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City of Pinole
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Pinole, CA 94564
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AFFORDABLE HOUSING REGULATORY AGREEMENT

AND

DECLARATION OF RESTRICTIVE COVENANTS

by and between

THE CITY OF PINOLE

AND

PINOLE VENTURE LP

Dated December 15, 2021

This Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this “**Agreement**”) is entered into effective as of December 15, 2021 (the “**Effective Date**”) by and between the City of Pinole, a California municipal corporation (the “**City**”) and Pinole Venture LP, a California limited partnership (“**Developer**”). City and Developer are hereinafter collectively referred to as the “**Parties**.”

RECITALS

A. Developer is the owner of certain property (the “**Property**”) located at 600 Roble Avenue, 1106 San Pablo Avenue, & 1230 San Pablo Avenue. in the City of Pinole, California, known as County Assessor’s Parcel Numbers 402-023-007, 402-230-003, and 402-023-002, as more particularly described in Exhibit A attached hereto and incorporated herein by this reference.

B. Developer intends to construct, own and operate on the Property a 179-unit affordable housing development for very low, low and moderate income households (the “**Project**”). The City’s Planning Commission approved Comprehensive Design Review for the Project on September 27, 2021. The City is not providing any financial assistance for the Project, and the Project is not being developed, constructed, or acquired, as those terms are defined in California Health and Safety Code Section 37001.5, by the City.

C. The Project is subject to Section 17.32.020 of the City’s Zoning Ordinance the (“**Ordinance**”). The Project is also subject to California Government Code Section 65915, and received an 80% density bonus pursuant to Section 65915(b)(1)(g) (“**Super Density Bonus**”).

D. The Ordinance requires that 15% of the Project units (excluding any units approved as a density bonus) be affordable to low-income households, with 40% of such units being affordable to very low income households. Consequently, the Project will include: nine (9) units available for occupancy by low income households as defined in California Health and Safety Code Section 50079.5 (“**Low Income Households**”) at rents affordable to such households as defined in California Health and Safety Code Section 50053(b)(3) and; seven (7) units available for occupancy by very low income households as defined in California Health and Safety Code Section 50105 (“**Very Low Income Households**”) at rents affordable to such households as defined in California Health and Safety Code Section 50053(b)(2).

E. The Super Density Bonus, allowed for the 101 base units in the Project to be increased to 179 units, because Government Code Section 65915(g) allows for an 80% density bonus if all units (excluding the managers units) are for Low Income Households, except that twenty percent (20%) of the units may be for moderate income households as defined in Health and Safety Code 50052.5 (the “**Moderate Income Household**”). With respect to rents, the Super Density Bonus requires that the rent for twenty percent (20%) of units be affordable, as defined in Health and Safety Code 50053. The remaining units shall be set at an amount consistent with the maximum rent levels for a housing development that receives an allocation of state or federal low-income housing tax credits from the California Tax Credit Allocation Committee.

F. The Parties are entering into this Agreement to memorialize the requirements of the Ordinance and the Super Density Bonus as applied to the Project and have agreed to enter into and record this Agreement in order to satisfy the conditions described in the foregoing Recitals. The purpose of this Agreement is to regulate and restrict the occupancy and rents of the Project’s

- 1.7 “**Rent-Restricted**” means a dwelling unit for which the gross Rent charged for such unit does not exceed the Qualifying Rent.
- 1.8 “**Restricted Unit**” means a dwelling unit which is reserved for occupancy at a Qualifying Rent by an Eligible Household in accordance with this Agreement.
- 1.9 “**Very Low-Income Household**” is defined in Recital D.

2. Use and Affordability Restrictions. Developer hereby covenants and agrees, for itself and its successors and assigns, that the Property shall be used solely for the construction and operation of a 179-unit affordable rental housing development, including two managers units, in compliance with this Agreement. 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, this Agreement is not intended to prevent, and developer will comply with any Project financing terms that require greater affordability restrictions than those imposed hereby.

2.1 Affordability Requirements.

2.1.1 For a term of fifty-five (55) years commencing upon the date of issuance of a final certificate of occupancy for the Project, no fewer than 179 dwelling units in the Project shall be both Rent-Restricted and occupied (or if vacant, available for occupancy) by Eligible Households. The size and mix of the Restricted Units are set forth in Exhibit B.

