

Recording requested by and
when recorded mail to:
City of Hollister
375 Fifth Street
Hollister, CA 95023
Attention: City Manager

Space above this line for Recorder's

**AFFORDABLE HOUSING AGREEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS**

**by and between
CITY OF HOLLISTER
and
Pad Investment Trust**

EXHIBITS

- A: Property Lot and Assessor Parcel Numbers
- B: Affordable Housing Marketing Plan
- C: Restriction Agreement
- D: Promissory Note
- E: Deed of Trust

DRAFT

This Affordable Housing Agreement and Declaration of Restrictive Covenants (this “Agreement”) is entered into effective as of __, _____ “Effective Date” by and between the City of Hollister, a California municipal corporation (the “City”) and Pad Investment Trust (“Developer”). City and Developer are hereinafter collectively referred to as the “Parties.”

RECITALS

- A. Applicant, Pad Investment Trust, has submitted an application for Tentative Map 2025-3 and Density Bonus 2025-1 to subdivide an existing .89-acre parcel located at 241 N. Chappell Road (APN 051-230-005) into seven (7) parcels to allow six (6) new residential dwellings to be constructed on Lots 1-6 and the existing residential dwelling to remain on Lot 7.
- B. Developer intends to market, construct and sell the Property, a 7 unit development (the “Project”) which includes one (1) Restricted Units and more particularly described in Exhibit A.

NOW THEREFORE, in consideration of the foregoing, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Definitions. The following terms have the meanings set forth in this Section wherever used in this Agreement or the attached exhibits.

1.1. **“Affordable Housing Cost”** means the sum of all of the following: (i) principal and interest on a mortgage loan and any loan insurance fees associated therewith; (ii) property taxes and assessments; (iii) a reasonable allowance for property maintenance and repairs based upon the estimated annual home warranty expense; (iv) other required payments such as solar; (v) homeowner association fees; and (vi) fire and casualty insurance does not exceed thirty-five percent of 110% of Area Median Income. In calculating Affordable Ownership Cost, mortgage payments will be calculated using a thirty year term, an interest rate equal to the current Housing Finance Agency (HFA) interest rate as published by the State’s HFA or an equivalent source and will assume a se percent down payment.

1.2. **“Eligible Household”** means a household which total household gross income does not exceed the maximum income level for a Restricted Unit as specified in Subsection 1.5 and that meets the requirements set forth in Section 3.2.

1.3. **“Median Income”** means the area median income for San Benito

County, California, adjusted for household size, determined periodically by the California Department of Housing and Community Development (“HCD”) as published in section 6932 of Title 25 of the California Code of Regulations or successor provision published pursuant to California Health and Safety Code section 50093(c). If HCD ceases to make such determination, Median Income shall be the median income applicable to San Benito County, with adjustments for household size, as determined from time to time by the United States Department of Housing and Urban Development (“HUD”) pursuant to the United State Housing Act of 1937 as amended, or such other method of median income calculation applicable to the City of Hollister that HUD may hereafter adopt in connection with such Act.

- 1.4. **“Moderate Income”** means a household whose gross income does not exceed one- hundred twenty percent (120%) of the Median Income.
 - 1.5. **“Restricted Unit”** means a dwelling unit which is reserved for occupancy as a primary place of residence for no more than one Moderate-Income Eligible Household in accordance with this Agreement.
 - 1.6. **Gross Annual Household Income**” means the total household income, before taxes and other deductions, received by all members of the tenant’s household. There shall be included in this total income all wages, social security payments, retirement benefits, military and veteran's disability payments, unemployment benefits, welfare benefits, interest and dividend payments and such other income items as U.S. Department of Housing and Urban Development considers appropriate.
2. Affordable Housing Unit Design. The exterior design of the Restricted Unit shall be indistinguishable from market rate units and the number of bedrooms in the Restricted Unit shall reflect the household size need reflected in the City’s Housing Element. The lot configurations, building height, and lot coverage limitations and parking requirements shall all meet applicable City zoning, design, building, and development standards.
 3. Use and Affordability Restrictions. Except as otherwise provided for in this Agreement, Developer hereby covenants and agrees, for itself and its successors and assigns, that the Project’s one (1) Restricted Units shall be used solely for the construction, sale, purchase, and occupancy in compliance with the Housing Agreement, the development approvals granted by the City of Hollister, and the requirements set forth herein. Developer represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the occupancy and affordability restrictions set forth in this Agreement, and Developer covenants that it shall not enter into any agreement that is inconsistent with such restrictions without the express written consent of City.

