



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

#4060

2023-017941 CONF

8:33 am 04/21/2023 AG Fee: NO FEE

Count of Pages 85

Recorded in Official Records

County of San Mateo

Mark Church

Assessor-County Clerk-Recorder



PROJECT WIDE AFFORDABLE HOUSING AGREEMENT

THIS PROJECT WIDE AFFORDABLE HOUSING AGREEMENT (“Agreement”) is made as of this 6 day of December, 2022, by and between Peninsula Innovation Partners, LLC, a Delaware limited liability company (“Project Wide Developer”) and the City of Menlo Park, a California municipal corporation (“City”) (each individually a “party” and together the “parties”), with reference to the following facts.

RECITALS

A. Project Wide Developer owns and is developing the real property commonly known as “Willow Village Master Plan Project” in the City of Menlo Park, County of San Mateo, (APNs 055-440-350, 055-440-210, 055-440-300, 055-440-130, 055-440-230, 055-440-110, 055-440-340, 055-440-330, 055-440-260, 055-440-320, 055-440-310, 055-440-040, 055-440-020, 055-440-010, 055-440-030, 055-440-050, 055-440-090, 055-440-190), more particularly described on Exhibit “A” attached hereto (“Property”). Development of the Property is governed by, among other items, Menlo Park Municipal Code Chapter 16.96 (“BMR Ordinance”) and the Below Market Rate Housing Program Guidelines (“Guidelines”).

B. Project Wide Developer applied to demolish an existing office, research and development and industrial site and to comprehensively redevelop the main project site with up to 1.6 million square feet of office space (inclusive of meeting and collaboration space and accessory uses), up to 200,000 square feet of retail uses, a 193 room hotel (approximately 172,000 square feet in size), and up to 1,730 residential dwelling units, as well as publicly accessible open space and landscaping (the “Project”).

C. The BMR Ordinance and Guidelines require Project Wide Developer to provide fifteen percent (15%) of the total number of units in the Project as affordable to below market rate households. To satisfy the requirements of the BMR Ordinance and Guidelines, Project Wide Developer has proposed to provide 312 on-site Affordable Housing Units (as hereinafter defined) to below market rate households, inclusive of 119 age-restricted senior Affordable Housing Units and 193 non-age restricted Affordable Housing Units.



D. On August 3, 2022, after a duly noticed public hearing, the Housing Commission recommended approval of the Affordable Housing Units (as hereinafter defined) with eighty-two (82) extremely-low-income age-restricted senior units, thirty-seven (37) very-low-income age-restricted senior units, seventy-six (76) low-income non-age restricted units and one hundred and seventeen (117) moderate-income non-age restricted units.

E. On December 6, 2022, after a duly noticed public hearing, and on the recommendation of the Housing Commission and the Planning Commission, the City Council certified the environmental impact report and granted General Plan Circulation Element and Zoning Map amendments, rezoning, conditional development permit, development agreement (the "Development Agreement"), vesting tentative map, and below market rate (BMR) housing agreement for the Project (collectively, "Project Approvals"). The Project Approvals require the Project Wide Developer to provide Affordable Housing Units as described herein. In accordance with the BMR Ordinance and Guidelines, Project Wide Developer is required to execute and record an approved BMR housing agreement as a condition precedent to the issuance of a building permit for the Project. This Agreement is intended to satisfy that requirement.

F. The Project is anticipated to be completed in two phases over time, with a cumulative total of six parcels containing all of the Affordable Housing Units, with parcels known as 2, 3, 6, and 7 in the first phase and parcels known as 4 and 5 in the second phase.

G. This Agreement will serve to memorialize the following: Project Wide Developer's agreement to provide the Affordable Housing Units within the Project needed to satisfy BMR Ordinance requirements; the security for the performance of this Agreement; the time frame for the construction of the Affordable Housing Units; the restriction of the Affordable Housing Units by the recordation of the Declarations (as defined below), in favor of the City and in a form agreed upon by Project Wide Developer and the City, as set forth in Exhibit "B-1" and "B-2" attached hereto, assuring affordability for the required term; and other related issues to the provision of Affordable Housing Units on the Property.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, Project Wide Developer hereby declares and the City hereby agrees as follows:

1. Definitions. The following terms shall have the meanings ascribed to them in this Section 1:

(a) Affordable Housing Units. "Affordable Housing Units" means the rental residential units that Project Wide Developer is required to provide on the Property, which are restricted as provided in this Agreement to assure affordability for households earning either 30% Area Median Income (as defined below), 50% Area Median Income (as defined below), 80% Area Median Income (as defined below), or 120% Area Median Income (as defined below).

(b) Agreement. "Agreement" means this Project Wide Affordable Housing Agreement.



(c) Area Median Income. "Area Median Income" or "AMI" means the area median income for San Mateo County, as published and periodically updated by the U.S. Department of Housing and Urban Development ("IUD"), adjusted for assumed household size.

(d) BMR Ordinance. "BMR Ordinance" has that meaning ascribed to it in Recital A, above.

(e) Building Permit(s). "Building Permit(s)" means a permit for the actual structure(s) of a Development Parcel, as that term is defined herein, in which residential rental units shall be developed and/or permits for any site preparation construction work, which may include but not be limited to make-ready utility installation; excavation, shoring and grading; and/or foundation installation.

(f) City. "City" means the City of Menlo Park, a municipal corporation.

(g) Declaration. "Declaration" means the Below Market Rate Housing Agreement and Declaration of Restrictive Covenants recorded in Senior Position against a parcel(s) and/or condominium(s) sufficient to accommodate construction of the Affordable Housing Units applicable to a Development Parcel or multiple Development Parcels. The Declaration shall be in substantially the same form as the Pro Forma Declaration attached hereto as Exhibit "B-1" and "B-2", with the form attached as Exhibit "B-1" used for the non-age restricted buildings, and the form attached as Exhibit "B-2" used for the age restricted building. The term Declaration includes the First Development Parcel Declaration as defined in Section 5(a) below. Each Declaration shall be made by the owner of the affordable housing portion of such corresponding Development Parcel.

(h) Development Parcel. "Development Parcel" means those parcels within the Property upon which any group of Market Rate Units and Affordable Housing Units, and/or improvements for which Building Permits are being concurrently requested by the Project Wide Developer (or any successor owner of any portion of the Project) are located, and shall include the First Development Parcel and any Subsequent Development Parcel, as such terms are defined herein.

(i) First Development Parcel. "First Development Parcel" shall mean and refer to: the first Development Parcel to be developed.

(j) Guidelines. "Guidelines" has that meaning ascribed to it in Recital A, above.

(k) Market Rate Units. "Market Rate Units" means the rental residential units that Project Wide Developer will develop on the Property that are not constricted by affordability rules under a Declaration and are permitted under the Project Approvals.

(l) Project Wide Developer. "Project Wide Developer" means Peninsula Innovation Partners, LLC, a Delaware limited liability company.

(m) Property. "Property" has that meaning ascribed to it in Recital A, above.



- (n) Project. "Project" has that meaning ascribed to it in Recital B, above.
- (o) Project Approvals. "Project Approvals" has that meaning ascribed to it in Recital E, above.
- (p) Required Affordable Units. "Required Affordable Units" means the number of Affordable Housing Units which, as of the date of issuance of the first Building Permit for any particular Development Parcel, Project Wide Developer is required to construct pursuant to Section 2(c) of this Agreement (less any such Affordable Housing Units which have already been commenced by Project Wide Developer).
- (q) Senior Position. "Senior Position" means that the document is recorded against the Property such that it is senior in recording priority to all mortgages and deeds of trust.
- (r) Subsequent Development Parcel. "Subsequent Development Parcel" (it being acknowledged that there will be approximately five Subsequent Development Parcels) shall mean and refer to: each of the five remaining Development Parcels to be developed as part of the Project.
- (s) Targeted Household. "Targeted Household" means those households whose aggregate gross annual income does not exceed one hundred twenty percent (120%) of Area Median Income, as adjusted for family size.
- (t) Other Terms. Other terms referenced in this Agreement in "quotations" (including those set forth in the Recitals) have the meanings ascribed to them in this Agreement.

2. Design, Construction and Occupancy Schedule for Affordable Housing Units. Project Wide Developer shall have no obligation to commence construction of the Affordable Housing Units except in accordance with the following schedule.

- (a) First Development Parcel. Upon the start of the First Development Parcel, Project Wide Developer and/or a successor owner of any portion of the Project shall obtain Building Permits for all of the Required Affordable Units for the First Development Parcel and shall diligently commence and pursue construction of such Affordable Housing Units.
- (b) Subsequent Development Parcel(s). Upon the commencement of any Subsequent Development Parcel, Project Wide Developer and/or a successor owner of such Subsequent Development Parcel shall obtain Building Permits for all of the Required Affordable Units for such Subsequent Development Parcel and shall diligently commence and pursue construction of such Affordable Housing Units. It is acknowledged that there may be more than one Subsequent Development Parcel.
- (c) Construction of Affordable Housing Units. With respect to each Development Parcel, Project Wide Developer shall obtain Building Permits (and thereafter construct and complete pursuant to Sections 2(a) and 2(b), above) for the Required Affordable Units in relation to such Development Parcel, all as provided in Exhibit "D" attached hereto, as the same may be



amended or updated with the mutual approval of the City and the Project Wide Developer, provided, however, that a reallocation of Affordable Housing Units of Affordable Housing Units from one Development Parcel to another Development Parcel is permitted without the approval of the City so long as the reallocation does not decrease the Affordable Housing Units in any given Development Parcel as set forth in Exhibit "D" by more than 5%; and provided further that a reallocation that decreases the number of Affordable Housing Units of any given Development Parcel by more than 5% but less than 10% shall require approval of the City pursuant to an Operating Memorandum as described in Section 8.7 of the Development Agreement. In the event of any reallocation of Affordable Housing Units as described in this Section and pursuant to Section 5.1 of the Guidelines (as that section may be amended), in the Development Parcel accommodating the reallocated Affordable Housing Units, the Affordable Housing Units shall generally be of the same proportionate size (number of bedrooms and square footage) as the market-rate units in such Development Parcel, should be distributed through such development, and should be indistinguishable from the exterior. City shall reasonably cooperate in the amendment of Exhibit "D" if a reallocation of more than 10% of Affordable Units among the Parcels is requested by Project Wide Developer provided there is no material impact on the deliver of Affordable Units to the Project.

