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AFFORDABLE HOUSING REGULATORY AGREEMENT

AND

DECLARATION OF RESTRICTIVE COVENANTS

by and between

CITY OF FOSTER CITY,
A California Municipal Corporation

and

SUMMERHILL PILGRIM TRITON LLC,
A California limited liability company

PILGRIM-TRITON PHASE C PROJECT

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AFFORDABLE HOUSING REGULATORY AGREEMENT

This Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants ("**Agreement**") is entered into effective as of June 17, 2020 ("**Effective Date**") by and between the City of Foster City, a California municipal corporation ("**City**") and SummerHill Pilgrim Triton LLC, a California limited liability company ("**Owner**"). City and Owner may be individually referred to herein as a "**Party**," and collectively as the "**Parties**."

RECITALS

A. Owner is the fee owner of that certain approximately 4.78 acre real property in the City of Foster City, California, depicted and referred to in the Pilgrim Triton Master Plan as "Parcel C of Phase B" and "Phase C" (collectively, the "**PTPIII Property**").

B. City and Pilgrim Triton Phase III FC LP, a Delaware limited liability partnership ("**PTPIII**") entered into a Development Agreement with respect to the PTPIII Property dated October 31, 2018 (Recorder's Document No. 2018-088599) ("**PTPIII Project DA**"), which PTPIII Project DA was assigned from PTPIII to Owner pursuant to that certain Assignment and Assumption Agreement Master Development Agreement/PTPIII Project Development Agreement dated as of May 22, 2019 (Recorder's Document No. 2019-038433), which PTPIII Project DA provides, among other things, for (1) City to grant Owner the vested right to develop approximately seventy (70) market rate, for-sale, residential townhouse units on an approximately 4.18 acre portion of the PTPIII Property, (2) City to grant Owner the vested right to develop a twenty-two (22) unit affordable multi-family housing rental building ("**Workforce Project**") on that certain approximately 0.6 acre portion of the PTPIII Property more particularly described in Exhibit A attached hereto ("**Property**"); (3) Owner to grant City an option to purchase the Workforce Project on the terms and conditions set forth therein; and (4) for Owner to record a regulatory agreement against the Property to ensure the long-term affordability of the Workforce Project regardless of whether City exercises its option to purchase the Workforce Project.

C. Under Section 3.4 of that certain Master Development Agreement (Recorder's Document No. 2010-017940) ("**Master Development Agreement**"), as amended, the developer of the PTPIII Property is obligated to cause the construction of affordable housing equal to twenty percent of the market-rate housing. The construction of the Workforce Project satisfies this obligation for the PTPIII Property.

D. As contemplated by Section 5(b) of the PTPIII Project DA, , Owner and City now desire to enter into this Agreement setting forth the terms under which units in the Workforce Project may be leased, including maximum allowable rents, and imposing certain restrictions on transfer of ownership of the Workforce Project.

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.

“Actual Household Size” means the actual number of persons in the applicable household.

“Adjusted for Family Size Appropriate for the Unit” shall be determined consistent with Section 50052.5(h) of the California Health and Safety Code, subject to the application of federal rules and regulations applicable to affordable housing financing sources, including Section 42(g)(2) of the Internal Revenue Code of 1986 as amended (or successor provision) if applicable.

“Affordable Rent” means the following amounts, less a utility allowance and other fees and charges required to be paid by tenants of the Workforce Project on a non-optional basis: (i) for units that are restricted for rental to “very low income households” as defined in Health and Safety Code section 50053(b)(2), the product of 30 percent times 50 percent of the Area Median Income adjusted for family size appropriate to the unit (**“Very Low Income Units”**); (ii) for units that are restricted for rental to “lower income households” as defined in Health and Safety Code section 50053(b)(3), the product of 30 percent times 80 percent of Area Median Income Adjusted for Family Size Appropriate for the Unit (**“Low Income Units”**); (iii) for units that are restricted to “moderate income households” as defined in Health and Safety Code section 50053(b)(4), the product of 30 percent times 110 percent of the Area Median Income Adjusted for Family Size Appropriate for the Unit for the unit (**“Moderate Income Units”**); and (iv) for units that are restricted for rental to Workforce Households, the product of 30 percent times 130 percent of Area Median Income Adjusted for Family Size Appropriate to the Unit (**“Workforce Units”**).

“Area Median Income” or “AMI” means the median income for San Mateo County, California, adjusted for Actual Household Size, as determined by HUD pursuant to Section 8 of the United States Housing Act of 1937 and as published from time to time by the State of California Department of Housing and Community Development (**“HCD”**) in Section 6932 of Title 25 of the California Code of Regulations or successor provision.

“City’s Authorized Representative” means the City Manager of the City of Foster City or his or her designee.

“Claims” means collectively, liabilities, losses, costs, expenses (including without limitation attorneys’ fees and costs of litigation), claims, demands, actions, suits, judicial or administrative proceedings, penalties, deficiencies, fines, orders, and damages.

“Eligible Household” refers to a Very Low Income Household, a Low Income Household, a Moderate Income Household, or a Workforce Household, as applicable.

“Gross Income” shall have the meaning set forth in Section 6914 of Title 25 of the California Code of Regulations as such section may be revised from time to time.

“HUD” means the U.S. Department of Housing and Urban Development.

“**Indemnitees**” means collectively, the City and its elected and appointed officers, officials, employees, agents, contractors and representatives.

“**Low Income Household**” is defined in Section 2.1.

“**Management Plan**” is defined in Section 6.5.

“**Moderate Income Household**” is defined in Section 2.1.

“**Official Records**” means the Official Records of the San Mateo County Recorder.

“**PTPIII Project DA**” is defined in Recital B.