2.1.2 In the event that recertification of tenant incomes indicates that the number of Restricted Units actually occupied by Eligible Households falls below the number required as specified in this Section and in Exhibit B, Developer shall rectify the condition by renting the next available dwelling unit(s) of equivalent size in the Project to Eligible Household(s) to meet the requirements of Section 2.1.1 and Exhibit B.

2.2 Rents for Restricted Units.

2.2.1 Rents for Restricted Units shall be limited to Qualifying Rents. The initial Rent schedule for all Restricted Units and used by the Developer must be provided to the City no later than thirty (30) days after the initial occupancy of the Restricted Units. Notwithstanding the foregoing, no tenant qualifying for a Restricted Unit shall be denied continued occupancy of a unit in the Project because, after admission, such tenant's adjusted income increases to exceed the Qualifying Rent for such Restricted Unit.

2.2.2 If upon recertification of a tenant's income, the Developer determines that tenant's adjusted income has increased higher than Very Low Income

2.7 Reporting Requirements.

2.7.1 Tenant Certification. Developer or Developer's authorized agent shall obtain from each household prior to initial occupancy of each Restricted Unit, and on every anniversary thereafter, a written certificate containing all of the following in such format and with such supporting documentation as City may reasonably require:

- (a) The identity and age of each member of the household; and
- (b) Total household income.

2.7.2 Developer shall retain such certificates for not less than three (3) years, and upon City's request, shall make the originals available for inspection by City and shall provide copies of such certificates to City.

2.8 Annual Report; Inspections. Developer shall submit an annual report ("Annual Report") to the City in form satisfactory to City, together with a certification that the Project is in compliance with the requirements of this Agreement.

2.8.1 Developer shall submit to the City such Annual Report:

- (a) Not later than the ninetieth (90) day after the close of each fiscal year of the City; or such other date as maybe requested by City; and
- (b) Within fifteen (15) days after receipt of a written request, any other information or completed forms requested by City in order to comply with reporting requirements of the State of California.

2.8.2 The Annual Report shall, at a minimum, include the following information for each dwelling unit in the Project:

- (a) Unit number;
- (b) Current rent and other charges;
- (c) Dates of any vacancies during the previous year;
- (d) Number of people residing in the unit;
- (e) Total household income of residents;
- (f) Documentation of source of household income; and
- (g) The information required by Section 2.7.1.

2.8.3 Upon City's request, Developer shall include with the Annual Report, an income recertification for each household, documentation verifying tenant eligibility, and such additional information as City may reasonably request from time to time in order to show compliance with this Agreement. The

3.3 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.

4. Binding Upon Successors; Covenants to Run with the Land.

4.1 Developer hereby subjects its interest in the Property and the Project 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 Property, the Project or any part thereof or interest therein. Any successor-in-interest to Developer, including without limitation any purchaser, transferee or lessee of the Property or the Project (other than the tenants of the individual dwelling units within the Project) 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 Property or the Project 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.

4.2 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 Property and the Project in favor of City.

4.3 The provisions of this Section 4 are subject to Article 6.

5. Property Management; Repair and Maintenance; Marketing.

5.1 Management Responsibilities. Developer shall be responsible for all management functions with respect to the Property and the Project, including without limitation the selection of tenants, certification and recertification of household income and eligibility, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. Except as City may otherwise agree in writing, City shall have no responsibility for management or maintenance of the Property or the Project.

5.2 Repair, Maintenance and Security. Throughout the term of this Agreement, Developer shall at its own expense, maintain the Property and the Project in good

- 6.1 Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon all or any portion of the Project or the Property, and the purchaser at any trustee's sale or foreclosure sale shall not be liable for any violation of any provision hereof occurring prior to the acquisition of title by such purchaser. Such purchaser shall be bound by and subject to this Agreement from and after such trustee's sale or foreclosure sale. Promptly upon determining that a violation of this Agreement has occurred, City shall give written notice to the holders of record of any mortgages or deeds of trust encumbering the Project or the Property that such violation has occurred. The provisions of this Section are subject to Section 6 above.
- 6.2 CalHFA Regulatory Agreement. The parties hereto acknowledge that the Developer, U.S. Bank National Association, as trustee, and CalHFA are entering into that certain Regulatory Agreement and Declaration of Restrictive Covenants (the "CalHFA Regulatory Agreement") with respect to the Property and the issuance of tax-exempt financing and further agree that as long as the CalHFA Regulatory Agreement is in effect, to the extent of any conflicting provisions between the CalHFA Regulatory Agreement and this Agreement, the CalHFA Regulatory Agreement shall control. That notwithstanding, the fact that this Agreement and the CalHFA Regulatory Agreement provide for greater, lesser or different obligations or requirements shall not be deemed a conflict unless the applicable provisions are inconsistent and could not be simultaneously enforced or performed.

