

EXHIBIT H TO DEVELOPMENT AGREEMENT

**AFFORDABLE HOUSING PLAN**

**(INDIA BASIN)**

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**Attachments**

AHP Attachment A: City and County of San Francisco Inclusionary Affordable Housing Monitoring and Procedures Manual

## SUMMARY

This Affordable Housing Plan is to ensure that at least 25% of all Residential Units built for the Project are affordable. Developer shall satisfy this requirement in any combination of the following options: (1) by conveying up to three (3) Development Parcels, at no cost, to an affordable housing developer for the construction of up to one hundred eighty (180) 100% Affordable Units; (2) by constructing on-site Inclusionary Units within Market-Rate Projects; and (3) by paying the India Basin Affordable Housing In-Lieu Fee on up to 300 Market-Rate Residential Units (which will, if paid on 300 Market Rate Residential Units, be considered the equivalent of 75 Inclusionary Units as described below) . In recognition of the phased development of the Project, this Affordable Housing Plan requires that interim milestones be met before issuance of every 250th Temporary Certificate of Occupancy for a Residential Unit (or Building containing such Residential Unit) within the Project Site.

In addition, this Affordable Housing Plan establishes maximum affordability levels for 100% Affordable Units and Inclusionary Units. At each of the interim milestones and upon full build out of the Project Site, (1) the rental rate for the affordable Rental Units must not exceed, on average, a rate that is affordable to households earning one hundred ten percent (110%) of AMI, and (2) the purchase price for the affordable For Sale Units must not exceed, on average, an amount that is affordable to households earning one hundred twenty percent (120%) of AMI.

All in lieu fees generated by the Project Site will be applied by MOHCD to affordable housing in Supervisorial District 10.

### 1. DEFINITIONS.

The following terms in this Affordable Housing Plan have the meanings given to them below. Initially capitalized and other terms not listed below are defined in the Development Agreement. All references to the Development Agreement include this Affordable Housing Plan.

**"100% Affordable Units"** means the Residential Units restricted to an Affordable Housing Cost and located within a 100% Affordable Housing Building. All of the requirements in this Affordable Housing Plan that apply to Inclusionary Units shall apply to the 100% Affordable Units, with the exception that they will not be located within a Market Rate Project.

**"4% LIHTC"** means tax credits available for affordable housing development under the Tax Code.

**"Affordable Housing Conveyance Agreement"** is defined in Subsection 3.2 (Affordable Housing Conveyance Agreement).

**"Affordable Housing Cost"** means (a) with respect to a Rental Unit, a monthly rental charge (including the Utility Allowance applicable to the Household Size of such Rental Unit but excluding Parking Charges) that does not exceed thirty percent (30%) of the maximum Area Median Income percentage permitted for the applicable type of Residential Unit, based upon Household Size; and (b) with respect to a For-Sale Residential Unit, a purchase price determined in accordance with the MOHCD Manual. An Affordable Housing Cost will not exceed an amount that is twenty percent (20%) below the average rental charge or sales price for the neighborhood (as the neighborhood is defined by Planning), generally consistent with Section 415.6(a)(4).

**"Affordable Housing Developer"** means a qualified developer selected by Developer and reasonably approved by MOHCD to develop an 100% Affordable Housing Parcel.

**"100% Affordable Housing Parcel"** means a Development Parcel that Developer elects to convey to an Affordable Housing Developer for construction of a 100% Affordable Housing Project.

**“100% Affordable Housing Project”** means the building that an Affordable Housing Developer builds on a 100% Affordable Housing Parcel in which all of the Residential Units are restricted to an Affordable Housing Cost, with the exception of the manager’s unit. The inclusion of associated and ancillary uses, such as ground floor retail, child care, social services, parking, or other tenant-serving uses will not affect the designation of the building as an Affordable Housing Project.

**“AMI”** or **“Area Median Income”** when used in reference to Inclusionary Units and 100% Affordable Units means the current unadjusted median income for the San Francisco area as published by HUD, adjusted solely for Household Size. If HUD ceases to publish the AMI data for San Francisco for eighteen (18) months or more, MOHCD and Developer will make good faith efforts to agree on other publicly available and credible substitute data for AMI.