Notwithstanding the foregoing or anything to the contrary contained herein, if the terms of financing for the Project require greater affordability restrictions than those imposed hereby, the requirements of such other financing shall prevail for the term thereof.

3.1 Affordability Requirements.

3.1.1 No fewer than one (1) dwelling unit in the Project shall be both sold to and occupied (or if vacant, made available for purchase and occupancy) by Eligible Households.

3.1.2 Restricted Units shall be offered for sale and sold only to Eligible Households subject to the terms and conditions in the Affordable Housing Component of the the Affordable Housing Marketing Plan, attached hereto as Exhibit B, including recordation of deed restrictions on the use and resale of the Restricted Units, attached hereto as Exhibit C and D.

3.2 Eligibility Requirements. The following restrictions apply to all Restricted Units for the duration of the deed restriction.

3.2.1 Owner Occupancy. The Restricted Unit must be the Eligible Household's primary residence.

3.2.2 Prohibition Against Renting, Leasing, or Subleasing. Restricted Units may not be rented or subleased in whole or in part. This prohibition includes renting or subleasing any part of the Restricted Unit as a short-term or vacation rental or renting or subleasing a parking space or any other outdoor space purchased with the Restricted Unit.

3.2.3 Prohibition Against Resale to Non-Eligible Households. Restricted Units may only be sold to another Eligible Household. All sales of Restricted Units shall be facilitated through the City.

3.3 Sales Price for Restricted Units and Purchaser Qualifications. Sales prices for Restricted Units shall be calculated based on the following assumptions. The Affordable Housing Cost for Eligible Households assumes a (i) five percent (5%) down payment, (ii) a thirty (30) year fixed amortized fixed rate loan, (iii) an interest rate equal to the published Federal Housing Administration ("FHA") thirty (30) year fixed rate at the time of the household's application, (iv) homeowner's insurance at 0.25% of appraised value, (v) 0.5% of primary mortgage insurance, (vi) 1.25% of property taxes and property assessments, (vii) estimated annual home maintenance and repair expense, (viii) utilities, and (ix) other required expenses

Developer agrees to sell the Restricted Unit solely to Eligible Households, at not more than the applicable Affordable Housing Cost. Developer shall apply the same purchase terms and conditions to potential buyers of Restricted Unit as are applied to all other buyers, except as otherwise required to comply with this Agreement (e.g., income requirements) and/or government subsidy programs. Discrimination based on subsidies received by the prospective homeowner is prohibited.

3.4 Purchase and Sale and Escrow Agreement of a Restricted Unit. The purchase, sale, and escrow agreement between the Developer and the Eligible Household (“Homeowner Purchase Agreement”) of any of Restricted Unit must comply with the following:

3.4.1. The Homeowner Purchase Agreement shall include provisions requiring the prospective purchaser to meet the requirements of this Agreement.

3.4.2. The Homeowner Purchase Agreement shall include a provision substantially as follows:

“Purchaser is hereby advised that the unit and the terms and conditions of the sale of the unit to purchaser are subject to terms and provisions of that certain AFFORDABLE HOUSING AGREEMENT AND DECLARATION OF COVENANT, CONDITIONS, AND RESTRICTIONS (“Affordable Housing Agreement”) between Pad Investment Trust and the City of Hollister, which shall be recorded with the Official Record San Benito County Recorder’s Office as Instrument NO. A copy of that Affordable Housing Agreement (and any amendments thereto) were delivered to the purchaser prior to the purchaser’s execution of the Homeowner Purchase Agreement. Purchaser is encouraged to review the Affordable Housing Agreement. Any questions regarding the Affordable Housing Agreement can be directed to the City of Hollister Development Services Housing Division, 339 Fifth St. Hollister, CA 95023, telephone number (831) 636-4356.”

