

RESOLUTION NO. 71-2020

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFICA AUTHORIZING THE CITY MANAGER TO EXECUTE AN AFFORDABLE HOUSING AGREEMENT, LOAN AGREEMENT, AND ANY OTHER DOCUMENTS WITH VAP 1 LP, A KH EQUITIES LIMITED PARTNERSHIP, TO CONVERT THE MARYMOUNT SUMMIT/GATEWAY APARTMENTS LOCATED AT 405-439 AND 443-467 GATEWAY DRIVE IN PACIFICA (APNS 009-540-110, 009-540-120, 009-540-130, 009-540-140, 009-540-150, 009-540-160, AND 009-540-170) INTO AN AFFORDABLE HOUSING PROJECT RESTRICTED TO RESIDENTS EARNING NOT MORE THAN 80 PERCENT OF SAN MATEO COUNTY AREA MEDIAN INCOME.

WHEREAS, KH Equities is a prospective purchaser of the Marymount Summit/Gateway Apartments located at 405-439 and 443-467 Gateway Drive in Pacifica (APNs 009-540-110, 009-540-120, 009-540-130, 009-540-140, 009-540-150, 009-540-160, and 009-540-170) (“Property”) and intends to purchase the Property as VAP 1 LP (“Developer”); and

WHEREAS, the Property consists of 170 apartment units, comprised of (94) 1 bedroom/1 bathroom units, (44) 2 bedroom/1 bathroom units; and (32) 2 bedroom/2 bathroom units; and

WHEREAS, Developer intends to rename the Property to “The Villages at Pacifica,” and the Property may be referred to by that name or by Marymount Summit/Gateway Apartments, and the names may be used interchangeably in various documents; and

WHEREAS, Developer has approached the City of Pacifica (“City”) to discuss the establishment of an affordable housing project (“Project”) affordable to persons earning not more than 80 percent of the San Mateo County Area Median Income (“AMI”) at the Property; and

WHEREAS, the Project would restrict 168 apartment units to rents affordable to persons earning not more than 80 percent of the San Mateo County AMI and 2 apartment units would have unrestricted rents and would be occupied by Project managers; and

WHEREAS, the City Council authorized the City Manager to negotiate with Developer on the terms of an affordable housing regulatory agreement, loan agreement, and other necessary documents (“Agreements”) for the Project, and to sign a Letter of Intent (“LOI”) establishing initial terms for the negotiations, at a special meeting on September 29, 2020; and

WHEREAS, Developer and City negotiated terms of the Agreements, presently consisting of an Affordable Housing Regulatory Agreement (“Exhibit 1”) and a Loan Agreement (“Exhibit 2”); and

WHEREAS, City provided notice of the City Council’s consideration of the Agreements by mailing notice to occupants of the Property, posting notice in various common area locations of the Property, and publishing a public notice in the Pacifica Tribune on November 11, 2020; and

WHEREAS, the City Council of the City of Pacifica considered the Agreements at a duly noticed public meeting on November 23, 2020, at which time it considered all oral and documentary evidence presented.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Pacifica as follows:

1. The City Council hereby finds as follows:
 - a. The above recitals are true and correct and material to this Resolution.
 - b. The public health, safety, and general welfare are best served by approval of the Agreements.
 - c. Approval of the Agreements is exempt from the California Environmental Quality Act (CEQA) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment per CEQA Guidelines Section 15061(b)(3).

2. The City Council hereby approves and authorizes the City Manager to execute the Affordable Housing Regulatory Agreement and the Loan Agreement in the forms attached hereto respectively, as Exhibits A and B, subject to minor revisions approved by the City Manager in consultation with the City Attorney. The City Manager is further authorized to execute any other documents necessary to effectuate the terms and conditions of the Affordable Housing Regulatory Agreement and the Loan Agreement, including escrow instructions.

3. The City Manager is authorized by this Resolution to sign the Agreements until 11:59 pm on March 31, 2021, after which this Resolution shall have no further force or effect unless the Affordable Housing Regulatory Agreement and Loan Agreements have both been executed and recorded in the Official Records of San Mateo County.

* * * * *

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Pacifica, California, held on the 23rd day of November 2020.

AYES, Councilmembers: Martin, Beckmeyer, Vaterlaus, Bier, O'Neill.

NOES, Councilmembers: n/a

ABSENT, Councilmembers: n/a

ABSTAIN, Councilmembers: n/a

Deirdre H Martin

Deirdre H Martin (Dec 4, 2020 12:14 PST)

Deirdre Martin, Mayor

ATTEST:

Sarah Coffey

Sarah Coffey, City Clerk

APPROVED AS TO FORM:

Michelle Marchetta Kenyon

Michelle Marchetta Kenyon, City Attorney

EXHIBIT 1

**Recorded at the Request of
Chicago Title Company**

NO FEE DOCUMENT 1117021426
(Government Code Section 27383 & 27388.1)

Recording requested by:
City of Pacifica

When recorded mail to:
City of Pacifica
170 Santa Maria Avenue
Pacifica, CA 94044
Attention: Kevin Woodhouse, City Manager

AFFORDABLE HOUSING REGULATORY AGREEMENT

THE VILLAGES AT PACIFICA

THE CITY OF PACIFICA

AND

VAP 1, LP

AFFORDABLE HOUSING REGULATORY AGREEMENT

This Affordable Housing Regulatory Agreement (“*Agreement*”), is made this ____ day of _____, 2020 (the “*Effective Date*”), by and between the City of Pacifica, a municipal corporation (the “*City*”), and VAP 1, LP, a California limited partnership (the “*Owner*”), with reference to the following facts:

RECITALS

A. Owner owns that certain real property located at 405-439 and 443-467 Gateway Drive in the City of Pacifica, as more particularly described in Exhibit A (the “*Land*”), and the improvements thereon consisting of a one hundred seventy (170) unit rental housing project (including two (2) manager’s units) and commonly known as the “The Villages at Pacifica” (formerly known as Marymount Gateway Apartments) (the “*Project*” and together with the Land, the “*Property*”). Owner is rehabilitating the Project and intends to restrict no fewer than one hundred sixty-eight (168) units at rental prices affordable to certain income groups as specified herein, provided, however, that residents occupying the Project as of the Effective Date that do not meet the affordability requirements and who are otherwise not in default under their respective existing leases may remain in the Project subject to rent increases as set forth herein. The Property was acquired by Owner in order to create and preserve affordable housing in the City.

B. This Project is intended to serve as a community resource by providing decent, safe, and sanitary housing for households who would otherwise be unable to afford such housing. The City has agreed to provide Owner with a loan in order to create and preserve the Project as an affordable housing (the “*Loan*”), which Loan is evidenced by a promissory note by Owner in favor of the City (the “*Note*”). The Note is secured by a Subordinate Deed of Trust, by Owner, as Trustor, to Chicago Title Company, as Trustee, for the benefit of the City, as Beneficiary (the “*Deed of Trust*,” and together with the Note, the “*Loan Documents*”).

C. As further consideration for the Loan and to further the public interests of the City in seeing the Property maintained as affordable housing, Owner has agreed to enter into and record this Agreement. The purpose of this Agreement is to regulate and restrict the occupancy, rents, operation, ownership, and management of the Property for the benefit of project occupants and the people of the City of Pacifica. The covenants in this Agreement are intended to run with the land and be binding on Owner and Owner’s successors to the land for the full term of this Agreement.

NOW, THEREFORE, for and in consideration of the foregoing recitals, which are hereby incorporated into this Agreement by this reference, the mutual covenants and obligations contained in this Agreement, and in reliance on the representations and warranties set forth herein, Owner and the City hereby agree as follows:

DEFINITIONS

1. DEFINED TERMS. The following terms and their derivatives have the meanings set forth in this Section wherever used in this Agreement or attached exhibits.

“*Assisted Units*” means the New Assisted Units and the Preexisting Assisted Units.

“*Capital Improvements*” means improvements to the Project such as (a) immediate deferred maintenance, including mold removal, and window and pipe repair; (b) seismic retrofit work to the extent required by the physical needs assessment provided by AEI Partners, dated as of August 31 2020; (c) upgrading the exterior and common areas, including the laundry room; or (d) upgrading the Assisted Units as they become available, including interior painting and replacement of appliances, flooring, cabinets and fixtures.

“*City*” means the City of Pacifica, a municipal corporation.