7. Default and Remedies.

7.1 Events of Default.

7.1.1 Developer's default in the performance of any term, provision or covenant under this Agreement and the continuation of such default for thirty (30) days following the date upon which City shall have given written notice of the default to Developer, or if the nature of any such default is such that it cannot be cured within 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, shall constitute an event of default hereunder ("Event of Default").

7.2 Remedies.

7.2.1 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:

- (a) Bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining,

9.2 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.

9.3 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.

9.3.1 All such notices shall be sent by:

- (a) Personal delivery, in which case notice is effective upon delivery;
- (b) 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;
- (c) 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;
- (d) Facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that
 - (i) A duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or
 - (ii) A transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

9.3.2 All such notices shall be sent to:

City: City of Pinole
2321 Pear St.
Pinole, CA 94563
Attention: City Manager

Developer: Pinole Venture LP, a California limited partnership
2711 N. Sepulveda BLVD #526
Manhattan Beach, CA 90266
Attention: Ben Kurzius

- 9.13 Entire Agreement; Exhibits. This Agreement, together with the City Documents contains the entire agreement of 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.
- 9.14 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.

SIGNATURES ON FOLLOWING PAGE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

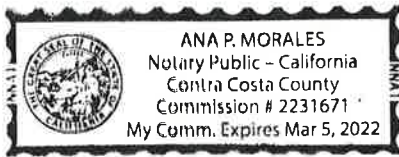
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Contra Costa)
On 12/15/2021 before me, Ana P. Morales, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Andrew Murray
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and 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 [Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____
 Corporate Officer -- Title(s): _____ Corporate Officer -- Title(s): _____
 Partner -- Limited General Partner -- Limited General
 Individual Attorney in Fact Individual Attorney in Fact
 Trustee Guardian or Conservator Trustee Guardian or Conservator
 Other: _____ Other: _____
Signer Is Representing: _____ Signer Is Representing: _____

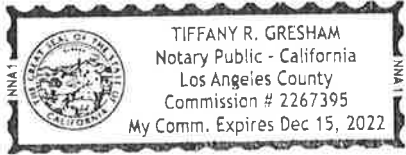
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

COUNTY OF LOS ANGELES)
)

On December 10, 2021, before me, Tiffany Gresham, Notary Public, personally appeared Sydne Garchik, 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.



T. Gresham
Name: Tiffany Gresham
Notary Public

Exhibit B

UNIT MIX, RENT AND OCCUPANCY RESTRICTIONS

7 units in the Project will be occupied by (or if vacant available for occupancy by) for Very Low Income Households (the “Very Low Income Units”)

135 units in the Project will be occupied by (or if vacant available for occupancy by) for Low Income Households (the “Low Income Units”)

35 units in the Project will be occupied by (or if vacant available for occupancy by) for Moderate Income Households (the “Moderate Income Units”) or below

Very Low Income Units, Low Income Units, and Moderate Income Units will be disbursed across the various unit size types in approximately the same proportions as the overall unit size type allocation.

Qualifying Rents:

Rents for the Very Low Income Units will be 1/12th of 30% times 50% of area median income adjusted for family size appropriate for the unit.

Rents for 9 Low Income Units will be 1/12th of 30% times 60% of area median income adjusted for family size appropriate for the unit.

Rents for 10 of the remaining Low Income Units and Moderate Income Units will be set at an affordable rent as defined in Section 50053 of the Health and Safety Code. Rent for the remaining units shall be set at an amount consistent with the maximum rent levels for a housing development that receives an allocation of state or federal low-income housing tax credits from the California Tax Credit Allocation Committee.