3. Building Permits. Issuance of Building Permits for any Development Parcel, and a corresponding release of this Agreement from the property comprising such Development Parcel, shall not be allowed until Project Wide Developer causes a parcel(s) and/or condominium(s) sufficient to accommodate construction of the Affordable Housing Units applicable to such Development Parcel to be encumbered by a Declaration in Senior Position.

4. Effect of Sale of Parcel by Project Wide Developer. If a parcel(s) or condominium(s) within the Project are sold or otherwise transferred by Project Wide Developer, every such parcel or condominium sold or transferred shall (at the time the owner thereof obtains Building Permits for residential rental units on such parcel(s) or condominium(s)) be included, for purposes of this Agreement, in the phased delivery of Affordable Housing Units and Market Rate Units as provided in Exhibit "D" attached hereto, as the same may be amended or updated with the mutual approval of the City and the Project Wide Developer pursuant to Section 2 of this Agreement, and the other requirements of this Agreement. Any such sale or transfer by the Project Wide Developer shall also be subject to the provisions of Section 11 of this Agreement.

5. Declarations of Covenants, Conditions and Restrictions. The Project Wide Developer, and/or a successor owner of any applicable portion of the Project, shall timely execute and record Declarations as and when required by this Agreement.

(a) First Development Parcel Declaration. Prior to the first date upon which Building Permits for Market Rate Units in the First Development Parcel are first issued, Project Wide Developer shall execute, acknowledge and deliver a "First Development Parcel Declaration" to the title company, who will cause the First Development Parcel Declaration to be recorded in Senior Priority against the parcel(s) and/or condominium(s) described in such First Development Parcel Declaration. The First Development Parcel Declaration shall ensure that the required number of Affordable Housing Units applicable to the First Development Parcel (as provided on Exhibit "D" attached hereto, as the same may be amended or updated with the mutual approval of



the City and the Project Wide Developer) will be owned, operated, leased, rented, maintained, and occupied as Affordable Housing Units for the term of the First Development Parcel Declaration. At the time the First Development Parcel Declaration is executed, the City shall execute a release of this Agreement for all of the parcel(s) and/or condominium(s) comprising the First Development Parcel. Such release shall be in the form attached as Exhibit "C" hereto.

(b) Subsequent Development Parcel Declaration. Prior to the issuance of Building Permits for any Market Rate Units in any Subsequent Development Parcel, Project Wide Developer shall, to the extent a previously recorded Declaration does not already address the Affordable Housing Units applicable to such Subsequent Development Parcel, cause a parcel(s) or condominium(s) of real property sufficient to accommodate construction of the Affordable Housing Units applicable to such Subsequent Development Parcel to be encumbered by a Declaration in Senior Position. At the time a Declaration for such Subsequent Development Parcel is executed, the City shall execute a release of this Agreement for all of the parcel(s) and/or condominium(s) comprising such Subsequent Development Parcel. Such release shall be in the form attached as Exhibit "C" hereto.

(c) Restrictions. Each Declaration shall be in substantially the same form as the declarations set forth in Exhibit "B-1" for the non-age restricted buildings and Exhibit "B-2" for the age restricted building and shall provide for the bedroom mix of the Affordable Housing Units on each Development Parcel. Each Declaration shall also restrict the occupancy, and rents paid by the Targeted Households in accordance with the provisions of the Guidelines or as otherwise allowed by law.

6. Recordation. This Agreement shall be recorded against the Property in the Office of the County Recorder for the County of San Mateo in Senior Position; but subject to the release provisions of Sections 5(a) and 5(b) above and Section 16 below.

7. Indemnity. Project Wide Developer agrees to indemnify and hold harmless the City, and any and all of its members, officers, agents, servants, or employees (the "Indemnitees") from and against all claims, liens, claims of lien, losses, damages, costs, and expenses, whether direct or indirect, arising in any way from the default by Project Wide Developer in the performance of its obligations under this Agreement; provided, however, that Project Wide Developer shall not be required to indemnify, defend or hold harmless any of the Indemnitees from claims, losses, damages, costs and expenses related to the negligence or willful misconduct of any of the Indemnitees.

8. Marketing Requirements. Project Wide Developer shall follow any applicable marketing requirements and procedures of the Guidelines.

9. Breach/Default. If Project Wide Developer is in material breach of the terms set forth in this Agreement and Project Wide Developer does not take action to correct such violation within 60 days of written notice of such failure from the City (or 180 days in the event such violation cannot be cured within 60 days and Project Wide Developer is diligently pursuing such cure), the City shall be entitled to all of its rights and remedies set forth herein and at law and in equity.



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

11. Successors and Assigns. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto, and their respective heirs, successors and assigns. Project Wide Developer shall not sell, transfer or otherwise dispose of the Property or any legal parcel or condominium comprising a portion thereof, unless: (i) the proposed transferee enters into a Declaration as described in Section 5 hereof or (ii) the proposed transferee shall have executed and delivered to the City an express written assumption of all of Project Wide Developer's obligations under this Agreement as they relate to such acquired real property, on a form substantially similar to the attached Exhibit "E". Upon any sale of any portion of the Property permitted by the preceding sentence, with respect solely to the transferred property, Project Wide Developer and any Property not so conveyed will be released from further obligations relating to such transferred property (and under any Declaration or other documentation related hereto). The foregoing restrictions on sale and transfer shall not apply to the granting of easements, rights-of-way, and similar conveyances in connection with the development of the Project which are not in the nature of a sale of one or more legal parcels or condominiums. Upon assignment and assumption by a successor entity, as approved by the City, Project Wide Developer shall be released from all further responsibility under the terms of this Agreement as to the subject parcel(s) and/or condominium(s) so conveyed. The successors, heirs and assigns of the Project Wide Developer shall enter into and execute such other and further documents as the City shall reasonably require, as from time to time, may be needed to effectuate the affordable housing requirements of the Guidelines or as otherwise required or allowed by law.

12. Standing, Equitable Remedies: Cumulative Remedies. Project Wide Developer expressly agrees and declares that the City and/or its successors shall be the proper parties and shall have standing to initiate and pursue any and all actions or proceedings, at law or in equity, to enforce the provisions hereof and/or to recover damages for any default hereunder, notwithstanding the fact that such damages or the detriment arising from such a default may have actually been suffered by some other person or by the public at large. Nothing in this subparagraph, and no recovery to the City, shall restrict or limit the rights or remedies of persons or entities other than the City, against Project Wide Developer in connection with the same or related acts by Project Wide Developer. Neither Project Wide Developer, nor any tenant or occupant of the Property, shall have any claim or right of action against the City based on any alleged failure of the City to perform or enforce the terms of this Agreement, except that Project Wide Developer may reasonably rely upon City's tenant eligibility determination, and provided further that Project Wide Developer may pursue a claim of specific performance against the City in the event the City improperly withholds a release of a Development Parcel from this Agreement after a Declaration has been recorded against such Development Parcel according to the terms of this Agreement.

13. Certificate of Compliance. The City shall provide Project Wide Developer upon request with recordable evidence that a particular parcel(s) of real property or condominium(s) within the



Project has satisfied all applicable requirements under this Agreement, or has been developed in a manner which makes this Agreement inapplicable thereto, and which instrument shall have the effect of making this Agreement no longer a lien or encumbrance upon title to such parcel(s) or condominium(s).

14. Term. This Agreement and the covenants and restrictions contained herein shall, subject to the provisions above relating to release hereof, remain in effect as a lien and charge against each legal parcel or condominium within the Property until the date of recordation of the final Declaration for the final Subsequent Development Parcel for the Property, at which time this Agreement shall be terminated.

15. Severability. In the event that any provision or covenant of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then it shall be severed from the remaining portions of this Agreement which shall remain in full force and effect.

16. Release of Non-Residential Parcels. This Agreement is entered into to provide for the development of Affordable Housing Units on the six (6) Development Parcels containing Affordable Housing Units. Those portions of the Project not containing the Development Parcels shall be released from this Agreement upon the earlier of (i) the recording of a parcel or final map for said portions of the Project not containing the six (6) Development Parcels, which map substantially conforms to the Willow Village Master Plan or (ii) the issuance of a demolition or building permit for the development of any portion of the Project not containing the six (6) Development Parcels. Such release shall be in the form attached as Exhibit "C" hereto.

17. General Provisions.

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

(b) Waiver and Amendment. No provision of this Agreement, or breach of any provision, can be waived except in writing. Waiver of any provision or breach shall not be deemed to be a waiver of any other provision, or of any subsequent breach of the same or other provision. Except as otherwise provided herein, this Agreement may be amended, modified or rescinded only in writing signed by Project Wide Developer and the City.

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

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

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



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

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

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

(i) Signatures. This Agreement may be executed in any number of counterparts and, as so executed, the counterparts shall constitute one and the same Agreement. All individuals signing this Agreement for a party which is a corporation, limited liability company, partnership or other legal entity, or signing under a power of attorney, or as a trustee, guardian, conservator, or in any other legal capacity, covenant to the City that they have the necessary capacity and authority to act for, sign and bind the respective entity or principal on whose behalf they are signing.

(j) Intentionally Omitted.

(k) Notices. All notices given pursuant to this Agreement or law shall be written. Notices shall be delivered with all delivery or postal charges prepaid. Notices may be given personally; by electronic mail; by United States first-class mail; by United States certified or registered mail; or by other recognized overnight service. Notices shall be deemed received on the date of personal delivery transmission; on the date shown on a signed return receipt or acknowledgment of delivery; or, if delivery is refused or notice is sent by regular mail, seventy-two (72) hours after deposit thereof with the U.S. Postal Service. Until a party gives notice of a change, notices shall be sent to:

If to the City:
 City of Menlo Park
 701 Laurel Street
 Menlo Park, CA 94025
 Attention: City Clerk
 E-mail:

If to Project Wide Developer: Peninsula Innovation Partners, LLC
 1 Hacker Way
 Menlo Park, CA 94025
 Attn: Facilities, Real Estate Development
 Attn: Real Estate Counsel
 E-mail:



With a copy to: Cox, Castle & Nicholson LLP
50 California Street, Suite 3200
San Francisco, CA 94111
Attn: Ofer Elitzur, Esq.
E-mail: oelitzur@coxcastle.com

(l) Mortgagees Protection. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Agreement shall defeat or render invalid or in any way impair the lien or charge of any permitted deed of trust recorded on the Property provided, however, that any subsequent owner of the Property shall be bound by the covenants, conditions, restrictions, limitations and provisions of this Agreement, whether such owner's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

(m) Actions of Parties to be Reasonable. Each party to this Agreement agrees that it shall act reasonably in granting or withholding any consent or approval required by this Agreement and/or any other legal document executed in connection with this Agreement or in connection with the development of the Project.