3.4.3. Within five (5) days after the date of execution of the Homeowner Purchase Agreement by the Developer and the Eligible Household, the Developer shall deliver to the City of Hollister a complete copy of the Homeowner Purchase Agreement and all exhibits and related documents.

3.4.4. The Homeowner Purchase Agreement shall include a provision which requires the close of escrow to be no later than one hundred twenty

(120) days after the earlier to occur of the date the Homeowner Purchase Agreement has been signed by both parties or the date the Developer or the Developer's authorized agent has certified the Eligible Household meets the eligibility requirements of this Agreement and the sale price has been calculated in accordance with this Agreement. Notwithstanding the foregoing, delays in the close of escrow may be permitted provided that Eligible Household can recertify that it remains qualified as an Eligible Housing and Developer and the Eligible Household agree upon a revised purchase price equal to the applicable Affordable Sales Price for the Restricted Unit determined as of the rescheduled closing date for the Restricted Unit.

3.4.5. The Homeowner Purchase Agreement shall require as a condition to the close of escrow to the Restricted Unit that the Eligible Household enters into the Resale Restriction and Option to Purchase described in Exhibit C and shall be duly recorded.

3.4.6. Include representations and warranties for the benefit of Developer and the City of Hollister, from the purchaser of the Restricted Unit that it is an Eligible Household and that purchaser intends to occupy the unit as its primary residence.

4. Non-Discrimination; Compliance with Fair Housing Laws.

4.1 Fair Housing. Developer shall comply with state and federal fair housing laws in the marketing and sale of the units in the Project.

4.2 Non-Discrimination. Developer covenants for and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, familial status, ancestry, disability or national origin in the sale, transfer, use, occupancy, tenure or enjoyment of the Property or the Project, nor shall Developer or any person claiming under or through Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Project. The foregoing covenant shall run with the land. All deeds or contracts made or entered into by Developer, its successors or assigns, as to the Project's one (1) Restricted Units shall contain the following language:

4.2.1 In Deeds:

"Purchaser agrees for itself and any successor in interest not to discriminate upon the basis of race, color, creed, religion, sex, sexual orientation, marital status, age, disability, national origin, or ancestry, in

the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property or any part thereof.

Purchaser 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, creed, religion, sex, sexual orientation, marital status, age, disability, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property or any part thereof, nor shall Purchaser itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sub-tenants, sublessees, or vendees in the Property.”

4.2.2 In Contracts:

“There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the sale, transfer, use, occupancy, tenure or enjoyment of the property nor shall 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.”

5. Marketing Plan. The Restricted Unit shall be marketed pursuant to the written Marketing Plan which has been approved by the Developer and the City, attached hereto as Exhibit C. The Marketing Plan addresses in detail how Developer shall market the Restricted Units to prospective Eligible Households in accordance with fair housing laws and this Agreement. Developer shall abide by the terms of the Marketing Plan in marketing the Restricted Units, and throughout the term of this Agreement.

6. Reporting Requirements.

6.1 Monthly Reporting. Commencing with the marketing of the first Restricted Unit and continuing until all Restricted Units have been constructed and initially sold, Developer or Developer’s authorized agent shall submit a monthly report, on the first date of each month to the City which contains, at a minimum, the following information:

6.1.1 Time and method of public notices of availability of Restricted Units for sale.

6.1.2 Listing of all applications for Restricted Units received during the eligible application period.

6.1.3 Report of all applicants selected, identifying those who acquired Restricted Units and those who did not qualify or were deemed ineligible, and a copy of all correspondence to all applicants deemed ineligible.

6.1.4 An inventory of all remaining unsold Restricted Units.

6.1.5 A timeline estimating the future sale date of the unsold Restricted Units.

6.2 Additional Information. Upon final sale of the last Restricted Unit, Developer shall provide any additional non-proprietary non-confidential information reasonably requested by City pertaining to the Project's one (1) Restricted Units.