“**Rent Restricted**” is defined in Section 2.1.

“**Restricted Unit**” means a dwelling unit that is reserved for occupancy at an Affordable Rent by Eligible Households of specified household income levels as set forth in Section 2.1.

“**Very Low Income Household**” is defined in Section 2.1

2. Use and Affordability Restrictions. Owner hereby covenants and agrees, for itself and its successors and assigns, that throughout the Term of this Agreement (as defined in Section 4.1 below), the Property shall be used solely for residential occupancy by Eligible Households in compliance with the requirements set forth in this Agreement. Owner 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 Owner covenants that it shall not enter into any agreement that is inconsistent with such restrictions without the express written consent of City. Owner further covenants that it shall use best efforts to complete the qualification of Eligible Households and lease up of the Restricted Units as soon as reasonably possible following City’s issuance of certificates of occupancy for such units.

2.1 Affordability and Occupancy Requirements. Except as permitted by Section 2.2 of this Agreement, throughout the Term of this Agreement (as defined in Section 4.1 below): (i) not less than two (2) of the residential units in the Workforce Project shall be both Rent Restricted at the Affordable Rent for Very Low Income Units and occupied (or if vacant, available for occupancy) by Eligible Households whose household Gross Income is no greater than 50 percent (50%) of AMI adjusted for Actual Household Size (“**Very Low Income Household**”), (ii) not less than two (2) of the residential units in the Workforce Project shall be both Rent Restricted at the Affordable Rent for Low Income Units and occupied (or if vacant, available for occupancy) by Eligible Households whose household Gross Income is no greater than 80 percent (80%) of AMI adjusted for Actual Household Size (“**Low Income Household**”); (iii) not less than ten (10) of the residential units in the Workforce Project shall be both Rent Restricted at the Affordable Rent for Moderate Income Units and occupied (or if vacant, available for occupancy) by Eligible Households whose household Gross Income is no greater than 120 percent (120%) of AMI adjusted for Actual Household Size (“**Moderate Income Household**”); and (iv) not less than eight (8) of the residential units in the Workforce Project shall be Rent Restricted at the Affordable Rent for Workforce Units calculated for households

whose household Gross Income is no greater than 130 percent (130%) of AMI adjusted for Actual Household Size (“**Workforce Household**”) (collectively, “**Restricted Units**”). The occupancy of the Workforce Units shall not be income restricted. A dwelling unit shall qualify as “**Rent Restricted**” if the gross rent charged for such unit does not exceed the Affordable Rent for the applicable household income category as specified in this Section 2.1.

Notwithstanding any contrary provision of this Agreement, if any residential units in the Workforce Project are subsidized with Section 8 project-based vouchers through a Housing Assistance Payment Contract with HUD, the rules and regulations applicable to such program shall prevail with respect to the setting of rents, implementation of occupancy requirements, and determination of household Gross Income for such units.

2.2 Rents for Restricted Units. For all Restricted Units, rents shall be limited to Affordable Rents for households of the applicable income limit in accordance with Section 2.1. The Restricted Units shall be allocated among affordability categories as set forth in Section 2.1. Notwithstanding the foregoing, no tenant qualifying for a Restricted Unit shall be denied continued occupancy of a unit in the Workforce Project because, after admission, such tenant’s household income increases to exceed the qualifying limit for such Restricted Unit. Rather a household whose income exceeds the income limit for the income category under which the household initially qualified may continue in occupancy of the unit but shall be treated as the appropriate higher income category based on the actual increased income of the household (e.g. a household that initially qualifies as a Very Low Income Household may graduate to Low Income Household or Moderate Income Household status, as applicable, based on the increased income of the household). In the event the household Gross Income of a household that qualified at the applicable income limit at initial occupancy exceeds the applicable income limit for a unit, that unit will continue to be considered as satisfying the applicable income limit if the unit remains Rent-Restricted.

In the event that recertification of tenant incomes indicates that the number of Restricted Units actually occupied by Eligible Households falls below the number reserved for each income group as specified in Section 2.1, Owner shall rectify the condition by renting the next available dwelling unit(s) in the Workforce Project to Eligible Household(s) until the required income mix is achieved.

2.3 No Condominium Conversion. Owner shall not convert the residential units in the Workforce Project to condominium or cooperative ownership or sell condominium or cooperative rights to the residential units in the Workforce Project during the Term of this Agreement.

2.4 Non-Discrimination; Compliance with Fair Housing Laws.

2.4.1 Non-Discrimination. Owner shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or Workforce Project, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, gender identity, disability, marital status, ancestry, age, or national origin of any person. Owner may not use marital status or source of income, including participation in the HUD Section 8 rental voucher program, in determining eligibility. Owner covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition

that 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 rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Owner or any person claiming under or through Owner 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, of, or for the Property or Workforce Project or part thereof. 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.

All deeds, leases, and contracts pertaining to management of the Workforce Project, made or entered into by Owner, its successors or assigns, as to any portion of the Property or the Workforce Project shall contain the following language:

(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 of 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 Workforce 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)."

3. Reporting Requirements; Access to Information; Inspections; Annual Monitoring Fee.

3.1 Tenant Certification. Owner or Owner's authorized agent shall obtain from each prospective tenant 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:

- (i) The identity of each household member;

- (ii) The total household Gross Income; and
- (iii) The basis upon which each household qualifies as an Eligible Household.

Owner shall retain such certificates for not less than five (5) years, and upon City's request, shall provide copies of such certificates to City and make the originals available for City inspection.