(n) Estoppel Certificate. Upon the request of the Project Wide Developer, the City shall, through the City Manager, provide Project Wide Developer and any potential lender or purchaser, with an estoppel certificate by which the City confirms that neither Project Wide Developer nor the City is in default hereof (or setting forth such defaults) and confirming such other factual matters as Project Wide Developer or such potential lender or purchaser may reasonably request and the addressees of such estoppel certificates shall be entitled to rely upon the information contained therein.

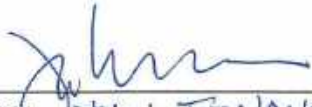
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IN WITNESS WHEREOF, the Project Wide Developer has caused this Agreement to be executed as of the date first written above.

PROJECT WIDE DEVELOPER:

PENINSULA INNOVATION PARTNERS, LLC, a Delaware limited liability company

By: 
Name: JOHN TENAVES
Its: V.P. REAL ESTATE

[Signatures continue on next page]

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF SAN MATEO)

On January 30, 2023 before me, Matt G Miller, Notary Public, personally appeared John Tenanes, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: [Handwritten Signature] (seal)





CITY:
CITY OF MENLO PARK, a California municipal corporation

By: *Justa Murphy*
Name: *Justa Murphy*
Title: City Manager

ATTEST:
[Signature]
City Clerk

Date: *3/16/2023*

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Mateo)

On March 16, 2023 before me, Sarah Sandoval, Notary Public
(insert name and title of the officer)

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
paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)

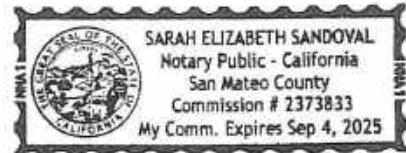




Exhibit "A"
Property Description

**EXHIBIT A****LEGAL DESCRIPTION
WILLOW VILLAGE SITE
MENLO PARK, CALIFORNIA**

The land referred to is situated in the City of Menlo Park, County of San Mateo, State of California and is described as follows:

BEGINNING at the southwesterly corner of Parcel S; as shown on that certain map entitled "Menlo Industrial Center, City of Menlo Park, San Mateo County, California" filed in the office of the County Recorder of San Mateo County, State of California, on October 1, 1979, in Volume 99 of Maps at Pages 81-83, thence,

North 22°05'00" East, 120.17 feet; thence,

North 24°45'44" East, 143.14 feet; thence,

Along a tangent curve to the left, having a radius of 1,536.52 feet, length of 74.34 feet, and a delta angle of 02°46'19"; thence,

North 22°05'00" East, 864.41 feet; thence,

Along a tangent curve to the left, having a radius of 1,032.50 feet, length of 55.72 feet, and a delta angle of 03°05'31"; thence,

North 25°35'47" East, 2.12 feet; thence,

North 19°19'09" East, 144.98 feet; thence,

North 22°05'00" East, 71.06 feet; thence,

North 84°59'41" East, 1,324.41 feet; thence,

Along a tangent curve to the left, having a radius of 1,1509.17 feet, length of 251.79 feet, and a delta angle of 01°15'13"; thence,



South 10°08'21" West, 1,612.25 feet; thence,

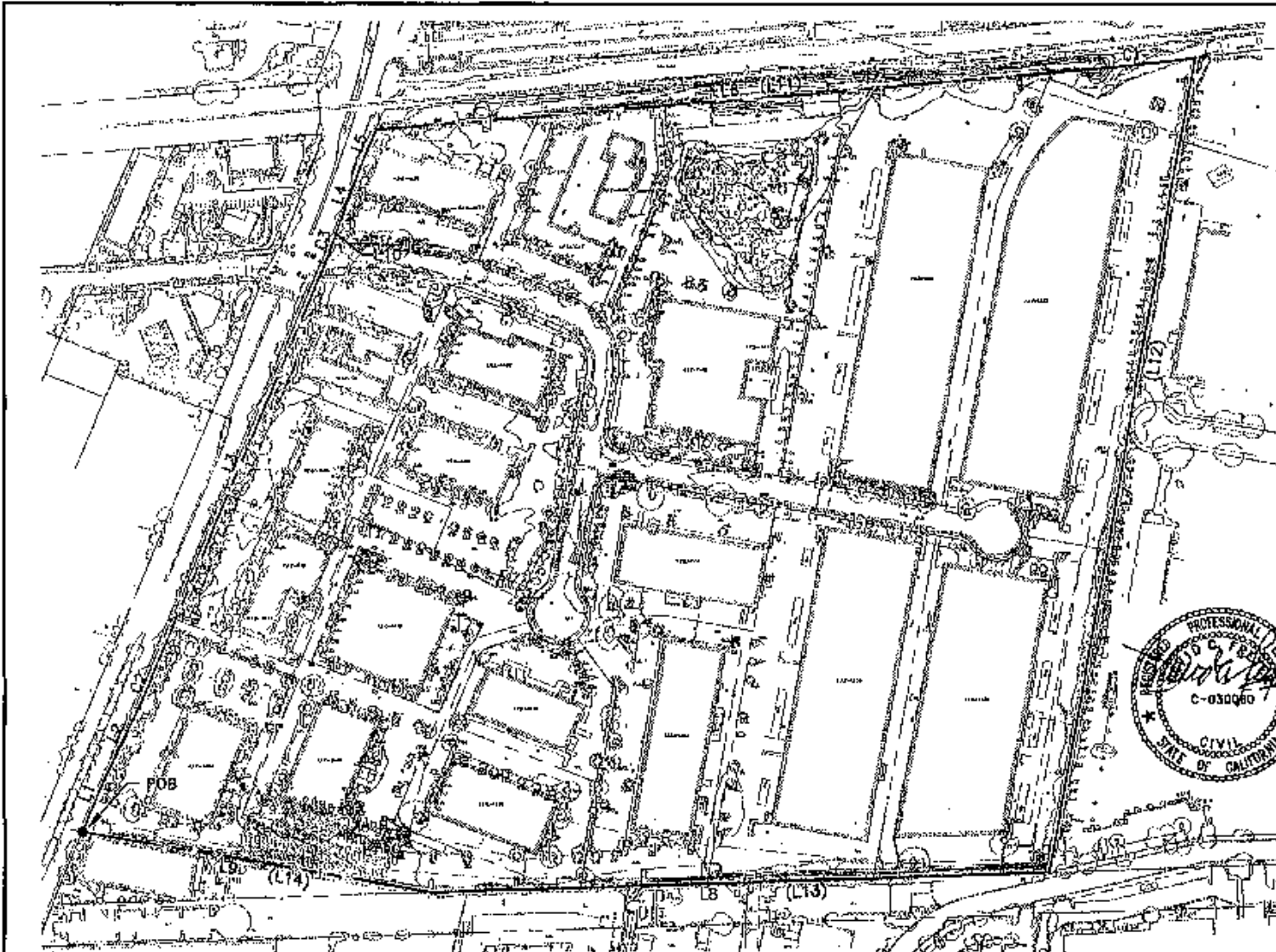
South 88°08'54" West, 1,612.25 feet; thence,

North 79°51'49" West, 668.96 feet to the **POINT OF BEGINNING.**

Containing 2,577,434.20 square feet (59.17 acres), more or less.

September 30, 2022





Line Table

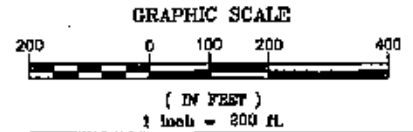
Line #	Length	Direction
L1	120.17	N22° 05' 00"E
L2	143.14	N24° 45' 44"E
L3	864.41	N22° 05' 00"E
L4	144.98	N19° 19' 09"E
L5	71.06	N22° 05' 00"E
L6	1324.41	N64° 59' 41"E
L7	1612.25	S10° 08' 21"W
L8	1182.95	S88° 08' 54"W
L9	668.96	N79° 51' 49"W
L10	2.12	N25° 35' 47"E
L11	1324.41	N64° 58' 45"E
L12	1612.25	S10° 07' 20"W
L13	1182.46	S88° 07' 50"W
L14	669.55	N79° 55' 00"W

Curve Table

Curve #	Length	Radius	Delta
C1	251.79	11508.17	1°15'13"
C2	74.34	1536.52	2°46'19"
C3	55.72	1032.50	3°05'31"



NOTES
(L11) RECORD DATA FROM
99 M 82-83



DATE: 2/10/2012
 PLOT: AC SHEET
 USER: BU
 CHECKED: GOF
 PROJ. ENGR:

FREYER & LAURITA, INC.
 CIVIL ENGINEERS • SURVEYORS • CONSTRUCTION MANAGERS
 195 FREDERICKS BLVD • SUITE 4203 • SAN FRANCISCO, CA 94104
 (415) 784-7000 • www.freyerandlaurita.com

DESCRIPTION	QTY

EXHIBIT B
PROJECT SITE PLAT
 WILLOW VILLAGE
 MENLO PARK, CALIFORNIA

SHEET
 1
 OF 2 SHEETS
 JPS/KD
 300001



Exhibit "B-1"

**Pro Forma Affordable Regulatory Agreement and
Declaration of Restrictive Covenants**



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
AND DECLARATION OF RESTRICTIVE COVENANTS**

(Willow Village Masterplan 1350 Willow Road)

THIS BELOW MARKET RATE HOUSING AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS ("Agreement") is entered into as of _____, 2022, by and between the City of Menlo Park, a California municipal corporation ("City"), and _____, a _____ ("Owner"). City and Owner may be referred to individually as a "**Party**" or collectively as the "**Parties**" in this Agreement.

RECITALS

A. Owner is the owner of that certain real property located at _____ (APN _____), in the City of Menlo Park, California ("**Property**"), as more particularly described in Exhibit A attached hereto and incorporated herein by this reference.

B. [Peninsula Innovation Partners, LLC] ("**Project Wide Developer**") applied to demolish an existing office, research and development and industrial site (the "**Main Willow Village Project Site**") and to comprehensively redevelop the project wide site with up to 1.6 million square feet of office space (inclusive of meeting and collaboration space and accessory uses), up to 200,000 square feet of retail uses, a 193 room hotel (approximately 172,000 square feet in size), and up to 1,730 residential dwelling units, as well as publicly accessible open space and landscaping as part of a master planned mixed-use project (the "**Willow Village Project**"), [which is subject to that certain Project Wide Affordable Housing Agreement ("**Project Wide Affordable Housing Agreement**") between Project Wide Developer and City, dated as of _____], 2022. The Property is part of Phase [_____] as described in the Project Wide Affordable Housing Agreement.]

