (Merriman/ Leitch), to review and recommend to City Council approval of revisions to the BMR Guidelines, excluding the changes made to section 7.1 of the BMR Guidelines, passed 5-0-2 (Pimentel, Walker absent).

E. Informational Items

- E1. Housing Commission meeting calendar for 2024 (Attachment)

Staff reported that this item would be included at a future meeting as a regular business item.

F. Reports and Announcements

- F1. Commissioner updates

None.

- F2. Future agenda items

Staff reported that more information on the impact to the Housing Commission from the Housing Element would be included at a future meeting.

- F3. Staff updates and announcements

Staff provided an update on an upcoming BMR agreement and the status of the Housing Element.

G. Adjournment

Chair Nguyen adjourned the meeting at 8:28 p.m.

Adam Patterson, Management Analyst II



Belle Haven Community Development Fund Programs

BHCDF Mission & Vision



Belle Haven
Community Development Fund

The Belle Haven Community Development Fund (BHCDF) was formally started as a local non-profit in 2013.

- BHCDF's mission is to engage the Belle Haven Community in advocating for our common goals and broker resources to foster sustainable community development. Uniting people and building community.
- BHCDF envisions Belle Haven as a diverse, self-sustaining and empowered community, which works to pursue its interests and attain its goals, and is a highly desirable place to live.

Who Are We?

The Belle Haven Community Development Fund is a non-profit organization with 10 years of experience brokering resources and providing support to Belle Haven residents. Our most notable work has been as the **Program Administrator of the Belle Haven Neighborhood Mini-Grant Program.**

Each year we and our Fiscal sponsor, the San Francisco Study Center, sign an MOU agreement with the City. With the funding received from the City, we administer the marketing, application process, support services, committee review and recommendation process, notifications, agreement signing process and distribution of awardee checks.

BHCDF Program & Initiatives

As advocates for Belle Haven residents, we look for ways to broker resources and encourage community engagement. This has included collaborations with other nonprofits and the City to provide:

- **College and Career Technical Fair** at Onetta Harris complex for 6th graders-adults
- **Recreation scholarships** to low income families with youth, 3-13 years
- **Sponsored Employment Program** summer jobs for Belle Haven youth, 14 -24
- **Belle Haven Mini-Grant Program**, provides small grants to Belle Haven residents who want to improve the front of their homes with curb appeal projects & local nonprofits serving the neighborhood to host community events

Menlo Park Tenant Rental Assistance Program Proposal

For
Those tenants who are below the 80% AMI eligibility

Median Household Income by Percentages

Percentages	\$153,288.00	2023 SMC AHMI
80%	\$122,630.40	Low
50%	\$76,644.00	Very low
30%	\$36,789.12	Extremely low
15%	\$22,993.20	

MidPen Gateway Rising Housing vs Springline

Mid-Pen Gateway Rising

Type	No.	Rent Range
1 BR	66	\$792 - 1698
2 BR	50	\$938 - 2026
3 BR	24	\$1066 - 2114

Springline

Type	No.	AMI	Rent
1 BR	8	80%	\$2,509.00
2 BR	2	80%	\$3,010.00
3 BR			

What's needed?

Mid-Pen's Gateway Rising Apartments are now open. They are currently working through the right of first refusal and waiting lists.

Menlo Park has several other developments that provide Low Income (80% AMI) housing; however most of them are beyond the reach of residents who fall in the Very Low (50% AMI) and Extremely Low (30%) income levels.

What are we proposing?

- **Subsidies for Local Households:** Our local pilot program will provide ongoing rent subsidies for Belle Haven residents or employees to live in Below Market Rate rental housing units in Menlo Park.
- **Recommended pilot size- 20 Units.** A larger pilot size will give us better data than a smaller group and allow us to explore the range of circumstances that put affordable housing units out of reach for families.
- **Recommended Pilot Duration - 60 months.** In order to be consistent with current trends in housing voucher programs and aiming to create housing stability, we feel that 60 months is the minimum period required to ensure that the City's Below Market Rate Housing policies (how many units, at what affordability) are updated to provide an effective solution to the lack of new, available, affordable (Extremely Low, Very Low and Low Income) BMR rental units.
- **Recommended Language:** Maximum disbursement per household per month \$1200, Maximum months per household 60. Total needed \$1.4 MM

Program Implementation

The Belle Haven Community Development Fund (BHCDF) has been disbursing city funds in the form of an annual Mini-Grant Program for Belle Haven Residents since 2014. We will replicate parts of the Mini-Grant model as the basis for a new MOU with the city. If the City accepts the proposal, we would do the following:

- Work with the City to establish the requirements, process and timeline for the pilot program, including requirements for data collection from property managers and residents.
- Generate an MOU with the City to use BMR funds for the pilot project.
- BHCDF set up the tools needed to implement. Similar to our Mini-Grant Program (website, communications, support systems, etc.)
- Work with the Study Center, the BHCDF fiscal sponsor, to establish a process (application and eligibility standards to set up monthly payments with the managers of the developments that have BMR housing).
- Initiate the disbursement of monthly checks.
- Conduct annual audits and report program performance on a periodic basis.
- Engage the city attorney and/or city manager when issues arise



Belle Haven Community Development Fund

P.O. Box 2005, Menlo Park CA 94026 • Phone: (650) 999-0545

Email: boardchair@bellehavencdf.org • Website: www.bellehavencdf.org

A wide landscape photograph showing a river or stream winding through a green, hilly area. The sky is filled with large, white and grey clouds, suggesting a bright but slightly overcast day. The water reflects the sky and the surrounding greenery.

BMR GUIDELINE REVISIONS

Tim Wong, Housing Manager

OVERVIEW

- Consider BMR Guideline Revisions
- Make recommendation to the City Council

BACKGROUND

- Past difficulties and future sales
 - Revisions to clarify new BMR sales process
 - Focus on new BMR sales
- More comprehensive BMR Guideline review per HE programs.
 - To be completed in the next two years

PROPOSED REVISIONS

- Section 4.1.2
 - Sets time when BMR price is calculated
- Section 5.1 and 5.2
 - Further protections to insure that BMR requirements are met for comparability, size, design and materials
- Section 5.4
 - Clarifies BMR formula
 - Requires use of BMR Administrator
- Section 5.5
 - Additional language to detail the City's rights
- Section 7.1
 - Exceptions to first time homebuyer removed
- Section 7.2
 - Sets forth when the applicant needs to attend Homebuyer Education Course

PROPOSED REVISIONS

- Section 8.1
 - Provisions to update the Legacy List
- Section 8.2
 - How to apply Legacy List and when a marketing plan is required
- Section 8.3
 - Clarifies a fixed loan must be obtained.
- Section 8.4
 - Clarifies application submittal requirements.
- Section 9
 - Outlines greater steps in new BMR sales



Current Process for New Sales	Proposed Process for New Sales	Proposed Section
City Final Inspection	Developer notices 180 days prior to building inspection	9.1.1
City Approval/Certification	If no building inspection is required, 180 days prior to sale. City to inspect the unit within 60 days	9.1.2
Set BMR Price	Developer provides housing costs and HOA as part of notice	9.1.3
Contact Developer with marketing plan and advertising schedule	Within 90 days of notice, BMR sales price determined	9.1.4
City reviews and approval of marketing plan	Writes certifying letter	9.1.6
Application packet goes out	Within 10 days of certifying letter, must provide purchase contract, ccr's and other documents	9.1.7
Orientation Meeting	If a marketing plan is needed, City has 15 business days to approve plan	9.1.7
Applicants submit applications	Within 10 days of approval of the marketing plan, developer implements the marketing plan.	9.1.9
Review applications, rank per legacy or lottery	City starts receiving applications. 45 day period	9.1.10
Begin sales process	Application closes. City reviews and ranks	9.1.11
City designee executes BMR docs	Highest ranked applicant is notified. Must satisfy HBE within 10 days	9.1.12
	Applicant referred to seller and provides purchase agreement. Must sign or revise within 10 days.	9.1.12
	If applicant does not sign within 21 days, forfeit and next applicant is contacted	9.1.12
	No applications within 45 days, with 30 days, sales price is recalculated	9.1.14
	City option to repeat the last step	9.1.14

RECOMMENDATION

Staff requests the Housing Commission:

1. Consider the proposed BMR Guideline revisions
2. Make a recommendation to the City Council on the proposed BMR Guidelines.



THANK YOU

From: [Kristen L](#)
To: [Patterson, Adam P](#)
Subject: Fwd: BMR Rule Updates
Date: Saturday, November 25, 2023 2:47:57 PM

CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.

It looks like my original message was blocked so I'm trying again. Thanks for your consideration!!

----- Forwarded message -----

From: **Kristen L** <leeping1@gmail.com>
Date: Sat, Nov 25, 2023 at 2:40 PM
Subject: BMR Rule Updates
To: Patterson, Adam P <APPatterson@menlopark.org>

Dear Housing Commissioners and Staff Liaison,

I'm sorry for the late notice before your Monday meeting. I recently became aware of updates to the BMR rules and have questions.

1. Requiring a BMR administrator to represent the buyer and seller in the sales process is a great move. My past experience attempting to purchase without this guidance was challenging.
2. The seller is allowed to use a real estate agent, but the buyer is not allowed to do so. I think purchasers should have the right to hire a real estate agent, paid independently from the transaction, if they need additional support. Would they have that option?
3. Regarding the update on the Legacy List and the use of lotteries, can you explain why the last two households on the Legacy List wouldn't retain purchasing priority? Would it be possible to allow them to keep their priority and use the lottery system for backup buyers?

Thank you so much for sharing your insights and taking these ideas into consideration as you move forward!!

Best wishes,
Kristen Leep



SPECIAL MEETING MINUTES – DRAFT

Date: 1/18/2024
Time: 6:30 p.m.
Locations: Teleconference and
Arrillaga Family Recreation Center, Oak Room
700 Alma St., Menlo Park, CA 94025

A. Call To Order

Chair Onap called the meeting to order at 6:34 p.m.

B. Roll Call

Present: Leitch, Merriman, Portillo, Onap (remote – Brown Act), Walker
Absent: Campos, Pimentel
Staff: Housing Manager Tim Wong, Management Analyst Adam Patterson, Community Development Director Deanna Chow, City Attorney Mary Wagner, Principal Planner Tom Smith, Senior Planner Calvin Chan, Associate Planner Matt Pruter

C. Regular Business

- C1. Approve the Housing Commission meeting minutes for August 2 and September 6, 2023 (Attachment)

ACTION: Motion and second (Leitch/ Walker), to approve the Housing Commission meeting minutes for August 2 and September 6, 2023, passed 5-0-2 (Campos and Pimentel absent).

- C2. Consider and adopt a resolution recommending the City Council amend the 2023-2031 Housing Element of the General Plan, as conditionally approved by the California Department of Housing and Community Development (Staff Report #24-001-HC)

Principal Planner Tom Smith introduced the item.

The Commission received clarification on reducing parking requirements at emergency shelters, transitioning from planning to implementation of Housing Element programs and the timeline for implementation, the Commission's role in the recommendation of these amendments, and how the Housing Element is addressing homelessness.

ACTION: Motion and second (Merriman/ Leitch), to adopt a resolution recommending the City Council amend the 2023-2031 Housing Element of the General Plan, as conditionally approved by the California Department of Housing and Community Development, passed 4-0-1-2 (Portillo abstaining, Campos and Pimentel absent).

- C3. Approve the Housing Commission meeting calendar for 2024 (Staff Report #24-002-HC)

Housing Manager Tim Wong introduced the item.

The Commission received clarification on the format of the calendar.

ACTION: Motion and second (Leitch/ Walker), to approve the Housing Commission meeting calendar for 2024, passed 5-0-2 (Campos and Pimentel absent).

D. Reports and Announcements

D1. Commissioner updates

None.

D2. Future agenda items

Staff reported out on an upcoming Housing Element progress report, pending state legislation, and an upcoming below market rate (BMR) agreement.

D3. Staff updates and announcements

None.

E. Adjournment

Chair Onap adjourned the meeting at 7:29 p.m.

Adam Patterson, Management Analyst II

HOUSING ELEMENT UPDATE

Amendments to the Adopted 2023-2031 Housing Element, as
Conditionally-Approved by HCD

BACKGROUND

- Housing Element outreach and public meetings began in 2021
 - Plan for city's housing needs from 2023 to 2031
 - Regional Housing Needs Allocation (RHNA): 2,946 units
 - Housing Commission recommended approval on Jan. 12, 2023

- Housing Element adopted Jan. 31, 2023

- HCD requested revisions in April and Aug. 2023
 - City Council authorized transmittal of revisions to HCD

- HCD indicated revisions substantially compliant with Housing Element law in Dec. 2023

- On Jan. 8, 2024, Planning Commission recommended adoption of the revisions

HIGHLIGHTED PROGRAMS

- Examples of key programs of interest:
 - **Anti-displacement strategy** (H2.E): Multi-step approach to reduce displacement, primarily focused on Belle Haven
 - **BMR Guidelines updates** (H4.A and H4.B): Amend BMR Guidelines and evaluate increased BMR requirements
 - **Affordable Housing on City-Owned Parking Lots Downtown** (H4.G): Prioritize development of affordable housing on downtown parking lots on an expedited schedule through 2027
 - **Fair chance ordinance** (H5.A): Prohibit housing providers from using criminal background as factor in tenant selection
 - **Community outreach in implementing Housing Element programs** (H5.B): Increase outreach through various channels to ensure broad public engagement



HIGHLIGHTED REVISIONS SINCE JAN. 31, 2023



- Attachment F of staff reports provides extensive list
- Examples of significant changes
 - **Mid-cycle review program** (H1.H) expanded: pipeline projects, Affordable Housing Overlay, governmental constraints, etc.
 - **Emergency shelters program** (H3.G) updated: reduce parking to maximum needed for shelter staff only
 - **City-owned parking lots program** (H4.G) updated: additional merit to proposals addressing certain housing priorities (extremely and very low income units people with special needs, etc.)
 - **Environmental Justice program** (H5.J) added: highlight General Plan Environmental Justice Element, use of community amenities fund, and implementation of one Environmental Justice Element program annually

RECOMMENDATION AND NEXT STEPS

- Staff recommends that Housing Commission recommend adoption to the City Council
- City Council will consider recommendations and take action Jan. 23
- After Council action, staff will submit Housing Element to HCD for final certification



THANK YOU



STAFF REPORT

Housing Commission

Meeting Date: 2/7/2024
Staff Report Number: 24-003-HC

Regular Business: Consider and make a recommendation to the Planning Commission to approve a Below Market Rate Housing Agreement with Farzad Ghafari for 1220 Hoover Street

Recommendation

Staff recommends that the Housing Commission recommend approval of the draft Below Market Rate (BMR) Housing Agreement (“Agreement”) to the Planning Commission for one on-site two bedroom BMR unit as part of a proposed eight-unit residential development, consisting of one three-story, multi-family residential building with tuck-under parking at 1220 Hoover Street, as described in the draft Agreement (Attachment A).

Policy Issues

The Housing Commission should consider whether the BMR Housing proposal and terms are in compliance with the BMR Housing Program Guidelines (BMR Guidelines) and the BMR Housing Ordinance.

Background

Site location

The project site consists of one parcel in the R-3 (Apartment) zoning district with a total lot area of approximately 10,995 square feet. The project site currently contains two one-story dwellings with a designated detached garage for each unit. Since the property is located in the R-3 district around downtown, the property qualifies for the R-3 infill development standards, which allows for greater density and FAR than R-3 properties that are not located near downtown.

For the purposes of this staff report, Hoover Street is considered to have an east-west orientation, and all compass directions referenced will use this orientation. The project site is located on the northern side of Hoover Street approximately half way between the intersections with Oak Grove Avenue and Elizabeth Lane. The parcels to the east and west of the project site are also located in the R-3 district, and the property to the north is located the SP-ECR-D (El Camino Real/Downtown Specific Plan) zoning district. A location map is provided as Attachment B.

Analysis

Project description

The applicant is proposing to demolish the two existing residences and construct a new three-story multifamily residential building on top of a tuck-under parking garage. The development would consist of

three one-bedroom units, three two-bedroom units, and two three-bedroom units, for a total of eight units. Although not required to provide parking spaces per SB 2097, which exempts developments from providing parking if they are located within one-half mile of major transit, the project would include 13 parking spaces for the residents of the development. The applicant has submitted a tentative subdivision map to subdivide the development into condominium units that can be sold separately. However, the units would initially be offered for rent and would be sold at a later date, as described in more detail below.

The proposal includes a request for architectural control to construct the residential building, a use permit for construction on a substandard lot, major subdivision, and a heritage tree removal permit to remove two on-site heritage trees and one heritage street tree. The applicant's BMR proposal letter and select sheets from the project plans are included as Attachments C and D, respectively. The Planning Commission will take final action on all requested entitlements for the proposed project, except for the major subdivision, where the City Council is the deciding body.

BMR Housing Program & related requirements

The applicant is required to comply with Chapter 16.96 of City's Municipal Code ("BMR Ordinance"), and with the BMR Housing Program Guidelines adopted by the City Council ("BMR Guidelines") to implement the BMR Ordinance, since the project includes five or more residential units. In accordance with the City's BMR Guidelines, it is preferred for residential developments of five to nine units that the developer provide at least one BMR unit on site. The BMR Ordinance requires the applicant to submit a Below Market Rate Housing proposal for review by the Housing Commission. At this time, the Housing Commission should review the applicant's proposal and the draft Agreement and provide guidance to staff, the applicant, and the Planning Commission. The draft Agreement would subsequently be reviewed by the Planning Commission.

The applicant is proposing to satisfy the project's BMR obligation through the construction of one 2 bedroom BMR unit on site. Based on previous comments by the Housing Commission, staff understands that the creation of new BMR on-site units (as opposed to payment of an in-lieu fee) is preferred, and that provision of such units, especially units capable of accommodating families in and around the El Camino Real corridor, is also generally desired.

As previously mentioned, the applicant intends to subdivide the development into condominium units to be sold separately. However, instead of immediately selling the units, the applicant intends to rent the units until the for-sale housing market becomes more favorable. The BMR Guidelines state that for-rent BMR units must be affordable to low-income residents (or equivalent to low if providing a mix of income ranges), but for-sale units can be affordable to moderate-income residents. Further, the BMR Guidelines state that the BMR unit be equivalent and indistinguishable from the market-rate units. In order to resolve this discrepancy in required income levels, the applicant proposes to rent all of the units until the for-sale market is more favorable, at which time all of the units would be sold. The Agreement would require the applicant to rent the BMR unit to a low-income resident initially. When the applicant is ready to sell the units, the BMR unit would be offered for sale to a moderate-income resident and the existing tenant would have right of first refusal to purchase the unit. If the existing tenant is not able to or does not wish to purchase the unit, the applicant would maintain ownership of the unit and the tenant would be allowed to remain in the unit under the existing lease at a low-income rate. Once the tenant voluntarily vacates the unit, the unit would be able

to be sold to a moderate-income buyer. Pursuant to Section 5.4.1 of the BMR Guidelines, the sale price would be determined upon completion of the project and would be adjusted based on one-third of the increase in the Consumer Price Index in the period between completion of the BMR unit and the month of notification of the intent to sell the unit.