3.2 Annual Report; Inspections. Following completion of construction of the Workforce Project, by not later than April 1 of each year during the Term of this Agreement, Owner shall submit an annual report ("**Annual Report**") to the City in form satisfactory to the City, together with a certification that the Workforce Project is in compliance with the affordability restrictions and occupancy requirements of this Agreement. The Annual Report shall, at a minimum, include the following information for each dwelling unit in the Workforce Project: (i) unit number; (ii) number of bedrooms; (iii) current rent, utility, and other charges; (iv) dates of any vacancies during the previous year; (v) number of people residing in the unit; (vi) total household Gross Income of residents; (vii) documentation of source of household income; (viii) lease commencement and termination dates; (ix) initial move-in date; and (x) the information required by Section 3.1.

Owner shall include with the Annual Report, income recertification for each household, documentation verifying tenant eligibility, and such additional information as the City may reasonably request from time to time in order to demonstrate compliance with this Agreement. The Annual Report shall conform to the format requested by the City.

In addition to the information described above, the Annual Report shall include the following:

- (i) A Workforce Project income and expense statement for the reporting period;
- (ii) Proposed annual budget for the next fiscal year which sets forth Owner's estimate of operating income, operating expenses and debt service for the year, amounts payable to reserves and proposed rent adjustments;
- (iii) A report on the operating reserve and replacement reserve accounts summarizing draws of such funds and remaining balances;
- (iv) A report summarizing any significant repairs or maintenance undertaken for the Workforce Project, and describing any remaining physical defects to be corrected and the budget for such work; and
- (v) A financial audit of the books and records of the Workforce Project prepared in accordance with generally accepted auditing standards by an independent certified public accountant.

City may from time to time request additional or different information, as may be reasonably required to demonstrate compliance with this Agreement, and Owner shall promptly supply such information in the reports required hereunder.

3.3 Maintenance of Records.

3.3.1 Owner shall maintain tenant leases, income certifications and other matters related to the leasing of the Workforce Project for a period of five (5) years after the final date of occupancy by the tenant.

3.3.2 Records must be kept accurate and up-to-date. City shall notify Owner of any records it deems insufficient. Owner shall have fifteen (15) calendar days from such notice to correct any specified deficiency in the records, or, if more than fifteen (15) days shall be reasonably necessary to correct the deficiency, Owner shall begin to correct the deficiency within fifteen (15) days and diligently pursue the correction of the deficiency as soon as reasonably possible.

3.4 Access to Records; Inspections.

3.4.1 With at least 48-hours' notice, during normal business hours, Owner shall provide City and its authorized agents and representatives access to the books, documents, papers and records of the Workforce Project for the purpose of making audits, examinations, excerpts and transcriptions.

3.4.2 With at least 48-hours' notice, during normal business hours and as often as may be deemed necessary, City and its authorized agents and representatives shall be permitted access to and the right to examine the Workforce Project and the Property and to interview tenants and property managers of the Workforce Project, for the purpose of verifying compliance with applicable regulations and compliance with the conditions of this Agreement.

3.5 Monitoring Fee. Owner shall be obligated to pay to City an annual Affordable Housing Monitoring Fee in the amount of \$70 per unit for each residential unit in the Workforce Project that is subject to the affordability restrictions set forth in Section 2.1. This per-unit fee is payable at initial lease-up of each residential unit, upon each annual review, and upon re-occupancy of any residential unit. The City will not charge an annual monitoring fee in the same year that the City charges a fee in connection with the initial lease-up. All monitoring fees shall be payable to City within thirty (30) days following City's written request for payment, and City shall have the right to file a lien against the Property, valid as of the date of the recordation of the Notice of Claim of Lien, if such fees are not paid within sixty (60) days of such written request. Beginning in the third year after the City's issuance of a final certificate of occupancy or equivalent for the Workforce Project, the annual compliance monitoring fee will increase annually by the percentage increase in the Consumer Price Index-Urban (CPI-U) for the San Francisco, California area over the prior year. In the event that in any year there is insufficient Workforce Project cash flow available to pay the annual monitoring fee, the City will permit the fee to be deferred. Any deferred amounts shall accrue without interest and shall be payable from future Workforce Project cash flow.

4. Term of Agreement.

4.1 Term of Restrictions. This Agreement shall remain in effect until the ninety-ninth (99th) anniversary of the Effective Date hereof ("**Term**").

4.2 Effectiveness Succeeds Conveyance of Property. This Agreement shall remain effective and fully binding for the full Term hereof regardless of any sale, assignment, transfer, or conveyance of the Workforce Project or the Property, or any part thereof or interest therein.

4.3 Reconveyance. Upon the termination of this Agreement, the Parties agree to execute and record appropriate instruments to release and discharge this Agreement; provided, however, the execution and recordation of such instruments shall not be necessary or a prerequisite to the termination of this Agreement upon the expiration of the Term.

5. Binding Upon Successors; Covenants to Run with the Land. Owner hereby subjects its interest in the Property and the Workforce Project to the covenants and restrictions set forth in this Agreement. The City and Owner 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 Owner and City, regardless of any sale, assignment, conveyance or transfer of the Property, the Workforce Project, or any part thereof or interest therein. Any successor-in-interest to Owner, including without limitation any purchaser, transferee or lessee of the Property or the Workforce Project (other than the tenants of the individual dwelling units within the Workforce 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 Workforce 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, Owner 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. Owner 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 Workforce Project in favor of City.

6. Property Management; Repair and Maintenance; Reserves; Supportive Services.

6.1 Management Responsibilities. Except as otherwise provided in Section 6.6 below with respect to tenant selection, Owner shall be responsible for all management functions with respect to the Property and the Workforce Project, including without limitation the 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. City shall have no responsibility for management or maintenance of the Property or the Workforce Project.