C. [The Project Wide Developer has transferred the Property to the Owner, and the City has released the Property from the Project Wide Affordable Housing Agreement pursuant to the terms of the Project Wide Affordable Housing Agreement, in conjunction with the recording of this Agreement.]



D. The Willow Village Project re-subdivided the Main Willow Village Project Site into ___ new legal parcels shown on the proposed Vesting Tentative Map in Exhibit ___ of the DA. Amongst those new parcels is parcel ____, which is approved for residential building [] with a new multifamily residential project with [] rental units, as well as associated open space, circulation, parking and infrastructure improvements. (“**Project**”), of which [] () rental units (“**BMR Units**”) shall be affordable to below market rate households as follows: [] () low income units (“**Low Income Units**”) and [] () moderate income units (“**Moderate Income Units**”). The allocation of BMR Units across the unit-sizes in the Project is more particularly described on Exhibit B, attached hereto and incorporated herein by this reference.

E. On _____, 2022, after a duly noticed public hearing, and on the recommendation of the Housing Commission, the Plannin Commission, and the City Council certified the environmental impact report and granted General Plan Circulation Element and Zoning Map amendments, rezoning, conditional development permit, development agreement, vesting tentative map, and below market rate (BMR) housing agreement for the Project (“**Project Approvals**”). The Project Approvals require the Project Wide Developer to provide BMR Units in accordance the Project Wide Affordable Housing Agreement. In accordance with the Menlo Park Municipal Code Chapter 16.96, the Below Market Rate Housing Program (“**BMR Ordinance**”), and the Below Market Rate Housing Program Guidelines (“**Guidelines**”), Owner is required to execute and record an approved BMR Housing Agreement as a condition precedent to the issuance of a building permit for the Project. This Agreement is intended to satisfy that requirement.

F. As required by the Project Wide Affordable Housing Agreement, and pursuant to this Agreement, Owner has agreed to observe all the terms and conditions set forth below for purposes of development and operation of the BMR Units. This Agreement will ensure the Project’s continuing affordability.

NOW, THEREFORE, the Parties hereto agree as follows. The recitals are incorporated into this Agreement by this reference.

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 other applicable state and local building codes, development standards, ordinances and zoning ordinances.

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 the City or any other governmental agency affected by such construction, including without limitation building permits. Owner shall pay all necessary fees and timely submit to the 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 other applicable laws and regulations.



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

2. OPERATION OF THE BMR UNITS

2.1 Affordability Period. This Agreement shall remain in effect and the Property shall be subject to the requirements of this Agreement from the date that the City issues a final certificate of occupancy for the Project (the "Effective Date") until the 55th anniversary of such Effective Date. The duration of this requirement shall be known as the "Affordability Period."

2.2 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 Property in a good, clean, safe, and sanitary condition.

2.3 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 or bookkeeper upon reasonable notice during normal business hours. Representatives of the 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 Units, and to conduct, or cause to be conducted, an independent audit or inspection of such records. Owner agrees to cooperate with the City in making the Property available for such inspection or audit. Owner agrees to maintain records in businesslike manner, and to maintain such records for Affordability Period.

2.4 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, or ancestry 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 Property. 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. In deeds, the following language shall appear:

(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. In leases, the following language shall appear:

(1) The lessee herein covenants by and for the lessee and lessee's heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or 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 the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased.

(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).



c. In contracts pertaining to management 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).

2.5 Subordination. This Agreement shall be recorded in the Official Records of the County of San Mateo and shall run with the land. The City agrees that the 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 the City in the event of default, including without limitation, extended notice and cure rights.

3. OPERATION OF THE BMR UNITS

3.1 BMR Units. Owner agrees to make available, restrict occupancy to, and lease not less than [] () BMR Units, inclusive of [] () Low Income Units and [] () Moderate Income Units, to Qualifying Households, as hereinafter defined, at an affordable rent, pursuant to the terms set forth below. The BMR Units shall be of a quality comparable to all of the other rental units in the Project. The BMR Units shall be initially distributed as set forth in Exhibit C, attached hereto and incorporated herein by this reference. Thereafter, the location of the individual BMR Units may float to account for the next available unit requirement set forth below and as otherwise necessary for the professional maintenance and operation of the Project provided that the distribution of BMR Units are equitably disbursed throughout the Project and the City's City Manager or Deputy Director of Community Development ("Deputy Director") shall be notified of any change or relocation of BMR Units by Owner.



3.2 Qualifying Households. For purposes of this Agreement, “Qualifying Households” shall mean those households with incomes as follows:

- a. **“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. Qualifying Households 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 the Owner shall either (1) 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 the total required number of Low Income Units are rented to Qualifying Households, or (2) if the tenant's income does not exceed one hundred twenty (120%) of the maximum income that would qualify the Tenant as a Moderate Income Household, the tenant shall be allowed to remain in the unit at a Moderate Income rent. If the tenant originally qualified as a Low Income Household, then the tenant's rent will be increased to a Moderate Income rent upon the later of sixty (60) days' notice or the renewal of the tenant's lease, and the Owner shall rent the next available unit to a Low Income Household. Owner shall notify the City annually if Owner substitutes a different unit for one of the designated Low Income Units pursuant to this paragraph.
- b. **“Moderate Income Unit”**: means units restricted to households with incomes of not more than one hundred and twenty percent (120%) 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. Qualifying Households shall continue to qualify unless at the time of recertification, the household's income exceeds the Moderate 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 Moderate Income Unit and the Owner shall either (1) make the next available Moderate Income Unit, which is comparable in terms of size, features and number of bedrooms, a Moderate Income Unit, or take other actions as may be necessary to ensure that the total required number of Moderate Income Units are rented to Qualifying Households, or (2) If the tenant's income does not exceed one hundred twenty (120%) of the maximum income that would qualify the Tenant as a Moderate Income Household, the tenant shall be allowed to



remain in the unit at a Moderate Income rent. If the tenant originally qualified as a Moderate Income Household, then the Tenant shall be notified they are no longer eligible for the BMR unit and tenant's rent will be increased to a market rate rent upon the later of sixty (60) days' notice or the renewal of the tenant's lease, and the Owner shall rent the next available unit to a Moderate Income Household. Owner shall notify the City annually if Owner substitutes a different unit for one of the designated Moderate Income Units 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 each household occupying a BMR Unit and submit to the City an income computation and certification form, completed by a tenant of such unit, which shall certify that the income of each Qualifying Household is truthfully set forth in the income certification form, in the form proposed by the Owner and approved by the Deputy Director ("**Annual Report**"). Owner shall make a good faith effort to verify that each household leasing a BMR Unit meets the income and eligibility restrictions for the BMR Unit by taking the following steps as a part of the verification process: (a) obtain a minimum of the three (3) most current pay stubs for all adults age eighteen (18) or older; (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 the City upon request. The Annual Report shall, at a minimum, include the following information for each 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, and lease commencement and termination dates. The Report shall also provide a statement of the 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 Rent. The maximum Monthly Rent, defined below, chargeable for the BMR Units and paid shall be as follows:

- a. "**Low Income Household**": shall be 1/12th of 30 percent of 80 percent of the 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 person per studio unit, 1.5 persons for a one-bedroom unit, 3 persons for a two-bedroom unit and 4.5 persons for a three-bedroom unit, unless otherwise approved by the Deputy Director for an unusually large unit with a maximum of two persons per bedroom, plus one.
- b. "**Moderate Income Household**": shall be 1/12th of 30 percent of 120 percent of the AMI. The Monthly Rent for a Moderate Income Unit rented to a Moderate Income Household and paid by the household shall be based



on an assumed average occupancy per unit of one person per studio unit, 1.5 persons for a one-bedroom unit, 3 persons for a two-bedroom unit and 4.5 persons for a three-bedroom unit, unless otherwise approved by the Deputy 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 each 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, but not including telephone or internet service, which reasonable allowance for utilities is set forth in the County of San 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 75 percent of comparable market rate rents.

3.5 Agreement to Limitation on Rents. As described in Recital C above, Owner is developing at the bonus level of development, which is a form of assistance authorized by Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code. Sections 1954.52(b) and 1954.53(a)(2) of the Costa-Hawkins Act provide that, where a developer has received such assistance, certain provisions of the Costa-Hawkins Act do not apply if a developer has so agreed by contract. Owner hereby agrees to limit Monthly Rent as provided in this Agreement in consideration of Owner's receipt of the assistance and further agrees that any limitations on Monthly Rents imposed on the BMR Units are in conformance with the Costa-Hawkins Act. Owner further warrants and covenants that the terms of this Agreement are fully enforceable.

3.6 Lease Requirements. No later than 180 days prior to the initial lease up of the BMR Units, Owner shall submit a standard lease form to the City for approval by the Deputy Director or his/her designee. The 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. The 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 the City, with each new tenant of a BMR Unit prior to a tenant or tenant household's occupancy of a BMR Unit. Each lease shall be for an initial term of not less than one year which may be renewed pursuant to applicable local and State laws, and shall not contain any of the provisions which are prohibited pursuant to the Guidelines, local, state and Federal laws.

3.7 Selection of Tenants. Each BMR Unit shall be leased to tenant(s) selected by Owner who meet all of the requirements provided herein, and, to the extent permitted by law, with priority given to those eligible households who either live or work in the City of Menlo Park, or meet at least one of the other preferences identified in the Guidelines. The City's BMR



Administrator, on behalf of the City will provide to Owner the names of persons who have expressed interest in renting BMR Units for the purposes of adding such interested persons to Owner's waiting list, to be processed in accordance with Owner's customary 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. DEFAULT AND REMEDIES

4.1 Events of Default. The following shall constitute an "Event of Default" by Owner under this Agreement: there shall be a material breach of any condition, covenant, warranty, promise or representation contained in this Agreement and such breach shall continue for a period of thirty (30) days after written notice thereof to the Owner without the Owner curing such breach, or if such breach cannot reasonably be cured within such 30 day period, commencing the cure of such breach within such 30 day period and thereafter diligently proceeding to cure such breach; provided, however, that if a different period or notice requirement is specified for any particular breach under any other paragraph of Section 4 of this Agreement, the specific provision shall control.

4.2 Remedies. The occurrence of any Event of Default under Section 4.1 shall give the City the right to proceed with an action in equity to require the 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.

4.3 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 the 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 any 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 the 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 the Owner. Each Owner shall comply with and be fully liable for all obligations the Owner hereunder during its period of ownership of the Project.