“*Loan Documents*” has the meaning set forth in Recital B.

“*New Assisted Units*” means those one hundred forty-two (142) units that are restricted pursuant to the terms of this Agreement. As set forth below, residents of the New Assisted Units as of the Effective Date that do not meet the affordability requirements may remain in the Assisted Units subject to the terms of this Agreement.

“*Note*” has the meaning set forth in Recital B.

“*Owner*” means VAP 1 LP, a California limited partnership.

“*Preexisting Assisted Units*” means those 26 units in the Project that were previously restricted as affordable units pursuant to the terms of the Preexisting City Agreements which are now restricted pursuant to the terms of this Agreement. Thirteen of the Preexisting Units are restricted to households with incomes at 80 percent of Area Median Income and other 13 are restricted to households with incomes at 120 percent of Area Median Income.

“*Preexisting City Agreements*” means that certain Inclusionary Zoning Compliance Agreement dated as of May 27, 2014, and recorded on August 27, 2014 as Document No. 2014-077501 in the Official Records of San Mateo County and that certain Below Market Rate Compliance Agreement dated as of April 15, 2019, and recorded on August 13, 2019 in the Official Records of San Mateo County.

“*Project*” has the meaning set forth in Recital A.

“*Property*” has the meaning set forth in Recital A.

TERM

2. COMPLIANCE WITH LOAN DOCUMENTS. Owner's actions with respect to the Property and the use of Loan funds must at all times be in full conformity with the requirements of the Loan Documents.

3. TERM OF AGREEMENT. This Agreement shall be binding, effective and enforceable upon execution and shall remain in full force and effect for an initial term of thirty-five (35) years after the date of recordation of this Agreement in the official records of San Mateo County (the "**Initial Term**"). The Initial Term may be extended by an additional twenty (20) years in the Owner's sole discretion upon Owner's delivery of a written notice to the City no less than one hundred eighty (180) days prior to the expiration of the Initial Term of Owner's intent to extend the Term (the "**Extension Notice**"). In the event the Initial Term is extended in the Owner's sole discretion by the delivery of Extension Notice as provided in this Section 3, the Owner shall, unless waived by the City in City's sole discretion, pay the City a one-time extension fee payment in the amount of Nine Hundred Thousand and No/100 Dollars (\$900,000) (the "**Extension Fee**") no later than 5:00 PM Pacific on the last day of the Initial Term. The Initial Term, as may be extended herein, shall be referred to as the "**Term**". Notwithstanding the foregoing, upon expiration of the Term, this Agreement shall be extended, or a new agreement executed by the parties, to ensure that the Preexisting Assisted Units are subject to the affordability restrictions herein for a total of fifty-five (55) years after the Effective Date of this Agreement. The obligations in this Agreement shall remain effective and fully binding on Owner for the Term, regardless of any expiration of the term of any loan, any payment or prepayment of any loan, any assignment of a Note and Deed of Trust, the termination of the Preexisting City Agreements, sale, assignment, transfer, or conveyance of the Property, unless terminated earlier by the City in a recorded writing or extended by the mutual consent of the parties.

ASSISTED UNIT OCCUPANCY AND RENTS

4. USE RESTRICTIONS. The use of the Property during the Term shall be restricted to residential use only, and such other incidental uses as may be approved by the City in its reasonable discretion.

5. OCCUPANCY OF ASSISTED UNITS. During the Term, Owner must limit the rental of Assisted Units to tenant households according to the Schedule and occupancy requirements set forth in Exhibit B attached hereto.

6. RENTS FOR ASSISTED UNITS. During the Term, Owner must limit rents for Assisted Units to those rents specified in the Schedule in Exhibit B and in conformance with the rent-setting requirements in Exhibit B.

7. MANAGERS' UNITS. The two managers' units may only be used and occupied by Project managers and their households, as required by and consistent with state law. In no event shall any managers' unit be rented or leased on a short or long-term basis to any other parties.

8. QUALITY OF ASSISTED UNITS. Assisted Units must be of a good quality comparable to affordable apartment projects in San Mateo County with equivalent amenities (including materials, finishes, fixtures, and appliances of equal quality and grade).

9. IMPROVEMENTS. Within six months of the Effective Date, Owner shall prepare and submit for City's review and reasonable approval, a capital improvement plan setting forth Owner's schedule to complete Capital Improvements and describing the work to be completed, which shall include work in a minimum amount of \$500,000.00 (the "**Capital Improvement Plan**"). The work set forth in the Capital Improvement Plan shall be completed within two years of the Effective Date, as may be mutually extended by the Owner and City ("**Improvement Deadline**"). Owner shall provide City with evidence that it has expended the funds as required herein on or prior to the Improvement Deadline. Evidence may consist of, without limitation, construction contracts, invoices and evidence of completion of work.

10. ADDITIONAL AFFORDABLE UNITS. In the event that Owner constructs any additional residential units on the Project site, such units shall be made subject to the affordability regulations set forth in this Agreement, including the requirement that such units be made available to households at or below 80 percent of AMI at an affordable rent. Owner and City agree to enter into amendments to this Agreement to effectuate this requirement.

11. CONDOMINIUM CONVERSION. Owner shall terminate the existing Condominium Map recorded against the Property prior to increasing any rental payments. In addition, Owner may not convert Assisted Units to condominium or cooperative ownership during the Affordability Period for such Assisted Unit. Upon Owner's termination of the existing Condominium Map, the City shall cooperate with the Owner to terminate Preexisting City Agreements.

12. NONDISCRIMINATION. Owner may not discriminate or segregate in the use, enjoyment, occupancy, conveyance, lease, sublease, or rental of Assisted Units on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, age (except for lawful senior housing), marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), immigration status or any other arbitrary basis. Owner shall not refuse to lease Assisted Units to a certificate or voucher holder under the Section 8 Rental Certificate Program or the Section 8 Rental Voucher Program, or to the holder of a comparable document evidencing participation in a tenant-based rental assistance program, because of the status of the prospective tenant as a holder of such certificate, voucher, or comparable tenant-based assistance document; nor shall Owner apply selection criteria to Section 8 certificate or voucher holders that are more burdensome than criteria applied to all other prospective tenant households, or permit the application of management policies or lease provisions which have the effect of precluding occupancy of units by such prospective tenant households. Owner is prohibited from retaliating against, threatening, or harassing employees or tenants based on immigration status. Owner shall include a statement in all advertisements, notices and signs for the availability of Assisted Units for rent to the effect that Owner is an Equal Housing Opportunity Provider.

13. TENANT MARKETING AND SELECTION. Owner shall prepare a marketing plan for review and approval by City prior to marketing any of the Assisted Units, which, among other things, shall include notice to the City, the Pacifica Resource Center and the County of San Mateo, and shall ensure notice via a broad number of media outlets to reach greatest number of possible applicants and tenants (the “*Marketing Plan*”). Owner shall market vacant Assisted Units in accordance with the approved Marketing Plan. If Owner creates a waitlist for vacant units and holds a tenant selection lottery, the Owner shall notify the City at least thirty (30) days prior to the commencement of the initial marketing period for vacant Assisted Units. Owner shall supply copies of tenant application materials to the City for distribution to potential applicants during the marketing period. Owner shall notify the City at least fifteen (15) days prior to the tenant selection lottery. The City reserves the right to send representatives to attend lottery proceedings.

PROPERTY MANAGEMENT

14. MANAGEMENT RESPONSIBILITIES. Owner is responsible for all management functions with respect to the Assisted Units, including, without limitation, the selection of tenants, certification and recertification of household size and income, evictions, and collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The City shall have no responsibility over management of the Assisted Units.

15. MAINTENANCE AND SECURITY. Owner, at its own expense, must maintain the Property in good condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions for the benefit of Assisted Unit occupants. Owner may not commit or permit any waste on or to the Property. Owner must maintain the Property in conformance with all applicable state, federal, and local laws, ordinances, codes, and regulations and the Final Management Plans (as defined below).

16. VACANCIES. Owner is required to use its best efforts to fill vacancies in Assisted Units as quickly as possible and in conformance with this Regulatory Agreement and state law.