6.2 Management Entity. City shall have the right to review and approve the qualifications of the management entity proposed by Owner from time to time for the Workforce Project, which approval shall not be unreasonably withheld. The contracting of management services to a management entity shall not relieve Owner of its primary

responsibility for proper performance of management duties. City hereby preapproves MidPen Housing, Bridge Housing, the John Stewart Company, First Community Housing, Eden Housing, Resources for Community Development, Mercy Housing, the Michaels Organization, CORE, EAH Housing, Satellite Affordable Housing Associates, and HIP Housing Affordable Ventures as being qualified entities to own and/or manage the Workforce Project. Owner may obtain pre-approval of additional management entities during the Term of this Agreement by submitting relevant information about the management entities, including experience, to the City; the City will not unreasonably withhold or delay its preapproval decision. Any management entity other than a preapproved management entity shall be subject to City review and approval, which shall not be unreasonably withheld or delayed. If the City fails to respond to a written request for pre-approval or approval of a management entity within thirty (30) days of receipt of the request, then the management entity shall be deemed approved but only if Owner's notice to City clearly indicated that failure to respond within such 30-day period shall be deemed approval of the request. Upon City determination and delivery of written notice to Owner that Owner has failed to operate the Workforce Project in accordance with this Agreement, City may require Owner to contract with a qualified management agent selected by City, or to make such other arrangements as City deems necessary to ensure performance of the required functions.

6.3 Repair, Maintenance and Security. Throughout the Term of this Agreement, Owner shall at its own expense, maintain the Property and the Workforce Project in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Owner agrees to maintain the Workforce Project and the Property (including without limitation, the residential units, common areas, meeting rooms, landscaping, driveways, parking areas and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property or at the Workforce Project. Owner shall prevent and/or rectify any physical deterioration of the Property and the Workforce Project and shall make all repairs, renewals and replacements necessary to keep the Property and the Workforce Project located thereon in good condition and repair. Owner shall provide adequate security measures for the Workforce Project, including without limitation, the installation of adequate lighting and deadbolt locks.

6.3.1 Additional Requirements. All construction/rehabilitation work and professional services for the Workforce Project shall be performed by persons or entities licensed or otherwise authorized to perform the applicable work or service in the State of California and shall have a current City of Foster City business license if required under local law. To the extent allowed by state and federal laws, Owner shall limit the installation of satellite dish, antenna and other such equipment to screened locations on the Property as approved by the City. Owner shall diligently work to resolve complaints related to noise, parking, litter or other neighborhood concerns.

6.4 City's Right to Perform Maintenance. In the event that Owner breaches any of the covenants contained in Section 6.3, and such default continues for a period of ten (10) days after written notice from City (with respect to graffiti, debris, and waste material) or thirty (30)

days after written notice from City (with respect to landscaping, building improvements and general maintenance), then City, in addition to any other remedy it may have under this Agreement or at law or in equity, shall have the right, but not the obligation, to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and the landscaped areas on the Property. All costs expended by City in connection with the foregoing, shall constitute indebtedness, and shall be paid by Owner to City upon demand. All such sums remaining unpaid thirty (30) days following delivery of City's invoice therefor shall bear interest at the lesser of 10% per annum or the highest rate permitted by applicable law. City shall have a lien against the Property for the amount of such unpaid sums, and shall have the right to record a Notice of Claim of Lien against the Property, valid as of the date of recordation of the Notice of Claim of Lien.

6.5 Management Plan; Rental Agreements. Not later than Substantial Completion of the Workforce Project (as defined in Section 3 of the PTPIII Project DA), Owner shall submit for City review and approval, a plan for managing the Property ("**Management Plan**" or "**Plan**"). The Management Plan shall address in detail how Owner plans to certify the eligibility of Eligible Households. The Plan shall also describe the management team and shall address how the Owner and the management entity plan to manage and maintain the Property and the Workforce Project. The Plan shall include the proposed management agreement and the form of rental agreement that Owner proposes to enter into with Workforce Project tenants. Owner shall abide by the terms of the approved Management Plan in managing and maintaining the Property and the Workforce Project, and throughout the Term of this Agreement, shall submit proposed modifications to City for review and approval.

In addition to the foregoing, the Management Plan shall address the following:

- (a) Criteria for determining tenant eligibility, including complying with City's waiting list of prequalified tenants, to the extent permitted by law, as described in Section 6 below, certification of household income and size, and establishing reasonable occupancy standards (which shall not exceed standards established by state and federal fair housing laws and state housing and building codes), and procedures for screening prospective tenants, including obtaining credit reports, unlawful detainer reports, landlord references, and criminal background investigations;
- (b) A requirement that eligible applicants be selected based on order of application, lottery or other reasonable method approved by City and permitted by law;
- (c) A requirement that eligible applicants be notified of eligibility and be provided an estimate regarding when a unit may be available;
- (d) A requirement that ineligible applicants be notified of the reason for their ineligibility;
- (e) Specific procedures through which applicants deemed to be ineligible may appeal this determination;

- (f) Specific procedures for obtaining documentation regarding prospective tenants' incomes, as necessary, to certify that such income does not exceed income limits;
- (g) Specific procedures for certification and recertification of household incomes and procedures for handling over-income tenants;
- (h) A requirement that a written rental agreement (in form approved by City) be executed with each Eligible Household selected to occupy a unit;
- (i) A detailed listing of reasonable rules of conduct and occupancy which shall be in writing, shall be consistent with federal and state law, and shall be provided to each tenant upon occupancy;
- (j) A requirement that there be no storage on balconies and patios and that tenants must keep all balconies, patios and other exterior areas neat, clean and clutter free, including no clotheslines or laundry;
- (k) A parking management plan which details, among other things, how parking spaces will be assigned, how guest parking will be handled and how parking will be managed to encourage tenants to use their assigned parking spaces;
- (l) Procedures for maintenance and management of the Workforce Project;
- (m) Procedures for dealing with tenant or neighborhood issues or concerns;
- (n) Procedures for maintaining a reserve account, budgeting for maintenance and repair needs as well as long-term rehabilitation needs, and handling net cash flow; and
- (o) Such other requirements and criteria/procedures as City may reasonably determine appropriate, to the extent consistent with applicable law.