4.4 Force Majeure. Subject to the party's compliance with the notice requirements as set forth below, performance by either party hereunder shall not be deemed to be in default, and



all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to causes beyond the control and without the fault of the party claiming an extension of time to perform, which may include, without limitation, the following: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, assaults, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, materials or tools, acts or omissions of the other party, or acts or failures to act of any public or governmental entity (except that the City's acts or failure to act shall not excuse performance of the City hereunder). An extension of the time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within 30 days of the commencement of the cause.

4.5 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.

4.6 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.

4.7 Waiver of Terms and Conditions. The 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.

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

4.9 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.

5. GENERAL PROVISIONS

5.1 Below Market Rate Guidelines ("Guidelines"). This Agreement incorporates by reference the Guidelines as of the date of this Agreement and any successor sections as the Guidelines may be 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.

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

5.3 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.

5.4 Successors and Assigns. This Agreement constitutes a covenant and legal restriction on the Property and shall run with the land, provided the Project remains on the Property, and all of the terms, covenants and conditions of this Agreement shall be binding upon Owner and the permitted successors and assigns of Owner.

5.5 Intended Beneficiaries. The City is the intended beneficiary of this Agreement and shall have the sole and exclusive power to enforce this Agreement. It is intended that the City may enforce this Agreement in order to, satisfy its obligations to improve, increase and preserve affordable housing within the 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 the City and Owner and their assigns and successors, shall have any right of action hereon.

5.6 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.

5.7 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.



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

5.9 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 the City, such approval shall not be unreasonably withheld may be given on behalf of the City by the City Manager or his or her designee. The City Manager or his or her 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 the City hereunder.

5.10 Indemnification. To the greatest extent permitted by law, Owner shall indemnify, defend (with counsel reasonably approved by City) and hold the City, its heirs, successors and assigns (the "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 Property and the Project or any failure to perform any obligation as and when required by this Agreement. Owner's indemnification obligations under this Section 6.10 shall not extend to Claims to the extent resulting from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 6.10 shall survive the expiration or earlier termination of this Agreement, but only as to claims arising from events occurring during the Affordability Period.

5.11 Insurance Coverage. Throughout the Affordability Period, Owner shall comply with the insurance requirements set forth in Exhibit D, 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 D.

5.12 Transfer and Encumbrance.

5.12.1 Restrictions on Transfer and Encumbrance. During the term of this Agreement, except as permitted pursuant to this Agreement, Owner shall not directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (other than a lease of a BMR Unit on an approved form under Section 3.6 hereof to a qualified tenant as described in Section 3.7 hereof) (collectively, "Transfer") of the whole or any part of any BMR Unit, without the prior written consent of the City, which approval shall not be unreasonably withheld. In addition, prior to the expiration of the term of this Agreement, except as expressly permitted by this Agreement, Owner shall not undergo any significant change of ownership without the prior written approval of City. For purposes of this Agreement, a "significant change of ownership" shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Owner, taking all transfers into account on a cumulative basis; provided however, neither the admission of an investor limited partner, nor the transfer by



the investor limited partner to subsequent limited partners shall be restricted by this provision.

5.12.2 Permitted Transfers. The prohibitions on Transfer set forth herein shall not be deemed to prevent: (i) the granting of easements or permits to facilitate development of the Property; or (ii) assignments creating security interests for the purpose of financing the acquisition, construction, or permanent financing of the Project or the Property, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest.

5.12.3 Requirements for Proposed Transfers. The City may, in the exercise of its reasonable discretion, consent to a proposed Transfer of this Agreement and/or a BMR Unit if all of the following requirements are met (provided however, the requirements of this Section 5.12.3 shall not apply to Transfers described in clauses (i) or (ii) of Section 5.12.2.

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

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

(iii) The proposed transferee shall expressly assume all of the rights and obligations of the Owner under this Agreement arising after the effective date of the Transfer and all obligations of Owner arising prior to the effective date of the Transfer (unless Owner expressly remains responsible for such obligations) and shall agree to be subject to and assume all of Owner's obligations pursuant to conditions, and restrictions set forth in this Agreement.

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

Consent to any proposed Transfer may be given by the City's Authorized Representative unless the City's Authorized Representative, in his or her discretion, refers the matter of approval to the City Council. If the City has not rejected a proposed Transfer or requested additional information regarding a proposed Transfer in writing within forty-five (45) days following City's receipt of written request by Owner, the proposed Transfer shall be deemed approved.

5.13 Effect of Transfer without City Consent. In the absence of specific written agreement by the City, no Transfer of any BMR Unit shall be deemed to relieve the Owner or any other party from any obligation under this Agreement. This Section 5.12 shall not apply to Transfers described in clauses (i) and (ii) of Section 5.12.2.

5.14 Recovery of City Costs. Owner shall reimburse City for all reasonable City costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments



and other legal documents proposed to effect a Transfer 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.

5.15 [Satisfaction of Project Wide Affordable Housing Agreement Requirements.
The City hereby acknowledges and agrees that Owner's execution and delivery of this Agreement and the performance of Owner's obligations herein, satisfies Project Wide Developer's obligation to execute and record a Below Market Rate Housing Agreement and Declaration of Restrictive Covenants against the Property as set forth in Section 5 of the Project Wide Affordable Housing Agreement.]

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

SIGNATURES ON FOLLOWING PAGE(S).



OWNER:

[_____], a [_____]

By: _____

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: Allocation of the BMR Units
- Exhibit C: BMR Unit Locations
- Exhibit D: Insurance Requirements



Exhibit A
Property Description



Exhibit B
Allocation of BMR Units in the Project

BMR Units	Low	Moderate
Studio apartment		
1 bedroom apartment		
2 bedroom apartment		
3 bedroom apartment		
Total - BMR Units		



Exhibit C
BMR Unit Locations



Exhibit D 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 the Owner or the Owner's agents, representatives, employees and contractors, or subcontractors, including the following:

(a) Commercial General Liability: The 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 the Owner and against all claims resulting from damage to any property due to any act or omission of the 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: The 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: The 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 the Owner and the 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: \$2,000,000 per occurrence and \$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 \$1,000,000 per occurrence, \$2,000,000 annual aggregate.

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

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

(d) Employer's Liability:

Bodily Injury by Accident - \$1,000,000 each accident.

Bodily Injury by Disease - \$1,000,000 policy limit.

Bodily Injury by Disease - \$1,000,000 each employee.

(e) Professional Liability/Errors and Omissions: \$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, the 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 the Owner; products and completed operations of the Owner; premises owned, occupied or used by the Owner; or automobiles owned, leased, hired or borrowed by the 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 the 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) The 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 the City before the 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 (c) of Section 1 above, duly executed endorsements evidencing the Indemnitees' status as additional insured, and all other endorsements and coverage required hereunder pertaining to such coverage. Prior to commencement of 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 above. 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 above. Owner shall



furnish the 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 the 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 the City. Insurance Certificates and Endorsements are to be received and approved by the City within the time periods specified in Section 6 above. 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 the 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 "B-2"

**Pro Forma Affordable Regulatory Agreement and
Declaration of Restrictive Covenants (Age-Restricted)**



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
AND DECLARATION OF RESTRICTIVE COVENANTS
(Willow Village Masterplan 1350 Willow Road)**

THIS BELOW MARKET RATE HOUSING AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS ("Agreement") is entered into as of _____, 2022, by and between the City of Menlo Park, a California municipal corporation ("**City**"), and [_____, _____], a [_____] ("**Owner**"). City and Owner may be referred to individually as a "**Party**" or collectively as the "**Parties**" in this Agreement.

RECITALS

A. Owner is the owner of that certain real property located at _____ (APN _____), in the City of Menlo Park, California ("**Property**"), as more particularly described in Exhibit A attached hereto and incorporated herein by this reference.

B. [Peninsula Innovation Partners, LLC] ("**Project Wide Developer**") applied to demolish an existing office, research and development and industrial site (the "**Main Willow Village Project Site**") and to comprehensively redevelop the project wide site with up to 1.6 million square feet of office space (inclusive of meeting and collaboration space and accessory uses), up to 200,000 square feet of retail uses, a 193 room hotel (approximately 172,000 square feet in size), and up to 1,730 residential dwelling units, as well as publicly accessible open space and landscaping as a part of a master planned mixed-use project (the "**Willow Village Project**"), [which is subject to that certain Project Wide Affordable Housing Agreement ("**Project Wide Affordable Housing Agreement**") between Project Wide Developer and City, dated as of _____], 2022. The Property is part of Phase [_____] as described in the Project Wide Affordable Housing Agreement.]

C. [The Project Wide Developer has transferred the Property to the Owner, and the City has released the Property from the Project Wide Affordable Housing Agreement pursuant to the terms of the Project Wide Affordable Housing Agreement, in conjunction with the recording of this Agreement.]



D. The Willow Village project re-subdivided the Main Willow Village Project Site into [] new legal parcels shown on the proposed Vesting Tentative Map in Exhibit [] of the Development Agreement. Amongst those new parcels is parcel [], which is approved for residential building RS7 with a new multifamily senior residential project with [one hundred twenty (120)] rental units, as well as associated open space, circulation, parking and infrastructure improvements. (“**Project**”), of which one hundred nineteen (119) rental units (“**BMR Units**”) shall be affordable to below market rate households as follows: eighty two (82) extremely low income units (“**Extremely Low Income Units**”) and thirty seven (37) very low income units (“**Very Low Income Units**”), and one (1) unit shall be a manager’s unit. The allocation of BMR Units across the unit-sizes in the Project is more particularly described on Exhibit B, attached hereto and incorporated herein by this reference.

E. On _____, 2022, after a duly noticed public hearing, and on the recommendation of the Housing Commission, the Planning Commission, and the City Council certified the environmental impact report and granted General Plan Circulation Element and Zoning Map amendments, rezoning, conditional development permit, development agreement, vesting tentative map, and below market rate (BMR) housing agreement for the Project (“**Project Approvals**”). The Project Approvals require the Project Wide Developer to provide BMR Units in accordance the Project Wide Affordable Housing Agreement. In accordance with the Menlo Park Municipal Code Chapter 16.96, the Below Market Rate Housing Program (“**BMR Ordinance**”), and the Below Market Rate Housing Program Guidelines (“**Guidelines**”), Owner is required to execute and record an approved BMR Housing Agreement as a condition precedent to approval of the issuance of a building permit for the Project. This Agreement is intended to satisfy that requirement.