**“Deferral Surcharge”** is defined in Subsection 6.3 (Payment of Fee).

**“Development Parcel”** means a Market Rate Parcel or a 100% Affordable Housing Parcel.

**“Final Affordable Percentage”** is defined in Subsection 2.1(b) (Final Affordable Percentage).

**“Final Completion of all Residential Projects”** means the date that a Temporary Certificate of Occupancy has been issued for all Residential Units to be developed on the Project Site under the Development Agreement, covering all Development Parcels.

**“Final Requirements”** means the Final Affordable Percentage is met, at the Maximum Average AMI, at the Completion of the 1,250th Residential Unit and at all times thereafter.

**“First Construction Document”** means the first building permit or site permit and addendum for Buildings that authorizes its construction to begin, and expressly excluding any construction permit for site preparation (e.g., demolition or relocation of existing structures, excavation and removal of contaminated soils, fill, grading, soil compaction and stabilization, and construction fencing and other security measures).

**“For-Rent”** or **“Rental Unit”** means a Residential Unit that is not a For Sale Unit. **“For-Sale”** or **“Sale Unit”** means a Residential Unit that is intended at the time of completion of construction to be offered for sale, e.g., as a condominium, for individual unit ownership, and then is sold to an individual or household.

**“household”** means one or more related or unrelated individuals who live together in a Residential Unit as their primary dwelling.

**“Household Size”** means the number of persons in a household occupying a Residential Unit as calculated under the MOHCD Manual.

**“HUD”** means the United States Department of Housing and Urban Development, or any successor agency.

**“In Lieu Fee Credit”** is defined in Section 5.2(a) (Calculation and Timing of Fee).

**“Inclusionary Unit”** means a Residential Unit constructed in a Market Rate Project with a Restrictive Covenant that (i) for a Rental Unit, is restricted to an Affordable Housing Cost not exceeding an AMI that, when averaged with the For-Rent 100% Affordable Units and other For-Rent Inclusionary Units does not exceed the Maximum Average AMI for Rental Units, and (ii) for a For Sale Unit, is restricted to an Affordable Housing Cost not exceeding an AMI that, when averaged with For-Sale 100% Affordable Units and other For-Sale Inclusionary Units, does not exceed the Maximum Average AMI for For-Sale Units.

**“India Basin Affordable Housing In-Lieu Fee”** is defined in Subsection 5.1 (Payment of India Basin Affordable Housing In-Lieu Fee).

**“Interim Affordable Housing Construction Deadline”** is defined in Subsection 3.2(c) (Affordable Housing Conveyance Agreement).

**“Interim Affordable Percentage”** is defined in Subsection 2.2(b)(i) (Required Interim Threshold).

**“Interim Measurement Date”** is defined in Subsection 2.2(b) (Required Interim Threshold).

**“Interim Requirements”** means that the Interim Affordable Percentage and the applicable Maximum Average AMI requirements of Section 2.2 are satisfied from and after each Interim Measurement Date.

**“Market-Rate For Sale Project”** means a Market-Rate Project containing For Sale Units.

**“Market-Rate Parcel”** means a Development Parcel other than a 100% Affordable Housing Parcel on which development of residential use is permitted.

**“Market-Rate Project”** means a Residential Project constructed by Developer that contains Market-Rate Units, and potentially Inclusionary Units, and may include other uses permitted under the SUD.

**“Market-Rate Rental Project”** means a Market-Rate Project containing Rental Units.

**“Market-Rate Unit”** means any Residential Unit constructed within the Project Site that is not subject to affordability restrictions under this Affordable Housing Plan.

**“Marketing and Operations Guidelines”** is defined in Subsection 5.5(a) (Generally).

**“Maximum Affordable Housing AMI”** is defined in Subsection 3.2(d) (Affordable Housing Conveyance Agreement).

**“Maximum Average AMI”** is defined in Subsection **Error! Reference source not found.**(b) (Final Affordable Percentage and Affordability Levels).

**“Minimum 100% Affordable Units”** is defined in Subsection 3.2(c) (Affordable Housing Conveyance Agreement).

**“MOHCD Manual”** is defined in Subsection 5.4(a) (Procedures for Monitoring and Enforcement).

**“Parking Charge”** means the charge for a Parking Space that is accessory to one or more Residential Projects on the Project Site.