17. MANAGEMENT AGENT. Owner shall designate a management agent to perform Owner’s management responsibilities for the Property under this Agreement (the “*Management Agent*”). Prior to designating such Management Agent, Owner shall provide notice of the identity of the Management Agent to City within five (5) days of execution of this Agreement. Upon receipt of the name of the Management Agent, the City shall have five (5) days to review and provide its written approval of the entity chosen by Owner to be the Management Agent which approval shall not be unreasonably withheld. Any contracting of management services by Owner shall not relieve Owner of its primary responsibilities for proper performance of management duties. Owner must submit a proposed management contract with the selected Management Agent to the City for the City’s review and approval within ten (10) days of City’s written approval of the Management Agent. Any such contract must provide that the Management Agent may be dismissed and the contract terminated as set forth in this Agreement. In addition, the Management Agent shall obtain and keep in force at all times

worker's compensation insurance that complies with all applicable state statutes and regulatory requirements, and employer's liability insurance coverage in an amount of at least one million dollars.

18. REPLACEMENT OF MANAGEMENT AGENT. The City reserves the right to require a change in the Management Agent for reasonable cause at any time during the Term. If the City determines in its reasonable judgment that the Property is not being operated and managed in accordance with any of the requirements and standards of this Agreement, the City shall deliver notice to Owner of its intention to cause replacement of the Management Agent, including the reasons therefor. Within thirty (30) days after receipt by Owner of such written notice, City staff and Owner representatives shall meet in good faith to consider methods for bringing the Property into compliance with this Agreement and improving the financial and operating status of the Property, including, without limitation, replacement of the Management Agent. If, after such meeting, City staff recommends in writing the replacement of the Management Agent, the Management agent shall be provided with written notice and shall be provided an opportunity to cure within a thirty day period; provided, however, to the extent cure is not possible within the 30 day period, but the Management Agent has diligently commenced to cure, then management agent shall have an additional 60 day period to cure. If after the application of notice and cure period, the Management Agent is not able to bring the Property into compliance with the requirements and standards of this Agreement, then Owner shall promptly dismiss the then-current Management Agent, and shall appoint as the Management Agent a person or entity meeting the standards for a Management Agent set forth in this Agreement, including without limitation review and written approval by City.

19. MANAGEMENT PLAN AND CONTRACT. Owner shall prepare a plan for managing the Property (the "*Final Management Plan*" or "*Plan*") and deliver the Plan to the City prior to marketing any of the Assisted Units. The Plan shall address how Owner plans to certify the eligibility of tenant households for Assisted Units. The Plan shall also address how the Owner and the Management Agent plan to manage and maintain the Property, and shall include a projected operating budget for the first year of operation. The Plan shall include a form rental agreement that Owner proposes to enter into with tenants of Assisted Units, which shall include a provision disclosing the terms of this Agreement which provision shall be approved by City. Owner shall abide by the terms of this Plan in marketing, managing, and maintaining the Property. The Plan shall be reviewed and updated on annual basis by Owner. Owner shall provide any amended or updated Plan to City.

20. FEES, TAXES, AND OTHER LEVIES. Owner shall be responsible for payment of all fees, assessments, taxes, charges, liens and levies imposed by any public authority or utility company with respect to the Property, and shall pay such charges prior to delinquency. However, Owner shall not be required to pay any such charge so long as (a) the legality thereof is being contested in good faith and by appropriate proceedings, and (b) Owner maintains reserves adequate to pay any contested liabilities.

21. INSURANCE COVERAGE. Owner shall, at Owner's expense, obtain and keep in force at all times the following "Owner's Insurance," and shall be liable for all premiums,

deductibles, and self-insured amounts, if any, in connection therewith:

A. Commercial General Liability Insurance (Occurrence Form). A policy of commercial general liability insurance (occurrence form) having a combined single limit of not less than One Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate, providing coverage for, among other things, blanket contractual liability, premises, products/completed operations and personal injury, death and advertising injury coverage, and, if necessary, Owner shall provide for restoration of the aggregate limit.

B. Automobile Liability Insurance. Comprehensive automobile liability insurance having a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence and insuring Owner against liability for claims arising out of the ownership, maintenance, or use of any owned, hired or non-owned automobiles.

C. Property Insurance. "All risk" property insurance including boiler and machinery comprehensive form, if applicable, covering damage to or loss of the Property (and coverage for the full replacement cost thereof including business interruption of Owner), together with, if the property of Owner's invitees is to be kept in the Property, warehouse's legal liability or bailee customers insurance for the full replacement cost of the property belonging to invitees and located in the Property.

D. General.

(1) Insurance Companies. Insurance required to be maintained by Owner shall be written by companies licensed to do business in California and having a "General Policyholders Rating" of at least A- VIII (or such higher rating as may be required by a lender having a lien on the Property) as set forth in the most current issue of "Best's Insurance Guide."

(2) Certificates of Insurance. Owner shall deliver to City certificates of insurance for all Owner's Insurance, in the form of the ACORD standard certificate of insurance, prior to the date of this Agreement. Owner shall, at least ten (10) days prior to expiration of the policy, furnish Landlord with certificates of renewal or "binders" thereof. Each certificate shall expressly provide that such policies shall not be cancelable or otherwise subject to modification except after thirty (30) days' prior written notice to the parties named as additional insureds as required in this Agreement (except in the case of cancellation for nonpayment of premium in which case cancellation shall not take effect until at least ten (10) days' notice has been given to the parties named as additional insureds). If Owner fails to maintain any insurance required in this Lease, Owner shall be liable for all losses and cost resulting from said failure.

(3) Additional Insureds. City, its Councilmembers, officials, officers, directors, employees and agents, shall be named as additional insureds on the policy. An additional insured endorsement naming such parties as additional insured(s) shall be attached to the certificate of insurance.

(4) Primary Coverage. Owner's Insurance shall be primary without right of contribution from City's Insurance.

(5) Umbrella/Excess Insurance. Any umbrella liability policy or excess liability policy (which shall be in "following form") shall provide that if the underlying aggregate is exhausted, the excess coverage will drop down as primary insurance. The limits of Owner's Insurance shall not limit Owner's liability under this Agreement.

(6) Waiver of Subrogation. Owner waives any right to recover against City for claims to the extent covered by Owner's Insurance. This provision is intended to waive fully, and for the benefit of City, any rights and/or claims which might give rise to a right of subrogation in favor of Owner's insurance carrier(s). The coverage obtained by Owner pursuant to this Agreement shall include a waiver of subrogation endorsement attached to the certificate of insurance.

(7) Compliance With Insurance Requirements, Warranties. Owner shall not do anything on the Property, or bring or keep anything therein, or subject the Property or any portion thereof to any use which would damage the same or increase the risk of loss or fire, or violate Owner's Insurance, which shall conflict with the regulations of the fire department or any federal, state or local laws or with any insurance policy on the Property or any part thereof, or with any rules or regulation established by any administrative body or official having jurisdiction. Owner shall promptly comply with the reasonable requirements of any board of fire insurance underwriters or other similar body now or hereafter constituted. Owner shall not take any action which would abrogate any warranties.

22. PROPERTY DAMAGE OR DESTRUCTION. If any of the Assisted Units or access thereto are damaged or destroyed, Owner must, at its own cost and expense, repair or restore the Assisted Unit(s). Such work shall be commenced within a reasonable time after the damage or loss occurs depending on the level of repair work required and shall be completed within a reasonable time thereafter, depending on the level of repair work required. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration.

MONITORING

23. MONITORING. The City shall have the right to monitor compliance with this Agreement as it deems reasonably necessary, including without limitation requesting records as provided in Section 24 and inspecting the Project as provided in Section 26.

24. RECORDS. Owner shall at all times maintain on the Project site, in the rental office or otherwise in the control of the property manager, copies of the current Final Management Plan, and Marketing Plan, and copies of all regulatory agreements and other documents imposing limitations on rent or occupancy of any Assisted Units. Owner shall make

all Property and Project records available for City review during normal business hours upon forty-eight (48) hours' advance notice of such visit to Owner. Owner understands and agrees that information concerning the Property, the Project, and tenant households may be included in a publicly-accessible database, and that records submitted to the City concerning the Project or Property may be disclosed to members of the public pursuant to the California Public Records Act.

25. ANNUAL REPORTS. Owner must submit an annual report to the City, on a form approved by the City, which, at a minimum, must state for each Assisted Unit the rental rate (including any rental assistance received on behalf of the tenant household) and the income, household size, race and ethnicity of the occupants. The income information required under this report shall be determined in accordance with the provisions of Exhibit B to this Agreement. City may request any reasonable additional information required to ensure compliance with the terms of this Agreement.