6.6 Tenant Selection

(a) Use of City List of Prospective Renters. The Owner shall maintain a list of preliminarily pre-qualified households that may be income qualified to rent the Restricted Units. When a Restricted Unit becomes available for rental to a new Eligible Household, Owner agrees to notify the City that a new Restricted Unit is available for rent, and identify what income level (i.e., Very Low Income Household, Low Income Household, Moderate Income Household, or Workforce Household) the available Restricted Unit is designated for. Owner shall maintain a waiting list of potential Eligible Households that incorporates the preference described in Section 6.6(b). The waiting list of potential Eligible Households shall be submitted upon request by the City for City review. Owner shall use the list of potential Eligible Households to fill vacancies in conformance with the City's Below Market Rate Housing Program Administrative Procedures and Guidelines for Property Manager, as amended from time to time, except as modified by this Agreement. If Owner determines that the household is not qualified to rent the Restricted Unit based on income, criminal record, rental history, or other reason that is consistent with state and federal fair housing laws, rules, regulations and guidelines, Owner has no obligation to rent to that household.

(b) Preferences. Subject to Section 6.6(d) below, first preference for the Very Low-, Low- and Moderate-Income Restricted Units shall be offered to Eligible Households that include at least one member who works for the City of Foster City. If there are no Eligible Households in the first preference tier, then second preference shall be offered to classroom teachers who are employees of the San Mateo-Foster City School District, the San Mateo Union High School district or the San Mateo Community College District. If there are no Eligible Households in the second preference tier, then third preference shall be offered to persons who live and work in Foster City. If there are no Eligible Households, in the third preference tier, then fourth preference shall be offered to persons who live in Foster City. If there are no Eligible Households in the fourth preference tier, then fifth preference shall be offered to persons who work in Foster City. If there are no Eligible Households in the fifth preference tier, then sixth preference shall be offered to all others who are income qualified.

Subject to Section 6.6(d) below, the Workforce Housing units shall be offered to households that include at least one member who works for the City of Foster City Police Department, City of Foster City Fire Department or is otherwise considered by the City of Foster City to be a first responder to emergencies. If there are no Eligible Households in the first preference tier, then second preference shall be offered to all other employees of the City of Foster City. If there are no Eligible Households in the second preference tier, then third preference shall be offered to classroom teachers who are employees of the San Mateo-Foster City School District, the San Mateo Union High School district or the San Mateo Community College District. If there are no Eligible Households in the third preference tier, then fourth preference shall be offered to persons who live and work in Foster City. If there are no Eligible Households, in the fourth preference tier, then fifth preference shall be offered to persons who live in Foster City. If there are no Eligible Households in the fifth preference tier, then sixth preference shall be offered to persons who work in Foster City. If there are no Eligible Households in the sixth preference tier, then seventh preference shall be offered to all others who are income qualified.

All preferences in this Section 6.6(b), are subject to and applicable only to the extent permitted by law, including by not limited to all state and federal fair housing laws, rules, regulations and guidelines. If, at any time during the term of this Agreement, the Workforce Housing Owner or Management Entity has a reasonable basis to conclude that the preferences listed above may conflict with the requirements in Section 6.6(d) or any other applicable state or federal law, the Owner or Management Entity shall so notify City whereupon the parties shall meet and confer in good faith, within fifteen (15) days of notification, with the objective of making such revisions to the City's preference program as the parties may mutually agree are necessary or desirable to ensure compliance with applicable laws. In the event, after good faith meet and confer, or City's failure to meet and confer within fifteen (15) days of notification, the Owner reasonably concludes, based on the advice of legal counsel, that any aspect of the City's preference program conflicts with applicable law, the Owner shall not be in default hereunder for not complying with such conflicting aspect.

(c) Income Verification. Prior to entering into a rental agreement with a potential Eligible Household, Owner shall provide a certification to City attesting to the prospective renter's household income and status as an Eligible Household. In connection with

such certification, prospective renters shall be required to provide written certification of household income, including without limitation such documents as income tax returns for the previous calendar year, W-2 statements, and pay stubs.

(d) Compliance with Fair Housing Laws. Owner shall comply with all state and federal fair housing laws, rules, regulations and guidelines. Owner may require each prospective Eligible Household to complete an application and credit and background check. There shall be no obligation to rent a Restricted Unit to a prospective renter whose application and credit check does not demonstrate ability to pay rent.

(e) Indemnity. City shall indemnify, defend (with counsel approved by Owner), and hold the Owner, including but not limited to its agents, employees, and contractors, harmless from and against all Claims or fines or other enforcement actions, and costs related thereto, arising directly or indirectly, in whole or in part, as a result of or in connection with Owner's implementation of or compliance with the Tenant Selection Preferences in Section 6.6 of this Agreement or any similar Tenant Selection Preferences the City may impose. The provisions of this Section 6.6(e) shall survive the expiration or earlier termination of this Agreement.

6.7 Approval of Plans and Amendments. If City has not responded to any submission of the Management Plan, the proposed management entity, the proposed management agreement, or a proposed amendment or change to any of the foregoing within sixty (60) days following City's receipt of such plan, proposal, agreement or amendment, the plan, proposal, agreement, or amendment shall be deemed approved by City, provided Owner's request for approval clearly states that City's failure to respond within such 60-day period shall be deemed approval.