**“Parking Space”** means a parking space constructed by or on behalf of Developer or an Affordable Housing Developer.

**“Residential Unit”** means a room or suite of two or more rooms that is designed for residential occupancy for 32 consecutive days or more, including provisions for sleeping, eating and sanitation, for not more than one family. [*refer to code definition instead?*]

**“Restrictive Covenant”** means a recorded document permanently encumbering a Market-Rate Project or a 100% Affordable Housing Project that (i) for Market-Rate Project, specifies the number and location of Inclusionary Units and required affordability levels in accordance with this Affordable Housing Plan, and (ii) for a 100% Affordable Housing Project, specifies that all of the Residential Units (other than the manager’s unit) are restricted to an Affordable Housing Cost. The form of the Restrictive Covenants shall generally be consistent with the forms used by MOHCD under Section 415, with such modifications (i) as needed to conform to this Affordable Housing Plan, and (ii) to limit the term and to make other adjustments as needed for any Inclusionary or 100% Affordable Units that are financed with 4% LIHTC. Any deviations from MOHCD’s forms will be subject to MOHCD’s review and approval.

**“Section 415”** means the City’s Inclusionary Affordable Housing Program (Planning Code sections 415 and 415.1 through 415.11), as amended from time to time.

**“Substantially Completed”** means, with respect to any Residential Unit, a Temporary Certificate of Occupancy has been issued for such Residential Unit.

**“Utility Allowance”** means a dollar amount determined in a manner acceptable to the California Tax Credit Allocation Committee, which may include an amount published periodically by the San Francisco Housing Authority or successor based on standards established by HUD, for the cost of basic utilities for households, adjusted for Household Size. If both the San Francisco Housing Authority and HUD cease publishing a Utility Allowance, then Developer may use another publicly available and credible dollar amount approved by MOHCD.

## 2. HOUSING DEVELOPMENT

### 2.1. Residential Development at Full Build-Out.

(a) Total Residential Units. The maximum number of Residential Units permitted on the Project Site is one thousand five hundred seventy-five (1,575) Residential Units.

(b) Final Affordable Percentage and Affordability Levels. Upon Final Completion of all Residential Projects, (i) the sum of the Inclusionary Units, the 100% Affordable Units and the In Lieu Fee Credits equals or exceeds twenty-five percent (25%) of the total number of Residential Units constructed on the Project Site (the **“Final Affordable Percentage”**), (ii) for Rental Units, the 100% Affordable Units and Inclusionary Units, taken together, are restricted, on average, at an Affordable Housing Cost that does not exceed one hundred ten percent (110%) of AMI, and (iii) for For-Sale Units, the 100% Affordable Units and Inclusionary Units, taken together, are restricted, on average, at an Affordable Housing Cost that does not exceed one hundred twenty (120%) of AMI (clauses (ii) and (iii), in either case, the **“Maximum Average AMI”**).

(c) All Residential Units with a Temporary Certificate of Occupancy shall be counted toward the “total number of Residential Units constructed on the Project Site” for purposes of calculating the Interim Affordable Percentage and the Final Affordable Percentage, as applicable. All Inclusionary Units and 100% Affordable Units will be counted for purposes of calculating the Maximum Average AMI at each Interim Measurement Date and at Final Completion of all Residential Projects.

### 2.2. Interim Residential Development.

(a) Phasing Effect. The Parties understand that, in connection with the Project phasing, Developer will have flexibility in assigning affordability restrictions and permitting payment of the India Basin Affordable Housing In Lieu Fee on Development Parcels, so long as the Interim Requirements and the Final Requirements are satisfied.

(b) Interim Requirements. Upon the issuance of a Temporary Certificate of Occupancy for the Residential Units described in Table 2.2(b) below (each, an **“Interim Measurement Date”**):

(i) The sum of the Inclusionary Units, 100% Affordable Units (including, without limitation, the Upfront Credits) and In Lieu Fee Credits, as a percentage of the total Residential Units within the Project Site that are Substantially Completed (or, in the case of the In Lieu Fee Credits, for which the India Basin Affordable Housing In-Lieu Fee has been paid), must equal or exceed the interim affordable percentage described in Table 2.2(b) below (each, an **“Interim Affordable Percentage”**) and the Interim Affordable Percentage must equal or exceed that percentage at all times thereafter; and

(ii) The Maximum Average AMI of the Inclusionary and the 100% Affordable Rental Units that are Substantially Completed, and the Maximum Average AMI as applied to For-Sale Units that are Substantially Completed, must be satisfied.