7. Eligible Household Certification.

7.1 Developer or Developer's Authorized Agent shall obtain from each Eligible Household prior to initial sale of each Restricted Unit, a written certificate that is dated within the previous one-hundred and twenty days (120) days containing all the following in such format and with such supporting documentation as City may reasonably require:

7.1.1. A pre-approval letter from Eligible Household's mortgage lender stating the lender has completed a review of the Eligible Household's income and the lender has determined that the income of the Eligible Household is Moderate Income or less.

7.1.2. The identity and age of each member of the Eligible Household; and

7.1.3. The maximum loan amount for which the Eligible Household is qualified.

7.2 Upon final sale of the last Restricted Unit, Developer shall provide to the City all Eligible Household Certification documents described in section 8.1.

7.3 Upon final sale of the last Restricted Unit, Developer shall provide any additional non-proprietary non-confidential information reasonably requested by City pertaining to the Project's one (1) Restricted Unit

7.4 As a condition prior to the approval of the Eligible Household, the Developer shall certify to the City of Hollister the total Gross Household Income of the prospective Eligible Household. Gross Household Income shall mean all income, from whatever source derived, of all adult household members (eighteen (18) years of age and older) but does not include income from dependents up to age twenty-four (24) that are full time students whether or

not such income is exempt from Federal Income Tax. All financial accounts from all household members, regardless of age, must be included in the application. Household Income will be based on current income projected out twelve (12) months from the time of application. Final determination of an applicant's income level and program eligibility shall be the sole discretion of the City Housing Programs Coordinator and/or their designee.

7.5 The Developer or the Developer's Authorized Agency will request income certification from all proposed adult Eligible Household member(s) of the Restricted Unit in one or more of the follows methods:

- i. Paycheck stubs from the three (3) most recent months;
- ii. A true copy of an income tax return for the most recently completed tax year;
- iii. Income verification from employers;
- iv. Income verification certification from the Social Security Administration and/or the California Department of Social Services if a household member receives assistance from such agencies; or
- v. An alternate form of income verification acceptable to the City.

8. Records. The Developer or Developer's authorized agent shall maintain complete, accurate, and current records pertaining to the Project's one (1) Restricted Unit, and shall permit any duly authorized representative of the City to inspect records, including records pertaining to income and household size of Eligible Households. All Eligible Household lists, applications, and waiting lists relating to the Project's one (1) Restricted Unit shall at all times be kept separate and identifiable from any other business of the Developer and shall be maintained as required by the City in a reasonable condition for proper audit and subject to examination during business hours by representatives of the City. Upon final sale of the last Restricted Unit, Developer will provide to City all records described in this section 9.

9. Public Records. Developer understands and acknowledges that all records provided by the Developer to the City are public records and will be subject to disclosure under the California Public Records Act. (Gov. Code, §§ 7920.000, et. seq.)

10. Maintenance Requirements. Prior to the first sale of each unit to an Eligible Household, Developer shall maintain the Restricted Unit in compliance with all applicable laws, ordinances, and regulations. Restricted Unit shall be maintained in a good and clean condition.

11. Utilization of Restricted Units. The Restricted Unit shall be sold and utilized only in accordance with this Agreement. No Restricted Unit shall be withdrawn from the market or otherwise held vacant, except vacancy during the period of time when the Developer is diligently attempting to sell the Restricted Unit to Eligible Households. No Restricted Unit shall be leased or rented.

12. Term of Agreement.

12.1. Term of Restrictions. This Agreement shall remain in effect until the Restricted Unit is sold.

12.2. Effectiveness Succeeds Conveyance of the Property. Subject to Section 11, above, this Agreement shall remain effective and fully binding on the Project's one (1) Restricted Unit for the full term hereof regardless of:

12.1.1 Any sale, assignment, transfer, or conveyance of the Property or the Project or any part thereof or interest therein;

12.1.2 Any reconveyance of the deed of trust, unless this Agreement is terminated earlier by City in a recorded writing.

12.2 Reconveyance. Upon the termination of this Agreement, the Parties agree to execute and record appropriate instruments to release and discharge the terms of this Agreement; provided, however, the execution and recordation of such instruments shall not be necessary or a prerequisite to the termination of this Agreement in accordance with its terms.