The proposed BMR unit would be one of the two-bedroom, two-bathroom units and would be located on the second floor. The unit would have access to its own parking space in the tuck-under garage. The BMR unit would generally have a similar floor plan and size as several of the other units within the building. At 921 square feet, the proposed BMR unit would be the smallest of the three two-bedroom units, but would be larger than all of the one-bedroom units. As shown on the proposed elevations, the BMR unit would be included in the overall building and would therefore, would be indistinguishable from the market-rate units within the building. Select plan sheets that include a site plan with project data illustrating the sizes of the units, floor plans and elevation drawings of the proposed BMR units are provided in Attachment D. Since the BMR units would be similar in size as to similar market-rate units, staff believes that the requirements for BMR unit characteristics, including the size, location, design, and materials as identified in the BMR Guidelines are met by the proposed project

Correspondence

At the time of the preparation of this staff report, staff has not received any correspondence regarding the draft BMR Housing Agreement.

Conclusion

Staff believes that the applicant's proposal of one on-site BMR unit meets the requirements of the BMR Ordinance and BMR Guidelines. Further, the size and location of this BMR unit near the El Camino Real corridor and the Downtown area supports the City's goal of producing housing near transit corridors and community amenities. Staff recommends that the Housing Commission recommend to the Planning Commission approval of the one on-site BMR unit under the terms stated in the proposed BMR Agreement.

Impact on City Resources

The project sponsor is required to pay Planning, Building, and Public Works permit fees, based on the City's Master Fee Schedule, to fully cover the cost of staff time spent on the review of the project.

Environmental Review

The proposed project will be evaluated with respect to compliance with the California Environmental Quality Act (CEQA) as part of the Planning Commission final action. BMR direction is not a project under CEQA, so environmental review is not required by the Housing Commission.

Public Notice

Public Notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

A. Draft BMR Agreement

- B. Location Map
- C. 1220 Hoover Street BMR Proposal
- D. Excerpts of Project Plans

Disclaimer

Attached are reduced versions of maps and diagrams submitted by the applicants. The accuracy of the information in these drawings is the responsibility of the applicants, and verification of the accuracy by City Staff is not always possible. The original full-scale maps, drawings, and exhibits are available for public viewing at the Community Development Department.

Exhibits to Be Provided at Meeting

None

Report prepared by:
Chris Turner, Senior Planner

Report reviewed by:
Tim Wong, Housing Manager

This document is recorded for the benefit of the City of Menlo Park and is entitled to be recorded free of charge in accordance with Sections 6103 and 27383 of the Government Code.

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

City of Menlo Park
Attn: City Clerk
701 Laurel Street
Menlo Park, CA 94025

BELOW MARKET RATE HOUSING AGREEMENT

(1220 Hoover Street, Menlo Park)

THIS BELOW MARKET RATE HOUSING AGREEMENT (“Agreement”) is entered into as of _____, 2024, by and between the City of Menlo Park, a California municipal corporation (“**City**”), and _____, a _____ (“**Owner**”).

RECITALS

A. Owner is the owner and resale of that certain real property comprised of approximately 10,995 square feet located at 1220 Hoover Street (APN 071-103-420), in the City of Menlo Park, California (“**Property**”), as more particularly described in Exhibit A attached hereto and incorporated herein by this reference.

B. The residential development to be located on the Property (“**Project**”) involves the demolition of two (2) existing single-story residential units and the construction of one (1) four-story residential building that includes eight (8) residential units. The eight (8) units in the Project include three (3) one-bedroom units, three (3) two-bedroom units and two (3) three-bedroom units.

C. Pursuant to the Project Approvals, BMR Ordinance and Guidelines (as all are defined below), one (1) unit in the Project will be a below market rate residential unit (“**BMR Unit**”) affordable to either (i) a low income individual or family (i.e., households earning no more than 80% of the County of San Mateo (“**County**”) AMI (defined in Section 3.2)) if the BMR Unit is rented, or (ii) a moderate income individual or family (i.e. households earning no more than 120% of the County AMI) if the BMR Unit is sold. The BMR Unit will be Unit Number __, a two (2) bedroom unit located on the second floor of the Project, as shown in Exhibit B.

D. Currently, Owner anticipates renting the residential units in the Project, including the BMR Unit, but also intends to place a condominium subdivision map

approved by the California Department of Real Estate (“**Condo Map**”) on title to the Project. The Guidelines allows for such a scenario, so long as Owner obtains all required City approvals and documents the arrangement in a BMR Housing Agreement (defined in Recital F). As further described in this Agreement, City will permit such arrangement, so long as Owner ultimately treats all units in the Project uniformly by selling or renting all residential units, including the BMR Unit. Owner may elect to initially rent all of the units in the Project and subsequently elect to sell all of the units in the Project, provided that Owner adheres to the terms and conditions of this Agreement, the BMR Ordinance, the Guidelines and Applicable Laws (defined in Section 1.3).

E. On _____, 2024, after a duly noticed public hearing, and on the recommendation of the Housing Commission and the Planning Commission, the City Council approved a use permit for new construction on a substandard lot, architectural control review for the building design, a major subdivision map to create a vesting tentative map and a form of below market rate (“**BMR**”) housing agreement for the Project that City Council authorized the City Manager to sign (collectively, **Project Approvals**). Separately, a permit allowing removal of three (3) heritage trees on the Property was approved by the Public Works Director on _____.

F. The Project Approvals require Owner to provide one (1) BMR Unit in accordance with this Agreement. Pursuant to the Menlo Park Municipal Code Chapters 15.36 and 16.96 establishing the Below Market Rate Housing Program (“**BMR Ordinance**”), and the Below Market Rate Housing Program Guidelines, as such may be revised by City from time-to-time (“**Guidelines**”), Owner is required to execute and record an approved “**BMR Housing Agreement**,” as a condition precedent to approval of a tentative or final map and the issuance of a building permit for the Project. The intent of City is to preserve the number and availability of affordable homes in the BMR program for persons with low or moderate incomes for as long as possible. This Agreement is intended to satisfy the requirement that Owner sign and record a BMR Housing Agreement.

G. As required by this Agreement, Owner agrees to observe all of the terms and conditions set forth below for purposes of development and operation of the BMR Unit. This Agreement will ensure the BMR Unit’s continuing affordability.

NOW, THEREFORE, in consideration of the forgoing, which are incorporated herein by references, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows.

1. CONSTRUCTION OF THE IMPROVEMENTS.

1.1 Construction of the Project. Owner agrees to construct the Project in accordance with the Menlo Park Municipal Code and all Applicable Laws.

1.2 City and Other Governmental Permits. Before commencement of the Project, Owner shall secure or cause its contractor to secure any and all permits which

may be required by City or any other governmental agency with any authority over such construction, including without limitation building permits. Owner shall pay all necessary fees and timely submit to City final drawings with final corrections to obtain such permits; City staff will, without incurring liability or expense therefore, process applications in the ordinary course of business for the issuance of building permits and certificates of occupancy for construction that meets the requirements of the Menlo Park Municipal Code, and all Applicable Laws.

1.3 Compliance with Laws. Owner shall carry out the design, construction and operation of the Project in conformity with all applicable laws, including , without limitation, all applicable state labor standards, City zoning and development standards, City and state building, plumbing, mechanical and electrical codes, and all other provisions of the Menlo Park Municipal Code, and all applicable disability access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.* (collectively, “**Applicable Laws**”).

2. OPERATION OF THE BMR UNIT

2.1 Effective Date. The effective date of this Agreement shall be the date that Owner obtains a certificate of occupancy or temporary certificate of occupancy from City (“**Effective Date.**”)

2.2 Affordability Period. The Property shall be subject to the requirements of this Agreement from the Effective Date until the fifty-fifth (55th) anniversary of such date. The duration of this requirement shall be known as the “**Affordability Period.**”

2.3 Maintenance. Owner shall comply with every condition of the Project Approvals applicable to the Project and shall, at all times, maintain the Project and the Property in good repair and working order, reasonable wear and tear excepted, and in a safe and sanitary condition, and from time to time shall make all necessary and proper repairs, renewals and replacements to keep the Project and the BMR Unit in a good, clean, safe, and sanitary condition.

2.4 Monitoring and Recordkeeping. Throughout the Affordability Period, Owner shall comply with all applicable recordkeeping and monitoring requirements set forth in the Guidelines. City shall have the right to inspect the books and records of Owner and its rental agent, sales agent or bookkeeper upon reasonable notice during normal business hours. During any period that the BMR Unit is owned by Owner, representatives of City shall be entitled to enter the Property, upon at least 48-hour prior written notice, which can be provided via email, to monitor compliance with this Agreement, to inspect the records of the Project with respect to the BMR Unit, and to conduct, or cause to be conducted, an independent audit or inspection of such records. Owner agrees to cooperate with City in making the Project and Property available for such inspection or

audit. Owner agrees to maintain records in businesslike manner, and to maintain such records for the entire Affordability Period.

2.5 Non-Discrimination Covenants. Owner covenants by and for itself, its successors and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, marital status, familial status, disability, national origin, ancestry or other class protected by Applicable Laws in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor 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 BMR Unit. Owner shall include such provision in all deeds, leases, contracts and other instruments executed by Owner, and shall enforce the same diligently and in good faith.

a. If the BMR Unit is sold, the following language shall appear in any BMR grant deed:

(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of a 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 sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

b. If the BMR Unit is rented, the following language shall appear in any BMR Unit lease or occupancy agreement of any sort:

(3) Tenant herein covenants by and for tenant and tenant's heirs, personal representatives and assigns, and all persons claiming under tenant or through tenant, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color,

creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein leased nor shall tenant or any person claiming under or through tenant establish or permit any such practice or practices of discrimination of segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased.

(4) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

c. In contracts pertaining to management, construction, maintenance or other element of the Project, the following language, or substantially similar language prohibiting discrimination and segregation shall appear:

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

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

2.6 Subordination. This Agreement shall be recorded in the Official Records of the County and shall run with the land. City agrees that City will not withhold consent to reasonable requests for subordination of this Agreement for the benefit of lenders providing financing for the Project, provided that the instruments effecting such subordination include reasonable protections to City in the event of default, including without limitation, extended notice and cure rights.

3. OPERATION OF BMR UNIT AS A RENTAL UNIT

3.1 BMR Unit. If Owner elects to rent all residential units in the Project, then Owner agrees to make available, restrict occupancy to and lease not less than one (1) Low Income BMR Unit to a Qualifying Household, as hereinafter defined, at an affordable Monthly Rent, as described in Section 3.4. The BMR Unit shall be of a quality comparable to all of the other rental units in the Project. The BMR Unit shall be a two (2) bedroom unit located on the second floor of the building. City's City Manager or Director of Community Development ("**Director**") shall be notified in writing of any change or relocation by Owner of the BMR Unit.

3.2 Qualifying Household. For purposes of this Agreement, a "**Qualifying Household**" shall mean a household with income as follows:

"Low Income Unit": means units restricted to households with incomes of not more than eighty percent (80%) of AMI. "AMI" means the median income for San Mateo County, California, adjusted for Actual Household Size, as published from time to time by the State of California Department of Housing and Community Development in Section 6932 of Title 25 of the California Code of Regulations or successor provision. A Qualifying Household shall continue to qualify unless at the time of recertification, the household's income exceeds the Low Income eligibility requirements, then the tenant shall no longer be qualified. Upon Owner's determination that any such household is no longer qualified, the unit shall no longer be deemed a Low Income Unit, and Owner shall make the next available unit, which is comparable in terms of size, features and number of bedrooms, a Low Income Unit, or take other actions as may be necessary to ensure that one (1) Low Income Unit is rented to a Qualifying Household. Owner shall notify City annually in writing if Owner substitutes a different unit for the designated Low Income Unit pursuant to this paragraph.

3.3 Income Verification and Annual Report. On or before July 1 of each year, commencing with the calendar year that the first residential unit in the Project is rented to a tenant, and annually thereafter, Owner shall obtain from the household occupying the BMR Unit and submit to City an income computation and certification form, completed by the tenant of such unit, which shall certify that the income of the Qualifying Household is truthfully set forth in the income certification form, in the form proposed by Owner and approved by the Director ("**Annual Report**"). Owner shall make a good faith effort to verify that the household leasing the BMR Unit meets the income and eligibility restrictions for the BMR Unit by taking the following steps as a part of the verification process with respect to all adults age eighteen (18) or older within the household: (a) obtain a minimum of the three (3) most current pay stubs; (b) obtain an income tax return for the most recent tax year; (c) conduct a credit agency or similar search; (d) obtain the three (3) most current savings and checking account bank statements; (e) obtain an income verification form from the applicant's current employer; (f) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (g) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. Copies of tenant income certifications shall be available to City upon request. The Annual Report shall, at a minimum, include the following information for the BMR Unit: unit

number, number of bedrooms, current rent and other charges, dates of any vacancies during the reporting period, number of people residing in the unit, total household gross income (as discussed in the Guidelines), and lease commencement and termination dates. The Annual Report shall also provide a statement of Owner's management policies, communications with the tenants and maintenance of the BMR Unit, including a statement of planned repairs to be made and the dates for the repairs.

3.4 Affordable Monthly Rent. The maximum Monthly Rent, defined below, chargeable for the BMR Unit and paid pursuant to the lease shall be as follows:

“Low Income Household”: shall be 1/12th of thirty percent (30%) of eighty percent (80%) of AMI. The Monthly Rent for a Low Income Unit rented to a Low Income Household and paid by the household shall be based on an assumed average occupancy per unit of one (1) person per studio unit, one and one-half (1.5) persons for a one-bedroom unit, three (3) persons for a two-bedroom unit and four and one-half (4.5) persons for a three-bedroom unit, unless otherwise approved by the Director for an unusually large unit with a maximum of two persons per bedroom, plus one.

For purposes of this Agreement, **“Monthly Rent”** means the total of monthly payments actually made by the household for (a) use and occupancy of the BMR Unit and land and facilities associated therewith, (b) any separately charged fees or service charges assessed by Owner which are required of all tenants, other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities not included in (a) or (b) above, and which are not paid directly by Owner, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuels and internet service but not including telephone, which reasonable allowance for utilities is set forth in the County's Mateo's Utility Allowance Schedule for detached homes, apartments, condominiums and duplexes, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than Owner. Pursuant to the Guidelines, in no case shall the Monthly Rent for a BMR Unit exceed seventy-five percent (75%) of comparable market rate rents in the Project.

3.5 Lease Requirements. No later than one hundred eighty (180) days prior to the initial lease up of the BMR Unit, Owner shall submit a standard lease form to City for approval by the Director or designee. City shall reasonably approve such lease form upon finding that such lease form is consistent with this Agreement and contains all of the provisions required pursuant to the Guidelines. City's failure to respond to Owner's request for approval of the standard lease form within thirty (30) business days of City's receipt of such lease, shall be deemed City's approval of such lease form. Owner shall enter into a written lease, in the form approved by City, with each new tenant of the BMR Unit prior to a tenant or tenant household's occupancy of the BMR Unit. Each lease shall be for an initial term of not less than one (1) year which may be renewed pursuant to Applicable Laws, and shall not contain any of the provisions which are prohibited pursuant to the Guidelines or any Applicable Laws.

3.6 Selection of Tenants. The BMR Unit shall be leased to tenant(s) selected by Owner who meet all of the requirements provided herein and by Applicable Laws, with priority given to those Qualifying Households who either live or work in the City of Menlo Park, or meet at least one (1) of the other preferences identified in the Guidelines. City's BMR Administrator, on behalf of City, will provide to Owner the names of persons who have expressed interest in renting BMR rental housing by having their names added to City's "**Interest List**" (as referred to in the Guidelines), so that such interested persons may be added to Owner's prospective tenant list, to be processed in accordance with Owner's customary, equitable and lawful policies. Owner shall not refuse to lease to a holder of a certificate or a rental voucher under the Section 8 program or other tenant-based assistance program, who is otherwise qualified to be a tenant in accordance with the approved tenant selection criteria.

4. OPERATION OF BMR UNIT AS A FOR SALE UNIT

4.1 Sale to Moderate Income Households. If Owner elects to sell all of the residential units in the Project, then the BMR Unit shall be sold to an Eligible Buyer (defined below) in accordance with the BMR Ordinance, Guidelines and this Agreement. On the date the Maximum Sales Price (defined below) is established by the City, the BMR Unit shall be affordable to Eligible Buyers which (a) are moderate income as defined in Section 50093 of the California Health and Safety Code and described in the Guidelines, (b) meet all of the requirements set forth in the Guidelines, (c) are of the smallest household size eligible for the BMR Unit ("**Eligible Buyer**"), and (d) remain on the "**BMR Purchase Legacy List**" (as defined in the Guidelines) if such list remains in effect and any prospective buyers remain on it and otherwise in accordance with the priorities set forth in the Guidelines. The BMR Unit shall be sold for no more than the "**Maximum Sales Price**" established by City, as described in the Guidelines. The eligibility requirements for BMR buyers, the selection process for BMR buyers, the purchase process, the sale procedures, the occupancy requirements and the process for resale are set forth in the Guidelines and supplemented by this Agreement.

4.2 Term. Any and all obligations or responsibilities of Owner under this Agreement with regard to the BMR Unit, but only to the extent the BMR Unit is then operated as a for sale residential unit, shall terminate upon recordation on title to the BMR Unit in compliance with the Guidelines of both (a) the grant deed conveying the BMR Unit to an Eligible Buyer, City or its Assignee in accordance with the terms and provisions of this Agreement, and (b) the Resale Restriction Agreement (defined in Section 4.8).

4.3 Third Party Purchasers. The execution and delivery of this Agreement shall not be deemed to be for the benefit of the third party purchasers of the BMR Unit or any other third party and any and all obligations and responsibilities of Owner under this Agreement are to City for whose benefit this Agreement has been entered into. No third party purchaser of the BMR Unit or any market rate unit, homeowners' association or any other third party shall obtain any rights or standing to complain that the BMR Unit was not constructed, designed, sold or conveyed in accordance with this Agreement, the BMR Ordinance and/or the Guidelines as a result of this Agreement. Furthermore, the

acceptance of this Agreement by City, the acceptance of the interior specifications for the BMR Unit, and the conveyance of the BMR Unit to an Eligible Buyer shall conclusively indicate that Owner has complied with this Agreement, the BMR Ordinance and the Guidelines.

4.4 Conditions of Transfer. For purposes of this Agreement, “transfer” shall mean any voluntary or involuntary sale, assignment or transfer of ownership or any interest in the BMR Unit, including, but not limited to, a fee simple interest, joint tenancy interest, or life estate. A “transfer” shall also include the recording of one or more deeds of trust against the BMR Unit to secure one or more loans or to refinance an existing loan. There shall be no transfer of the BMR Unit to any person or entity, except with the express written consent of City or its designee, which consent shall be consistent with the City’s goal of creating, preserving, maintaining and protecting housing in Menlo Park for persons of low and moderate income. Any transfer of the BMR Unit shall be subject to the conditions set forth in this Agreement, the BMR Ordinance and the Guidelines.

4.5 Prohibited Transfer/Default. Any transfer which is not in substantial compliance with the above conditions shall be deemed a “**Prohibited Transfer**”. Upon receipt of any evidence of a Prohibited Transfer or any other violation of the terms of this Agreement, City shall give written notice to Owner specifying the nature of the violation. If the violation is not corrected to the satisfaction of City within ten (10) days after the date of the notice, or within such further time as City determines is necessary to correct the violation, City may declare a default under this Agreement. Upon the declaration of a default, City may apply to a court of competent jurisdiction for specific performance of the Agreement, for an injunction prohibiting a proposed sale or transfer in violation of this Agreement, for a declaration that the Prohibited Transfer is void, or for any such other relief as may be appropriate under the circumstances. Owner shall reimburse City for all reasonable City costs, including but not limited to attorneys’ fees, incurred in reviewing instruments and other legal documents proposed to effect a Transfer under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee within ten (10) days following City’s delivery to Owner of an invoice detailing such costs.