(iii) Notwithstanding the language in subsection (i) above regarding Substantial Completion, for purposes of determining whether the Interim Requirements

have been satisfied, Developer shall be given credit for each 100% Affordable Unit in an Affordable Housing Project if the underlying real estate has been transferred to an Affordable Housing Developer, a Restrictive Covenant approved by MOHCD has been recorded, the Affordable Housing Project is under construction, with completion bonds in place, and the Affordable Housing Project has achieved at least 50% completion, as confirmed by the MOHCD Director.

Table 2.2(b): Interim Affordable Percentage

Upon issuance of a Temporary Certificate of Occupancy for:	Interim Affordable Percentage must equal or exceed:
250th Residential Unit	20.0%
500th Residential Unit	20.0%
750th Residential Unit	22.5%
1,000th Residential Unit	22.5%
1,250th Residential Unit	25.0%
1,500th Residential Unit	25.0%

**2.3. Failure to Achieve Interim Requirements.** If the Interim Requirements are not satisfied on an Interim Measurement Date or equaled or exceeded at all times thereafter, then the City will have no obligation to issue Temporary Certificates of Occupancy or Later Approvals, unless and until (i) the issuance of a Temporary Certificate of Occupancy would cause the Interim Requirements to be met (e.g., issuance to a Market-Rate Project containing the requisite Inclusionary Units), (ii) MOHCD has approved, in its sole discretion, a development plan designed to achieve the applicable Interim Requirements within the next Development Parcels or (iii) in the case of a failure to achieve an Interim Affordable Percentage, Developer has paid the India Basin Affordable Housing In-Lieu Fee on a sufficient number of Residential Units to cause the Interim Affordable Percentage to be satisfied.

**2.4. Development Process.**

**(a) Phases of Development.** Developer proposes to construct the Project in discrete Development Phases, as more particularly described in the Development Agreement, subject to revision in accordance with the Development Agreement. Because of the flexibility provided to Developer under this Affordable Housing Plan, Developer shall not transfer any real property within the Project Site without identifying, with specificity, the total number of Residential Units that will be developed on the real property transferred, the required number of Inclusionary and 100% Affordable Units, and the maximum AMI levels for the Inclusionary and 100% Affordable Units. For each Development Phase, there can be only one Developer responsible for Completion of the Infrastructure, and that Developer will also be responsible for making the above allocations and for gathering and providing to City the information required to complete the housing data table and map in subparagraph (b) below. Upon any transfer of the entirety of a Development Phase, the Developer responsible for Completion of the Infrastructure in each Development Phase will cooperate and provide information as required to all other Developers, as needed, to complete the

housing data tables. Finally, if there is more than one Developer within a Development Phase, each Developer acknowledges and understands the City's rights and remedies for failure to meet the Interim Requirements as set for in Development Agreement Section 9.4.2, and therefore it may be impacted by the City's right to not issue certificates of occupancy and Later Approvals based upon another Developer's failure to satisfy the Interim Requirements.

**(b)** Housing Data Table. To track Developer's obligations under this Affordable Housing Plan, at the time Developer submits a Development Phase application to the City, it will provide the Planning Director with a housing data table and map that tracks Developer's obligations hereunder. The housing data table and map will be subject to the MOHCD Director's approval, not to be unreasonably withheld. Whenever Developer changes the development program in a manner that changes the information in a previously approved housing data table or map, it will update the table and provide a copy to MOHCD with an explanation of the changes. Each map will show the proposed location of the Residential Units in the Development Phase by type (i.e., Market Rate, Inclusionary, 100% Affordable Unit), and any proposed application of In-Lieu Fee Credits. Each housing data table must include the following information:

**(i)** An estimate, based on then-current market conditions, of the number of Residential Units to be constructed in the current Development Phase (including the number of Inclusionary and 100% Affordable Units and In-Lieu Fee Credits) and, to the extent known, the anticipated housing tenure (rental vs. ownership);

**(ii)** The number of Residential Units anticipated to be constructed in all prior Development Phases for which Developer has obtained a Tentative Subdivision Map approval but for which the City has not issued a Temporary Certificate of Occupancy;