13. Binding Upon Successors: Covenants to Run with the Land.

13.1 Developer hereby subjects its interest in the Project's one (1) Restricted Unit to the covenants and restrictions set forth in this Agreement. The City and Developer hereby declare their express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of Developer and City, regardless of any sale, assignment, conveyance or transfer of the Project's one (1) Restricted Unit or any part thereof or interest therein. Any successor-in-interest to Developer, including without limitation any purchaser, transferee or lessee of the Project's one (1) Restricted Unit shall be subject to all of the duties and obligations imposed hereby for the full term of this Agreement. Each and every contract, deed, ground lease or other instrument affecting or conveying the Project's one (1) Restricted Unit or any part thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants,

restrictions, duties and obligations are set forth in such contract, deed, ground lease or other instrument. If any such contract, deed, ground lease or other instrument has been executed prior to the date hereof, Developer hereby covenants to obtain and deliver to City an instrument in recordable form signed by the parties to such contract, deed, ground lease or other instrument pursuant to which such parties acknowledge and accept this Agreement and agree to be bound hereby.

13.2 Developer agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Project's one (1) Restricted Unit in favor of City.

14. Prior to the close of escrow for the initial sale of each Restricted Unit, Developer shall ensure that the following documentation is entered into and/or obtained:

14.1 Resale Restriction. Developer shall ensure that the City and the buyer execute, acknowledge, and deposit into escrow for recordation against the Restricted Unit a Resale Restriction in the form attached hereto as Exhibit C. The Resale Restriction shall record immediately after the grant deed conveying the Restricted Unit and before any deed of trust or other instrument securing any financing to the buyer.

14.2 Promissory Note Related to the Excess Proceeds. Developer shall require the buyer to execute a promissory note in favor of the City that obligates the buyer to pay the City the amount required under Exhibit D. The promissory note will substantially conform with the form attached hereto as Exhibit D and will be subject to City's reasonable review and approval.

14.3 Deed of Trust. Developer shall ensure that the City and the buyer execute, acknowledge, and deposit into escrow for recordation against the Restricted Unit a deed of trust in the form attached hereto as Exhibit E to secure performance of the buyer's covenants under the Resale Restriction and payment of the amounts due under the Promissory Note. The deed of trust shall record immediately after the grant deed conveying the Inclusionary Housing Unit and concurrent with the Resale Restriction, subordinate only to the lien for the first mortgage loan obtained by the buyer to finance the purchase of the Restricted Unit.

15. Fees, Taxes, and Other Levies. Developer shall be responsible for payment of all fees, assessments, taxes, charges, liens and levies, including without limitation possessory interest taxes, if applicable, imposed by any public authority or utility company with respect to the Property or the Project, and shall pay such charges prior to delinquency. However, Developer shall not be required to pay any such charge so long as:

15.1 Developer is contesting such charge in good faith and by appropriate proceedings;

15.2 Developer maintains reserves adequate to pay any contested liabilities; and

15.3 On final determination of the proceeding or contest, Developer immediately pays or discharges any decision or judgement rendered against it, together with all costs, charges and interest

16. Administrative Costs.

16.1 Administrative costs which are directly attributed to the monitoring and administration of selling an Affordable Housing Unit shall be set by the City and paid by the Developer upon close of escrow. The initial fee shall be set at \$200 for each Affordable Housing Unit sold.

17. Recordation: No Subordination. This Agreement shall be recorded in the Official Records of San Benito County. Developer hereby represents, warrants and covenants that absent the written consent of City, this Agreement shall not be subordinated in priority to any lien (other than those pertaining to taxes or assessments), encumbrance, or other interest in the Project's one (1) Restricted Unit. If at the time this Agreement is recorded, any interest, lien, or encumbrance has been recorded against the Project's one (1)) Restricted Unit in a position superior to the Agreement, upon the request of the City, Developer hereby covenants and agrees to promptly undertake all action necessary to clear such matter from title or to subordinate such interest to this Agreement consistent with the intent of and in accordance with this Section 17, and to provide such evidence thereof as City may reasonably request.