26. PROPERTY INSPECTION. Owner shall permit representatives of the City to enter and inspect the Property for compliance with obligations under this Agreement upon seventy-two (72) hours' advance notice of such visit to Owner and the Management Agent, as permitted under applicable law and subject to eligible residential tenant leases.

GENERAL PROVISIONS

27. ASSIGNMENT. During the term of this Agreement, Owner must give written notice to the City at least thirty (30) days in advance of any sale, agreement to sell, assignment, conveyance, lease (other than the rental of Assisted Units to eligible residential tenant occupants), or transfer of the Property, the Project or any Assisted Units or any part thereof, including the sale of any general or limited partnership interests, the removal of any general partner, or any substantial change in operational or management control over the Assisted Units ("**Assignment**"). No Assignment shall take place without City's prior written approval, which shall not be unreasonably withheld. Any Assignment shall be documented by an Assignment and Assumption Agreement in a form reasonably acceptable to City, which shall be recorded against the Property. Notwithstanding the foregoing, the City shall permit the limited partner of Owner ("**Limited Partner**") to transfer its limited partner interest to any person or entity at any time, and the City shall permit the Limited Partner to remove the general partner of Owner in accordance with an amended and restated partnership agreement of Owner, provided that the substitute general partner is acceptable to the City in its reasonable discretion, which acceptance shall not be unreasonably withheld, conditioned or delayed.

28. DEFAULT AND REMEDIES. A breach of any agreement, obligation, or warranty under this Agreement which remains uncured for a period of thirty (30) days after written notice thereof shall been given to Owner shall be an Owner default; provided, however, that if the default stated in the notice is of such a nature that it cannot be corrected within thirty (30) days, such default shall not constitute an event of default hereunder so long as Owner institutes corrective action within said thirty (30) days and diligently pursues such action and in such event Owner shall have an additional sixty (60) days to cure the default. Said notice shall specify the nature of the act, omission, or deficiency giving rise to the default.

Concurrently with the notice provided to Owner, the City shall provide a copy of any notice of an event of default to the Limited Partner of Owner provided that that an address has been provided, and the City agrees that any cure provided by such limited partner shall be accepted or rejected on the same basis as if made or tendered by Owner.

If Owner fails to cure or commence to cure the breach within the time frame specified in the notice, or if a cure is not possible, the City may proceed with any of the following remedies:

- A. Bring an action for equitable relief seeking the specific performance by Owner of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of said terms and conditions, and/or seeking declaratory relief;
- B. After notice provided for herein, make such repairs or replacements to the Property as are necessary and submit an invoice to Owner for reimbursement, provided that failure to reimburse City within thirty (30) days shall constitute a new event of default subject to the remedies set forth herein;
- C. For violations of Owner's obligations with respect to occupancy restrictions for Assisted Units, Property maintenance, and Assisted Unit vacancies, impose as liquidated damages a charge upon Owner in an amount of \$250 per day, increased annually by the Consumer Price Index-San Francisco Area ("**CPI**"), for each Assisted Unit that is not operated in compliance with this Regulatory Agreement;
- D. For violations of Owner's obligations with respect to maximum rents for Assisted Units wherein Owner has collected rent from a household of Assisted Units in excess of the allowable rent set forth on Exhibit B impose as liquidated damages a charge upon Owner in an amount of \$500 per occurrence, increased annually by CPI, or three times the rent overage, whichever is greater; or
- E. Pursue any other remedy allowed at law or in equity.

29. THIRD PARTY BENEFICIARIES. The following are intended to be third party beneficiaries of this Regulatory Agreement, and shall have such rights and remedies to enforce any of Owner's obligations under this Agreement as may be available to third party beneficiaries under the law:

- A. A tenant of an Assisted Unit; and
- B. A low or moderate income person, as defined under California law, who is qualified to live in an Assisted Unit but was denied occupancy due to an alleged breach of this Regulatory Agreement.

30. NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. No member, official, officer, director, employee, or agent of the City shall be personally liable to Owner for any obligation created under the terms of this Agreement.

31. INDEMNITY. Owner hereby indemnifies and holds the City, its Councilmembers, officials, officers, directors, employees, and agents (collectively, the “*Indemnified Parties*”) harmless from and against any losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including reasonable attorneys’ fees) arising out of (1) actions taken in implementation of this Agreement, (2) Owner’s failure to perform any obligations as and when required by this Agreement; (3) any failure of Owner’s representations or warranties to be true and complete; or (4) any act or omission by Owner or any contractor, subcontractor, management agent, or supplier with respect to the Project or the Property, except to the extent that such losses are caused by the gross negligence or willful misconduct of the Indemnified Parties. Any defense of any or all of the Indemnified Parties referenced in this Section 31 shall be at Owner’s sole cost and expense and by counsel selected by the City, subject to the reasonable approval of the Owner.

32. COMPLIANCE WITH LAWS. Owner must comply with all federal, state and local laws and regulations in its implementation of this Agreement, including without limitation, the Tenant Protection Act of 2019 (AB 1482) and all applicable fair housing laws, to the extent applicable to the Property.

33. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of California, except for those provisions relating to choice of law and those provisions preempted by federal law.

34. TIME. Time is of the essence in the performance of this Agreement by Owner and the City.

35. CONSENTS AND APPROVALS. Any consent or approval required under this Agreement shall not be unreasonably withheld, delayed, or conditioned.

36. NOTICES, DEMANDS AND COMMUNICATIONS. Formal notices, demands and communications between Owner and the City shall be given by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the principal offices of Owner and the City as follows, or if any such office is relocated, to the new address specified by the relocated party:

CITY: City of Pacifica
170 Santa Maria Avenue
Pacifica, CA 94044
Attention: Kevin Woodhouse, City Manager
Telephone: [Please provide]
Email: [Please provide]

OWNER: VAP 1, LP
c/o KH Equities
1601 Vine St. 7th Floor
Los Angeles, CA
Telephone: (323) 933-0024
Email: dmense@khequities.com

37. BINDING UPON SUCCESSORS; COVENANTS TO RUN WITH THE LAND. Subject to the limitations on assignments set forth in Section 27 above, all provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of Owner and the City. Any successor-in-interest to Owner and any purchaser or transferee of the Property shall be subject to all of the duties and obligations imposed on Owner under this Agreement for the full term of this Agreement. The term “*Owner*” as used in this Agreement shall include all such assigns, successors-in-interest, and transferees.

The parties intend that the covenants contained in this Agreement shall constitute covenants running with the land and shall bind the Property and every person having an interest in the Property during the term of this Agreement. 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.

38. RELATIONSHIP OF PARTIES. The relationship of Owner and the City with respect to the Property shall not be construed as a joint venture, equity venture, or partnership. The City neither undertakes nor assumes any responsibility or duty to Owner or to any third party with respect to the operation of the Property or the actions of Owner. Except as the City may specify in writing, Owner shall have no authority to act as an agent of the City or to bind the City to any obligation.

39. WAIVER. Any waiver by the City of any obligation in this Agreement must be in writing. No waiver will be implied from any delay or failure by the City to take action on any breach or default of Owner or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Owner to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the City to any act or omission by Owner shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the City’s written consent to future waivers.

40. OTHER AGREEMENTS. Owner represents that it has not entered into any agreements that would restrict or compromise its ability to comply with the terms of this Agreement. Owner shall not enter into any agreements that are inconsistent with the terms of this Agreement without an express written waiver or consent by the City.

41. AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to this Agreement must be in writing, and shall be effective only if executed by both Owner and the City.

42. SEVERABILITY. Every provision of this Agreement is intended to be severable. 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.

43. EXHIBITS. The following Exhibits are attached to this Agreement and are hereby incorporated into this Agreement by reference:

Exhibit A: Property Description
Exhibit B: Occupancy and Rent Restrictions
Exhibit C: Lower Income Households Family Household Income Reporting Worksheet

44. COUNTERPARTS; PDF. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which, when duly executed, shall constitute one and the same Agreement, and in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart. A PDF copy of a parties' signature on this Agreement shall constitute an original and be binding on all parties when assembled into a fully executed Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned parties have executed this Regulatory Agreement, effective as of the date first above written.