4.6 Owner Occupancy. Prospective purchasers of the BMR Unit must sign a written statement acknowledging their agreement that the BMR Unit must be occupied as the purchaser’s principal residence and that the BMR Unit may not be rented or leased (including short term leases, such as through Airbnb or comparable rental platform), except as allowed under the Resale Restriction Agreement. Further, each purchaser of the BMR Unit must annually sign a written statement certifying compliance with the foregoing requirements.

4.7 Senior Lien Holder. Any attempt to transfer title or any interest therein in violation of these covenants shall be void, provided, however, that any deed restrictions herein shall be subordinate to any mortgage (“**First Deed of Trust**”) held by a Senior Lien Holder and/or a federally or state chartered bank or savings and loan association qualified to do business in the State of California which mortgage was obtained at the time owner

purchased the BMR Unit ("**Senior Lien Holder**"). City and Owner acknowledge and agree that this Agreement is subject and subordinate in all respects to the liens, terms, covenants and conditions of the First Deed of Trust and to all advances heretofore made or which may hereafter be made pursuant to the First Deed of Trust held by a Senior Lien Holder including all sums advanced for the purpose of (a) protecting or further securing the lien of the First Deed of Trust, curing defaults by Owner under the First Deed of Trust or for any other purpose expressly permitted by the First Deed of Trust, or (b) constructing, renovating, repairing, furnishing, fixturing or equipping the BMR Unit. The terms and provisions of the First Deed of Trust are paramount and controlling, and they supersede any other terms and provisions hereof in conflict therewith. In the event of a foreclosure or deed in lieu of foreclosure of the First Deed of Trust, any provisions herein or any provisions in any other collateral agreement restricting the use of the BMR Unit to low or moderate income households or otherwise restricting Owner's ability to sell the BMR Unit shall have no further force or effect on subsequent owners or purchasers of the BMR Unit. Any person, including his or her successors or assigns (other than Owner or a related entity of Owner), receiving title to the BMR Unit through a foreclosure or deed in lieu of foreclosure of the First Deed of Trust shall receive title to the BMR Unit free and clear from such restrictions. Further, if the Senior Lien Holder acquires title to the BMR Unit pursuant to a deed in lieu of foreclosure, the lien of this Agreement shall automatically terminate upon the Senior Lien Holder's acquisition of title, provided that (i) City was given written notice of a default under the First Deed of Trust, (ii) City was given a reasonable period of time under the First Deed of Trust to cure the default, and (iii) City did not timely cure the default or diligently pursue a cure of the default as determined by the Senior Lien Holder, within the sixty (60) day period provided in such notice of default sent to City. Any and all deeds of trust recorded against the BMR Unit, other than the First Deed of Trust held by the Senior Lien Holder and/or such Senior Lien Holder's successor or assignee of its interest, shall be subordinate and subject to the terms and provisions of this Agreement.

4.8 Resale Restriction Agreement. The initial buyer and each subsequent buyer of the BMR Unit (except City in connection with its exercise of the City Purchase Option) shall (a) execute and record an Agreement and Deed Restrictions Regarding Resale Controls for Below Market Rate Property substantially in the form of Exhibit D, that restricts the future sale of the BMR Unit to moderate income households at no more than the Maximum Sales Price at the time of sale for a period of fifty-five (55) years ("**Resale Restriction Agreement**"), (b) execute a Promissory Note or other document acceptable to City ("**Note**"), and (c) execute and record a Performance Deed of Trust ("**Deed of Trust**"), and with respect to the Note and Deed of Trust, in a form and substance acceptable to City. The Resale Restriction Agreement and Deed of Trust must be recorded against the BMR Unit at the closing of the applicable purchase and sale of the BMR Unit. Among other things, the Resale Restriction Agreement shall provide that for a term equal to fifty-five (55) years, subsequent sales of the BMR Unit may only be made at no more than the then Maximum Sales Price (as determined by City) to an Eligible Buyer that qualifies as a moderate-income household, that the buyer must occupy the BMR Unit as its principal residence, that the BMR Unit may not be rented or leased

except as allowed under the Resale Restriction Agreement, that the buyer may not make the BMR Unit available for short term rentals, and that the Buyer is required to annually sign a written statement certifying compliance with all of the foregoing requirements. In connection with the sale of the BMR Unit, City may, in its discretion, require prospective buyers to (i) be pre-qualified by City or its designee, (ii) execute a disclosure agreement that explains the provisions of the Resale Restriction Agreement, and (iii) execute and record the Deed of Trust that secures performance under the Resale Restriction Agreement. Concurrently with the recordation of the first Resale Restriction Agreement and Deed of Trust applicable to the BMR Unit, City shall execute and cause to be recorded an instrument releasing and reconveying this Agreement with respect to the BMR Unit, so that the BMR Unit will no longer be encumbered by this Agreement.

4.9 Subsequent Election by Owner to Sell all Residential Units. Owner has elected to initially rent all residential units in the Project, but shall also encumber the Project with a Condo Map allowing Owner to sell the residential units in the Project in the future. As provided for in the Guidelines, Owner shall be permitted to make a subsequent election to sell the units, so long as Owner complies with all Applicable Laws, adheres to all terms and conditions of this Agreement and makes such election to sell with respect to all residential units in the Project, including the BMR Unit. Notwithstanding the foregoing, if at the time Owner elects to sell all residential units in the Project the BMR Unit is occupied by a tenant or other occupant ("**BMR Occupant**"), Owner shall first be required to offer the BMR Unit for sale to such then BMR Occupant pursuant to the terms of the BMR Ordinance and the Guidelines and that BMR Occupant shall have a one-time option to purchase the BMR Unit. Owner shall offer the BMR Unit for sale to the BMR Occupant pursuant to a written notice and the BMR Occupant shall have a period of _____ (___) days to advise Owner in writing (a) if it wishes to purchase the BMR Unit, and (b) to complete and deliver to Owner and City a BMR application, as described in the Guidelines. If the BMR Occupant declines to purchase the BMR Unit, does not timely respond to Owner's offer or is not an Eligible Buyer, Owner shall not be permitted to remove the BMR Occupant from the BMR Unit and instead, the BMR Occupant shall remain in occupancy of the BMR Unit for the duration of the term of the BMR Occupant's lease or occupancy agreement, as such may be extended, and pursuant to the existing terms of the BMR's Occupant's lease or occupancy agreement. If the BMR Occupant remains in the BMR Unit as a tenant, the requirements of Section 3 of this Agreement (including the income verification requirement) shall continue to apply, and the BMR Occupant may not be charged for assessments or other association fees required to be paid by owners of residential units in the Project. If the BMR Occupant desires to purchase the BMR Unit, timely submits a BMR application and is an Eligible Buyer, then Owner shall promptly proceed with selling the BMR Unit to the BMR Occupant pursuant to the BMR Ordinance, the Guidelines and this Agreement.

5. City Purchase Option. Owner hereby grants to City, or another governmental entity or tax-exempt nonprofit organization to whom City may assign the rights set forth in this Section 5 ("**Assignee**"), a right to purchase the BMR Unit solely for rental or resale as a BMR unit ("**City Purchase Option**") in conformance with this Agreement, the BMR Ordinance and the Guidelines. No less than one hundred eighty (180) days prior to the

date Owner anticipates the Project being ready for a building inspection, Owner shall deliver written notice thereof to City, and City or its Assignee shall have the right to exercise the City Purchase Option with respect to the BMR Unit for a period (“**Option Exercise Period**”) of ninety (90) days from the date of such notice. Owner’s notice shall be sent by certified mail through the United States Postal Service (“**USPS**”) to the Community Development Director and Housing Manager, City of Menlo Park, 701 Laurel Street, Menlo Park, CA 94025. If City does not deliver written notice to Owner of City’s decision to exercise its option prior to the expiration of the Option Exercise Period, Owner may sell the BMR Unit to an Eligible Purchaser at a purchase price up to or equal to the Maximum Sales Price accordance with the requirements of this Agreement, the Guidelines and BMR Ordinance. City may, in its sole discretion, assign this purchase right to an Eligible Buyer, as described in the BMR Ordinance and Guidelines; City reserves the right to reassign the rights set forth in this Section 5 to another Eligible Buyer in the event the initial or any subsequent Eligible Buyer fails or is unable to complete a purchase and sale transaction and in such event, applicable timelines and deadlines shall be extended. If City elects to rent the BMR Unit, then City shall select a tenant from the City’s Interest List if one exists. Alternatively, City may market the BMR Unit for rental or sale and may retain a realtor or comparable service to locate Eligible Buyers or Qualifying Households, as applicable.

a. **Acceptance.** Exercise of the City Purchase Option by City or its Assignee shall be in writing, shall state the Maximum Sales Price and shall state if the option is being exercised on behalf of City or its Assignee. The notice shall be sent via certified mail through USPS to the address of Owner stated in Owner’s notice to City. The BMR Unit shall be sold to City, its Assignee or an Eligible Buyer in “**salable condition**” as defined in the Guidelines following an inspection by City, its Assigned or an Eligible Buyer, as described in the Guidelines. Owner’s notice to City described in Section 5 shall be deemed an offer to sell and City’s acceptance of Owner’s offer shall be deemed an acceptance of such offer and shall collectively constitute a legally binding contract to transfer title to the BMR Unit from Owner to City or its Assignee that may not be withdrawn without the written consent of City or its Assignee, as applicable.

b. **Escrow.** Within five (5) days of City’s or Assignee’s acceptance of the offer and full execution by City, its Assignee or Eligible Buyer and Owner of a purchase and sale agreement consistent with the Guidelines and otherwise acceptable to City, an escrow account shall be opened by City or its Assignee at a title company selected by City. Closing shall occur within sixty (60) days of opening escrow. At closing, the title insurance company shall issue to City, its Assignee or Eligible Buyer a CLTA owner’s title insurance policy, in a form reasonably approved by City and subject only to such title exceptions as reasonably approved by City. Taxes and assessments shall be prorated as of the date of closing. Taxes must be paid current as of the closing date and all liens must be satisfied and removed from title unless City expressly agrees otherwise in writing. City, its Assignee or Eligible Buyer shall pay the cost of the title insurance. The title company shall utilize the form of escrow agreement customarily used for residential transactions with Menlo Park, modified to the extent necessary to conform to the transaction and otherwise acceptable to City. If the BMR Unit is sold to an Eligible Buyer,

then prior to closing, City and Eligible Buyer shall deliver into escrow an executed Resale Restriction Agreement, Deed of Trust and Note; the Resale Restriction Agreement and Deed of Trust shall be recorded at closing. The Eligible Buyer must also certify at closing that he or she will occupy the BMR Unit as his or her primary residence. At closing, Owner shall convey title to City, Assignee or Eligible Buyer by grant deed and otherwise in conformance with this Agreement, the Guidelines and BMR Ordinance.

6. ADVANCES BY CITY. In the event City advances any amounts for the payment of mortgages, including the curing of defaults on senior liens and redeeming the BMR Unit prior to a lien sale, taxes, assessments, insurance premiums, homeowner's fees and/or associated late fees, costs, interest, attorneys' fees, pest inspections, resale inspections and other expenses related to the BMR Unit, which Owner has failed to pay or has permitted to become delinquent, City shall be entitled to a lien against the BMR Unit in the amount of all costs and expenses incurred by City.

7. DEFAULT AND REMEDIES

7.1 Events of Default. The following shall constitute an "Event of Default" by Owner under this Agreement: a material breach of any condition, covenant, warranty, promise or representation contained in this Agreement where such breach continues for a period of thirty (30) days after written notice thereof to Owner without Owner curing such breach, or if such breach cannot reasonably be cured within such thirty (30) day period, Owner must commence the cure of such breach within such thirty (30) day period and thereafter diligently proceed to cure such breach; provided, however, that if a different period or notice requirement is specified for any particular breach under any other section of this Agreement, the specific provision shall control.

7.2 Remedies. The occurrence of any Event of Default under Section 7.1 shall give City the right to proceed with an action in equity to require Owner to specifically perform its obligations and covenants under this Agreement or to enjoin acts or things which may be unlawful or in violation of the provisions of this Agreement, and the right to terminate this Agreement.

7.3 Obligations Personal to Owner. The liability of Owner under this Agreement to any person or entity is limited to Owner's interest in the Project, and City and any other such persons and entities shall look exclusively thereto for the satisfaction of obligations arising out of this Agreement or any other agreement securing the obligations of Owner under this Agreement. From and after the date of this Agreement, no deficiency or other personal judgment, nor any order or decree of specific performance (other than pertaining to this Agreement, any agreement pertaining to the Project or any other agreement securing Owner's obligations under this Agreement), shall be rendered against Owner, the assets of Owner (other than Owner's interest in the Project), its partners, members, successors, transferees or assigns and each of their respective officers, directors, employees, partners, agents, heirs and personal representatives, as the case may be, in any action or proceeding arising out of this Agreement or any agreement securing the obligations of Owner under this Agreement, or any judgment,

order or decree rendered pursuant to any such action or proceeding. No subsequent Owner of the Project shall be liable or obligated for the breach or default of any obligations of Owner under this Agreement on the part of any prior Owner. Such obligations are personal to the person who was Owner at the time the default or breach was alleged to have occurred and such person shall remain liable for any and all damages occasioned thereby even after such person ceases to be Owner. Each Owner shall comply with and be fully liable for all obligations Owner hereunder during its period of ownership of the Project.

7.4 Attorneys' Fees. In addition to any other remedies provided hereunder or available pursuant to law, if either Party brings an action or proceeding to enforce, protect or establish any right or remedy hereunder, the prevailing Party shall be entitled to recover from the other Party its costs of suit and reasonable attorneys' fees. This Section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

7.5 Remedies Cumulative. No right, power, or remedy given by the terms of this Agreement 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 by the terms of any such instrument, or by any statute or otherwise.

7.6 Waiver of Terms and Conditions. City may, in its sole discretion, waive in writing any of the terms and conditions of this Agreement. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

7.7 Non-Liability of City Officials and Employees. No member, official, employee or agent of City shall be personally liable to Owner or any occupant of the BMR Unit, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Owner or its successors, or on any obligations under the terms of this Agreement.

7.8 Cure Rights. Notwithstanding anything to the contrary contained herein, City hereby agrees that any cure of any default made or tendered by (i) Owner's limited partner, or (ii) Owner's senior mortgage lender, shall be deemed to be a cure by Owner and shall be accepted or rejected on the same basis as if made or tendered by Owner.

8. GENERAL PROVISIONS

8.1 Below Market Rate Guidelines. This Agreement incorporates by reference the Guidelines, as amended from time to time. In the event of any conflict or ambiguity between this Agreement, the requirements of state and federal fair housing laws and the Guidelines, the terms and conditions of this Agreement and the requirements of state and federal fair housing laws shall control.

8.2 Time. Time is of the essence in this Agreement.

8.3 Notices. Unless otherwise indicated in this Agreement, any notice requirement set forth herein shall be deemed to be satisfied three days after mailing of the notice first-class United States certified mail, postage prepaid, or at the time of personal delivery, addressed to the appropriate party as follows:

Owner: _____

Attention: _____
Email: _____

City: City of Menlo Park
701 Laurel Street
Menlo Park, California 94025-3483
Attention: City Manager

Such addresses may be changed by notice to the other Party given in the same manner as provided above.

8.4 Successors and Assigns. This Agreement constitutes a covenant and legal restriction on the BMR Unit and shall run with the land, and all of the terms, covenants and conditions of this Agreement shall be binding upon Owner and the permitted successors and assigns of Owner.

8.5 Intended Beneficiaries. City is the intended beneficiary of this Agreement and shall have the sole and exclusive power to enforce this Agreement. It is intended that City may enforce this Agreement in order to, satisfy its obligations to improve, increase and preserve affordable housing within City, as required by the Guidelines, and to provide that a certain percentage of new housing is made available at affordable housing cost to persons and families of very low, low and moderate incomes as required by the Guidelines. No other person or persons, other than City and Owner and their assigns and successors, shall have any right of action hereon.

8.6 Partial Invalidity. If any provision of this Agreement shall be declared invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

8.7 Governing Law. This Agreement and other instruments given pursuant hereto shall be construed in accordance with and be governed by the laws of the State of California. Any references herein to particular statutes or regulations shall be deemed to refer to successor statutes or regulations, or amendments thereto. The venue for any action shall be the County of San Mateo.

8.8 Amendment. This Agreement may not be changed orally, but only by agreement in writing signed by Owner and City.

8.9 Approvals. Where an approval or submission is required under this Agreement, such approval or submission shall be valid for purposes of this Agreement only if made in writing. Where this Agreement requires an approval or consent of City, such approval shall not be unreasonably withheld and may be given on behalf of City by the City Manager or designee. The City Manager or designee is hereby authorized to take such actions as may be necessary or appropriate to implement this Agreement, including without limitation the execution of such documents or agreements as may be contemplated by this Agreement, and amendments which do not substantially change the uses or restrictions hereunder, or substantially add to the costs of City hereunder.

8.10 Indemnification. To the greatest extent permitted by law, Owner shall indemnify, defend (with counsel reasonably approved by City) and hold City, its heirs, successors, assigns, elected and appointed officials, employees and agents (“**Indemnitees**”) harmless from and against any and all demands, losses, claims, costs and expenses, and any other liability whatsoever, including without limitation, reasonable accountants’ and attorneys’ fees, charges and expense (collectively, “**Claims**”) arising directly or indirectly, in whole or in part, as a result of or in connection with Owner’s construction, management, or operation of the BMR Unit and the Project or any failure to perform any obligation as and when required by this Agreement. Owner’s indemnification obligations under this Section 8.10 shall not extend to Claims to the extent resulting from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 8.10 shall survive the expiration or earlier termination of this Agreement, but only as to claims arising from events occurring during the Affordability Period.

8.11 Insurance Coverage. Owner shall comply with the insurance requirements set forth in Exhibit C, attached hereto and incorporated herein by this reference, and shall, at Owner’s expense, maintain in full force and effect insurance coverage as specified in Exhibit C for the following time periods: (a) if the BMR Unit is operated as a rental unit then for the duration of the Affordability Period, and (b) if the BMR Unit is operated as a for sale unit then until recordation of both a grant deed conveying the BMR Unit to a third party and the Resale Restriction Agreement at which time the insurance requirements in the Resale Restriction Agreement shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year set forth above.

OWNER:

_____, a _____

By: _____

Name:

Its:

CITY:

CITY OF MENLO PARK, a California
municipal corporation

By: _____

City Manager

ATTEST:

By: _____

City Clerk

List of Exhibits:

- Exhibit A: Property Description
- Exhibit B: Depiction of BMR Unit
- Exhibit C: Insurance Requirements
- Exhibit D: Resale Restriction

Exhibit A

Property Description

Exhibit B

BMR Unit Depiction

Exhibit C

Insurance Requirements

Prior to initiating work on the Project and continuing throughout the Affordability Period, Owner shall obtain and maintain the following policies of insurance and shall comply with all provisions set forth in this Exhibit.