18. Transfer and Encumbrance.

18.1 Restrictions on Transfer and Encumbrance. During the term of this Agreement, Developer shall not make or permit the occurrence of any transfer of the Project without the prior written consent of the City; provided, however, that the following shall not require City consent: (i) the admission of an investor limited partner of Developer; (ii) the transfer, sale

or assignment by the investor limited partner of Developer, its successors and assigns, of its ownership interest in Developer; or (iii) the withdrawal, removal, transfer and/or replacement of the general partner of Developer.

18.2 Permitted Transfers. The City shall not withhold its consent to the following transfers:

18.2.1 A transfer from Developer to an entity which is controlled by the Developer; or

18.2.2 A transfer to the construction or permanent lender of the Project or to a third party by foreclosure, deed in lieu of foreclosure or comparable conversion of any lien on the Project or to any subsequent transfer by such lender or third party following such foreclosure, deed in lieu of foreclosure or comparable conversion, provided that:

18.2.2.1 Prior to any of the foregoing transfers (other than a third-party following foreclosure and transfers expressly permitted pursuant to Section 17.1), Developer or the proposed Developer shall provide City with a copy of the transferee's organizational documents and the final form of the agreement effectuating such transfer;

18.2.2.2 The Project is and shall continue to be operated in compliance with this Agreement; and

18.2.2.3 Except for transfers permitted pursuant to Section 17.1, the transferee executes all documents reasonably requested by the City with respect to the assumption of the Developer's obligations under this Agreement, and upon reasonable request of City, delivers to the City an opinion of transferee's counsel to the effect that this Agreement is the valid, binding and enforceable obligation of such transferee.

18.2.3 In addition, City shall not unreasonably withhold its consent to the sale, transfer or other disposition of the Project, in whole or in part, provided that:

18.2.3.1 The Project is and shall continue to be operated in compliance with the Agreement;

18.2.3.2 The transferee expressly assumes all obligations of Developer imposed by this Agreement; and/or

18.2.3.3 The transferee executes all documents reasonably requested by the City with respect to the assumption of the Developer's obligations under this Agreement.

19. Default and Remedies.

19.1 Events of Default.

19.1.1 The occurrence of any one or more of the following events shall constitute an event of default hereunder ("Event of Default"):

19.1.1.1 The occurrence of a transfer in violation of Section 17 hereof;

19.1.1.2 Subject to Developer's right to contest the following charges, Developer's failure to pay taxes or assessments due on the Property, Project, or Restricted Unit(s) and Developer's failure to cure such default within ten (10) days.

19.1.2 Developer's default in the performance of any term, provision, or covenant under this Agreement or under any other City document, and unless such provision specifies a shorter cure period for such default, the continuation of such default for ten (10) days in the event of a monetary default or thirty (30) days in the event of a non-monetary default following the date upon which the City shall have given written notice of default to Developer, or if the nature of any such non-monetary default cannot be cured within thirty (30) days, Developer's failure to commence to cure the default within thirty (30) days and thereafter prosecute the curing of such default with due diligence and in good faith, but in no event longer than one hundred and twenty (120) days from receipt of the notice of default.

19.1.3 At least ten (10) days prior to City's declaring any default under this Agreement, City shall provide written notice of such default to Developer and to each of Developer's lenders

holding a security interest of record and Developer's lender shall have the right, but not the obligation, to exercise any cure rights provided for in this Agreement as amended and such cure shall be accepted by City as and to the same extent as cure by Developer.