6.8 Fees, Taxes, and Other Levies. Owner shall be responsible for payment of all fees, assessments, taxes, charges, liens and levies applicable to the Property or the Workforce Project, including without limitation possessory interest taxes, if applicable, imposed by any public entity, and shall pay such charges prior to delinquency. However, Owner shall not be required to pay any such charge so long as (a) Owner is contesting such charge in good faith and by appropriate proceedings, (b) Owner maintains reserves adequate to pay any contested liabilities, and (c) on final determination of the proceeding or contest, Owner immediately pays or discharges any decision or judgment rendered against it, together with all costs, charges and interest. The foregoing is not intended to impair Owner's ability to apply for any applicable exemption from property taxes or other assessments and fees.

6.9 Insurance Coverage.

(i) Throughout the Term of this Agreement Owner shall maintain insurance at the following minimum levels:

(1) Commercial General Liability (with coverage at least as broad as ISO form CG 00 01 01 96) coverage in an amount not less than \$4,000,000 general aggregate and \$2,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

(2) Automobile Liability (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") coverage in an amount not less than \$1,000,000 per accident for bodily injury and property damage.

(3) Workers' Compensation coverage as required by the State of California.

(ii) Endorsements. The insurance policies shall be endorsed as follows:

(1) For the commercial general liability insurance, the Indemnitees shall be named as additional insured, and the policy shall be endorsed with a form at least as broad as ISO form CG 20 10 11 85.

(2) Owner's insurance is primary to any other insurance, self-insurance or joint self-insurance available to the City with respect to any claim arising out of this Agreement. Any insurance, self-insurance or joint self-insurance maintained by the City shall be excess of the Owner's insurance and shall not contribute with it.

(3) Owner's insurance will not be canceled, limited, or allowed to expire without renewal until after 30 days' written notice has been given to the City. During the Term of this Agreement, Owner will not materially alter any of the policies or reduce any of the levels of coverage afforded by its insurance policies.

(iii) Qualifications of Insurers. All insurance companies providing coverage to Owner shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California, and shall have an A.M. Best's rating of not less than "A:VII."

(iv) Adjustments. The limits of the liability coverage and, if necessary, the terms and conditions of insurance, shall be reasonably adjusted from time to time (not sooner than ten (10) years after the Effective Date nor more than once in any five (5) year period) to address changes in circumstances for similarly situated and similarly sized projects, including, but not limited to, changes in inflation and the litigation climate in California. Within thirty (30) days following City's delivery of written notice of any such adjustments, Owner shall provide City with amended or new insurance certificates and endorsements evidencing compliance with such adjustments.

(v) Additional Insured Coverage; Liability Limits. For all liability insurance required by this Agreement, Owner 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 to obtain and provide for the benefit of the Indemnitees, additional insured coverage in the same amount of insurance carried by Owner, but in no event less than the minimum amounts specified in this Agreement. In the event that Owner 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.

6.10 Property Damage or Destruction. If any part of the Workforce Project is damaged or destroyed, Owner shall repair or restore the same, consistent with the occupancy and rent restriction requirements set forth in this Agreement. Such work shall be commenced as soon as reasonably practicable after the damage or loss occurs and shall be completed within one year thereafter or as soon as reasonably practicable, provided that insurance proceeds are available to be applied to such repairs or restoration within such period and the repair or restoration is financially feasible.

6.11 Reserves. Owner shall establish and maintain operating and replacement reserves in the amounts as appropriate to ensure the Workforce Project is maintained at all time in decent, safe, sanitary, habitable and tenantable living conditions and in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations.

7. Recordation; No Subordination. This Agreement shall be recorded in the Official Records. Deeds of trust provided for the benefit of lenders shall be subordinate to this Agreement and upon City request such lenders shall execute and deliver to City a subordination agreement in a form reasonably acceptable to the City.

8. Transfer and Encumbrance.

8.1 Requirements for Transfer; Encumbrance and Mortgagee Protection. During the Term of this Agreement, Owner shall have the right to transfer the Workforce Land and Workforce Project, in whole only, by sale, transfer, conveyance, assignment, or long-term lease whether directly or indirectly, voluntarily, involuntarily or by operation of law (collectively, a "**Transfer**"), so long as such Transfer is expressly subject to this Agreement and the transferee enters into an recorded assignment and assumption agreement wherein the transferee accepts all obligations under this Agreement, and notice of any such Transfer is provided to the City within ten (10) days of such Transfer. During the Term of this Agreement, the Owner shall not directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any partial sale, transfer, conveyance, assignment or lease (collectively, "**Partial Transfer**") of any part of the Property or the Workforce Project without the prior written consent of the City, which approval shall not be unreasonably withheld.

8.2 Permitted Partial Transfers. The prohibitions on a Partial Transfer set forth in Section 8.1 above shall not be deemed to prevent: (i) the granting of easements or permits to facilitate development of the Property; (ii) the dedication of any property required pursuant to the PTPIII Project DA; (iii) the lease of individual dwelling units to tenants for occupancy as their principal residence in accordance with this Agreement; or (iv) creating security interests for the purpose of financing the acquisition, construction or permanent financing of the Workforce Project or the Property or Transfers resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest.

8.3 Effect of Partial Transfer without City Consent. It shall be an Event of Default hereunder entitling City to pursue remedies if without the prior written approval of the City,

Owner attempts a Partial Transfer of this Agreement, the Workforce Project, or the Property in violation of Section 8.1. This Section 8.3 shall not apply to Transfers described in Section 8.2.