F. [As required by the Project Wide Affordable Housing Agreement, and pursuant to this Agreement.] Owner has agreed to observe all the terms and conditions set forth below for purposes of development and operation of the BMR Units. This Agreement will ensure the Project’s continuing affordability.

NOW, THEREFORE, the Parties hereto agree as follows. The recitals are incorporated into this Agreement by this reference.

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 other applicable state and local building codes, development standards, ordinances and zoning ordinances.

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 the City or any other governmental agency affected by such construction, including without limitation building permits. Owner shall pay all necessary fees and timely submit to the 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 other applicable laws and regulations.

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

2. OPERATION OF THE BMR UNITS

2.1 Affordability Period. This Agreement shall remain in effect and the Property, shall be subject to the requirements of this Agreement from the date that the City issues a final certificate of occupancy for the Project (the "Effective Date") until the 55th anniversary of such Effective Date. The duration of this requirement shall be known as the "Affordability Period."

2.2 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 Property in a good, clean, safe, and sanitary condition.

2.3 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 or bookkeeper upon reasonable notice during normal business hours. Representatives of the 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 Units, and to conduct, or cause to be conducted, an independent audit or inspection of such records. Owner agrees to cooperate with the City in making the Property available for such inspection or audit. Owner agrees to maintain records in businesslike manner, and to maintain such records for Affordability Period.

2.4 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, or ancestry 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 Property. 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. In deeds, the following language shall appear:



(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. In leases, the following language shall appear:

(1) The lessee herein covenants by and for the lessee and lessee's heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or 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 the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased.

(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).

c. In contracts pertaining to management 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).

2.5 Subordination. This Agreement shall be recorded in the Official Records of the County of San Mateo and shall run with the land. The City agrees that the 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 the City in the event of default, including without limitation, extended notice and cure rights.

3. OPERATION OF THE BMR UNITS

3.1 BMR Units. Owner agrees to make available, restrict occupancy to, and lease not less than one hundred nineteen (119) BMR Units, inclusive of eighty two (82) Extremely Low Income Units and thirty seven (37) Very Low Income Units, to Qualifying Households, as hereinafter defined, at an affordable rent, pursuant to the terms set forth below. The BMR Units shall be of a quality comparable to all of the other rental units in the Project. The Project Approvals included a modification to the proportionality requirement to permit exclusively studio and one bedroom BMR Units and a modification to the location requirement to accommodate 119 BMR units at the Project. The BMR Units shall be initially distributed as set forth in Exhibit C, attached hereto and incorporated herein by this reference. Thereafter, the location of the individual BMR Units may float to account for the next available unit requirement set forth below and as otherwise



necessary for the professional maintenance and operation of the Project provided that the distribution of BMR Units are equitably disbursed throughout the Project and the City's City Manager or Deputy Director of Community Development ("**Deputy Director**") shall be notified of any change or relocation of BMR Units by Owner.

3.2 Qualifying Households. For purposes of this Agreement, "**Qualifying Households**" shall mean those households with incomes as follows:

- a. **"Extremely Low Income Unit"**: means units restricted to households with incomes of not more than thirty percent (30%) 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. Qualifying Households shall continue to qualify unless at the time of recertification, the household's income exceeds the Extremely 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 an Extremely Low Income Unit, and the Owner shall either (1) make the next available unit, which is comparable in terms of size, features and number of bedrooms, an Extremely Low Income Unit, or take other actions as may be necessary to ensure that the total required number of Extremely Low Income Units are rented to Qualifying Households, or (2) if the tenant's income does not exceed eighty (80%) of the maximum income that would qualify the Tenant as a Very Low Income Household, the tenant shall be allowed to remain in the unit at a Very Low Income rent. If the tenant originally qualified as an Extremely Low Income Household, then the tenant's rent will be increased to a Very Low Income rent upon the later of sixty (60) days' notice or the renewal of the tenant's lease, and the Owner shall rent the next available unit to an Extremely Low Income Household. Owner shall notify the City annually if Owner substitutes a different unit for one of the designated Extremely Low Income Units pursuant to this paragraph.
- b. **"Very Low Income Unit"**: means units restricted to households with incomes of not more than fifty percent (50%) 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. Qualifying Households shall continue to qualify unless at the time of recertification, the household's income exceeds the Very 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 Very Low Income Unit and the Owner shall either (1) make the next available Very Low Income Unit, which is



comparable in terms of size, features and number of bedrooms, a Very Low Income Unit, or take other actions as may be necessary to ensure that the total required number of Very Low Income Units are rented to Qualifying Households, or (2) If the tenant's income does not exceed one hundred twenty (120%) of the maximum income that would qualify the Tenant as a Very Low Income Household, the tenant shall be allowed to remain in the unit at a Very Low Income rent. If the tenant originally qualified as a Very Low Income Household, then the Tenant shall be notified they are no longer eligible for the BMR unit and tenant's rent will be increased to a market rate rent upon the later of sixty (60) days' notice or the renewal of the tenant's lease, and the Owner shall rent the next available unit to a Very Low Income Household. Owner shall notify the City annually if Owner substitutes a different unit for one of the designated Very Low Income Units 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 each household occupying a BMR Unit and submit to the City an income computation and certification form, completed by a tenant of such unit, which shall certify that the income of each Qualifying Household is truthfully set forth in the income certification form, in the form proposed by the Owner and approved by the Deputy Director ("**Annual Report**"). Owner shall make a good faith effort to verify that each household leasing a BMR Unit meets the income and eligibility restrictions for the BMR Unit by taking the following steps as a part of the verification process: (a) obtain a minimum of the three (3) most current pay stubs for all adults age eighteen (18) or older; (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 the City upon request. The Annual Report shall, at a minimum, include the following information for each 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, and lease commencement and termination dates. The Report shall also provide a statement of the 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. Notwithstanding anything to the contrary contained herein, for so long as the Project is encumbered a Regulatory Agreement from the California Tax Credit Allocation Committee ("**Tax Credit Regulatory Agreement**") due to the Project's receipt of federal/and or state low-income housing tax credits, copies of any annual reporting required by the Tax Credit Regulatory Agreement delivered to the City shall satisfy the requirements of this Section.

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



- a. **"Extremely Low Income Household"**: maximum Monthly Rent shall be 1/12th of 30 percent of 30 percent of the AML. The Monthly Rent for an Extremely Low Income Unit rented to an Extremely Low Income Household and paid by the household shall be based on an assumed average occupancy per unit of one person per studio unit, 1.5 persons for a one-bedroom unit, 3 persons for a two-bedroom unit and 4.5 persons for a three-bedroom unit, unless otherwise approved by the Deputy Director for an unusually large unit with a maximum of two persons per bedroom, plus one.
- b. **"Very Low Income Household"**: maximum Monthly Rent shall be 1/12th of 30 percent of 50 percent of the AML. The Monthly Rent for a Very Low Income Unit rented to a Very Low Income Household and paid by the household shall be based on an assumed average occupancy per unit of one person per studio unit, 1.5 persons for a one-bedroom unit, 3 persons for a two-bedroom unit and 4.5 persons for a three-bedroom unit, unless otherwise approved by the Deputy Director for an unusually large unit with a maximum of two persons per bedroom, plus one.
- c. Notwithstanding anything to the contrary contained herein, if the the Project is encumbered by a Tax Credit Regulatory Agreement and there is a conflict between the provisions of this Agreement and the provisions of such Tax Credit Regulatory Agreement regarding rent, utility allowance, and/or household size appropriate for each unit, the Tax Credit Regulatory Agreement shall govern.

For purposes of this Agreement, "Monthly Rent" means the total of monthly payments actually made by the household for (a) use and occupancy of each 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, but not including telephone or internet service, which reasonable allowance for utilities is set forth in the County of San 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 75 percent of comparable market rate rents.

3.5 Agreement to Limitation on Rents. As described in Recital C above, Owner is developing at the bonus level of development, which is a form of assistance authorized by Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code. Sections 1954.52(b) and 1954.53(a)(2) of the Costa-Hawkins Act provide that, where a developer has received such assistance, certain provisions of the Costa-Hawkins Act do not apply if a developer has so agreed by contract. Owner hereby agrees to limit Monthly Rent as provided in this Agreement in consideration of Owner's receipt of the assistance and further agrees that any limitations on Monthly Rents imposed on the BMR Units are in conformance with the Costa-



Hawkins Act. Owner further warrants and covenants that the terms of this Agreement are fully enforceable.

3.6 Lease Requirements. No later than 180 days prior to the initial lease up of the BMR Units, Owner shall submit a standard lease form to the City for approval by the Deputy Director or his/her designee. The 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. The 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 the City, with each new tenant of a BMR Unit prior to a tenant or tenant household's occupancy of a BMR Unit. Each lease shall be for an initial term of not less than one year which may be renewed pursuant to applicable local and State laws, and shall not contain any of the provisions which are prohibited pursuant to the Guidelines, local, state and Federal laws.

3.7 Selection of Tenants. Each BMR Unit shall be leased to tenant(s) selected by Owner who meet all of the requirements provided herein, and, to the extent permitted by law, with priority given to those eligible households (i) with a minimum of one household member who is a senior of age [] and above, and (ii) who either live or work in the City of Menlo Park, or meet at least one of the other preferences identified in the Guidelines. The City's BMR Administrator, on behalf of the City will provide to Owner the names of persons who have expressed interest in renting BMR Units for the purposes of adding such interested persons to Owner's waiting list, to be processed in accordance with Owner's customary 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. DEFAULT AND REMEDIES

4.1 Events of Default. The following shall constitute an "Event of Default" by Owner under this Agreement: there shall be a material breach of any condition, covenant, warranty, promise or representation contained in this Agreement and such breach shall continue for a period of thirty (30) days after written notice thereof to the Owner without the Owner curing such breach, or if such breach cannot reasonably be cured within such 30 day period, commencing the cure of such breach within such 30 day period and thereafter diligently proceeding to cure such breach; provided, however, that if a different period or notice requirement is specified for any particular breach under any other paragraph of Section 4 of this Agreement, the specific provision shall control.

4.2 Remedies. The occurrence of any Event of Default under Section 4.1 shall give the City the right to proceed with an action in equity to require the 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.

4.3 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 the 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 any 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 the 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 the Owner. Each Owner shall comply with and be fully liable for all obligations the Owner hereunder during its period of ownership of the Project.

4.4 Force Majeure. Subject to the party's compliance with the notice requirements as set forth below, performance by either party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to causes beyond the control and without the fault of the party claiming an extension of time to perform, which may include, without limitation, the following: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, assaults, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, materials or tools, acts or omissions of the other party, or acts or failures to act of any public or governmental entity (except that the City's acts or failure to act shall not excuse performance of the City hereunder). An extension of the time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within 30 days of the commencement of the cause.