19.2 Remedies. If within the applicable cure period, Developer fails to cure a default or fails to commence to cure and diligently pursue completion of a cure, as applicable, or if a cure is not possible, City may proceed with any of the following remedies:

19.2.1.1 Bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking declaratory relief;

19.2.1.2 Pursuant to the deed of trust, foreclose on the Property or Restricted Unit(s);

19.2.1.3 For violations of obligations with respect to sale price for Restricted Unit, impose as liquidated damages a charge in an amount equal to the actual amount collected in excess of the Sales Price for Restricted Unit; or

19.2.1.4 Pursue any other remedy allowed at law or in equity.

19.2.2 Each of the remedies provided herein is cumulative and not exclusive. The City may exercise from time to time any rights and remedies available to it under applicable law or in equity, in addition to, and not in lieu of; any rights and remedies expressly provided in this Agreement.

20. Indemnification.

20.1 Notwithstanding the insurance coverage required hereunder, Developer shall defend, indemnify and hold harmless City and its officials, officers, directors, employees, and agents (collectively, the "Indemnified Parties") harmless from and against any and all losses, damages, liabilities, claims, demands, judgments, actions, court cases, and legal or other expenses (including reasonable attorneys' fees) which an Indemnified Party may incur as a result of:

20.1.1 Developer's failure to perform any obligation as and when required by the Agreement; and

20.1.2 Any act or omission by Developer, or any of Developer's contractors, subcontractors, agents, employees, licensees or suppliers with respect to the Project's one (1) Restricted Unit, except to the extent that such losses are caused by the gross negligence or willful misconduct of such Indemnified Party.

20.2 Developer shall pay immediately upon an Indemnified Party's demand any amounts owing under the indemnity provided under this Section. The duty of Developer to indemnify includes the duty to defend the Indemnified Party in any court action, administrative action, or other proceeding brought by any third party arising in connection with the Project's one (1) Restricted Unit with counsel reasonably approved by City. Developer's duty to indemnify the Indemnified Parties shall survive the expiration or earlier termination of this Agreement.

21. Miscellaneous.

21.1 Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties.

21.2 No Waiver. Any waiver by City of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by City to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by City at any time to require strict performance by Developer of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

21.3 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section.

21.3.1 All such notices shall be sent by:

21.3.1.1 Personal delivery, in which case notice is effective upon delivery;

21.3.1.2 Certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt; or

21.3.1.3 Nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

21.3.2 All such notices shall be sent

to: City: City of Hollister
375 Fifth St.
Hollister, CA 95023
Attention: Housing Programs Manager

Developer: Owner

Name
Address
Email:

21.4 Further Assurances. The Parties shall execute, acknowledge, and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

21.5 Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

21.6 Action by the City. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City Manager or by any person who shall have been designated by the City Manager, without further approval by the governing body of the City.

21.7 Non-Liability of City and City Officials, Employees, and Agents. No

member, official, employee, or agent of the City shall be personally liable to Developer or any successor in interest, in the event of any default or breach by the City, or for any amount of money which may become due to Developer or its successor or for any obligation of City under this Agreement.

- 21.8 Headings; Construction. The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party.
- 21.9 Time is of the Essence. Time is of the essence in the performance of this Agreement.
- 21.10 Governing Law. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law.
- 21.11 Attorneys' Fees and Costs. If any legal or administrative action is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.
- 21.12 Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.
- 21.13 Entire Agreement; Exhibits. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto. The exhibits attached hereto are incorporated herein by this reference.
- 21.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

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

CITY OF HOLLISTER

a California Municipal Corporation

By: _____

Name: [NAME] _____

[TITLE]

KB HOME South Bay,
Inc., a California
corporation

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

ATTEST:

By: _____

City Clerk

APPROVED AS TO FORM:

By: _____

City Attorney

SIGNATURES MUST BE NOTARIZED

Exhibit A

PROPERTY LOT AND ASSESSOR PARCEL NUMBERS

LOT	Plan	St. No.	Street	APN

DRAFT

Exhibit B
AFFORDABLE HOUSING MARKETING PLAN

DRAFT

Exhibit C

**Grant Deed Containing Covenants, Conditions and Restrictions Governing Use
and Resale of the Property**

DRAFT

Exhibit D
Promissory Note

DRAFT

Exhibit E

Performance Deed of Trust, Assigned of Rents and Security Agreement

DRAFT