1. General Requirements. Owner shall procure and maintain the following insurance providing coverage against claims for injuries to persons or damages to property that may arise from or in connection with the Project, construction, management, or operation of the Property by Owner or Owner's agents, representatives, employees, consultants and contractors, or subcontractors, including the following:

(a) Commercial General Liability: Owner and all contractors working on behalf of Owner on the Property shall maintain a commercial general liability policy in an occurrence policy for protection against all claims arising from injury to person or persons not in the employ of Owner and against all claims resulting from damage to any property due to any act or omission of Owner, its agents, or employees in the conduct or operation of the work or the execution of this Agreement. Such insurance shall include products and completed operations liability, blanket contractual liability, personal injury liability, and broad form property damage coverage. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage.

(b) Commercial Automobile Liability: Owner and all contractors working on behalf of Owner on the Property shall maintain insurance for protection against all claims arising from the use of vehicles, owned, hired, non-owned, or any other vehicle in connection with the Project, construction, operation or management of the Property. Such insurance shall cover the use of automobiles and trucks on and off the site of the Property. Coverage shall be at least as broad as Insurance Services Office covering Commercial Automobile Liability, any auto, owned, non-owned and hired auto.

(c) Workers' Compensation Insurance: Owner (and the general partners thereof) shall furnish or cause to be furnished to City evidence satisfactory to City that Owner (and the general partners thereof), and any contractor with whom Owner has contracted for the performance of work on the Property or otherwise pursuant to this Agreement, shall maintain Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance.

(d) Builder's Risk: Upon commencement of any construction work on the Property, Owner and all contractors working on behalf of Owner shall maintain a policy of builder's all-risk insurance in an amount not less than the full insurable cost of the Project on a replacement cost basis naming City as loss payee as its interests may appear.

(e) Professional Liability/Errors and Omissions: Owner shall require any architects, engineers, and general contractors working on the Property to maintain Professional Liability/Errors and Omissions insurance with limits not less than Two Million Dollars (\$2,000,000) each claim. Certificates evidencing this coverage must reference

both Owner and City, its heirs, successors, assigns, elected and appointed officials, employees and agents (“**Indemnitees**”). If the professional liability/errors and omissions insurance is written on a claims made form: (i) the retroactive date must be shown and must be before the Effective Date, (ii) insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of Project construction, and (iii) if coverage is cancelled or non-renewed and not replaced with another claims made policy form with a retroactive date prior to the Effective Date, Owner must purchase, or require the provision of, extended period coverage for a minimum of three (3) years after completion of construction.

(f) Property: Owner shall maintain property insurance covering all risks of loss, including earthquake and flood (if required) for 100% of the replacement value of the Project with deductible, if any, in an amount acceptable to City, naming City as loss payee as its interests may appear.

2. Minimum Limits; Adjustments. Insurance shall be maintained with limits no less than the following:

(a) Commercial General Liability and Property Damage: Two Million Dollars (\$2,000,000) per occurrence and Five Million Dollars (\$5,000,000) annual aggregate for bodily injury, personal injury and property damage; provided however, with City’s advance written approval, subcontractors may maintain liability coverage with limits not less than One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) annual aggregate.

(b) Products and Completed Operations: Three Million Dollars (\$3,000,000) per occurrence/aggregate.

(c) Commercial Automobile Liability: Two Million Dollars (\$2,000,000) combined single limit.

(d) Employer’s Liability:

Bodily Injury by Accident – One Million Dollars (\$1,000,000) each accident.

Bodily Injury by Disease – One Million Dollars (\$1,000,000) policy limit.

Bodily Injury by Disease – One Million Dollars (\$1,000,000) each employee.

(e) Professional Liability/Errors and Omissions: Two Million Dollars (\$2,000,000) per occurrence or claim. If the policy provides coverage on a claims-made basis, the retroactive date must be shown and must be before the date of the Agreement or the beginning of the contract work.

Coverage limits, and if necessary, the terms and conditions of insurance, shall be reasonably adjusted from time to time (not less than every five (5) years after the Effective Date nor more than once in every three (3) year period) to address changes in

circumstance, including, but not limited to, changes in inflation and the litigation climate in California. City shall give written notice to Owner of any such adjustments, and Owner shall provide City with amended or new insurance certificates or endorsements evidencing compliance with such adjustments within thirty (30) days following receipt of such notice.

3. Deductibles and Self-Insured Retention. Any deductibles or self-insured retention must be declared to, and approved by, City. Payment of all deductibles and self-insured retentions will be the responsibility of Owner. If the City determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects the Indemnitees or Owner shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense.

4. Additional Requirements. The required general liability and automobile policies shall contain, or be endorsed to contain, the following provisions:

(a) The Indemnitees are to be covered as Additional Insureds as respects: liability arising out of activities performed by or on behalf of Owner; products and completed operations of Owner; premises owned, occupied or used by Owner; or automobiles owned, leased, hired or borrowed by Owner. The coverage shall contain no special limitations on the scope of protection afforded to the Indemnitees. Additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

(b) All insurance shall be primary insurance as respects the Indemnitees. Any insurance or self-insurance maintained by the Indemnitees shall be excess of Owner's/contractor's insurance and shall not contribute with it.

(c) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Indemnitees.

(d) Owner's insurance shall apply separately to each insured against whom claim is made or suit is brought except, with respect to the limits of the insurer's liability.

(e) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

(f) If any insurance policy or coverage required hereunder is canceled or reduced, Owner shall, within five (5) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure

to so file such certificate, City may, without further notice and at its option, procure such insurance coverage at Owner's expense, and Owner shall promptly reimburse City for such expense upon receipt of billing from City.

(g) Owner agrees to waive subrogation rights for commercial general liability, automobile liability and worker's compensation against Indemnitees regardless of the applicability of any insurance proceeds, and to require all contractors, subcontractors or others involved in any way with any construction on the Property to do likewise. Each insurance policy shall contain a waiver of subrogation for the benefit of City. If any required insurance is provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs are included in such annual aggregate limit, such annual aggregate limit shall be three times the applicable occurrence limits specified above.

(h) It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirement and/or limits shall be available to the additional insured. Furthermore, the requirement for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater. For all liability insurance required by this Agreement, Owner (and Owner's contractors, as applicable) shall obtain endorsements that name the Indemnitees as additional insured in the full amount of all applicable policies, notwithstanding any lesser minimum limits specified in this Agreement. This Agreement requires Owner (and Owner's contractors, as applicable) to obtain and provide for the benefit of the Indemnitees, additional insured coverage in the same amount of insurance carried by Owner (or Owner's contractors, as applicable), but in no event less than the minimum amounts specified in this Agreement. In the event that Owner (or Owner's contractors as applicable) obtains insurance policies that provide liability coverage in excess of the amounts specified in this Agreement, the actual limits provided by such policies shall be deemed to be the amounts required under this Agreement. Without limiting the foregoing, the limits of liability coverage specified in this Agreement are not intended, nor shall they operate, to limit City's ability to recover amounts in excess of the minimum amounts specified in this Agreement.

(i) The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before City's own insurance or self-insurance shall be called upon to protect it as a named insured.

5. Acceptability of Insurers. Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII.

6. Verification of Coverage. Prior to the Effective Date of this Agreement, Owner shall furnish City with certificates of insurance in form acceptable to City evidencing the

insurance coverage required under paragraphs (a), (b), (c), and (e) of Section 1, duly executed endorsements evidencing the Indemnitees' status as additional insured, and all other endorsements and coverage required hereunder pertaining to such coverage. Prior to commencement of any construction work on the Property, Owner shall furnish City with certificates of insurance in form acceptable to City evidencing the insurance coverage required under paragraphs (d) and (g) of Section 1. Prior to City's issuance of a final certificate of occupancy or equivalent for the Project, Owner shall furnish City with certificates of insurance in form acceptable to City evidencing the insurance coverage required under paragraph (f) of Section 1. Owner shall furnish City with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf.

7. Insurance Certificates and Endorsements. Owner shall submit to City all of the necessary insurance documents, including the applicable amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of required Owner policies listing all required policy endorsements to City. Insurance Certificates and Endorsements are to be received and approved by City within the time periods specified in Section 6. Should Owner cease to have insurance as required at any time, all work by Owner pursuant to this Agreement shall cease until insurance acceptable to City is provided. Upon City's request, Owner shall, within thirty (30) days of the request, provide or arrange for the insurer to provide to City, complete certified copies of all insurance policies required under this Agreement. City's failure to make such request shall not constitute a waiver of the right to require delivery of the policies in the future.

Exhibit D

Resale Restriction

RECORDING REQUESTED BY

Fidelity National Title Company
Escrow Number: FSMO-1082200758

AND WHEN RECORDED MAIL TO

CITY OF MENLO PARK
c/o CITY CLERKS OFFICE
701 LAUREL STREET
MENLO PARK, CA 94025

Exempt From Recording Fees Per Gov. Code
§ 27383 And Building Homes & Jobs Trust Fund
Fee Per Gov. Code § 27388.1(A)(2)(D) (instrument
executed by a municipality)

SPACE ABOVE THIS LINE FOR RECORDER'S USE _____

THE UNDERSIGNED OWNER DECLARES:

This transaction is exempt from documentary transfer tax
pursuant to Revenue & Taxation Code Section §11922.
This instrument imposes use restrictions and a right of first
refusal in City of Menlo Park, an exempt agency.

Signature of Declarant

**AGREEMENT AND DEED RESTRICTIONS
REGARDING RESALE CONTROLS
FOR BELOW MARKET RATE PROPERTY**

This Agreement and Deed Restrictions Regarding Resale Controls for Below
Market Rate Property is junior and subordinate to a first Deed of Trust in favor of _____
in the amount of \$_____.

**NOTICE: THIS DOCUMENT IS A LEGALLY BINDING AGREEMENT WHICH IMPOSES
SEVERAL OBLIGATIONS AND RESTRICTIONS REGARDING THE USE AND TRANSFER
OF YOUR PROPERTY.
READ IT CAREFULLY.**

This Agreement and Deed Restrictions Regarding Resale Controls for Below Market Rate
Property ("**Agreement**") is entered into as of this _____ day of _____, 202_, by and
between the Cit of Menlo Park ("**City**") and _____ ("**Owner**"). City and Owner may be
referred to individually as a "**Party**" or collectively as the "**Parties**" in this Agreement.

RECITALS

A. The City adopted a Below Market Rate Housing Program, codified in the Menlo
Park Municipal Code at Chapters 16.96 and 15.36, as such may be amended and revised from
time to time ("**BMR Ordinance**"),and governed by the Below Market Rate Housing Program
Guidelines, as such may be amended and revised from time to time ("**Guidelines**"), to provide
housing opportunities to persons with low or moderate incomes to purchase homes at prices
which are below market rates prevailing in the community.

B. The intent of the City is to preserve the number and availability of affordable homes in the program for persons with low or moderate incomes for as long as possible.

NOW, THEREFORE, in consideration of the forgoing, which are incorporated herein by references, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows.

1. Property. The real property which is the subject of this Agreement is commonly known as _____, Menlo Park, CA 94025 more fully described in the legal description attached hereto and incorporated herein by reference as Exhibit A (“**Property**”). The Property is hereby designated as a Below Market Rate Unit (“**BMR Unit**”) and shall be subject to the terms and conditions set forth in this Agreement, as well in the BMR Ordinance and Guidelines.

2. Supersession. This Agreement shall supersede any and all resale agreements, deed restrictions and other similar conditions and/or restrictions previously imposed on the Property whether or not such previous agreements or restrictions were recorded.

3. Misrepresentation of Fact as a Material Breach. Owner hereby declares and agrees that the financial, residence address, employment, occupancy, or any other information previously provided to City for the purpose of qualifying to purchase the Property was true and correct at the time it was given and remains true and correct as of the date of this Agreement, or, in the alternative, the financial and other information has been updated to be true and correct today. Owner further understands that any material misstatement or misrepresentation shall be deemed to be a material breach of this Agreement and shall be grounds for declaring a default, terminating the Agreement, or seeking other such relief and remedies as are appropriate under the circumstances.

4. Occupancy. Owner must occupy the Property as their primary residence and remain in residence for the duration of the Deed Restrictions (55 years). “**Occupy**” shall mean residing in the Property for at least ten (10) months in every twelve (12) month period. Owner may not terminate occupancy of the BMR property and allow the property to be occupied by a relative, friend, or tenant. Owner’s failure to maintain a homeowner’s property tax exemption shall be construed as evidence that the Property is not Owner’s primary residence. As necessary, City may request that Owner provide evidence that the Property is occupied by Owner as its primary residences. Examples of such evidence may include current copies of any of the following: homeowner’s insurance, car/vehicle registration, and utility bills.

5. Conditions of Transfer. For purposes of this Agreement, “**transfer**” shall mean any voluntary or involuntary sale, assignment or transfer of ownership or any interest in the Property, including, but not limited to, a fee simple interest, joint tenancy interest, or life estate. A “transfer” shall also include the recording of one or more deeds of trust against the Property to secure one or more loans or to refinance an existing loan. Until such time as the City’s Purchase Option (defined in Section 10) is exercised, waived, or expired, there shall be no transfer of the Property to any person or entity except with the express written consent of City or its designee, which consent shall be consistent with City’s goal of creating, preserving, maintaining, and protecting housing in Menlo Park for persons of low and moderate income. Any transfer of the Property shall be subject to the conditions set forth in this Agreement, and

any and all conditions contained in the BMR Ordinance and Guidelines.

A. Prohibited Transfer/Default. Any transfer which is not in substantial compliance with the above conditions shall be deemed a “**Prohibited Transfer**”. Upon receipt of any evidence of a Prohibited Transfer or any other violation of the terms of this Agreement, City shall give written notice to Owner specifying the nature of the violation. If the violation is not corrected to the satisfaction of City within ten (10) days after the date of the notice, or within such further time as City determines is necessary to correct the violation, City may declare a default under this Agreement and/or exercise the City Purchase Option. Upon the declaration of a default, City may apply to a court of competent jurisdiction for specific performance of the Agreement, for an injunction prohibiting a proposed sale or transfer in violation of this Agreement, for a declaration that the Prohibited Transfer is void, or for any such other relief as may be appropriate under the circumstances.

B. Permitted Transfer. Notwithstanding the foregoing, the following transfers are exempt from the City Purchase Option and do not re-start the fifty-five (55) year deed restriction clock (each, a “**Permitted Transfer**”):

- (i) Transfer by devise or inheritance to Owner’s spouse;
- (ii) Transfer of title by an Owner’s death to a surviving joint tenant, tenant in common, or a surviving spouse of community property (that is, another owner already on title);
- (iii) Transfer of title to Owner’s spouse as part of divorce or dissolution proceedings;
- (iv) Transfer of title or an interest in the property to Owner’s spouse in conjunction with marriage; and
- (v) Transfer to Fannie Mae through foreclosure or its acceptance of a deed in lieu of foreclosure.

In the event of a Permitted Transfer, an instrument shall be executed, acknowledged and recorded by the transferee containing the following covenant:

“This property is subject to the terms and provisions of that certain Agreement and Deed Restrictions Regarding Resale Controls for Below Market Rate Property, dated _____ (“**Resale Restriction**”), an Excess Proceeds Promissory Note (or other document approved by City) (“**Note**”) and Performance Deed of Trust (“**Deed of Trust**”). Transferee, on behalf of transferee, and transferee’s successors and assigns, covenants and agrees to be bound by, and to perform in accordance with, such Resale Restriction, Note and Deed of Trust, and to include this covenant in any further transfer of the property.”

C. Conditional Permitted Transfers. Owner may transfer the Property to a child or other relative by devise or inheritance provided that: a) Owner provides written notice to City with the transferee’s name, contact information, and household income information and City consents in writing; b) the transferee household is an eligible, qualifying household under the BMR Guidelines (i.e., an “**Eligible Buyer**”) at the time of the transfer; c) the transferee

signs a new Resale Restriction, Deed of Trust and Note and occupies the Property. In the event that the transferee is not an Eligible Buyer, the transferee may inherit the Property but must offer the Property for sale in accordance with Section 11 within ninety (90) days of the recording of the deed or probate order conveying title to the Property to transferee. Failure to comply with the provisions of this Section 5.C shall constitute a Prohibited Transfer.

6. Prohibition on Leasing. Owner may not lease or rent the Property, or enter into any contract transferring physical possession of the Property, for any period of time without the express, prior, written permission of City, and such transfer shall be subject to such further conditions as may be necessary to ensure compliance with the purpose and intent of the City's affordable housing program. Transferee shall execute a rental agreement or lease in a form acceptable to City under the terms of which the transferee shall assume all of the obligations and duties and agree to be bound by the restrictions of this Agreement. Notwithstanding the foregoing, Owner may not lease or rent the Property on a short term basis, including through a rental platform such as Airbnb or comparable platform.

7. Senior Lien Holder. Any attempt to transfer title or any interest therein in violation of these covenants shall be void, provided, however, that any deed restrictions herein shall be subordinate to any mortgage ("**First Deed of Trust**") held by a Senior Lien Holder and/or a federally or state chartered bank or savings and loan association qualified to do business in the State of California which mortgage was obtained at the time owner purchased the Property ("**Senior Lien Holder**"). City and Owner acknowledge and agree that this Agreement is subject and subordinate in all respects to the liens, terms, covenants and conditions of the First Deed of Trust and to all advances heretofore made or which may hereafter be made pursuant to the First Deed of Trust held by a Senior Lien Holder including all sums advanced for the purpose of (a) protecting or further securing the lien of the First Deed of Trust, curing defaults by Owner under the First Deed of Trust or for any other purpose expressly permitted by the First Deed of Trust, or (b) constructing, renovating, repairing, furnishing, fixturing or equipping the Property. The terms and provisions of the First Deed of Trust are paramount and controlling, and they supersede any other terms and provisions hereof in conflict therewith. In the event of a foreclosure or deed in lieu of foreclosure of the First Deed of Trust, any provisions herein or any provisions in any other collateral agreement restricting the use of the Property to low or moderate income households or otherwise restricting Owner's ability to sell the Property shall have no further force or effect on subsequent owners or buyers of the Property. Any person, including his or her successors or assigns (other than Owner or a related entity or individual of Owner), receiving title to the Property through a foreclosure or deed in lieu of foreclosure of the First Deed of Trust shall receive title to the Property free and clear from such restrictions. Further, if the Senior Lien Holder acquires title to the Property pursuant to a deed in lieu of foreclosure, the lien of this Agreement shall automatically terminate upon the Senior Lien Holder's acquisition of title, provided that (i) City has been given written notice of a default under the First Deed of Trust, (ii) City was given a reasonable period of time under the First Deed of Trust to cure the default, and (iii) City shall not have cured the default under the First Deed of Trust, or diligently pursued curing the default as determined by the Senior Lien Holder, within the 60-day period provided in such notice sent to City. Any and all deeds of trust recorded against the Property, other than the First Deed of Trust held by the Senior Lien Holder and/or such Senior Lien Holder's successor or assignee of its interest, shall be subordinate and subject to the terms and provisions of this Agreement.

8. Advances by City. In the event City advances any amounts for the payment of mortgages, including the curing of defaults on senior liens and redeeming the Property prior to a lien sale, taxes, assessments, insurance premiums, homeowner's fees and/or associated late fees, costs, interest, attorneys' fees, pest inspections, resale inspections and other expenses related to the Property, which Owner has failed to pay or has permitted to become delinquent, City shall be entitled to a lien against the Property in the amount of all costs and expenses incurred by City and City may deduct same from the proceeds upon any resale of the Property.

9. Covenant Running with the Land. The terms and conditions set forth herein are intended to run with the land and shall bind Owner and all successors, heirs, grantees and assigns, unless and until superseded by subsequently recorded Agreements. These terms and conditions shall be made part of each deed subsequently recorded and shall bind each successor in interest until the earlier of (a) fifty-five (55) years from the date of recordation, or (b) the recordation of a subsequent and superseding Agreement. This Agreement and the covenants contained herein shall survive delivery of any transfer of the Property.