**(iii)** The number of Residential Units in all prior Development Phases for which the City has issued a Temporary Certificate of Occupancy and the proposed housing tenure (rental vs. ownership) of those Residential Units;

**(iv)** The sum of the following taken as a percentage of the total Residential Units within the Project Site as of the date of the applicable Housing Data Table submittal: (a) the Inclusionary Units for which a Temporary Certificate of Occupancy has been issued, (b) 100% Affordable Units for which a Temporary Certificate of Occupancy has been issued; (c) Upfront Credits taken in accordance with Section 3.3; (d) the number of Residential Units for which the India Basin Affordable Housing In-Lieu Fee has been paid; and (e) the Inclusionary Units and 100% Affordable Units that do not have a temporary certificate of occupancy but for which a Restrictive Covenant has been recorded.

**(v)** The average AMI calculated separately for Rental Projects and For Sale Projects for (i) all 100% Affordable Units that have obtained a Temporary Certificate of Occupancy as of the date of the applicable Housing Data Table, (ii) all Inclusionary Units that have obtained a Temporary Certificate of Occupancy as of the date of the applicable Housing Data Table, (iii) the number of Residential Units for which the India Basin Affordable Housing In-Lieu Fee has been paid as of the date of the applicable Housing Data Table; and (iv) the AMI levels for 100% Affordable Units and Inclusionary Units that do not have a Temporary Certificate of Occupancy but for which a Restrictive Covenant has been recorded.

To the extent any of the above information is estimated at the time of the Development Phase Application, Developer will not transfer a parcel that will include Residential Units to another Developer without providing to MOHCD an update to the housing data table and map that describes the affordable housing obligations relating to the transferred property, together with the most current information regarding Developer's plan to satisfy the applicable Interim Requirements by the next Interim Measurement Date.

### 3. 100% AFFORDABLE HOUSING PARCELS

**3.1. Conveyance to Affordable Housing Developer.** Developer may elect to convey up to three (3) Development Parcels to an Affordable Housing Developer for the development of a 100% Affordable Housing Project containing up to one hundred eighty (180) 100% Affordable Units in the aggregate. Developer shall receive credit in accordance with this Article 3 towards the Final Affordable Percentage, the Interim Affordable Percentage, and the Maximum Average AMI for the 100% Affordable Units constructed or to be constructed on such Affordable Housing Parcel.

**3.2. Affordable Housing Conveyance Agreement.** The conveyance of an 100% Affordable Housing Parcel (either in fee or ground lease) will be pursuant to a written conveyance or option agreement (an “**Affordable Housing Conveyance Agreement**”), pursuant to which, among other things, Developer and the Affordable Housing Developer covenant and agree that:

(a) Developer shall convey the 100% Affordable Housing Parcel (or other right of control) to the Affordable Housing Developer at no cost, excluding payment of customary transaction costs;

(b) the Affordable Housing Developer shall construct and obtain a Temporary Certificate of Occupancy for a minimum number of 100% Affordable Units to be set forth in such Affordable Housing Conveyance Agreement (the “**Minimum 100% Affordable Units**”); and

(c) the Affordable Housing Developer shall rent or sell, as applicable, the 100% Affordable Units at levels affordable to households with incomes not exceeding a maximum AMI to be set forth in such Affordable Housing Conveyance Agreement (the “**Maximum Affordable Housing AMI**”) for the life of the Affordable Housing Project.

**3.3. Credit for 100% Affordable Units.** For purposes of calculating whether the Interim Affordable Percentage and the Maximum Average AMI have been satisfied as of any Interim Measurement Date, Developer shall receive credit for the 100% Affordable Units in either of the following manners, at Developer’s election:

(a) Upon Conveyance. (i) One-third (1/3) of the Minimum 100% Affordable Units (the “**Upfront Credits**”), at the Maximum Affordable Housing AMI, upon conveyance of the 100% Affordable Housing Parcel to an Affordable Housing Developer and recordation of a Restrictive Covenant memorializing the requirements as set forth in the Affordable Housing Conveyance Agreement; and (ii) the remainder of the 100% Affordable Units actually constructed, at the affordability levels at which the 100% Affordable Units are actually offered to the public, upon issuance of a Temporary Certificate of Occupancy for the applicable 100% Affordable Housing Project; or

(b) Upon Commencement. All of the 100% Affordable Units to be constructed within the 100% Affordable Housing Project upon (i) commencement of vertical construction (following conveyance and the recordation of a Restrictive Covenant), and (ii) delivery to MOHCD of a completion guaranty or other security in form and substance acceptable to MOHCD; provided, if Affordable Housing Developer or its affiliate delivers a completion guaranty or other acceptable security to a construction lender, then the requirement set forth in clause (ii) shall be deemed to have been satisfied if the City is listed as a third party beneficiary.