“OWNER”

VAP 1, LP,
a California limited partnership

By:
Name:
Title:

“CITY”

CITY OF PACIFICA,
a municipal corporation

By: _____
City Manager

Approved as to form:

By: _____
City Attorney

[SIGNATURE(S) MUST BE ACKNOWLEDGED]

ACKNOWLEDGEMENT

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 _____)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

ACKNOWLEDGEMENT

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 _____)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

REGULATORY AGREEMENT
(The Villages at Pacifica)

EXHIBIT A
PROPERTY DESCRIPTION

**REGULATORY AGREEMENT
(The Villages at Pacifica)**

**EXHIBIT B
OCCUPANCY AND RENT RESTRICTIONS**

1. Definitions

The following terms and their derivatives have the meanings set forth in this Section wherever used in this Exhibit or elsewhere in the Agreement:

“**AMI**” means area median income as published and adjusted by the United States Department of Housing and Urban Development and the California Department of Housing and Community Development, including adjustments for household size.

“**Income Determination Guidelines**” means the determination of income in accordance with the San Mateo County Assessor – County Clerk – Recorder Lower Income Households Family Household Income Reporting Worksheet attached hereto as Exhibit C.

“**Low Income Unit**” means an Assisted Unit rented according to the Schedule to a tenant household with a maximum tenant household income at or below 80% of AMI.

“**Temporary Non-Compliance**” means a situation in which an Assisted Unit is in compliance with the provisions of this Agreement except that a tenant household’s income exceeds the maximum allowable income because of increases in household income subsequent to initial occupancy.

“**Year 1**” means the year commencing on the first day the Owner implements a rent increase in accordance with the terms of this Agreement and ending on the date that is the first anniversary thereof; provided, however, Year 1 shall commence within one hundred eighty (180) calendar days of the Effective Date.

“**Year 2**” means the year starting on the first day after the first anniversary of Year 1 and ending the day that is the second anniversary of Year 1.

“**Year 3**” means the year starting on the first day after the second anniversary of Year 1 and ending the day that is the third anniversary of Year 1.

2. Schedule of rent and occupancy restrictions

Except as provided in Section 3 of this Exhibit B, the rents and occupancy of Assisted Units in the Project shall be restricted according to the following schedule (the “*Schedule*”):

Assisted Unit Type	Minimum Number of Assisted Units	Maximum Tenant Household Income	Maximum Annual Rent
405-439 Gateway Drive 1 Bedroom	42	80% of AMI	30% of 80% of AMI
405-439 Gateway Drive 2 Bedroom	56	80% of AMI	30% of 80% of AMI
443-467 Gateway Drive 1 Bedroom	52	80% of AMI	30% of 80% of AMI
443-467 Gateway Drive 2 Bedroom	20	80% of AMI	30% of 80% of AMI
Total Assisted Units	168		
Total Manager’s Units	2		
Total Units	170		

3. Rent Increases for Existing Tenants as of the Effective Date

Notwithstanding anything to the contrary set forth in the Schedule, Owner and City acknowledge and agree that for any person or household living at the Property as of the Effective Date of this Agreement, rent, including a reasonable utility allowance, may only increase from existing rent in effect as of Effective Date as set forth below, or to the maximum rent as may be otherwise required by law. In addition, rent may be adjusted no more than once in a twelve-month period.

- (a) For Year 1, annual rent for any person or household living at the Property as of the Effective Date may only be increased to the lower of: (i) an amount not to exceed thirty percent of 80 percent of AMI; or (ii) existing rent plus a 9.85% rent increase, except that (x) unqualified households (i.e., those households with income above 80% AMI) shall see the same 9.85% rent

increase set forth above but shall in no event exceed the market rent; and (y) qualified households paying above the 80 percent AMI limit as of the Effective Date shall receive no increase;

- (b) For Year 2, annual rent for any person or household that resided at the Property as of the Effective Date may only be increased to the lower of: (i) an amount not to exceed thirty percent of 80 percent of AMI; or (ii) existing rent plus a 9% rent increase, except that (x) unqualified households (i.e., those households with income above 80% AMI) shall see the same 9% rent increase set forth above but shall in no event exceed the market rent; and (y) qualified households paying above the 80 percent AMI limit shall receive no increase; and
- (c) For Year 3 and subsequent years, annual rent for any person or household that resided at the Property as of the Effective Date may only be increased to the lower of (i) an amount not to exceed thirty percent of 80 percent AMI; or (ii) an amount not greater than the maximum allowed pursuant to state rent control law for a non-exempt unit (e.g. currently, 5 percent plus the percentage change in the cost of living, or 10 percent, whichever is less), except that unqualified households (i.e., those households with income above 80% AMI) may see additional rent increases but shall in no event exceed the market rent.

Notwithstanding the foregoing, the rent, including a reasonable utility allowance, for a Preexisting Assisted Unit restricted to a household with an income at or below 120 percent of AMI as of the Effective Date shall be no greater than 30 percent of 120 percent of AMI.

In order to determine which existing tenants meet the income criteria for a qualified household, Owner must certify the income level and other qualifications of each tenant household within 120 days of the Effective Date. Certifications must comply with the standards and procedures set forth in the Income Determination Guidelines. All income determinations must be based on projected income for the tenant household for the next twelve months, not the income for the preceding year.

Notwithstanding the foregoing, in the event that a tenant household who entered into a lease prior to the date of this Agreement refuses to provide an (i) income recertification despite Owner's best efforts after fourteen (14) days, Owner in such circumstance may treat such tenant as an unqualified household (i.e., a household with income above 80% AMI) and charge rent to such tenant at a level not exceed market rent or (ii) initial income certification despite Owner's best efforts after fourteen (14) days, Owner in such circumstance may treat such tenant as an unqualified household (i.e., a household with income above 80% AMI) and charge rent to such tenant at a level not exceed market rent.

For rent increases in Year 1, the Owner shall deliver the following written notices: (i) to a tenant household at least 120 calendar days written notice prior to any rent increase and (ii) to the City at least 30 calendar days written notice prior to increasing rents on any Assisted Unit for the City

to review and approve such rent increase, which approval shall not be unreasonably withheld, conditioned or delayed within such 30 calendar day period.

For Year 2 rent increases, Year 3 and subsequent years rent increases, the Owner shall deliver the following written notices: (i) to a tenant household at least 60 calendar days written notice prior to any rent increase and (ii) to the City at least 30 calendar days written notice prior to increasing rents on any Assisted Unit for the City to review and approve such rent increase, which approval shall not be unreasonably withheld, conditioned or delayed within such 30 calendar day period.

4. Initial occupancy

Owner must limit for the Term of this Agreement (except as otherwise provided in this Exhibit) the rental of Assisted Units only to tenant households with incomes no higher than the maximum tenant household income specified in the above Schedule, as such income level is certified prior to first occupancy by the tenant household. The applicable income limit shall be the maximum tenant household income for a household of a size equal to the actual size of the tenant household as household size is defined and determined under the Income Determination Guidelines. Owner must certify the income levels and other qualifications of applicants for Assisted Units prior to initial occupancy in conformance with the Income Determination Guidelines. All income determinations shall be based on the projected household income of the tenant household for the next 12 months, not the income for the preceding year.

5. Determination of maximum rents

Owner must limit for the Term of this Agreement (except as otherwise provided in this Exhibit) the annual rents charged for Assisted Units to the maximum annual rents specified in the above Schedule. Maximum rents must be adjusted downwards by the appropriate allowance for tenant-paid utilities. Rents for over-income tenants must be adjusted in accordance with the provisions of Section 9 below.

6. Rent calculations adjusted for household size

Maximum rents for Assisted Units shall be calculated according to the maximum annual rent limits in the Schedule with adjustments for household size.

7. Rents for units with rental assistance

For Assisted Units that are occupied by tenant households that receive Section 8 tenant-based vouchers or other tenant-based rental assistance, the maximum rent allowed will be the rent allowed under the Section 8 or other applicable rental assistance program, notwithstanding the maximum rents set forth in the Schedule, provided that the tenant household's total payment for rent plus an allowance for tenant-paid utilities does not exceed 30% of the tenant household's income.