10. City Purchase Option. Owner hereby grants to City, or another governmental entity or tax-exempt nonprofit organization to whom City may assign the rights set forth in this Section 10 ("**Assignee**"), a right to purchase the Property for resale as a BMR unit ("**City Purchase Option**") in conformance with this Agreement, the BMR Ordinance and the Guidelines. City shall have the right to exercise the City Purchase Option upon the occurrence of any of the following: (a) receipt of Owner's notice of offer to sell described in Section 11.A, (b) a notice of default or notice of sale is recorded against BMR Unit by any lienholder (subject to any rights of Owner to cure the underlying default); (c) a Prohibited Transfer occurs and continues in effect beyond any applicable cure period; (d) Owner fails to occupy the BMR Unit as Owner's principal residence in violation of the terms of this Agreement; or (e) the occurrence of any event of default listed in Section 20. City may, in its sole discretion, assign this purchase right to an Eligible Buyer, as described in the BMR Ordinance and Guidelines; City reserves the right to reassign the rights set forth in this Section 10 to another Eligible Buyer in the event the initial or any subsequent Eligible Buyer fails or is unable to complete a purchase and sale transaction and in such event, applicable timelines and deadlines shall be extended. City's right to exercise the City Purchase Option shall survive any transfer of the Property, and as long as the City Purchase Option exists, any actual or attempted Prohibited Transfer shall be voidable at the election of City. City may market the BMR Unit for sale and may retain a realtor or comparable service to locate Eligible Buyers.

11. Resale Procedures.

A. Notice of Offer to Sell. If Owner no longer desires to own the Property, Owner shall notify City of its intent to offer the Property for sale in accordance with the terms of this Agreement. Such notice shall be in writing, and must be sent by certified mail through United States Postal Service ("**USPS**"), addressed to the Community Development Director and Housing Manager, City of Menlo Park, 701 Laurel Street, Menlo Park, CA 94025. Owner's offer to sell may be withdrawn by Owner, provided that notice of withdrawal has been received by City or its designee, in writing, prior to acceptance by City or its designee.

B. Acceptance. In response to Owner's notice, City or its Assignee shall have the right to exercise the City Purchase Option for a period ("**Option Exercise Period**") of ninety (90) days commencing upon the date that Owner delivers to City a written notice of its desire to

sell the Property as described in Section 11.A. Exercise of the City Purchase Option by City or its Assignee shall be in writing and state the Purchase Price (defined in Section 14). The notice shall be sent via certified mail through USPS to Owner at the Property. The BMR Unit shall be sold to City or its Assignee in “**salable condition**” as defined in the Guidelines following an inspection by City or its Assigned, which inspection Owner shall allow to occur in advance of City’s exercise of the City Purchase Option. Owner’s notice to City shall be deemed an offer to sell and City’s acceptance of Owner’s offer shall be deemed an acceptance of such offer and shall collectively constitute a legally binding contract to transfer title to the BMR Unit from Owner to City or its Assignee that may not be withdrawn without the written consent of City or its Assignee, as applicable.

C. Escrow. Within five (5) days of City’s or Assignee’s acceptance of the offer and full execution by City, its Assignee or Eligible Buyer and Owner of a purchase and sale agreement consistent with the Guidelines and otherwise acceptable to City (“**Purchase Agreement Date**”), an escrow account shall be opened by City or its Assignee at a title company selected by City. Closing shall occur within sixty (60) days of opening escrow. At closing, the title insurance company shall issue to City, its Assignee or Eligible Buyer a CLTA owner’s title insurance policy, in a form reasonably approved by City and subject only to such title exceptions as reasonably approved by City. Taxes and assessments shall be prorated as of the date of closing. Taxes must be paid current as of the closing date and all liens must be satisfied and removed from title unless City expressly agrees otherwise in writing. City, its Assignee or Eligible Buyer shall pay the cost of the title insurance. The title company shall utilize the form of escrow agreement customarily used for residential transactions with Menlo Park, modified to the extent necessary to conform to the transaction and otherwise acceptable to City. If the Property is sold to an Eligible Buyer, prior to closing, City and Eligible Buyer shall deliver an executed Resale Restriction, Deed of Trust and Note; the Resale Restriction and Deed of Trust shall be recorded at closing. The Eligible Buyer must also certify at closing that he or she will occupy the BMR Unit as his or her primary residence. At closing, Owner shall convey title to City, Assignee or Eligible Buyer by grant deed and otherwise in conformance with this Agreement, the Guidelines and BMR Ordinance.

12. Transfer by Owner to Eligible Buyer. If City does not exercise the City Purchase Option, Owner shall proceed to sell the Property in compliance with the following requirements and the Guidelines:

A. Marketing. Owner shall immediately request City to refer Eligible Buyers from the City’s BMR Purchase Legacy List, if any. Owner may also list the Property on the multiple listing service. Owner shall use bona fide good faith efforts to sell the Property to an Eligible Buyer in compliance with this Section 12, including keeping the Property in an orderly condition, making the Property available to show to agents and prospective buyers, and providing buyers with Eligible Buyer requirements and documents. A proposed buyer who Owner believes will qualify as an Eligible Buyer shall be referred to City or its designee for an eligibility determination.

B. Proposed Buyer. A proposed buyer must satisfy all of the following requirements:

(1) Intent to Owner Occupy. The proposed buyer shall certify that he or she will occupy the Property as his or her principal place of residence throughout his or her ownership of the Property.

(2) Agreement to Sign Resale Restriction and to Cooperate with City.

The proposed buyer shall agree to sign a Resale Restriction, Deed of Trust and Note restricting the resale and refinancing of the Property for a term equal to the balance remaining of the original fifty-five (55) year term of this Agreement, each in the form provided by City, and shall agree to cooperate fully with the City in promptly providing all information requested by City to assist City in monitoring the proposed buyer's compliance with the Resale Restriction. The Resale Restriction and the Deed of Trust shall be recorded at the closing for sale of the Property.

(3) Income Eligibility. The combined gross income for all members of the proposed buyer's household shall not exceed the amount of a moderate income individual or family (i.e. households earning no more than 120% of the County AMI).

C. Costs of Eligible Buyer to Close Escrow. The actual and reasonable costs to the Eligible Buyer incurred in connection with the purchase of the Property, including real estate commissions or sales administrative fees, real estate transfer taxes, and escrow costs, shall not exceed reasonable and customary buyers' closing costs in the County of Santa Clara.

D. Disclosure and Submittals to City. Owner and the proposed buyer shall provide the following information and documents to City:

(1) The name, address and telephone number of the proposed buyer.

(2) A signed financial statement of the proposed buyer in a form acceptable to City and supporting documentation reasonably requested by City. The financial information shall be used to determine the income eligibility of the proposed buyer.

(3) The proposed sales contract and all other related documents which shall set forth all the terms of the sale of the Property. Such documents shall include at least the following terms: (x) the proposed purchase price, (y) the price to be paid by the proposed buyer for the Owner's personal property, if any, and (z) any credits, allowances or other consideration, if any.

(4) A written certification from Owner and the proposed buyer in a form acceptable to City that the sale shall be closed in accordance with the terms of the sales contract and other documents submitted to and approved by City. The certification shall also certify that neither the proposed buyer nor any other party has paid nor will pay to Owner, and that Owner has not received and will not receive from the proposed buyer or any other party, money or other consideration, including personal property, other than as set forth in the sales contract and documents submitted to City. The written certification shall also include a provision that in the event a transfer is made in violation of the terms of this Agreement or false or misleading statements are made in any documents or certification submitted to City, City shall have the right to exercise the City Purchase Option or file an action at law or in equity as may be appropriate. In any event, any costs, liabilities or obligations incurred by Owner and the proposed buyer for the return of any moneys paid or received in violation of this Agreement or for any of Owner's and/or the proposed buyer's costs and legal expenses, shall be borne by Owner and/or the proposed buyer, and Owner and the proposed buyer shall hold City harmless and reimburse City's expenses, legal fees and costs for any action it reasonably

takes in good faith to enforce the terms of this Agreement.

(5) A Resale Restriction, Deed of Trust and Note, each executed and acknowledged by the proposed buyer, in the form provided by City. Buyer's execution of the Note, a Resale Restriction Agreement and Deed of Trust shall be a condition precedent to City's approval of the proposed sale. The Deed of Trust and the Resale Restriction shall be recorded against the Property at the closing for the purchase and sale of the Property.

(6) The name of the title company/escrow holder (subject to City approval) for the sale of the Property, the escrow number, and name, address, and telephone number of the escrow officer.

(7) Upon the close of the proposed sale, the Note and certified copies of the recorded Resale Restriction and Deed of Trust shall be delivered to City together with a copy of the final sales contract, settlement statement, escrow instructions, and any other documents that City may reasonably request.

(8) A full disclosure of the condition of the Property under Civil Code Section 1102, et seq. City will provide Owner with a Real Estate Transfer Disclosure form which shall be completed by Owner. Owner shall cure all noted deficiencies in accordance with Section 18.

13. Owner's Obligation to Cooperate. At all times commencing on the date that Owner delivers the notice described in Section 11.A, Owner shall ensure that the Property is in a salable condition and available to be shown to prospective Eligible Buyers. Owner shall cooperate with City and its officers, employees, agents and representatives in connection a potential sale of the Property. Failure to comply with these conditions shall be deemed a material breach of Owner's obligations under this Agreement and upon determination by City that Owner has failed to comply with any of the conditions in this Agreement, City shall notify Owner that all relevant time periods described herein are tolled and extended accordingly until Owner has complied with all of the conditions in this Agreement. Acts by Owner which shall be deemed to be a breach of this obligation include, but are not limited to, (a) failure to make the Property available for showing to prospective Eligible Buyers upon reasonable notice, (b) willful or deliberate actions to dissuade prospective Eligible Buyers from purchasing the Property, (c) failure to maintain the Property in a salable condition, and (d) failure or refusal in a timely manner to return telephone calls, complete forms, provide required reports or perform other actions ordinarily required by a party to a real estate transaction. In addition to tolling the applicable time periods, City may pursue any other remedies for breach based upon this section or available at law or in equity, including exercise of the City Purchase Option.

14. Purchase Price. The purchase price shall be paid in cash at the close of escrow or as may be otherwise provided by mutual agreement of buyer and seller. The purchase price of the Property shall be **fixed at the lower amount** as determined by using the following two methods ("**Purchase Price**"):

A. Fair Market Value. City or its Assignee shall have an appraisal made by an appraiser of its choice to establish the fair market value. Owner, at his or her own expense, may also have an appraisal made by a qualified appraiser of Owner's choice to establish the market value. If Owner elects to obtain its own appraisal, the time period during which City

has the option to perform pursuant to this Agreement shall be tolled for the period of time between the time City obtains an appraisal and Owner submits a separate appraisal. If an agreement cannot be reached as to the fair market value, the average of the two appraisals shall be deemed the market price, unless the difference between the two appraisals is greater than ten (10) percent of the amount of the higher appraisal, in which case City has the option of requesting a third appraisal (to be paid for by Owner) be conducted by a qualified appraiser agreed upon by both City and Owner, who will make an independent appraisal without knowledge of the results of the first two appraisals. The amount of the first two appraisals which is closer to the amount determined by the third appraiser shall be deemed the fair market value for purposes of this Agreement.

B. Adjusted by Consumer Price Index. Base Price: \$_____, plus an amount, if any, to compensate for any increase in the cost of living during Owner's ownership of the Property as measured by one-third (1/3) of the Consumer Price Index, All Urban Consumers, for the San Francisco-Oakland-San Jose area, published by the US Department of Labor, Bureau of Labor Statistics ("**Index**"). For that purpose, the Index prevailing on the date of the recorded purchase by the selling Owner shall be compared with the latest Index available on the date of receipt by City of notice of intent to sell. One-third (1/3) of the percentage increase in the Index during Owner's ownership of the Property, if any, shall be computed and the base price shall be increased by that percentage; provided, however, that the Purchase Price shall in no event be lower than the purchase price paid by Owner when it purchased the Property. The Purchase Price shall be adjusted to include the amount of any substantial capital improvement expenditures greater than one percent (1%) of the original purchase price, minus any costs necessary to bring said unit a salable condition and otherwise conformance with the BMR Ordinance and the Guidelines.

In establishing the Purchase Price under either method, City shall also consider homeowners' dues, insurance, and taxes.

15. Wood Destroying Pests and Organisms. Owner shall bear the expense of providing a current written report of an inspection by a licensed Structural Pest Control Operator. All work recommended in said report to repair damage caused by infestation or infection of wood-destroying pests or organisms found and all work to correct conditions that caused such infestation or infection shall be done at the expense of Owner. Any work to correct conditions usually deemed likely to lead to infestation or infection of wood-destroying pests or organisms, but where no evidence of infestation or infection is found with respect to such conditions, is not the responsibility of Owner, and such work shall be done only if requested by the buyer and then at the expense of the buyer.

16. Improvements. The adjusted price described in Section 14.B shall be increased by the value of any substantial structural or permanent fixed improvements which cannot be removed without substantial damage to the Property or substantial or total loss of value of said improvements, and by the value of any appliances, fixtures, or equipment which were originally acquired as part of the Property by Owner; provided that such price adjustment for replacement appliances, fixtures, or equipment shall be allowed only when the expenditure is necessitated by the non-operative or otherwise deteriorated condition of the original appliance, fixture, or equipment.

A. If at any time of replacement the original appliance, fixture, or equipment

had in excess of twenty percent (20%) of its original estimated useful life remaining, Owner shall document to City's satisfaction the condition of the appliance, fixture, or equipment which necessitated its replacement. A written statement from a certified repair person can satisfy this requirement.

B. No such price adjustment shall be made significantly in excess of the reasonable cost to replace the original appliance, fixture, or equipment with a new appliance, fixture, or equipment of comparable quality as hereinafter provided.

(1) No such adjustment shall be made except for improvements, appliances, fixtures, or equipment made or installed by the selling Owner.

(2) No improvements, appliances, fixtures, or equipment shall be deemed substantial unless the actual initial cost thereof to Owner exceeds one percent (1.0%) of the purchase price paid by Owner for the Property; provided that this minimum limitation shall not apply in either of the following situations:

(a) Where the expenditure was made pursuant to a mandatory assessment levied by the homeowners association for the development in which the Property is located, whether levied for improvements or maintenance to the Property, the common area, or related purposes.

(b) Where the expenditure was made for the replacement of appliances, fixtures, or equipment which were originally acquired as part of the Property by Owner.

C. No adjustment shall be made for the value of any improvements, appliances, fixtures, or equipment unless Owner shall present to City valid written documentation of the cost of said improvements. The value of such improvements by which the purchase price shall be adjusted shall be determined as follows:

(1) The value of any improvement, appliance, fixture, or equipment, the original cost of which was less than Five Thousand Dollars (\$5,000), shall be the depreciated value of the improvement, appliance, fixture, or equipment calculated in accordance with principles of straight-line depreciation applied to the original cost of the improvement, appliance, fixture, or equipment based upon the estimated original useful life of the improvement, fixture, or equipment.

(2) The value of any improvement, appliance, fixture, or equipment, the original cost of which was Five Thousand Dollars (\$5,000) or more, shall be the lesser of the appraised value of the improvement, appliance, fixture, or equipment when considered as an addition or fixture to the Property (i.e., the amount by which said improvement, appliance, fixture, or equipment enhances the value of the Property), or the depreciated value of the improvement as described in Section 17.C(1), at the time of sale. The appraised value shall be determined in the same manner as the market value of the Property in Method A above.

(3) On January 1, 1988 and every two (2) years thereafter, regardless of the date of execution or recordation hereof, the amount of Five Thousand Dollars (\$5,000) referred to in Sections 17(C)(1) and (2) above shall be automatically adjusted for the purpose

of those Sections in the following manner. On each adjustment date, the Index prevailing on January 1, 1988, shall be compared with the Index prevailing on the date of recordation of this Agreement. The percentage increase in the Index, if any, shall be computed and the sum of Five Thousand Dollars (\$5,000.00) shall be increased in the same percentage. In no event shall the sum be reduced below Five Thousand Dollars (\$5,000.00).

(4) No price adjustment will be made except upon presentation to City of written documentation of all expenditures made by Owner for which an adjustment is requested.

D. Notwithstanding any other provision herein, no adjustment shall be made for the value of any improvements, appliances, fixtures, or equipment unless said improvements were completed with required permits and in accordance with applicable provisions of the municipal code. Moreover, no adjustment shall be made for any improvements, appliances, fixtures, or equipment which were installed or completed in violation of any applicable provision of the homeowners' association by-laws, Covenants, Conditions and Restrictions ("CC&Rs"), or other similar restrictions or regulations.

17. Deferred Maintenance. Any purchase price determined through the use of the above method shall be adjusted by decreasing the purchase price by an amount to compensate for deferred maintenance costs, which amount shall be determined in the following manner. Upon receipt of notice of Owner's intent to sell, City or its designee or Assignee shall be entitled to inspect the Property. City or its designee or Assignee shall have an opportunity to determine whether any violations of applicable building, plumbing, electric, fire, or housing codes or any other provisions of Title 12 of the Menlo Park Municipal Code exist and that the Property are in salable condition as determined in the reasonable discretion of the City Manager.

18. Property Deficiency. In the event deficiencies are noted, City or its designee or Assignee shall obtain estimates to cure the deficiencies. Owner shall cure the deficiencies in a reasonable manner acceptable to City or its designee or Assignee within sixty (60) days of being notified of the results of the inspection, but in no event later than close of escrow. Should Owner fail to timely cure such deficiencies prior to the scheduled date of close of escrow, at the option of City, its designee or Assignee, escrow may be closed, title conveyed to the buyer and a portion of the funds otherwise due to Owner held back in escrow to pay for curing such deficiencies (based upon written estimates obtained by City, its designee or Assignee). City, its designee or Assignee shall cause such deficiencies to be cured, and upon certification by City of completion of work, escrow holder shall disburse such funds to the party that incurred the costs to pay for the work. Any remaining funds shall be paid to Owner as the seller. No other payment shall be due to the selling Owner.

19. Non-Liability of City. In no event shall City become in any way liable to Owner, nor become obligated in any manner, by reason of the City Purchase Option, nor shall City be in any way obligated or liable to Owner for any failure of City's designee, Assignee, or Eligible Buyer to consummate a purchase of the Property or to comply with the terms of any purchase and sale agreement. Nothing in this Agreement shall be construed to obligate City to purchase any unit in the event that an Eligible Buyer fails to complete actions to close escrow.

A. Owner acknowledges, understands and agrees that the relationship

between Owner and the City is solely that of an owner and an administrator of a municipal below market rate housing program, and that City does not undertake or assume any responsibility for or duty to Owner to select, review, inspect, supervise, pass judgment on, or inform Owner of the quality, adequacy or suitability of the Property or any other matter. City owes no duty of care to protect Owner against negligent, faulty, inadequate or defective building or construction or any condition of the Property and Owner agrees that neither Owner, nor Owner's heirs, successors or assigns shall ever claim, have or assert any right or action against City for any loss, damage or other matter arising out of or resulting from any condition of the Property and will hold City harmless from any liability, loss or damage for these things. Nothing contained herein shall be deemed to create or be construed to create a partnership, joint venture or any relationship other than that of an owner and an administrator of a municipal below market rate housing program.