**3.4. No Other Developer Obligations.** Developer’s sole obligations with respect to development of 100% Affordable Housing Projects on the 100% Affordable Housing Parcels are those set forth in this Article and any Affordable Housing Conveyance Agreement. Nothing in this Affordable Housing Plan requires Developer to contribute funds to MOHCD or any other person to complete the 100% Affordable Housing Projects. But failure to complete a 100% Affordable Housing Project may impact Developers within the Project Site if, as a result, the Interim Requirements are not satisfied by an Interim Measurement Date.

#### 4. INCLUSIONARY HOUSING REQUIREMENTS

**4.1. Market-Rate Projects.** Developer may elect, but shall not be obligated to, provide Inclusionary Units within one or more Market-Rate Projects, so long as the requirements of this Affordable Housing Plan are satisfied. Within any such Market-Rate Project, there will be no minimum number of Inclusionary Units nor any maximum affordability level so long as the Interim Requirements are met by each Interim Measurement Date, and the Final Requirements are met on a Project Site-wide basis. Any such election shall be memorialized in a recorded Restrictive Covenant prior to commencement of construction.

**4.2. Financing.** Developer is responsible for financing the development of the Inclusionary Units included within the Market-Rate Projects and may access financing sources, including sources of below market rate housing financing, to the extent the Market-Rate Project qualifies for any such available financing. The City has no obligation to provide any funding to any Market Rate Project or Affordable Housing Project under this Affordable Housing Plan. .

**4.3. Credit for Inclusionary Units.** Upon issuance of a Temporary Certificate of Occupancy for any Inclusionary Unit, Developer shall receive credit under this Affordable Housing Plan for such Inclusionary Unit, at the affordability level set forth in the applicable Restrictive Covenant.

#### 4.4. Procedures for Monitoring and Enforcement.

**(a)** Subject to clause (b) of this Subsection, procedures for renting or selling an Inclusionary Unit must conform to the *City and County of San Francisco Inclusionary Affordable Housing Program Monitoring and Procedures Manual*, as amended from time to time ( the "MOHCD Manual").

**(b)** To the extent that the MOHCD Manual (as it may be amended from time to time) is inconsistent with or conflicts with the specific requirements of this Affordable Housing Plan, this Affordable Housing Plan will prevail. Accordingly, MOHCD agrees that a Developer of a Market-Rate Project may proceed under the following provisions.

**(i)** All Inclusionary Units must be on the Project Site. Developer will have no off-site option.

**(ii)** Units shall be designated in accordance with Zoning Administrator Bulletin 10 (Designation Priorities for the Inclusionary Affordable Housing Program).

**(iii)** Parking spaces shall be made available to households renting Inclusionary Units at the same ratio of Parking Spaces to Market Rate Units in the applicable Market Rate Project. All parking spaces will be offered and priced in accordance with the MOHCD Manual.

**(c)** The maximum monthly parking rate for an Inclusionary Unit will be equal to the ratio of the Inclusionary Unit's rent as compared to rent for an equivalent (determined by factors including square footage, number of bedrooms, and location within the Market Rate Project) Market-Rate Unit. For example, if the equivalent Market-Rate Unit's monthly rent is \$3,000 and the Inclusionary Unit's monthly rent is \$1,500, the permitted parking rate for a tenant in the Inclusionary Unit would be fifty percent (50%) of market-rate Parking Charge. Parking Charges may be adjusted in concert with market rate adjustments, but no more than annually.

#### 4.5. Marketing.

**(a)** Generally. Developer may not market or rent Market Rate, Inclusionary Units or 100% Affordable Units until MOHCD has approved, in its reasonable discretion, the following: (i) Marketing and Operations Guidelines, which must include any preferences required by the MOHCD Manual or this Affordable Housing Plan; (ii) conformity of the proposed Affordable Housing Cost for Inclusionary Units with this Affordable Housing Plan; and (iii) project-specific eligibility and

income qualifications for tenant households (collectively, “**Marketing and Operations Guidelines**”).