4.5 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.

4.6 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.

4.7 Waiver of Terms and Conditions. The 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.

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

4.9 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.

5. GENERAL PROVISIONS

5.1 Below Market Rate Guidelines ("Guidelines"). This Agreement incorporates by reference the Guidelines as of the date of this Agreement and any successor sections as the Guidelines may be 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.

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

5.3 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.

5.4 Successors and Assigns. This Agreement constitutes a covenant and legal restriction on the Property and shall run with the land, provided the Project remains on the



Property, and all of the terms, covenants and conditions of this Agreement shall be binding upon Owner and the permitted successors and assigns of Owner.

5.5 Intended Beneficiaries. The City is the intended beneficiary of this Agreement and shall have the sole and exclusive power to enforce this Agreement. It is intended that the City may enforce this Agreement in order to, satisfy its obligations to improve, increase and preserve affordable housing within the 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 the City and Owner and their assigns and successors, shall have any right of action hereon.

5.6 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.

5.7 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.

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

5.9 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 the City, such approval shall not be unreasonably withheld may be given on behalf of the City by the City Manager or his or her designee. The City Manager or his or her 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 the City hereunder.

5.10 Indemnification. To the greatest extent permitted by law, Owner shall indemnify, defend (with counsel reasonably approved by City) and hold the City, its heirs, successors and assigns (the "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 Property and the Project or any failure to perform any obligation as and when required by this Agreement. Owner's indemnification obligations under this Section 6.10 shall not extend to Claims to the extent resulting from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 6.10 shall survive the expiration or earlier termination of this Agreement, but only as to claims arising from events occurring during the Affordability Period.



5.11 Insurance Coverage. Throughout the Affordability Period, Owner shall comply with the insurance requirements set forth in Exhibit D, 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 D.

5.12 Transfer and Encumbrance.

5.12.1 Restrictions on Transfer and Encumbrance. During the term of this Agreement, except as permitted pursuant to this Agreement, Owner shall not directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (other than a lease of a BMR Unit on an approved form under Section 3.6 hereof to a qualified tenant as described in Section 3.7 hereof) (collectively, "Transfer") of the whole or any part of any BMR Unit, without the prior written consent of the City, which approval shall not be unreasonably withheld. In addition, prior to the expiration of the term of this Agreement, except as expressly permitted by this Agreement, Owner shall not undergo any significant change of ownership without the prior written approval of City. For purposes of this Agreement, a "significant change of ownership" shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Owner, taking all transfers into account on a cumulative basis; provided however, neither the admission of an investor limited partner, nor the transfer by the investor limited partner to subsequent limited partners shall be restricted by this provision.

5.12.2 Permitted Transfers. The prohibitions on Transfer set forth herein shall not be deemed to prevent: (i) the granting of easements or permits to facilitate development of the Property; or (ii) assignments creating security interests for the purpose of financing the acquisition, construction, or permanent financing of the Project or the Property, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest.

5.12.3 Requirements for Proposed Transfers. The City may, in the exercise of its reasonable discretion, consent to a proposed Transfer of this Agreement and/or a BMR Unit if all of the following requirements are met (provided however, the requirements of this Section 5.12.3 shall not apply to Transfers described in clauses (i) or (ii) of Section 5.12.2.

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

(ii) The Owner and the proposed transferee shall submit for



City review ~~and~~ approval all instruments and other legal documents proposed to effect any Transfer of all or any part of or interest in the BMR Unit or this Agreement together with such documentation of the proposed transferee's qualifications and development capacity as the City may reasonably request.

(iii) The proposed transferee shall expressly assume all of the rights and obligations of the Owner under this Agreement arising after the effective date of the Transfer and all obligations of Owner arising prior to the effective date of the Transfer (unless Owner expressly remains responsible for such obligations) and shall agree to be subject to and assume all of Owner's obligations pursuant to conditions, and restrictions set forth in this Agreement.

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

Consent to any proposed Transfer may be given by the City's Authorized Representative unless the City's Authorized Representative, in his or her discretion, refers the matter of approval to the City Council. If the City has not rejected a proposed Transfer or requested additional information regarding a proposed Transfer in writing within forty-five (45) days following City's receipt of written request by Owner, the proposed Transfer shall be deemed approved.

5.13 Effect of Transfer without City Consent. In the absence of specific written agreement by the City, no Transfer of any BMR Unit shall be deemed to relieve the Owner or any other party from any obligation under this Agreement. This Section 5.12 shall not apply to Transfers described in Section 5.12.2.

5.14 Recovery of City Costs. Owner shall reimburse City for all reasonable City costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to effect a Transfer 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.

5.15 [Satisfaction of Project Wide Affordable Housing Agreement Requirements. The City hereby acknowledges and agrees that Owner's execution and delivery of this Agreement and the performance of Owner's obligations herein, satisfies Project Wide Developer's obligation to execute and record a Below Market Rate Housing Agreement and Declaration of Restrictive Covenants against the Property as set forth in Section 5 of the Project Wide Affordable Housing Agreement.]

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

SIGNATURES ON FOLLOWING PAGE(S).



OWNER:

[_____] , a
[_____]

By: _____

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: Allocation of the BMR Units
- Exhibit C: BMR Unit Locations
- Exhibit D: Insurance Requirements



Exhibit A
Property Description



Exhibit B
Allocation of BMR Units in the Project

BMR Units	Extremely Low	Very Low	Manager's Unit
Studio apartment			
1 bedroom apartment			
2 bedroom apartment			1
Total - BMR Units	82	37	



Exhibit C
BMR Unit Locations



Exhibit D
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 the Owner or the Owner's agents, representatives, employees and contractors, or subcontractors, including the following:

(a) Commercial General Liability: The 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 the Owner and against all claims resulting from damage to any property due to any act or omission of the 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: The 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: The 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 the Owner and the 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: \$2,000,000 per occurrence and \$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 \$1,000,000 per occurrence, \$2,000,000 annual aggregate.

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

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

(d) Employer's Liability:

Bodily Injury by Accident - \$1,000,000 each accident.

Bodily Injury by Disease - \$1,000,000 policy limit.

Bodily Injury by Disease - \$1,000,000 each employee.

(e) Professional Liability/Errors and Omissions: \$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, the 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 guarantocking 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 the Owner; products and completed operations of the Owner; premises owned, occupied or used by the Owner; or automobiles owned, leased, hired or borrowed by the 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 the 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) The 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 the City before the 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 above, duly executed endorsements evidencing the Indemnitees' status as additional insured, and all other endorsements and coverage required hereunder pertaining to such coverage. Prior to commencement of 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 above. 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 above. Owner shall



furnish the 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 the 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 the City. Insurance Certificates and Endorsements are to be received and approved by the City within the time periods specified in Section 6 above. 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 the 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 "C"

Pro Forma Partial Release

**RECORDING REQUESTED BY**

Peninsula Innovation Partners, LLC
 1 Hacker Way
 Menlo Park, California 94025
 Attention: _____

(Space Above for Recorder's Use)

APN/Parcel ID: _____

PARTIAL RELEASE
OF
PROJECT WIDE AFFORDABLE HOUSING AGREEMENT

THIS PARTIAL RELEASE OF PROJECT WIDE AFFORDABLE HOUSING AGREEMENT ("**Release**") is made and entered into as of the _____ day of _____, 202_ by THE CITY OF MENLO PARK, a California municipal corporation ("**City**") in favor of PENINSULA INNOVATION PARTNERS, LLC, a Delaware limited liability company ("**Project Wide Developer**") and its successors and assigns with reference to the following:

RECITALS

A. Pursuant to that certain Project Wide Affordable Housing Agreement executed by Project Wide Developer and City, recorded on _____ as Instrument No. _____ of the County Recorder of San Mateo County, California (the "**Instrument**"), the City imposed certain covenants, conditions and/or restrictions upon the real property described therein, a portion of which is more particularly described in Exhibit A attached hereto (the "**Released Property**").

B. As provided for in [Section 5]/[Section 16] of the Instrument, the City has agreed to release a portion of the real property from the Instrument.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Project Wide Developer hereby agree that the restrictions contained in the Instrument as they relate only to the Released Property are hereby unconditionally and irrevocably released and terminated as to the Released Property.

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]



IN WITNESS WHEREOF, this Release is made and executed as of this ____ day of _____, 202_.

[ALL SIGNATURES TO BE ACKNOWLEDGED]

PROJECT WIDE DEVELOPER:

PENINSULA INNOVATION PARTNERS, LLC, a Delaware limited liability company

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

CITY:

CITY OF MENLO PARK, a California municipal corporation

By: _____
Name: _____
Title: City Manager

ATTEST:

City Clerk

Date: _____



CALIFORNIA ACKNOWLEDGMENTS

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of _____
County of _____

On _____, 2022, before me, _____, a notary public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____

(Seal)



CALIFORNIA ACKNOWLEDGMENTS

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of _____
County of _____

On _____, 2022, before me, _____, a notary public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____

(Seal)



EXHIBIT A

**Exhibit "D"****Phase 1**

	Market Rate Units	Affordable Units
Parcel 2	293	34
Parcel 3	376	43
Parcel 6	158	20
Parcel 7	1 (manager's unit)	119

Phase 2

	Market Rate Units	Affordable Units
Parcel 4	378	62
Parcel 5	212	34



Exhibit "E"
Pro Forma Assignment and Assumption



Recording Requested by and
When Recorded Return to:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**ASSIGNMENT AND ASSUMPTION AGREEMENT -
PROJECT WIDE AFFORDABLE HOUSING AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("**Agreement**") is made and entered into as of _____, 20____, by and between _____, a _____ company ("**Assignor**"), and _____, a _____ company ("**Assignee**").

RECITALS

A. Assignor owns that real property located in the City of Menlo Park ("**City**"), County of San Mateo, State of California, and more particularly described in Exhibit A attached hereto (the "**Property**").

B. On the date hereof, Assignee is acquiring approximately ____ acres of the Property as more particularly described in Exhibit B attached hereto (the "**Assigned Property**").

C. The City and Peninsula Innovation Partners, LLC, a Delaware limited liability company, entered into that certain Project Wide Affordable Housing Agreement dated as of _____, 202__ and recorded against the Property on _____, 202__ as Instrument No. _____ in the San Mateo County Recorder's Office (the "**Project Wide Affordable Housing Agreement**").