B. Owner agrees to defend, indemnify, and hold City harmless from all losses, damages, liabilities, claims, actions, judgments, costs and reasonable attorneys' fees that City may incur as a direct or indirect consequence of: (a) Owner's default, performance or failure to perform any obligations as and when required by this Agreement; (b) the failure at any time of any of Owner's representations to City to be true and correct; or (c) Owner's purchase or ownership of the Property.

20. Security; Default; Remedies.

A. Security. As security for the performance of this Agreement, Owner has delivered the Note and Deed of Trust dated _____ and the Deed of Trust is to be recorded concurrently.

B. Event of Default. The following shall be an "**Event of Default**":

(1) The City determines that the Owner has made a misrepresentation to obtain the benefits of purchasing the Property or in connection with Owner's obligations under this Agreement;

(2) Any actual, attempted or pending Prohibited Transfer of the Property or of any estate or interest therein, if the violation is not corrected to the satisfaction of the City within ten (10) days after written notice by the City, or within such further time as City determines is necessary to correct the violation;

(3) A lease of the Property without City's prior written consent;

(4) Recordation of a notice of default and/or notice of sale pursuant to California Civil Code Section 2924 (or successor provisions) under any deed of trust or mortgage with a power of sale encumbering the Property;

(5) Commencement of a judicial foreclosure proceeding regarding the Property;

(6) Execution by Owner of a deed in lieu of foreclosure transferring ownership of the Property;

(7) Commencement of a proceeding or action in bankruptcy, whether voluntary or involuntary, pursuant to Title 11 of the United States Code or other bankruptcy statute, or any other insolvency, reorganization, arrangement, assignment for the benefit of creditors, receivership or trusteeship, concerning the Owner; or

(8) Any other default or breach of any covenant, warranty, promise or representation under this Agreement, and such default or breach continues following written notice by City and thirty (30) days opportunity to cure following the date of such notice.

C. Remedies. If there is an Event of Default, City shall have the remedies set forth in the Deed of Trust, in addition to any other remedies at law or equity, including without limitation specific performance, declaratory relief, or injunctive relief. With respect to Section 21.B (4) through (6), City shall also have the remedies set forth in Section 21.

21. Default Under a Mortgage and Foreclosure. Owner covenants to cause to be filed for record in the Office of the Recorder of the County of San Mateo a request for City to receive a copy of any notice of default and of any notice of sale under any deed of trust or mortgage with power of sale encumbering the Property pursuant to Section 2924(b) of the Civil Code of the State of California. Such request shall specify that any such notice shall be mailed to the City of Menlo Park, attn: Community Development Director, 701 Laurel Street, Menlo Park, CA 94025. Any notice of sale given pursuant to Civil Code Section 2924(f) shall constitute a notice of intent to sell hereunder and City may exercise its preemptive right prior to any trustee's sale, judicial foreclosure sale, or transfer by deed in lieu of foreclosure. In the event Owner fails to file such request for notice, City's right to purchase shall run from the date City obtains actual knowledge of a sale or proposed sale. City or its designee or assignee shall have the right to cure any such notice of default. The exercise of such right to cure shall in no way affect the operation of the notice of default as a notice of intent to sell by Owner. City, its designee or assignee, shall be entitled to recover all costs incurred in curing such default by Owner, as described in Section 8. Such costs shall be paid through escrow from the proceeds of sale if the sale is consummated. If the sale is not consummated and Owner retains ownership of the Property, City, its designee or assignee, shall be entitled to recover its costs directly from Owner. None of the foregoing shall be interpreted to impair the right of the FNMA (Fannie Mae) to take legal action under the terms of its First Deed of Trust or to require FNMA to send default or foreclosure notice to any third party. In the event City fails to exercise its preemptive rights to purchase or prevent foreclosure or trustee's sale, a completed action of foreclosure or trustee's sale shall render this Agreement and the restrictions imposed thereby to be null and void and of no further force or effect. In the event City elects not to exercise its right to purchase upon default, any surplus to which Owner may be entitled pursuant to Code of Civil Procedure Section 727 shall be paid as follows: That portion of surplus (after payment of encumbrances), if any, up to but not exceeding the net amount that Owner would have received after payment of encumbrances under the formula set forth above had City exercised its right to purchase the Property on the date of the foreclosure sale, shall be paid to Owner on the date of the foreclosure sale; the balance of surplus, if any, shall be paid to City in order to compensate City for the loss of the BMR unit and to preserve the purposes of the City's Below Market Rate Housing Program.

22. Entirety of Agreement. This Agreement comprises the entire agreement between the Parties, and no other terms or conditions shall be deemed to apply, unless by a mutually executed, written amendment, modification or superseding agreement which references this

Agreement and is recorded in the Official Records of the County of San Mateo. Owner covenants that he or she has not, and will not execute any other agreement with provisions contradictory to or in opposition to the provisions hereof, and that in any event, Owner understands and agrees that this Agreement shall control the rights and obligations between and among the parties and respective successors.

23. Controlling Law and Venue. The terms of the Agreement shall be interpreted under the laws of the State of California without regard to principles of conflict of laws. The Agreement was entered into and is to be performed in San Mateo County, which is the exclusive venue for any action or dispute arising out of the Agreement.

24. Severability. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provisions shall be deemed severable from the remaining provisions contained in this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision(s) had never been contained herein.

25. Distribution of Insurance and Condemnation Proceeds. Except as may be required to satisfy the first claim of the FNMA pursuant to the Community Partnership Program, in the event that the Property are condemned or destroyed (or in the event that the Property consist of a unit in a condominium project and the condominium project is destroyed and insurance proceeds are distributed to Owner instead of being used to rebuild), if proceeds thereof are distributed to Owner; or in the event of termination of the condominium, liquidation of the association and distribution of the assets of the association to the members thereof, including Owner, any surplus of proceeds so distributed remaining after payment of encumbrances of said Property shall be distributed as follows: That portion of the surplus up to but not to exceed the net amount that Owner would have received under the formula set forth above had City exercised its right to purchase the Property on the date of the destruction, condemnation valuation date, or liquidation, shall be distributed to Owner, and the balance of such surplus, if any, shall be distributed to City.

26. Non-waiver. Any waiver of any term or provision of this Agreement must be in writing. With the exception of City's Purchase Option pursuant to Section 10, the failure of City to take an action to enforce a right or to seek a remedy under the terms and conditions of this Agreement shall not be deemed to be a waiver by City to take such action or enforce any rights it may otherwise have pursuant to this Agreement.

27. Compliance with the Menlo Park Municipal Code. It is the purpose and intent of this Agreement to fulfill and be consistent with the requirements set forth in the BMR Ordinance and the Guidelines, which are incorporated by reference herein, as presently written and as amended from time to time hereafter. In the event of a discrepancy or conflict between a particular provision of this Agreement and any provision of the BMR Ordinance and the Guidelines, the provisions of the BMR Ordinance and the Guidelines, shall be controlling.

28. Notices. All notices required herein shall be sent to the following addresses:

CITY:

Community Development Director

OWNER:

City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025-3483

Menlo Park, CA 94025

DATED: _____

DATED: _____

City of Menlo Park
Justin Murphy, City Manager

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 MATEO }

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

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 MATEO }

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT "A"
Legal Description

ALL THAT REAL PROPERTY SITUATED IN THE CITY OF MENLO PARK,
COUNTY OF SAN MATEO, STATE OF CALIFORNIA, DESCRIBED AS
FOLLOWS:



City of Menlo Park
 Location Map
 1220 HOOVER STREET



MELANIE GRISWOLD
ATTORNEY AT LAW
SBN 234917

1787 McDaniel Ave, San Jose, CA 95126 | 415.265.1086 | mg@hestia-re.com

January 9, 2024

Mr. Christopher Turner
Assistant Planner
City of Menlo Park
CRTurner@menlopark.gov

Re: 1220 Hoover Ave BMR Proposal

Dear Mr. Turner:

Please find a revised BMR proposal for presentation at the next available Housing Commission meeting. As you know, the proposed project involves the demolition of two (2) existing residential units (not deed-restricted and not occupied by low or very-low income households within the past five (5) years). In its place, the owners plan to construct eight residential units in a 4-story building, which will be mapped as condominiums for future sale.

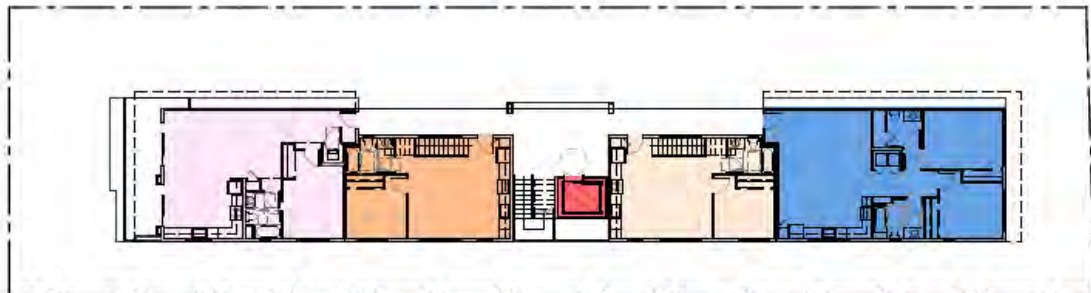
The proposed unit mix for the project is as follows:

Type of Unit	# of Units	SF of Units	Average SF of Units
1 Bedroom	3	1 @ 764 SF 1 @ 665 SF 1 @ 881 SF	770 SF
2 Bedroom	2	1 @ 921 SF (Proposed BMR Unit) 1 @ 1,060 SF 1 @ 1,099 SF	1,026 SF
3 Bedroom Townhome	2	2 @ 1620 SF	1,620 SF

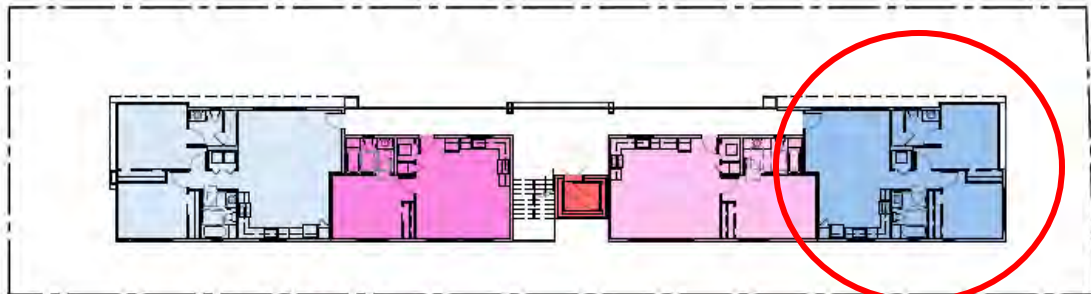
As requested, the owners are dedicating one of the 2 bedrooms units as a Below Market Rate unit for rent to a low-income household as circled in red below:



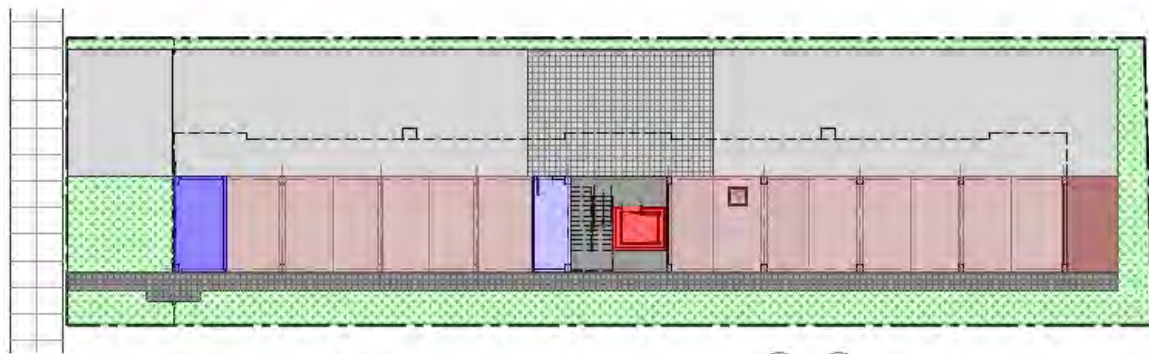
4 AREA FLOOR PLAN 4
1/8" = 1'-0"



3 AREA FLOOR PLAN 3
1/8" = 1'-0"



2 AREA FLOOR PLAN 2
1/8" = 1'-0"



1 AREA SITE PLAN
1/8" = 1'-0"



On sale, the unit will be sold to a moderate-income household.¹ The owners will execute a regulatory agreement (“BMR Housing Agreement”) whereby they will commit to offering the BMR unit for sale once there is any other sale of residential units within the building. The sale will occur upon termination of any existing BMR lease. If the BMR unit is sold at a future date within the deed-restricted period, the owner will abide by the sales price set in the BMR Housing Agreement.

Because this is a small development, the owners will exceed the 10% BMR requirement of §16.96.020 by providing 1 affordable unit. Moreover, the 2 bedroom unit was selected in collaboration with City staff and the City Attorney’s Office to meet the proportionality requirements of Section 5.1 of the BMR Program Guidelines. The proposed affordable unit will be indistinguishable from the market rate units from the exterior. The interior will have comparable amenities to the market rate units; however, it is anticipated that more affordable finishes will be chosen, such as laminate flooring and prefabricated countertops.

We trust that this proposal meets all of the written, objective standards in the BMR Guidelines and we look forward to moving forward with the project application.

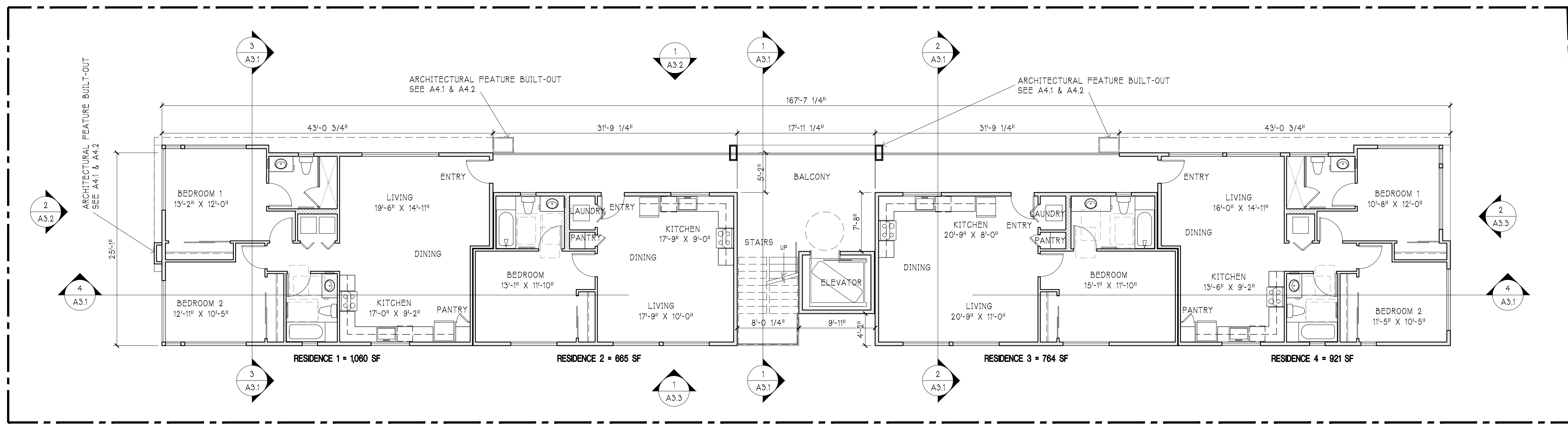
Sincerely,



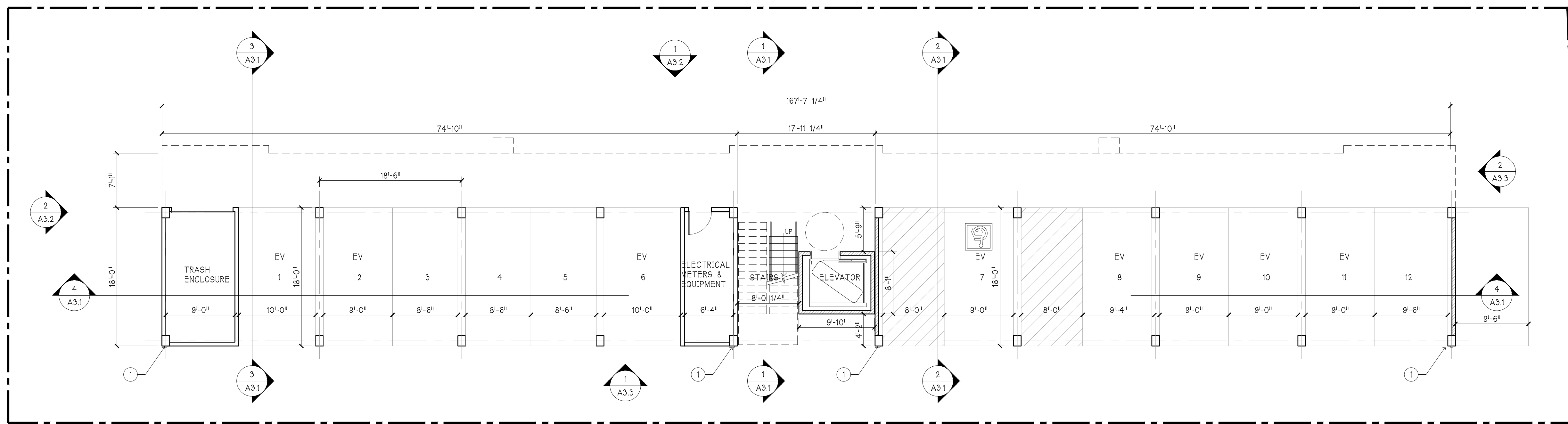
Melanie Griswold

cc: Lisa Maxwell, Burke Williams Sorenson
LMaxwell@bswlaw.com

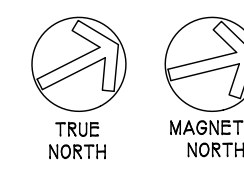
¹ The moderate income option meets the BMR Program Guidelines under Section 3.4 which allow small developers to choose from a very low, low or moderate income level for the one affordable unit is required and meets the minimum threshold for density bonuses in a for sale project.