8. Income certification and recertification

Owner must recertify the income level and other qualifications of each tenant household in an Assisted Unit yearly on or before the anniversary date of the tenant household's first occupancy of the Assisted Unit. Recertifications must comply with the standards and procedures set forth in the Income Determination Guidelines. All income determinations must be based on projected income for the tenant household for the next twelve months, not the income for the preceding year. Notwithstanding the above, nothing in this Agreement shall require Owner to evict any tenant household in an Assisted Unit because the income of that tenant household has increased. Further, in the event that a tenant household who entered into a lease prior to the date of this Agreement refuses to provide an income recertification despite Owner's best efforts (as determined by the City in its reasonable discretion), Owner shall not be deemed in default under this Agreement and such unit shall be considered to be in Temporary Non-Compliance.

9. Rent increases for Tenants or Households Entering into Leases with Owner After Effective Date of this Agreement:

- a. Owner may adjust the rent for an Assisted Unit no more than once in a twelve-month period. Rent may be increased only if (a) the tenant household's income upon recertification exceeds the maximum annual income specified in the Schedule, and then only as allowed below, or (b) the maximum annual rent as calculated in accordance with Section 2 for the Assisted Unit has increased because of changes in AMI.
- b. The Owner shall deliver the following written notices: (i) to a tenant household at least 60 calendar days written notice prior to any rent increase and (ii) to the City at least 30 calendar days written notice prior to increasing rents on any Assisted Unit for the City to review and approve such rent increase, which approval shall not be unreasonably withheld, conditioned or delayed within such 30 calendar day period.
- c. Notwithstanding the above, rent adjustments are subject to any rent provisions of the current lease or rental agreement with the tenant household.

10. Adjustment of rents for over-income tenants for Tenants or Households Entering into Leases With Owner After Effective Date of this Agreement:

If upon income recertification, a tenant household's income exceeds 80% of AMI, the rent shall increase to 30% of the tenant household's adjusted income as defined in the Income Determination Guidelines in the first year and in subsequent years,

- (a) the lesser or the maximum rent allowable under any applicable state or local rent restrictions, or
- (b) the market rate, as determined by Owner.

11. Compliance with Laws. All rent increases shall be in compliance with all federal, state and local laws and regulations, including, the Tenant Protection Act of 2019 (AB 1482), to the extent applicable to the Property. In the event that any provision of this Agreement or Exhibit is inconsistent with or not permitted under any current or future federal or state housing law or other law, such invalid provision shall not be enforced.

**REGULATORY AGREEMENT
(The Villages at Pacifica)**

EXHIBIT C

**RECORDER LOWER INCOME HOUSEHOLDS FAMILY HOUSEHOLD INCOME
REPORTING WORKSHEET**

Exhibit 2

LOAN AGREEMENT

THIS LOAN AGREEMENT (this “**Agreement**”) is entered into effective as of _____, 2020 (“**Effective Date**”) by and between the City of Pacifica, a municipal corporation (“**City**”) and KH Equities, a _____ (“**Purchaser**”). City and Purchaser are collectively referred to herein as the “**Parties.**”

RECITALS

A. Purchaser is under contract to purchase that certain real property located at 405-439 and 443-467 Gateway Drive in the City of Pacifica and the improvements thereon consisting of a one hundred seventy (170) unit rental housing project (including two (2) manager’s units) and commonly known as the “The Villages at Pacifica” (formerly known as Marymount Gateway Apartments) as more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the “**Property**”).

B. Purchaser plans to rehabilitate the Project and restrict no fewer than one hundred sixty-eight (168) units at rental prices affordable to certain income groups as specified herein, and as set forth in more detail in an Affordable Housing Regulatory Agreement between the Parties to be executed substantially concurrently with this Agreement and recorded against the Property (the “**Regulatory Agreement**”).

C. Upon satisfaction of the conditions precedent set forth in this Agreement and subject to the terms and conditions set forth herein, the City has agreed to provide a loan to Purchaser in the amount of Ten Thousand Dollars (\$10,000.00) (the “**Loan**”) to assist in creating the affordable housing.

D. Substantially concurrently with the execution of this Agreement, among other documents, Purchaser will execute, and deliver to City, and as applicable, cause to be recorded in the Official Records: a secured promissory note to evidence Purchaser’s obligation to repay the Loan and City Expenses, as defined below, and a deed of trust to secure repayment of the note.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

Loan and Note. In order to support the affordability proposed for the Project, the City has agreed to make the Loan to Purchaser upon the terms and conditions set forth in this Agreement. In addition, Purchaser has agreed to repay the City’s staff, consultant and City Attorney reasonable time and expenses required to process this Agreement and the Regulatory Agreement, which processing costs shall include all aspects of review including review by experts and outside legal

counsel, and negotiation and preparation of letters, agreements, staff reports, public notices, participation in public meetings related to the project, and all other activities that staff determines are necessary to ensure compliance with applicable law, and City codes and policies (“**City Expenses**”). Purchaser’s obligation to repay the Loan and the City Expenses (“**Repayment Amount**”) shall be evidenced by a Note which shall be dated as of the Closing Date and executed by Purchaser substantially in the form attached hereto as Exhibit B. The Repayment Amount shall be inserted into the Note prior to execution and shall include the amount of City Expenses, minus the \$15,000 already deposited by Purchaser, as provided by City. Provided that Purchaser has complied with all conditions precedent to disbursement of the Loan set forth herein, the proceeds of the Loan (“**Loan Proceeds**”) shall be disbursed at Closing.

Interest Rate; Payment Dates; Maturity Date. The principal balance of the Note will bear interest at a rate equal to three percent simple annual interest commencing upon the origination date of the Note. Unless forgiven as provided herein, the entire outstanding principal balance under the Note together with accrued interest and all other sums due under the City Documents shall be payable in full on the third anniversary of the date of the Note (the “**Maturity Date**”). Notwithstanding the foregoing, the City shall have the right to accelerate the Maturity Date and declare all sums payable under the Note immediately due and payable upon the expiration of all applicable cure periods following the occurrence of an uncured Event of Purchaser Default.

Security. As security for repayment of the Note, Purchaser shall execute the Deed of Trust in favor of City as beneficiary pursuant to which City shall be provided a lien against the Property. The Deed of Trust shall be substantially in the form attached hereto as Exhibit C, and shall be recorded in the Official Records of San Mateo on the date of closing.

Prepayment; Acceleration.

Prepayment. Purchaser shall have the right to prepay the amounts set forth in the Note at any time and from time to time, without penalty or premium, provided that any prepayment of principal must be accompanied by payment of the interest accrued but unpaid on such principal to the date of prepayment. Prepayments shall be applied first to accrued but unpaid interest and then to principal. Any such prepayment shall have no effect upon Purchaser’s obligations under the Regulatory Agreement which shall survive for the term of such agreement.

Due On Transfer or Encumbrance. Unless City agrees otherwise in writing, the entire unpaid principal balance and all interest and other sums accrued under the Note shall be due and payable upon a Transfer absent the prior written consent of City of all or any part of, or interest in, the Property or the Project except as otherwise permitted pursuant to this Agreement.

Default. The City shall have the right to accelerate the maturity date and declare all sums payable under the Note immediately due and payable upon the expiration of all applicable cure periods following the occurrence of an Event of Purchaser Default.

Escrow. Purchaser shall or has opened escrow at Chicago Title Company (“**Title Company**” or “**Escrow Agent**”) in order to consummate the closing of the purchase of the Property. Purchaser shall pay all recording fees, transfer taxes, escrow fees and closing costs incurred in connection

thereof. The closing date shall be a date determined by Purchaser, which shall be no later than March 31, 2021. Prior to the close of escrow, Purchaser shall deposit into escrow the Regulatory Agreement, Note and Deed of Trust (“**City Documents**”), executed and acknowledged as applicable, and all closing costs. Provided that all conditions precedent to close of escrow set forth herein have been satisfied or waived, City shall deposit into escrow executed copies of the City Documents to which City is a party. On the closing date, the Escrow Agent shall cause the Regulatory Agreement and the Deed of Trust to be recorded in the Official Records of San Mateo County.

Conditions to Closing and Disbursement of Loan Proceeds. City’s obligation to disburse Loan Proceeds is conditioned upon the satisfaction of all of the requirements set forth in this section unless any such condition is waived in writing by City.

No Default. There shall exist no condition, event or act which would constitute a material breach or default by Purchaser under this Agreement or any other City agreement, or which, upon the giving of notice or the passage of time, or both, would constitute such a material breach or default.