**(b)** Marketing and Operations Guidelines.

**(i)** After the City notifies MOHCD of the recordation of a Final Subdivision Map that will allow development within the first Development Phase, Developer shall commence to develop and diligently pursue completion of area- or project-wide Marketing and Operations Guidelines for each Market-Rate Project within the Project Site.

**(ii)** MOHCD will review and grant or withhold its approval of each set of Marketing and Operations Guidelines in its reasonable judgment within thirty (30) days after it is delivered. All marketing, outreach and sales or lease procedures shall be in compliance with the MOHCD Manual, except to the extent a deviance is approved by MOHCD as part of the Marketing and Operations Guidelines.

**(c)** Restrictive Covenant. Each Restrictive Covenant for a Market-Rate Parcel to be developed as a Market-Rate Rental Project must include the following.

**(i)** the total number of Residential Units and the number and location of the Inclusionary Units, with the maximum AMI level for each Inclusionary Unit, that the Vertical Developer intends to build on the Market-Rate Parcel;

**(ii)** a requirement to provide and maintain the Inclusionary Units at the specified AMI levels for the life of the Market-Rate Rental Project;

**(iii)** for Rental Units, a covenant to keep the Inclusionary Units as Rental Units for a period that is the greater of the life of the Market-Rate Rental Project, and fifty-five (55) years from issuance of a Temporary Certificate of Occupancy for such Inclusionary Units; and

**(iv)** the City as a third party beneficiary, with the right to enforce the restrictions and receive attorneys' fees and costs in any enforcement action.

**4.6.** Planning Code Section 415. Due to the detail set forth in this Affordable Housing Plan, and the differences between the City's inclusionary program under Section 415 and this Affordable Housing Plan, the Parties have not imposed all of the requirements of Section 415 into this Agreement. However, the Parties acknowledge and agree that (i) the location of the Inclusionary Units within a Market Rate Project shall be approved by the City in accordance with the standards and practices established for Section 415, (ii) all Inclusionary Units and 100% Affordable Units will be subject to the lottery system established by MOHCD under Section 415, (iii) MOHCD will monitor and enforce the requirements applicable to Inclusionary Units under this Article 4 in accordance with Planning Code Section 415.9, except that all references to Section 415 will be deemed to refer to the requirements under this Affordable Housing Plan, and (iv) to the extent there are implementation issues that have not been addressed in this Housing Plan, then the provisions of Section 415 and the MOHCD Manual shall govern and control such issues. To the extent Section 415 is incorporated into and applies to actions under this Affordable Housing Plan, it will mean Section 415 as it is amended from time to time, except to the extent any amendment conflicts with the express provisions of this Affordable Housing Plan.

**4.7.** Outreach. Given the Project's Site's location, the Parties desire that, to the greatest extent permitted by MOHCD's then-applicable policies and procedures, pre-marking and marketing programs for Inclusionary Units constructed on the Market-Rate Parcels target residents of Supervisorial District 10 and/or residents residing within one-half (0.5) miles of the Project Site. In addition, the Parties desire that residents of District 10 and residents residing within one-half (0.5) miles of the Project Site be given the maximum neighborhood preference for leasing or acquisition, as applicable, of Inclusionary Units permitted under MOHCD's then-applicable policies and procedures.

## 5. INDIA BASIN AFFORDABLE HOUSING FEE.

5.1. Payment of India Basin Affordable Housing In-Lieu Fee. Developer may elect to pay an affordable housing fee (the “**India Basin Affordable Housing In-Lieu Fee**”) on not more than 300 Residential Units in the aggregate. In consideration of these requirements, in the event of any inconsistencies regarding the collection of fees under Section 415 from the Project Site and this Agreement, then this Agreement will prevail.