D. Assignor desires to assign to Assignee all of Assignor's rights, duties and obligations under the Project Wide Affordable Housing Agreement with respect to the Assigned Property only (the "**Assigned Rights and Obligations**"), and Assignee desires to accept and assume Assignor's rights and obligations under the Project Wide Affordable Housing Agreement with respect to the Assigned Property only (the "**Assumed Rights and Obligations**"), such assignment and assumption to be effective on the Effective Date (as defined in Section 1.3 below). The Assigned Rights and Obligations and the Assumed Rights and Obligations are referred to collectively herein as the "**Assigned Property Rights and Obligations**".

NOW THEREFORE, in consideration of these promises, and of the agreements, covenants and conditions contained in this Agreement and other good and valuable consideration, the parties agree as follows:



ARTICLE 1

ASSIGNMENT AND ASSUMPTION OF THE ASSIGNED PROPERTY RIGHTS AND OBLIGATIONS

1.1 Assignment. Assignor assigns to Assignee, as of the Effective Date (as defined in Section 1.3 below), all of Assignor's rights, title and interest in and to the Assigned Property Rights and Obligations.

1.2 Assumption. As of the Effective Date, Assignee accepts Assignor's assignment of the Assigned Rights and Obligations and assumes the Assumed Rights and Obligations. From and after the Effective Date, Assignee shall keep and perform all covenants, conditions and provisions of the Project Wide Affordable Housing Agreement relating to the Assigned Property.**Effective Date.** For purposes of this Agreement, the "Effective Date" shall be the later to occur of (1) the date on which the deed from Assignor to Assignee for the Assigned Property is recorded in the Office of the Recorder of the County of San Mateo; or (2) the date of the execution of this Agreement by all parties; provided, however, that this Agreement shall have no force and effect without the written approval of the City, as evidenced by the full execution by the City's representatives of the form entitled City of Menlo Park's Consent, attached hereto as Exhibit C.

RIGHTS AND REMEDIES

2.1 Assignor's Release; No Assignor Liability or Default for Assignee Breach. Pursuant to Section 11 of the Project Wide Affordable Housing Agreement, Assignor shall be released from the Project Wide Affordable Housing Agreement with respect to the Assigned Property and the Assumed Rights and Obligations as of the Effective Date. Any default or breach by Assignee under the Project Wide Affordable Housing Agreement following the Effective Date with respect to the Assigned Property or the Assumed Rights and Obligations ("**Assignee Breach**") shall not constitute a breach or default by Assignor under the Project Wide Affordable Housing Agreement and shall not result in (a) any remedies imposed against Assignor, or (b) modification or termination of the Project Wide Affordable Housing Agreement with respect to that portion of the Property retained by Assignor after the conveyance of the Assigned Property, if any (the "**Assignor Property**"). **No Assignee Liability or Default for Assignor Breach.** As of the Effective Date, any default or breach by Assignor under the Project Wide Affordable Housing Agreement prior to or after the Effective Date ("**Assignor Breach**"), shall not constitute a breach or default by Assignee under the Project Wide Affordable Housing Agreement, and shall not result in (a) any remedies imposed against Assignee, including without limitation any remedies authorized in the Project Wide Affordable Housing Agreement, or (b) modification or termination of the Project Wide Affordable Housing Agreement with respect to the Assigned Property.

INTENTIONALLY OMITTED



ARTICLE 4

AMENDMENT OF THE PROJECT WIDE AFFORDABLE HOUSING AGREEMENT

4.1 Assignor. Assignor shall not request, process or consent to any amendment to the Project Wide Affordable Housing Agreement that would affect the Assigned Property or the Assigned Property Rights and Obligations without Assignee's prior written consent, which consent shall not be withheld unreasonably. The foregoing notwithstanding, Assignor may process any amendment that does not affect the Assigned Property, and, if necessary, Assignee shall consent thereto and execute all documents necessary to accomplish said amendment, provided that said amendment does not adversely affect the Assigned Property or any of Assignee's Assigned Property Rights and Obligations pursuant to the Project Wide Affordable Housing Agreement. **Assignee.** Assignee shall not request, process or consent to any amendment to the Project Wide Affordable Housing Agreement that would affect the Assignor Property or the Assignor's remaining rights and obligations pursuant to the Project Wide Affordable Housing Agreement without Assignor's prior written consent, which consent shall not be withheld unreasonably. The foregoing notwithstanding, Assignee may process any amendment that does not affect the Assignor Property or any of Assignor's remaining rights and obligations pursuant to the Project Wide Affordable Housing Agreement, and, if necessary, Assignor shall consent thereto and execute all documents necessary to accomplish said amendment.

GENERAL PROVISIONS

5.1 Notices. All notices, invoices and other communications required or permitted under this Agreement shall be made in writing, and shall be delivered either personally (including by private courier) or by nationally recognized overnight courier service to the following addresses, or to such other addresses as the parties may designate in writing from time to time: If to Assignee:

with copies to:

If to Assignor:

with a copies to:



Notices personally delivered shall be deemed received upon delivery. Notices delivered by courier service as provided above shall be deemed received twenty-four (24) hours after the date of deposit. From and after the Effective Date and until further written notice from Assignee to the City pursuant to the terms of the Project Wide Affordable Housing Agreement, Assignee hereby designates as its notice address for notices sent by the City pursuant to Section 17(k) of the Project Wide Affordable Housing Agreement, the notice address set forth above.

5.2 Estoppel Certificates. Within ten (10) days after receipt of a written request from time to time, either party shall execute and deliver to the other, or to an auditor or prospective lender or purchaser, a written statement certifying to that party's actual knowledge: (a) that the Project Wide Affordable Housing Agreement is unmodified and in full force and effect (or, if there have been modifications, that the Project Wide Affordable Housing Agreement is in full force and effect, and stating the date and nature of such modifications); (b) that there are no current defaults under the Project Wide Affordable Housing Agreement by the City and either Assignor or Assignee, as the case may be (or, if defaults are asserted, so describing with reasonable specificity) and that there are no conditions which, with the passage of time or the giving of notice, or both, would constitute a default; (c) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect, and stating the date and nature of such modifications); and (d) such other matters as may be reasonably requested. **Attorneys' Fees.** In the event of any legal or equitable proceeding in connection with this Agreement, the prevailing party in such proceeding shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorneys' fees, costs and disbursements paid or incurred in good faith at the arbitration, pre-trial, trial and appellate levels, and in enforcing any award or judgment granted pursuant thereto. **No Waiver.** No delay or omission by either party in exercising any right, remedy, election or option accruing upon the noncompliance or failure of performance by the other party under the provisions of this Agreement shall constitute an impairment or waiver of any such right, remedy, election or option. No alleged waiver shall be valid or effective unless it is set forth in a writing executed by the party against whom the waiver is claimed. A waiver by either party of any of the covenants, conditions or obligations to be performed by the other party shall not be construed as a waiver of any subsequent breach of the same or any other covenants, conditions or obligations. **Amendment.** This Agreement may be amended only by a written agreement signed by both Assignor and Assignee, and subject to obtaining the City's consent.

5.6 Successors and Assigns. This Agreement runs with the land and shall be binding on and inure to the benefit of the parties and their respective successors and assigns. **No Joint Venture.** Nothing contained herein shall be construed as creating a joint venture, agency, or any other relationship between the parties hereto other than that of assignor and assignee. **Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstance is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and enforceable to the full extent permitted by law; provided that, if the invalidation or unenforceability would deprive either Assignor or Assignee of material benefits derived from



this Agreement or make performance under this Agreement unreasonably difficult, then Assignor and Assignee shall meet and confer and shall make good faith efforts to modify this Agreement in a manner that is acceptable to Assignor, Assignee and the City. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. **Third Party Beneficiaries.** Assignor and Assignee acknowledge that the City is a third party beneficiary of the terms and conditions of this Agreement to the extent necessary for City to enforce the terms and conditions of the Project Wide Affordable Housing Agreement. This Agreement shall not be deemed or construed to confer any rights, title or interest, including without limitation any third party beneficiary status or right to enforce any provision of this Agreement, upon any person or entity other than Assignor, Assignee and the City. **Time of the Essence.** Time is of the essence in the performance by each party of its obligations under this Agreement. **Authority.** Each party represents that the individuals executing this Agreement on behalf of such Party have the authority to bind his or her respective party to the performance of its obligations hereunder and that all necessary board of directors', shareholders', partners' and other approvals have been obtained. **Term.** The term of this Agreement shall commence on the Effective Date and shall expire upon the expiration or earlier termination of the Project Wide Affordable Housing Agreement, subject to any obligations under the Project Wide Affordable Housing Agreement that expressly survive the expiration or termination of the Project Wide Affordable Housing Agreement. Upon the expiration or earlier termination of this Agreement, the parties shall have no further rights or obligations hereunder, except with respect to any obligation to have been performed prior to such expiration or termination or with respect to any default in the performance of the provisions of this Agreement which occurred prior to such expiration or termination or with respect to any obligations which are specifically set forth as surviving this Agreement or the Project Wide Affordable Housing Agreement. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document. **Default.** Any failure by either party to perform any material term or provision of this Agreement shall constitute a default (a) if such defaulting party does not cure such failure within thirty (30) days following written notice of default from the other party, where such failure is of a nature that can be cured within such thirty (30) day period, or (b) if such default is not of a nature that can be cured within such thirty (30) day period, if the defaulting party does not within such thirty (30) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence the curing of such failure. Any notice of default given hereunder shall be given in the same manner as provided in Section 5.1 hereof and shall specify in detail the nature of the failures in performance that the noticing party claims and the manner in which such failure can be satisfactorily cured.

[remainder of page left intentionally blank – signature pages follow]



IN WITNESS WHEREOF, Assignor and Assignee have executed this Agreement by proper persons thereunto duly authorized, to be effective as of the Effective Date.

"Assignor"

a _____ company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

"Assignee"

a _____ company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____) ss:

On _____, before me, _____,
(insert name and title of the officer),

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

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

WITNESS my hand and official seal.

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 _____) ss:

On _____, before me, _____,
(insert name and title of the officer),

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

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

WITNESS my hand and official seal.

Signature: _____

[Seal]



EXHIBIT A
Description of the Property
(Attached)



EXHIBIT B
Description of the Assigned Property
(Attached)



EXHIBIT C

CONSENT OF CITY OF MENLO PARK

The City of Menlo Park hereby consents to the assignment and assumption of the Assigned Property Rights and Obligations as set forth in this Agreement and agrees to the terms and conditions set forth herein.

CITY OF MENLO PARK,
a California Municipal corporation

By: _____