8.4 Encumbrances. Owner agrees to use best efforts to ensure that all deeds of trust or other security instruments and any applicable subordination agreement recorded against the Property, the Workforce Project or part thereof for the benefit of a lender other than City ("**Third-Party Lender**") shall contain each of the following provisions: (i) Third-Party Lender shall use its best efforts to provide to City a copy of any notice of default issued to Owner concurrently with provision of such notice to Owner; and (ii) City shall have the reasonable right, but not the obligation, to cure any default by Owner within the same period of time provided to Owner for such cure. Owner agrees to provide to City a copy of any notice of default Owner receives from any Third-Party Lender within three (3) business days following Owner's receipt thereof.

8.5 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 Workforce 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; provided however, that 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 Workforce Project or the Property that such violation has occurred.

9. Default and Remedies.

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

- (i) The occurrence of a Transfer in violation of Section 8 hereof;
- (ii) Owner's failure to maintain insurance on the Property and the Workforce Project as provided by Section 6.9 above, and the failure of Owner to cure such default within five (5) days;
- (iii) Subject to Owner's right to contest the following charges, Owner's failure to pay taxes or assessments due on the Property or the Workforce Project or failure to pay any other charge that may result in a lien on the Property or the Workforce Project, and Owner's failure to cure such default within twenty (20) days of delinquency, but in all events prior to the date upon which the holder of any such lien has the right to foreclose thereon;
- (iv) A default arises under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Property and remains uncured beyond any applicable cure period such that the holder of such security instrument has the right to accelerate repayment of such loan;

(v) During the Term of the PTPIII Project DA as that term is defined in the PTPIII Project DA, a default arises under the PTPIII Project DA that remains uncured beyond the expiration of any applicable cure period; or

(vi) Owner's default in the performance of any term, provision or covenant under this Agreement (other than an obligation enumerated in this Section 9.1), and unless such provision specifies a shorter cure period for such default, the continuation of such default for thirty (30) days in the event of a monetary default or sixty (60) days in the event of a non-monetary default following the date upon which City shall have given written notice of the default to Owner, or if the nature of any such non-monetary default is such that it cannot be cured within sixty (60) days, Owner's failure to commence to cure the default within sixty (60) days and thereafter prosecute the curing of such default to completion with due diligence and in good faith but in no event longer than ninety (90) days from receipt of the notice of default.

9.2 Remedies. Upon the occurrence of an Event of Default and its continuation beyond any applicable cure period, City may proceed with any of the following remedies:

(i) 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;

(ii) For violations of obligations with respect to rents for Restricted Units, impose a charge in an amount equal to the actual amount collected in excess of the Affordable Rent; or

(iii) Pursue any other remedy allowed under the law or in equity.

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.

10. Indemnity. Except as otherwise provided in Section 6.6(e) of this Agreement, to the greatest extent permitted by law, Owner shall indemnify, defend (with counsel approved by City), and hold the Indemnitees harmless from and against all Claims arising directly or indirectly, in whole or in part, as a result of or in connection with Owner's management, or operation of the Property and the Workforce Project, or Owner's employees', agents', contractors', or subcontractors' failure to comply with applicable law, including without limitation state and federal fair housing laws, or failure to perform any obligation as and when required by this Agreement. Owner's indemnification obligations under this Section 10 shall not extend to Claims to the extent resulting from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 10 shall survive the expiration or earlier termination of this Agreement.

10.1 Terms Applicable to Indemnity Provisions. The terms set forth in this Section 10.1 shall apply to all provisions of this Agreement that pertain to Owner's obligations to

indemnify City and the other Indemnitees, including without limitation, Section 10. In connection with each such provision, all of the following shall apply:

(a) City does not and shall not waive any rights that it may have by reason of any indemnity and hold harmless provision set forth in this Agreement because of the acceptance by City, or the deposit with City by Owner, of any of the insurance policies described in this Agreement.

(b) Owner's obligation to indemnify the Indemnitees shall not be limited or impaired by any of the following: (i) any amendment or modification of the PTPIII Project DA; (ii) any extensions of time for performance required by any City Document; (iii) any provision in the PTPIII Project DA limiting the personal liability of Owner, or any other party under the PTPIII Project DA; (iv) the accuracy or inaccuracy of any representation and warranty made by Owner under this Agreement or by Owner or any other party under the PTPIII Project DA, (v) the release of Owner or any other person, by City or by operation of law, from performance of any obligation under the PTPIII Project DA; and (vi) the release or substitution in whole or in part of any security.

(c) The obligations of Owner to indemnify the Indemnitees shall survive any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, except to the extent that the foreclosing lender has agreed to expressly assume Owner's indemnity obligations under this Section 10.

11. Residential Use; No Condominium Conversion. The Property and the Restricted Units shall be used only for residential purposes, and the Restricted Units shall be operated and maintained as residences for the Term of this Agreement. No part of the Property shall be operated as transient housing in which the term of occupancy is less than thirty (30) days. Owner shall not convert the Property to condominium or cooperative ownership or sell condominium or cooperative rights to the Property or any part thereof during the Term of this Agreement.

12. Miscellaneous.

12.1 Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties and recorded in the Official Records.

12.2 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 Owner 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.