2 FLOOR PLAN 2
1/8" = 1'-0"



1 FLOOR PLAN 1
1/8" = 1'-0"



Nika Project LLC
P.O. Box 3683
Los Altos, CA 94024

HOOVER RESIDENTIAL
1220 HOOVER STREET,
MENLO PARK, CA

LPMD
Architects

1288 Kifer Road, Unit 206,
Sunnyvale, CA 94086
Telephone : 408-992-0280
Fax : 408-992-0281

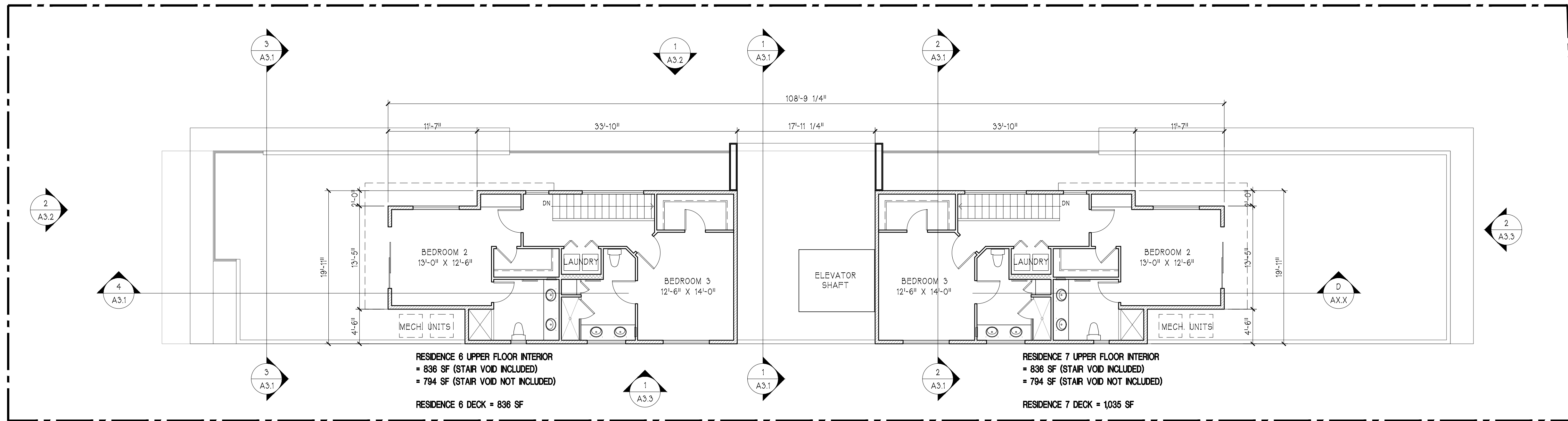
Revisions:

FLOOR PLANS
1 & 2

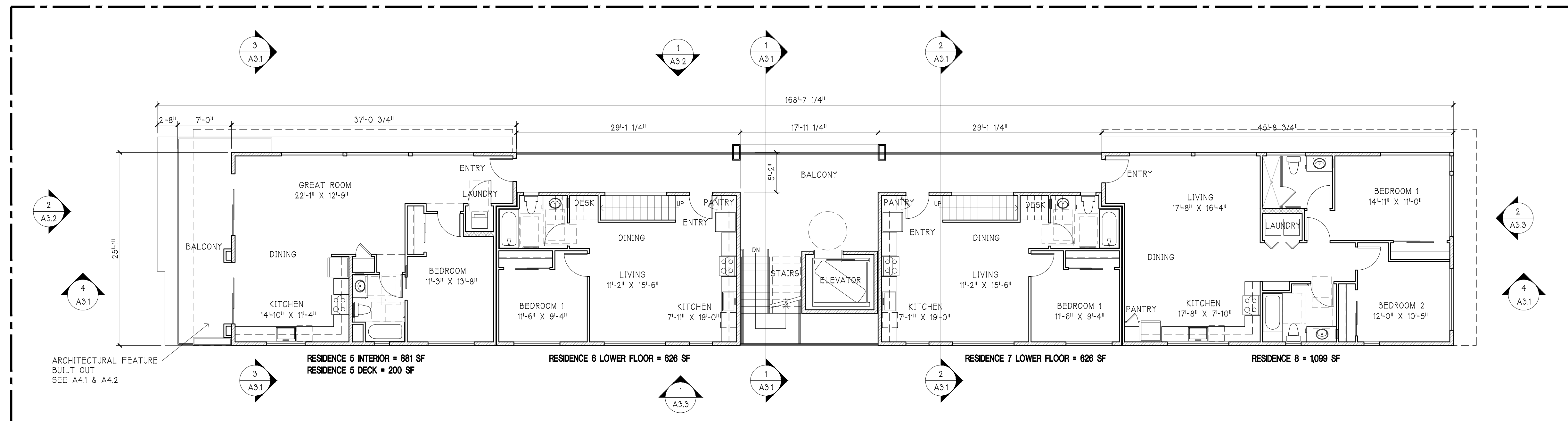
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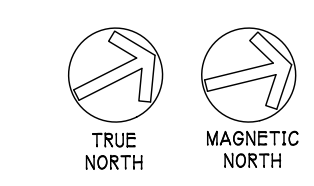
of Sheets



2 FLOOR PLAN 4
1/8" = 1'-0"



1 FLOOR PLAN 3
1/8" = 1'-0"



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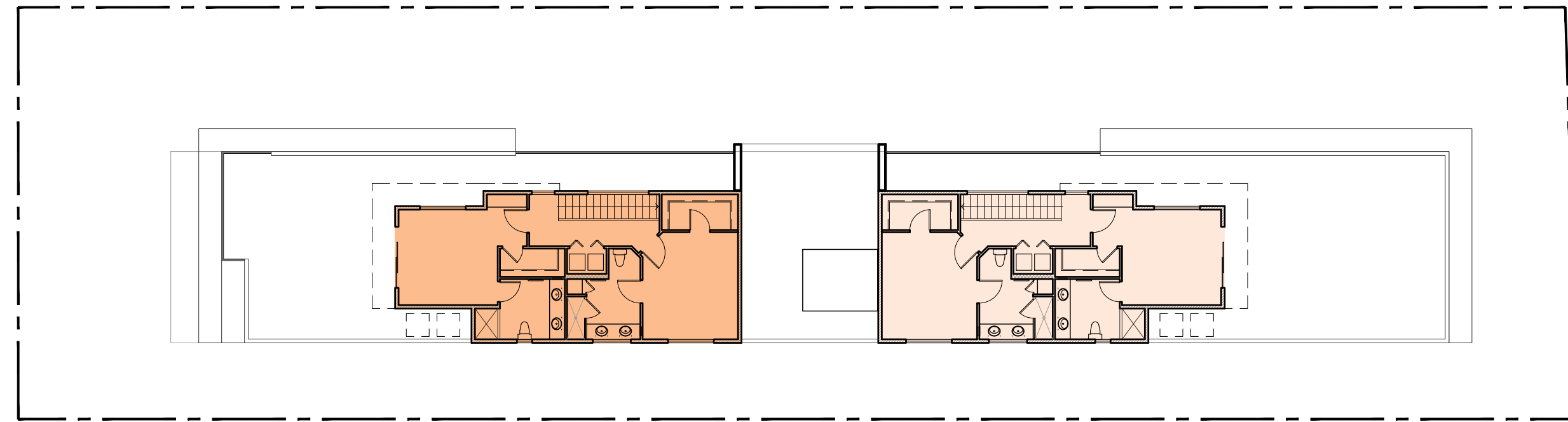
Revisions:

FLOOR PLANS
3 & 4

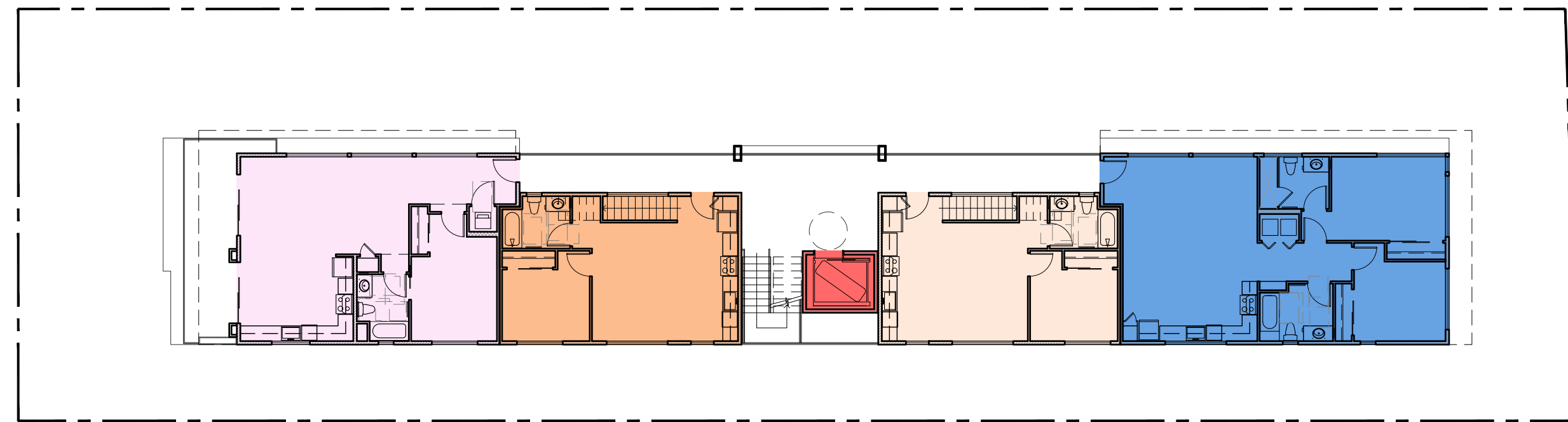
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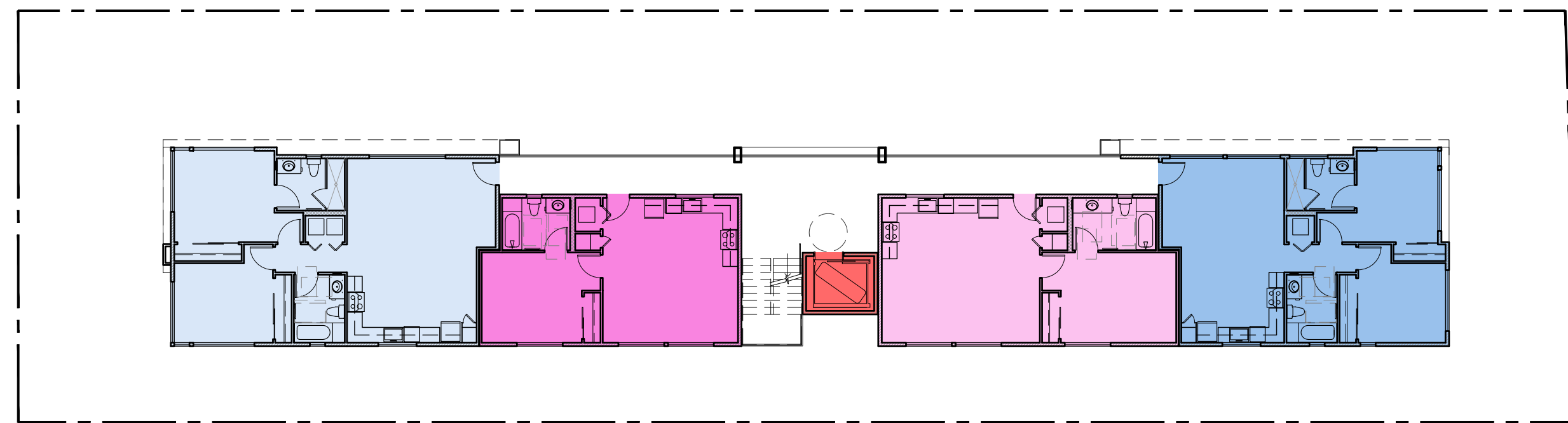
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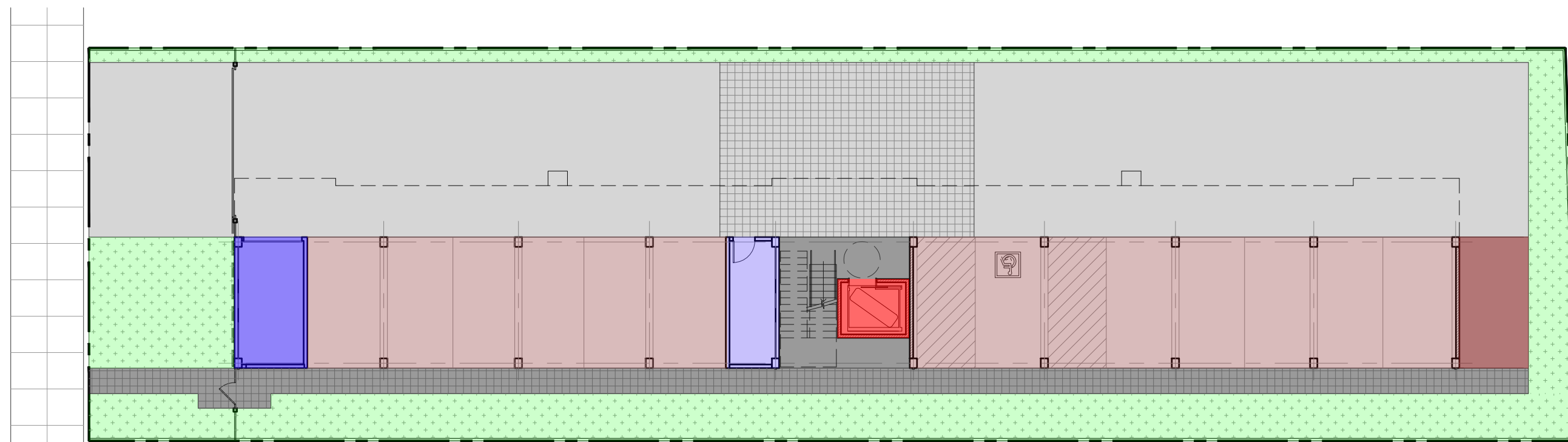
4 AREA FLOOR PLAN 4
1/16" = 1'-0"



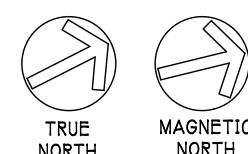
3 AREA FLOOR PLAN 3
1/16" = 1'-0"



2 AREA FLOOR PLAN 2
1/16" = 1'-0"



1 AREA SITE PLAN
1/16" = 1'-0"



	COLOR CODE	SPACE CATAGORY	AREA (SF)
4TH FLOOR	[Orange]	RESIDENCE 6 - UPPER LEVEL (3 BEDROOM)	836
	[Light Orange]	RESIDENCE 7 - UPPER LEVEL (3 BEDROOM)	836
		SUM	1,672
3RD FLOOR	[Pink]	RESIDENCE 5 (1 BEDROOM)	881
	[Orange]	RESIDENCE 6 - LOWER LEVEL (3 BEDROOM)	626
	[Red]	ELEVATOR	80
	[Light Orange]	RESIDENCE 7 - LOWER LEVEL (3 BEDROOM)	626
	[Blue]	RESIDENCE 8 (2 BEDROOM)	1,099
		SUM	3,312
2ND FLOOR	[Light Blue]	RESIDENCE 1 (2 BEDROOM)	1,060
	[Pink]	RESIDENCE 2 (1 BEDROOM)	665
	[Red]	ELEVATOR	80
	[Light Pink]	RESIDENCE 3 (1 BEDROOM)	764
	[Blue]	RESIDENCE 4 (2 BEDROOM)	921
		SUM	3,490
1ST FLOOR	[Red]	ELEVATOR	80
	[Purple]	ELECTRICAL ROOM	128
	[Blue]	TRASHROOM	180
	[Brown]	COVERED PARKING	2,398
	[Dark Brown]	OPEN PARKING	171
	[Grey]	PAVED WALKWAY	955
	[Light Grey]	DRIVEWAY	4,746
	[Green]	LANDSCAPE OEN AREA	2,337
	SUM	10995 (SITE AREA)	

TOTAL AREA	RESIDENTIAL	8,554
	ELECTRICAL ROOM	128
	TRASHROOM	180
	COVERED PARKING	2,398
	OPEN PARKING	171
	PAVED WALKWAY	955
	DRIVEWAY	4,746
LANDSCAPE OEN AREA	2,337	

PARKING CALCULATION		
UNIT TYPE	COUNT	PARKING SPACE # PROVIDED
1 BEDROOM UNIT	3	3
2 BEDROOM UNIT	3	6
3 BEDROOM UNIT	2	4
SUM	8	13

	PERMITTED / REQUIRED	PROPOSED (8 UNITS)		
7 UNITS (SF)	7,652			
8TH UNIT BONUS (SF)	1,093			
TOTAL WITH BONUS (SF)	8,745	8,314		
DRIVEWAY (SF)	3,848	35.0%	4,917	44.7%
LANDSCAPE OPEN SPACE (SF)	2,749	25.0%	3,292	29.9%

Nika Project LLC
P.O. Box 3683
Los Altos, CA 94024

HOOVER RESIDENTIAL
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MENLO PARK, CA

LPMD
Architects

1288 Kifer Road, Unit 206,
Sunnyvale, CA 94086
Telephone : 408-992-0280
Fax : 408-992-0281

Revisions:

AREA SUMMARY

Sheet No:

A13

of Sheets



2 SOUTH ELEVATION - HOOVER STREET
1/8" = 1'-0"



1 WEST ELEVATION
1/8" = 1'-0"

AVERAGE NATURAL GRADE
= [71.81 + 72.18 + 73.07 + 72.88] / 4
= 72.49

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Revisions:

WEST & SOUTH ELEVATIONS
Sheet No:
A3.2
of _____ Sheets



2 NORTH ELEVATION
1/8" = 1'-0"



1 EAST ELEVATION
1/8" = 1'-0"

AVERAGE NATURAL GRADE
= [71.81 + 72.18 + 73.07 + 72.88] / 4
= 72.49

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Revisions:

**EAST & NORTH
ELEVATIONS**

Sheet No:

A3.3

of Sheets



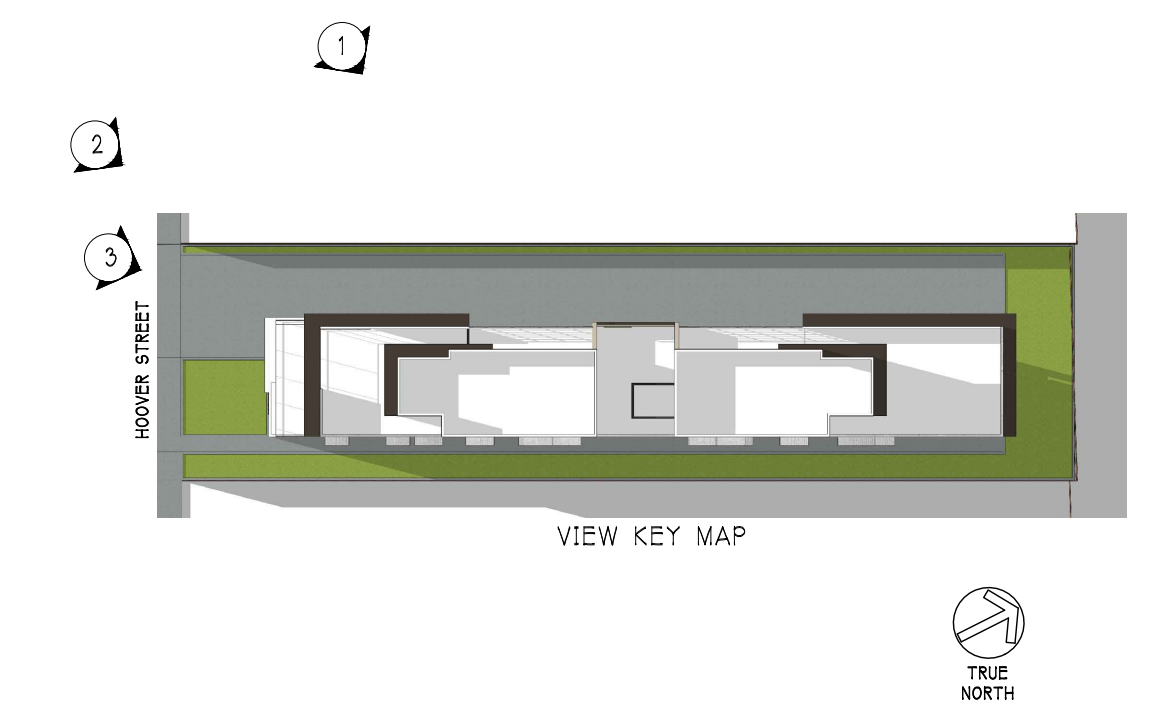
3 SOUTH WEST VIEW



2 SOUTH WEST VIEW



1 WEST VIEW



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 P.O. Box 3683
 Los Altos, CA 94024