Execution, Delivery and Recordation of Documents. Purchaser shall have executed, acknowledged as applicable, and delivered to City, or if so instructed, into escrow, the City Documents. Concurrently with the Closing, the Regulatory Agreement and the Deed of Trust shall be recorded in the Official Records.

Settlement Statement. City shall have received and approved Title Company’s settlement statement showing the closing costs and all other amounts due in escrow.

Prohibition on Transfer. Prior to the repayment of the principal and interest under the Note, Purchaser shall not, except as expressly permitted by this Agreement, directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, “**Transfer**”) of the whole or any part of the Property, the Project, the Improvements, or this Agreement, without the prior written approval of City which approval shall not be unreasonably withheld.

Event of Purchaser Default. The following events shall constitute an event of default on the part of Purchaser hereunder (“**Event of Purchaser Default**”):

Purchaser fails to pay when due the principal and interest payable under the Note, and such failure continues for ten (10) days after City notifies Purchaser thereof in writing;

A Transfer occurs, either voluntarily or involuntarily, in violation of this Agreement;

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;

The Purchaser shall have voluntarily suspended its business or Purchaser shall have been dissolved or terminated; or

An event of default arises under any City Document and remains uncured beyond any applicable cure period.

City's Remedies and Rights Upon an Event of Purchaser Default. Upon the occurrence of an Event of Purchaser Default and the expiration of any applicable notice and cure period, City shall have all remedies available to it under this Agreement or under law or equity, including, but not limited to the following, and City may, at its election, without notice to or demand upon Purchaser, except for notices or demands required by law or expressly required pursuant to the City Documents, exercise one or more of the following remedies:

Accelerate and declare the balance of the Note and interest accrued thereon immediately due and payable; or

Pursue any and all other remedies available under this Agreement or the other City Documents, or under law or equity to enforce the terms of the City Documents and City's rights thereunder.

Remedies Cumulative; No Consequential Damages. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different time, of any other rights or remedies for the same or any other default by the other Party. Notwithstanding any contrary provision of this Agreement, a Party's right to recover damages in the event of a default shall be limited to actual damages and shall exclude consequential damages.

Inaction Not a Waiver of Default. No failure or delay by either Party in asserting any of its rights and remedies as to any default shall operate as a waiver of such default or of any such rights or remedies, nor deprive either Party of its rights to institute and maintain any action or proceeding which it may deem necessary to protect, assert or enforce any such rights or remedies in the same or any subsequent default.

Rights of Mortgagees. Any rights of the City under this Agreement shall not defeat, limit or render invalid any mortgage or deed of trust permitted by this Agreement or any rights provided for in this Agreement for the protection of holders of such instrument.

Indemnity. To the greatest extent allowed by law, Purchaser shall indemnify, defend (with counsel reasonably approved by City) and hold the City and its officers, agents, employees, contractors and consultant harmless from and against any and all claims, demands, judgements, payments, suits, penalties, losses or liabilities ("**Claims**") (including without limitation, Claims arising from any injury, death, illness, property damage, or loss of property) arising directly or indirectly, in whole or in part, as a result of or in connection with the development, construction, improvement, operation, ownership or maintenance of the Property, or any part thereof or interest therein, by Purchaser or Purchaser's contractors, subcontractors, agents, employees or any other party acting for or on behalf of Purchaser, or otherwise arising out of or in connection with this Agreement, including without limitation Purchaser's performance or failure to perform

under this Agreement. Purchaser's indemnification obligations under this section shall not extend to Claims to the extent resulting from the gross negligence or willful misconduct of Indemnitees. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

Notices. Formal notices, demands and communications between Owner and the City shall be given by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the principal offices of Owner and the City as follows, or if any such office is relocated, to the new address specified by the relocated party:

CITY: City of Pacifica
170 Santa Maria Avenue
Pacifica, CA 94044
Attention: Kevin Woodhouse, City Manager
Telephone: [Please provide]
Email: [Please provide]

OWNER: _____, LP
c/o KH Equities
1601 Vine St. 7th Floor
Los Angeles, CA
Telephone: (323) 933-0024
Email: dmense@khequities.com

Amendment. This Agreement may be amended or modified only by a written instrument executed by the Parties.

Binding on Successors. Subject to the restrictions on Transfers set forth herein, this Agreement shall bind and inure to the benefit of the Parties and their respective permitted successors and assigns. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any permitted successor and assign of such Party who has acquired an interest in compliance with this Agreement or under law.

Headings; Interpretation; Statutory References. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

Entire Agreement. This Agreement, including Exhibits A through C attached hereto and incorporated herein by this reference, together with the other City Documents contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior

written or oral agreements, understandings, representations or statements between the Parties with respect to the subject matter hereof.

Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which taken together shall constitute one instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto having additional signature pages executed by the other Party. Any executed counterpart of this Agreement may be delivered to the other Party by facsimile and shall be deemed as binding as if an originally signed counterpart was delivered.

Severability. If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement is defeated by such invalidity or unenforceability.

Parties Not Co-Venturers; No Agency 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 Purchaser and City is and shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership or any other relationship.

Time of the Essence; Calculation of Time Periods. Time is of the essence for each condition, term, obligation and provision of this Agreement. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is not a business day, in which event the period shall run until the next business day. The final day of any such period shall be deemed to end at 5:00 p.m., local time at the Property. For purposes of this Agreement, a “business day” means a day that is not a Saturday, Sunday, a federal holiday or a state holiday under the laws of the State of California.

Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be filed and heard in the County of San Mateo.

Subordination. The Loan as evidenced by the Note and secured by the Deed of Trust is and shall be, with respect to Borrower, subordinate in right of payment to the prior payment in full of all amounts then due and payable (including, but not limited to, all amounts due and payable by virtue of any default or acceleration or upon maturity) with respect to the indebtedness evidenced and made by Borrower payable to any (i) lender having a superior lien on the Property, or (ii) to the extent applicable, low income housing tax credit investor limited partner(s), as limited partner(s), admitted into the Borrower.

SIGNATURES ON FOLLOWING PAGE(S).

IN WITNESS WHEREOF, the Parties have entered into this Loan Agreement effective as of the date first written above.

“OWNER”

_____, LP,
a California limited partnership

By:
Name:
Title:

“CITY”

CITY OF PACIFICA,
a municipal corporation

By: _____
City Manager

Approved as to form:

By: _____
City Attorney

Exhibit A

LEGAL DESCRIPTION OF THE PROPERTY

[to be inserted]

Exhibit B

FORM OF PROMISSORY NOTE

[\$ _____]

[January] __, 2021

For value received, _____ LP, a California limited partnership (“**Borrower**”), promises to pay to the order of the CITY OF PACIFICA, a municipal corporation (“**Lender**”), in lawful money of the United States, the principal sum of _____ and No/100 Dollars (\$ _____), with interest at the rate due and payable, all as set forth below.

**ARTICLE 1
INTEREST AND PAYMENTS**

- 1.1 **Maturity Date.** The “**Maturity Date**” shall mean January __, 2024.
- 1.2 **Rates of Interest.** Interest shall begin to accrue as of the date of this Note first stated above. The principal and interest balance outstanding from time to time shall bear simple interest at 3% per annum.
- 1.3 **Payments.** No payment of any principal or interest balance shall be due until the Maturity Date.
- 1.4 **Prepayments.** Borrower may prepay all or any part of the principal and interest balance at any time without charge or premium.

**ARTICLE II
ADDITIONAL TERMS AND CONDITIONS**

- 2.1 **Security.** This Note shall be secured by that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of January __, 2021.
- 2.2 **Application of Payments.** Unless otherwise agreed in writing or required by applicable law, all payments received, irrespective of how they may be designated by Borrower, shall be applied payments first to accrued but unpaid interest, then to principal.