12.3 Notice. Any notice, demand or request which may be permitted, required or desired to be given in connection herewith shall be given in writing and directed to the City and Owner as follows:

If to the City: Community Development Director
City of Foster City
610 Foster City Boulevard
Foster City, CA 94404
Attention: Curtis Banks
Telephone: (650) 286-3225

With a copy to: City Attorney
City of Foster City
610 Foster City Boulevard
Foster City, CA 94404
Telephone: (650) 286-3200

If to Developer: SummerHill Pilgrim Triton LLC
c/o SummerHill Homes LLC
3000 Executive Parkway, Suite 450
San Ramon, CA 94583
Attn: COO

With a copy to: SummerHill Pilgrim Triton LLC
c/o SummerHill Homes LLC
777 California Avenue
Palo Alto, CA 94304
Attn: General Counsel

Notices to be deemed effective if delivered by certified mail return receipt requested or commercial courier, with delivery to be effective upon verification of receipt. Any Party may change its respective address for notices by providing written notice of such change to the other Party.

12.4 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.

12.5 Parties Not Co-Venturers; Independent Contractor; No City Relationship. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another. The relationship of Owner and City shall not be construed as a joint venture, equity venture, partnership or any other relationship. City neither undertakes nor assumes any responsibility or duty to Owner (except as expressly provided in this Agreement) or to any third party with respect to the Workforce Project. Owner and its employees are not employees of City but rather are, and shall always be considered independent

contractors. Furthermore, Owner and its employees shall at no time pretend to be or hold themselves out as employees or agents of City. Except as City may specify in writing, Owner shall not have any authority to act as an agent of City or to bind City to any obligation.

12.6 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's Authorized Representative or by any person who shall have been designated by the City's Authorized Representative, without further approval by the City Council.

12.7 Non-Liability of City and City Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to Owner 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 Owner or its successor or for any obligation of City under this Agreement.

12.8 Headings; Construction; Statutory References. 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. All references in this Agreement to particular statutes, regulations, ordinances or resolutions of the United States, the State of California, or the City of Foster City shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

12.9 Time is of the Essence. Time is of the essence in the performance of this Agreement.

12.10 Governing Law; Venue. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of San Mateo County, California or in the Federal District Court for the Northern District of California.

12.11 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.

12.12 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.

12.13 Entire Agreement; Exhibits. This Agreement, together with the PTPIII Project DA for so long as it is in effect under its terms, 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. Exhibit A attached hereto is incorporated herein by this reference.

12.14 Survival. Owner's obligations pursuant to Section 10, and all other provisions that expressly so state, shall survive the expiration or termination of this Agreement.

12.15 No Third Party Beneficiaries. There are no third party beneficiaries to this Agreement.

12.16 City's Acquisition of Fee Title. In the event City acquires fee title to the Workforce Project, City may, in its sole discretion by written instrument, terminate, amend or modify this Agreement from time to time as it sees fit.

12.17 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.

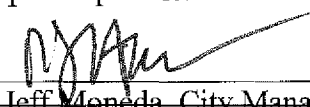
12.18 Costa-Hawkins Covenants and Waivers. The PTPIII Project DA is a voluntary, mutual contract that implements the City policies, including a grant of vested rights, benefitting the PTPIII Project, including the Workforce Project and result in substantial, identifiable benefits to the City and the Developer and any successors and assigns, as contemplated by California Government Code section 65915. In consideration thereof, the Parties understand and agree that if the Costa-Hawkins Rental Housing Act is repealed, the City shall not apply more stringent rent or vacancy control measures than set forth in this Agreement to the Workforce Project or the Property. This provision shall survive for the life of this Agreement.

SIGNATURES ON FOLLOWING PAGE(S).

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

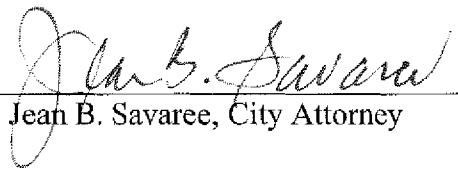
CITY:

CITY OF FOSTER CITY, a California
municipal corporation

By: 

~~Jeff Moneda, City Manager~~ Dante Hall
[signature must be notarized] Interim
City Manager

APPROVED AS TO FORM:

By: 

Jean B. Savaree, City Attorney

ATTEST:

By: 

~~Priscilla Tam, City Clerk~~
Priscilla Schaus, City Clerk

OWNER:

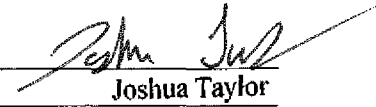
SUMMERHILL PILGRIM TRITON LLC,
a California limited liability company

By: SummerHill Homes LLC,
a California limited liability company,
its manager

By: 

Name: **Monica Wong**

Title: **Controller**

By: 

Name: **Joshua Taylor**

Title: **Assistant Secretary**

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.

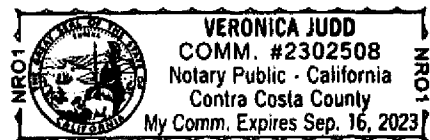
State of California)
County of Contra Costa)

On July 28, 2020 before me, Veronica Judd, Notary Public,
personally appeared Monica Wong and Joshua Taylor, 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 Veronica Judd (Seal)



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

State of California)
County of San Mateo)

On September 18, 2020 before me, Yelena K. Cappello, Notary Public
personally appeared Danle Hall, 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] (Seal)

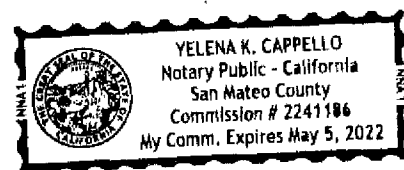


Exhibit A

Exhibit A

LEGAL DESCRIPTION THE PROPERTY

Real property in the City of Foster City, County of San Mateo, State of California, described as follows:

LOT 16 AS SHOWN ON THE MAP OF "LAGUNA VISTA PILGRIM TRITON PHASE 3", FILED FOR RECORD ON NOVEMBER 25, 2020 IN BOOK 143 OF MAPS, AT PAGES 6 THROUGH 13, SAN MATEO COUNTY RECORDS.