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Revisions:

PERSPECTIVES

Sheet No:

A4.1

of Sheets



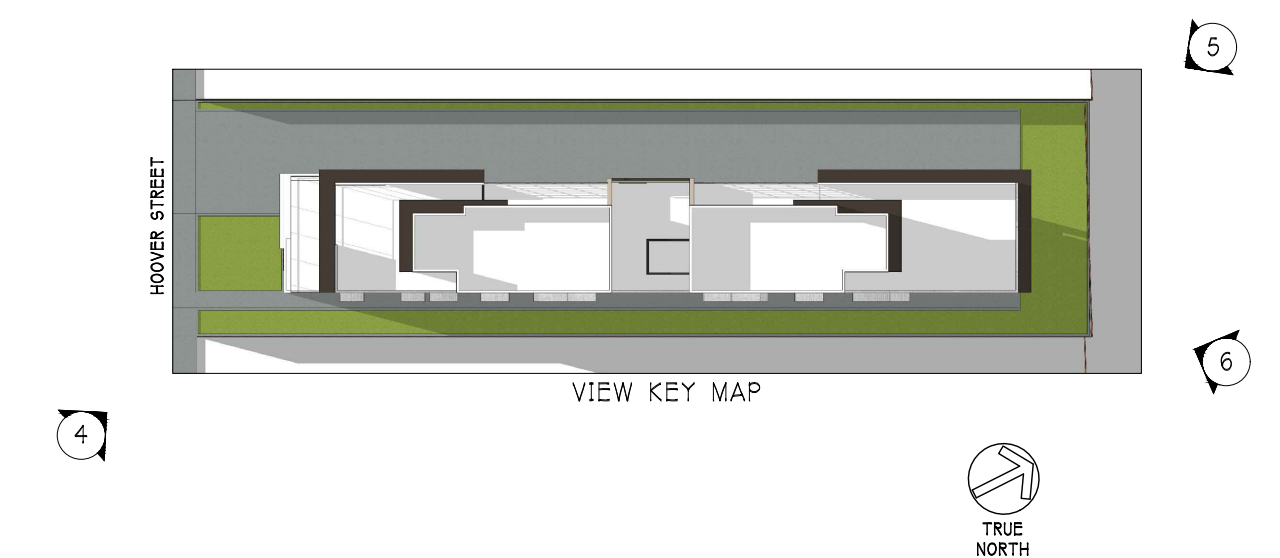
6 NORTH EAST VIEW



5 NORTH WEST VIEW



4 SOUTH EAST VIEW



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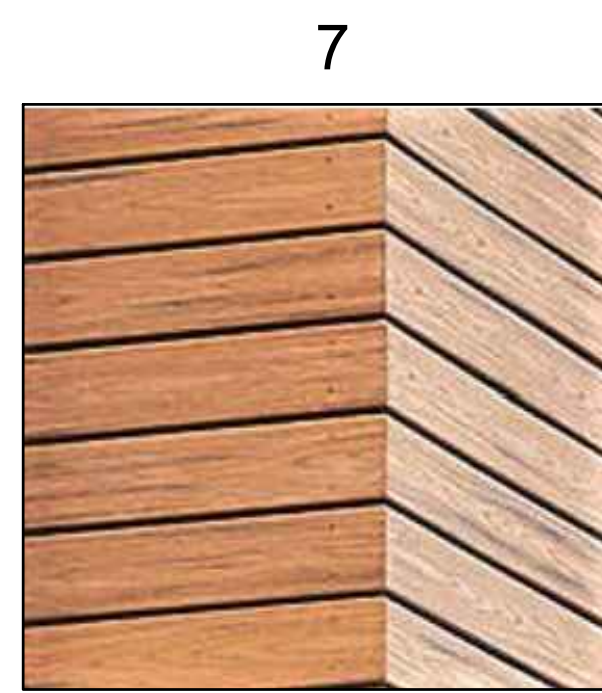
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Revisions:

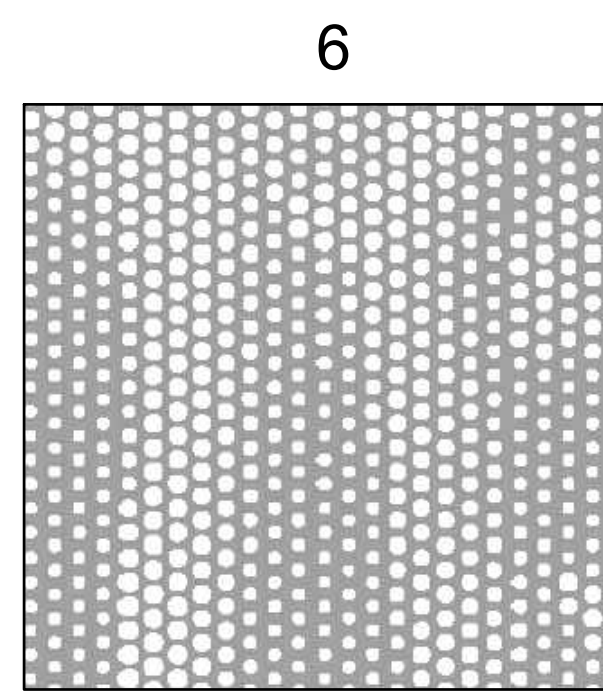
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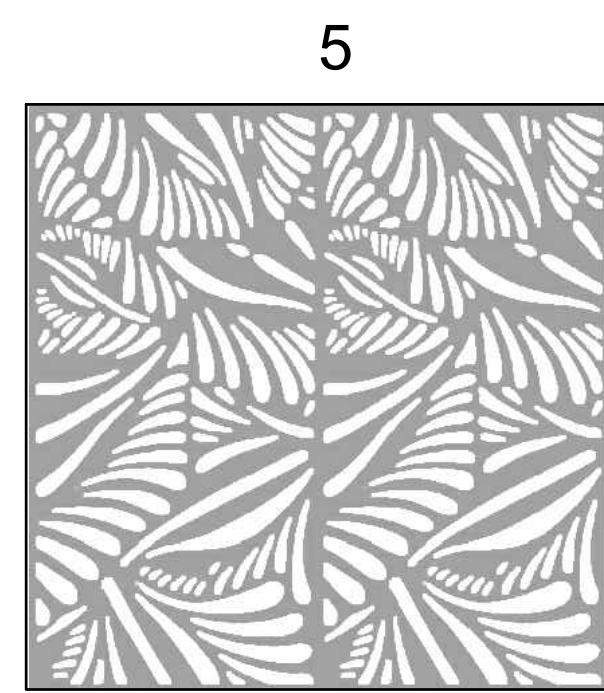
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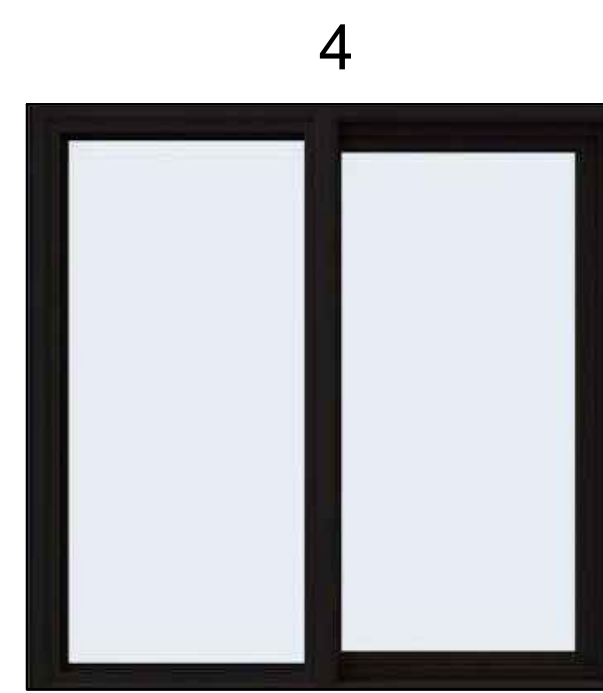
7
COMPOSITE
WOOD SIDING



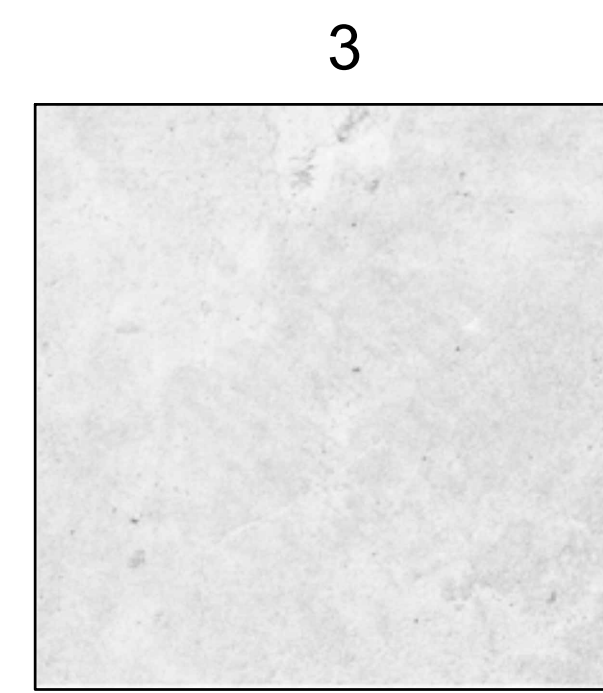
6
PREFABRICATED
METAL PANEL 2



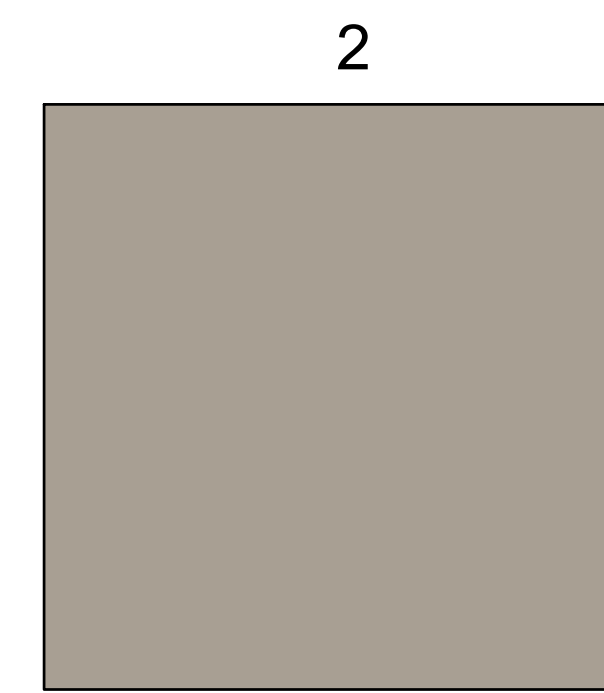
5
PREFABRICATED
METAL PANEL 1



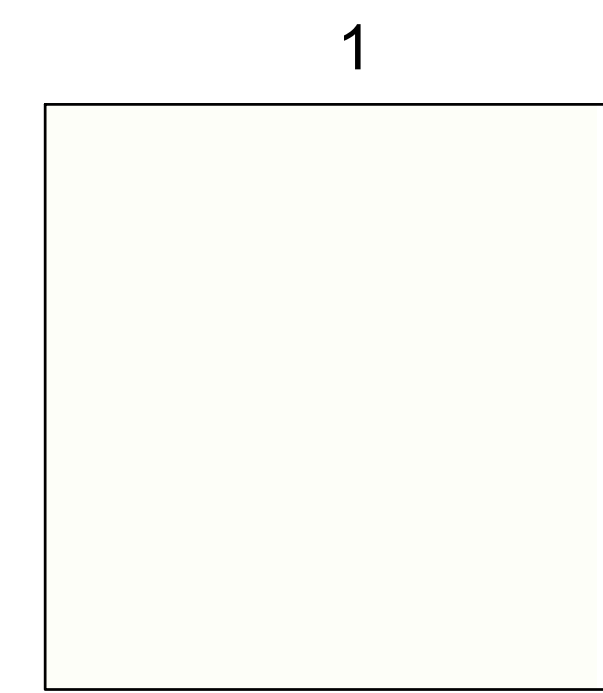
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VINYL WINDOW



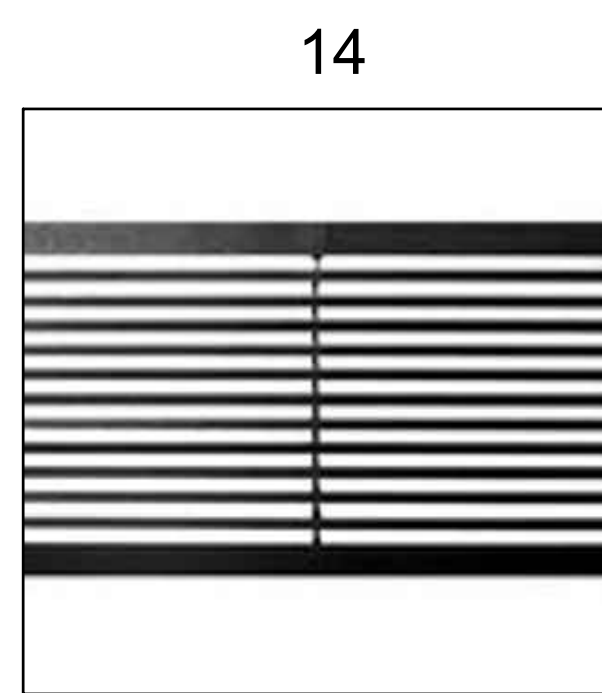
3
BODY PAINT 3
ON CONCRETE



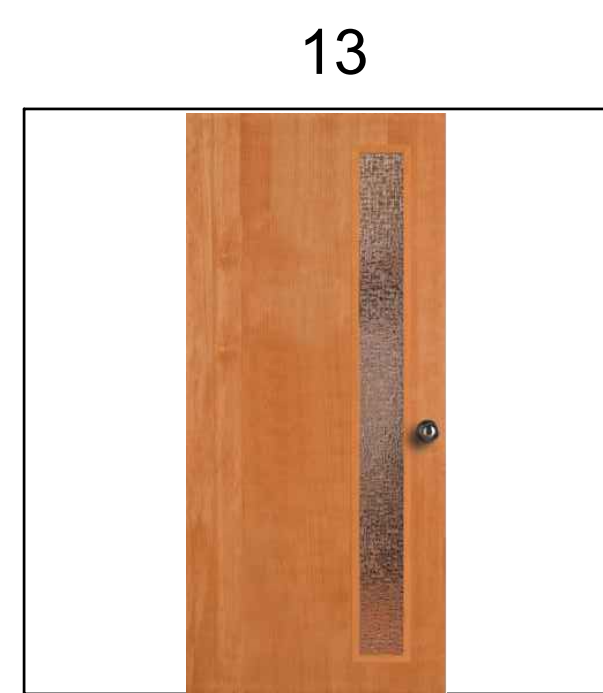
2
BODY PAINT 2
IN STUCCO



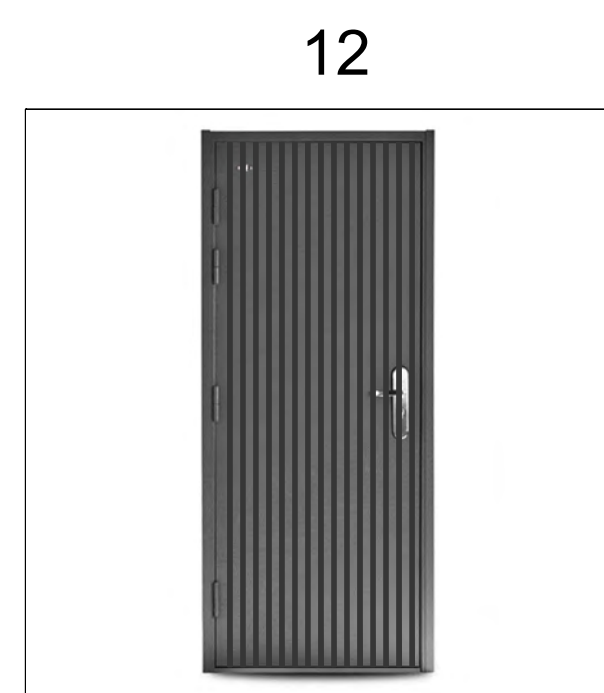
1
BODY PAINT 1
IN STUCCO



14
METAL GRILLE



13
UNIT ENTRY WOOD
DOOR



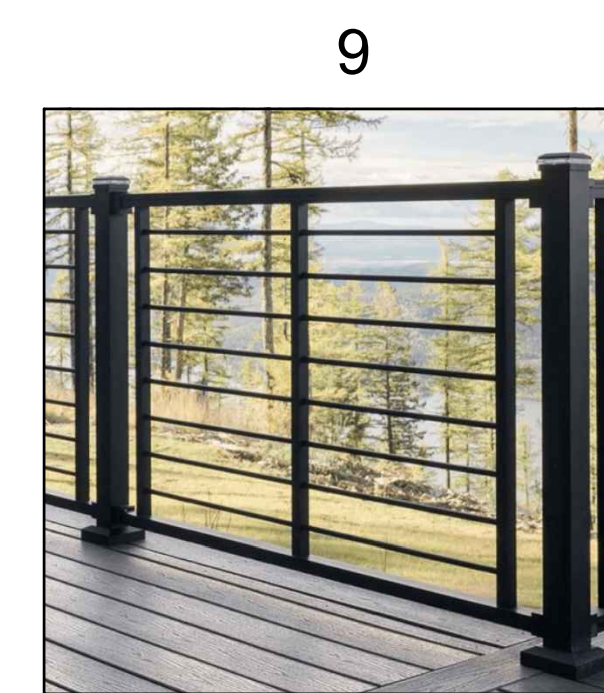
12
TRASH ROOM
STEEL DOORS



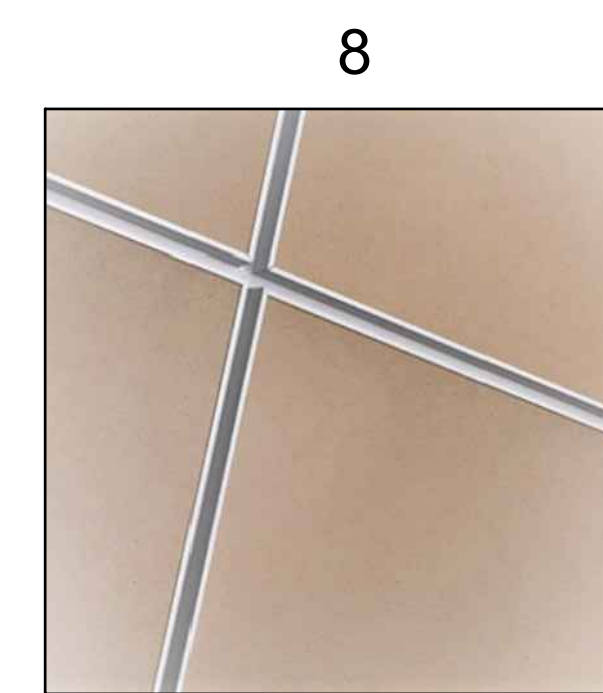
11
GLASS RAILING



10
METAL AWNING



9
METAL RAILING



8
STUCCO REVEAL
ALUMINUM

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Revisions:

**COLOR &
MATERIALS**

Sheet No:

A6.0

of _____ Sheets