### 5.2. Calculation and Timing of Fee.

(a) The initial India Basin Affordable Housing In-Lieu Fee rate will be \$61 per gross square foot, payable on those Residential Units for which Developer elects to pay the India Basin Affordable Housing In-Lieu Fee. Upon payment of the India Basin Affordable Housing In-Lieu Fee, Developer will receive credit (an “**In Lieu Fee Credit**”) equal to one quarter, or twenty-five percent (25%), of an Inclusionary Unit. In other words, In Lieu Fee Credits paid for every four (4) Residential Units will equal one Inclusionary Unit for purposes of the Interim Requirements and the Final Requirements. There will be no AMI calculation as it relates to the In Lieu Fee Credits and, for purposes of calculating the Maximum Average AMI at any time, only the AMI levels on the Inclusionary and 100% Affordable Units will be considered.

(b) The India Basin Affordable Housing In-Lieu Fee rate will be adjusted annually in accordance with Planning Code section 409(b) (as section 409(b) is in effect as of the Effective Date), based on the Annual Infrastructure Construction Cost Inflation Estimate (AICCIE) published by Office of the City Administrator’s Capital Planning Group and approved by the Capital Planning Committee. Adjustments after the 15 Year Period will be made as set forth in Section 5.7 of the Development Agreement.

5.3. Payment of Fee. The City will collect the India Basin Affordable Housing In-Lieu Fee from Developer as a condition to issuance of the First Construction Document for each Market-Rate Project for which Developer has elected to pay the India Basin Affordable Housing In-Lieu Fee; provided, however, if then permitted under Section 415, Developer may elect to defer payment of the India Basin Affordable Housing In-Lieu Fee to a due date prior to the issuance of the first certificate of occupancy subject to payment of any deferral surcharge then required by Section 415 (the “**Deferral Surcharge**”). The India Basin Affordable Housing In-Lieu Fee and the Deferral Surcharge, if applicable, shall be payable to DBI’s Development Fee Collection Unit for application as set forth in Section 5.4 of this Affordable Housing Plan.

5.4. Use of Fees. MOHCD will use all India Basin Affordable Housing In-Lieu Fees collected by the City for affordable housing within Supervisorial District 10, including rehabilitation, stabilization, and new construction, as determined by MOHCD. Any Deferral Surcharge shall be deposited into the Citywide Affordable Housing Fund.

## 6. PARKING REQUIREMENTS

### 6.1. Parking Charge.

(a) Discretion to Set Rates. Developer (for Market-Rate Parcels) and each Affordable Housing Developer (for Affordable Housing Parcels) will determine, each in its sole discretion, the Parking Charge for Parking Spaces serving the parcel, subject to Subsection 6.1(b) (Limitations on Rates).

(b) Limitations on Rates. Developer must not charge renters of Inclusionary Units any fees, charges, or costs, or impose rules, conditions, or procedures on such renters or buyers that do not equally apply to all market-rate renters.

**7. MISCELLANEOUS**

The following provisions apply to this Agreement in addition to those in Article 14 of the Development Agreement (Miscellaneous Provisions).

**7.1. Third-Party Beneficiaries.** The Parties agree that the City, acting through MOHCD, is a third-party beneficiary of this Affordable Housing Plan, with the same rights and obligations as if it were a party. Except to the extent set forth in the immediately preceding sentence, there are no express or implied third-party beneficiaries of this Affordable Housing Plan.

**7.2. Notices to MOHCD.** Notices given under this Affordable Housing Plan are governed by [Section 14.11 (Notice) of the Development Agreement]. Notices to MOHCD must be addressed as specified below.

To MOHCD: Mayor’s Office of Housing and Community  
Development  
1 South Van Ness Avenue, Floor\_\_\_  
San Francisco, CA 94102  
Attn: Director

With a copy to: Dennis J. Herrera, Esq.  
City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Attn: RE/Finance

**7.3. Severability.** If any provision of this Affordable Housing Plan, or its application to any Person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Affordable Housing Plan or the application of such provision to any other Person or circumstance, and the remaining portions of this Affordable Housing Plan shall continue in full force and effect. Without limiting the foregoing, in the event that any applicable law prevents or precludes compliance with any term of this Affordable Housing Plan, the Parties shall promptly modify this Affordable Housing Plan to the extent necessary to comply with such law in a manner that preserves, to the greatest extent possible, the benefit to each of the Parties. In connection with the foregoing, the Parties shall develop an alternative of substantially equal, but not greater, cost to Developer and benefit to City.

**7.5. Attachments.** The attachments listed below are incorporated in and are a part of this Affordable Housing Plan.

[attach form of housing tables]