- 2.3 **No Waiver By Acceptance of Overdue or Partial Payments.** If Lender accepts payment of any overdue amount, or partial payment of an amount due and the remainder of such amount is unpaid, such acceptance shall in no event: (a) constitute a cure or waiver of Borrower's default with respect to such overdue or unpaid amount; (b) prevent Lender from exercising any of its rights and remedies with respect to Borrower's default; or (c) constitute a waiver of Lender's right to require full and timely payment of amounts becoming due thereafter or to exercise any of Lender's rights and remedies for any failure to so pay.
- 2.4 **Default.** The following event shall constitute an "**Event of Default**" under this Note:
- (a) In the event of any monetary default by Borrower under the terms of this Note or the Loan Agreement dated _____, Lender shall give Borrower a ten (10) day written notice of default, during which Borrower shall have the ability to cure the monetary default. If the default is not timely cured, Lender may proceed with all rights and remedies under the terms of this Note.
- (b) The Lender hereby agrees that any cure of any default hereunder made or tendered by Borrower's limited partners shall be accepted or rejected on the same basis as if made or tendered by Borrower.
- 2.5 **Acceleration Upon Default.** If an Event of Default has occurred and is continuing, Lender may, at its election by written notice to Borrower, declare the entire balance of principal and accrued interest immediately due and payable. A delay by Lender in exercising any right of acceleration after an Event of Default shall not constitute a waiver of the Event of Default or of the right of acceleration or any other right or remedy for such Event of Default. The failure by Lender to exercise any right of acceleration as a result of an Event of Default shall not constitute a waiver of the right of acceleration or any other right or remedy with respect to any other Event of Default, whenever occurring.
- 2.6 **Time of the Essence.** Time is of the essence with respect to the payment and performance of the obligations under this Note.
- 2.7 **No Oral Waivers or Modifications.** No provision of this Note may be waived or modified orally, but only in a writing signed by Lender.
- 2.8 **Governing Law.** This Note shall be governed by and construed under the internal laws of the State of California, without regard to conflict of law provisions.
- 2.9 **Severability.** Every provision of this Note is intended to be severable. If any provision of this Note is determined by a court of competent jurisdiction to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect the other provisions hereof, which shall remain binding and enforceable.
- 2.10 **Notice.** All notice required or permitted in connection with this Note will be in writing and shall be deemed to have been duly given if (i) mailed, certified first class mail, postage prepaid, return receipt requested, (ii) personally delivered, or (iii) delivered by Federal Express or other comparable overnight delivery service to the party to whom the same is so given or made, at the address of such party as set forth below, which address

may be changed by notice to the other parties hereto duly given pursuant hereto: (a) if to the Lender, to it at: City of Pacifica, 170 Santa Maria Avenue, Pacifica, California 94044, Attn: Kevin Woodhouse, City Manager; (b) if to the Borrower, to it at: KH Equities, 1601 Vine Street 7th Floors, Los Angeles, California 90028, with a copy to: Downs Pham & Kuei LLP, 235 Montgomery Street, Floor 30, San Francisco, CA 94104, Attention: Irene C. Kuei, Esq.

2.11 **Headings**. Headings herein are used for convenience of reference only and do not define or limit the scope of provisions of this Note.

2.12 **Successors and Assigns**. This Note binds Borrower and its successors, permitted assigns, heirs, administrators and executors, and inures to the benefit of Lender and its successors, assigns, participants, heirs, administrators and executors.

2.13 **Transfer of Note**. The Note shall not be sold, assigned, assumed, conveyed or transferred to any party without the prior written consent of the Borrower and Borrower's limited partner, in their sole and absolute discretion.

2.14 **Subordination**. The indebtedness evidenced by this Note is and shall be, with respect to Borrower, subordinate in right of payment to the prior payment in full of all amounts then due and payable (including, but not limited to, all amounts due and payable by virtue of any default or acceleration or upon maturity) with respect to the indebtedness evidenced and made by Borrower payable to any (i) lender having a superior lien on the Property, or (ii) to the extent applicable, low income housing tax credit investor limited partner(s), as limited partner(s), admitted into the Borrower.

2.15 **Nonrecourse**. Neither the Borrower, nor any of its partners, members and/or managers shall have any personal liability under this Note and the Deed of Trust and Lender's only recourse for the satisfaction of the indebtedness and the performance of such obligations shall be remedies with respect to the collateral.

[Signatures Appear on the Following Page]

IN WITNESS WHEREOF, this Note has been duly executed by Borrower as of the day and year first above written.

BORROWER:

_____ LP,
a California limited partnership

By: _____, LLC,
a California limited liability company,
its Administrative General Partner

By: _____
Daniel Mense
Manager

By: Housing On Merit,
a California nonprofit public benefit corporation,
its Managing General Partner

By: _____
Jennifer Litwak
Executive Director

Exhibit C

FORM OF DEED OF TRUST

Recording Requested By and
When Recorded Return to:

City of Pacifica
170 Santa Maria Avenue
Pacifica, CA 94044
Attn: Kevin Woodhouse, City Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

**Deed of Trust, Assignment of Leases and Rents,
Security Agreement and Fixture Filing**

This Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (this "**Deed of Trust**") is made on January __, 2021, by _____, LP, a California limited partnership, whose address is c/o KH Equities, 1601 Vine Street 7th Floor, Los Angeles, CA 90028, as grantor ("**Borrower**"), Chicago Title Company, having an address at _____, as trustee ("**Trustee**"), for the benefit of CITY OF PACIFICA, a municipal corporation, whose address is 170 Santa Maria Avenue, Pacifica, CA 94044 ("**Lender**").

1. **Promissory Note**. In return for a loan that Borrower received, Borrower promised to pay _____ and No/100 Dollars (\$_____) (called "**Principal**"), plus interest in accordance with the terms of a Promissory Note (referred to as the "**Note**") dated October __, 2020. All sums owed under the Note are due as set forth in the Note. All terms of the Note are made part of this Deed of Trust.
2. **Property**. That certain property located in City of Pacifica, State of California, known generally as The Villages at Pacifica (formerly known Marymount Apartments and Gateway Apartments) (called the "**Property**"). The Property includes: (a) the land; (b) all buildings that are now, or will be, located on the land; (c) all fixtures that are now, or will be, attached to the land or building(s) (for example, furnaces, bathroom fixtures and kitchen cabinets); (d) all condemnation awards and insurance proceeds relating to the land and building(s); and (e) all other rights that Borrower has, or will have, as owner of the Property. The legal description is attached hereto as **Exhibit A**.
3. **Granting Clause**. Borrower, in consideration of the indebtedness evidenced by the Note and the trust created by this Deed of Trust, irrevocably grants, conveys and assigns to Trustee, in trust, with power of sale, the Property, to have and to hold the Property unto Trustee, Trustee's successor in trust and Trustee's assigns forever.

BORROWER:

_____ LP,
a California limited partnership

By: _____, LLC,
a California limited liability company,
its Administrative General Partner

By: _____
Daniel Mense
Manager

By: Housing On Merit,
a California nonprofit public benefit corporation,
its Managing General Partner

By: _____
Jennifer Litwak
Executive Director

ACKNOWLEDGEMENT

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 _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

ACKNOWLEDGEMENT

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 _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

DESCRIPTION OF THE LAND




For Signature: ResolutionNo71-2020_MarymountRegulatoryAgreement-Approved

Final Audit Report

2020-12-04

Created:	2020-12-04
By:	Sarah Coffey (coffeys@ci.pacifica.ca.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAAdB5GJBd4MarZM4ootQjE101CCcHL-tjY

"For Signature: ResolutionNo71-2020_MarymountRegulatoryAgreement-Approved" History

-  Document created by Sarah Coffey (coffeys@ci.pacifica.ca.us)
2020-12-04 - 8:12:03 PM GMT- IP address: 68.65.68.29
-  Document emailed to Deirdre H Martin (martind@ci.pacifica.ca.us) for signature
2020-12-04 - 8:13:16 PM GMT
-  Email viewed by Deirdre H Martin (martind@ci.pacifica.ca.us)
2020-12-04 - 8:14:32 PM GMT- IP address: 192.41.62.5
-  Document e-signed by Deirdre H Martin (martind@ci.pacifica.ca.us)
Signature Date: 2020-12-04 - 8:14:42 PM GMT - Time Source: server- IP address: 192.41.62.5
-  Document emailed to Sarah Coffey (coffeys@ci.pacifica.ca.us) for signature
2020-12-04 - 8:14:44 PM GMT
-  Email viewed by Sarah Coffey (coffeys@ci.pacifica.ca.us)
2020-12-04 - 8:18:20 PM GMT- IP address: 68.65.68.29
-  Document e-signed by Sarah Coffey (coffeys@ci.pacifica.ca.us)
Signature Date: 2020-12-04 - 8:18:59 PM GMT - Time Source: server- IP address: 68.65.68.29
-  Agreement completed.
2020-12-04 - 8:18:59 PM GMT