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AND WHEN RECORDED MAIL TO:**

City of San Leandro
835 East 14th Street
San Leandro, CA 94577
Attention: City Manager

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GOVERNMENT CODE §§6103, 27383

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**AMENDED AND RESTATED
AFFORDABLE HOUSING REGULATORY AGREEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS**

by and between

THE CITY OF SAN LEANDRO

and

EDEN SURF ASSOCIATES, L.P., A CALIFORNIA LIMITED PARTNERSHIP

This Amended and Restated Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this “**Agreement**”) is entered into effective as of January __, 2012 (“**Effective Date**”) by and between the City of San Leandro, a municipal corporation (“**City**”) and Eden Surf Associates L.P., a California limited partnership (“**Owner**”). City and Owner are hereinafter collectively referred to as the “**Parties.**”

RECITALS

A. Owner owns that certain real property located in the City of San Leandro at 15320 Tropic Court, known as Alameda County Assessor’s Parcel No. 412-0006-007, and more particularly described in Exhibit A attached hereto (the “**Property**”).

B. Owner intends to own and operate the existing forty-six (46) unit multi-family residential rental project (the “**Project**”) on the Property in accordance with that certain Owner Participation and Loan Agreement executed by and between the Parties and dated as of the date hereof (the “**Loan Agreement**”).

C. The Loan Agreement requires Owner to restrict thirty-two (32) of the residential units in the Project for occupancy by Eligible Households at Affordable Rents (defined below) in accordance with this Agreement.

D. Subject to the conditions set forth in the Loan Agreement, City has agreed to provide to Owner a loan in the amount of One Hundred Thousand Dollars (\$100,000) (the “**Loan**”) in order to provide partial financing for the rehabilitation of the Project. The Loan is evidenced by a Secured Promissory Note (the “**Note**”) executed by Owner and dated as of the date hereof, and is secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (“**Deed of Trust**”) dated as of the date hereof and executed by Owner for the benefit of City. The Deed of Trust will be recorded in the Official Records substantially concurrently herewith.

E. Pursuant to that certain Assignment and Assumption of City Loan Documents, dated as of the date hereof, executed by and between Owner and Surf Housing Associates, L.P., a California limited partnership (“**Surf**”), and recorded in the Official Records of Alameda County substantially concurrently herewith (the “**Assignment Agreement**”), Owner has assumed the obligation to repay to City the outstanding balance of an existing HOME Program loan provided by City to Surf to assist in the acquisition and rehabilitation of the Project (the “**Existing Loan**”), and has assumed the rights and obligations of Surf under the documents executed by Surf in connection with such Existing Loan.

F. As a condition to its agreement to provide the Loan to Owner, and to permit Owner to assume the obligation to repay the Existing Loan, City requires the Property to be subject to the terms, conditions and restrictions set forth herein. In addition, to the extent permitted by California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*) (the “**CRL**”), this Agreement is intended to enable the San Leandro Redevelopment Agency (the “**Agency**”) to count the residential

units in the Project toward satisfaction of the Agency's housing production obligation under CRL Section 33413(b)(2).

G. The Parties have agreed to enter into and record this Agreement in order to satisfy the conditions described in the foregoing Recitals. The purpose of this Agreement is to regulate and restrict the occupancy and rents of the Project's Restricted Units for the benefit of the Project occupants. The Parties intend the covenants set forth in this Agreement to run with the land and to be binding upon Owner and Owner's successors and assigns for the full term of this Agreement.

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

1.1 Amendment and Restatement. This Agreement amends and restates in its entirety that certain Regulatory Agreement between City of San Leandro and Citizens' Housing Corporation ("**CHC**"), executed by and between City and CHC and recorded in the Official Records of Alameda County on June 13, 2002 as Instrument No. 2002-261091, as amended by that certain Amendment No. 1 to the Regulatory Agreement dated as of November 17, 2003, executed by and between the City and Surf, and recorded in the Official Records on January 12, 2004 as Instrument No. 2004-013762, and assigned to and assumed by Owner pursuant to the Assignment Agreement (defined in Recital E above).

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

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

"Adjusted for Family Size Appropriate for the Unit" shall be determined consistent with Section 50052.5(h) of the California Health and Safety Code and federal rules applicable to the Project; provided that, with respect to the HOME Assisted Units, if a conflict exists between Section 50052.5(h) of the California Health and Safety Code and the HOME Regulations, the HOME Regulations shall govern.

"Affordable Rent" means the following amounts, less a utility allowance and such other adjustments as required pursuant to the HOME Regulations: (i) for units that are restricted for rental to households with incomes of not more than thirty-five percent (35%) of AMI ("**35% Units**"), a monthly rent that does not exceed one-twelfth of thirty percent (30%) of thirty-five percent (35%) of Area Median Income, Adjusted for Family Size Appropriate for the Unit, (ii) for units that are restricted for rental to households of Very Low Income ("**Very Low-Income Units**"), a monthly rent that does not exceed one-twelfth of thirty percent (30%) of fifty percent (50%) of Area Median Income, Adjusted for Family Size Appropriate for the Unit, and (iii) for units that are restricted for rental to households with incomes of not more than sixty percent (60%) of

AMI (“**60% Units**”), a monthly rent that does not exceed one-twelfth of thirty percent (30%) of sixty percent (60%) of Area Median Income, Adjusted for Family Size Appropriate for the Unit.

"Area Median Income" or "AMI" means the median income for Alameda County, California, adjusted for Actual Household Size, as determined by the U.S. Department of Housing and Urban Development (“**HUD**”) pursuant to Section 8 of the United States Housing Act of 1937 and as published from time to time by the State of California Department of Housing and Community Development (“**HCD**”) in Section 6932 of Title 25 of the California Code of Regulations or successor provision published pursuant to California Health and Safety Code Section 50093(c).

"Claims" is defined in Section 10.

"Eligible Household" means a household for which gross household income upon initial occupancy does not exceed the applicable maximum income level for a Restricted Unit as specified in Section 2.1.

"Existing Loan" is defined in Recital E.

"HOME Assisted Units" is defined in Section 2.1.1.

"HOME Regulations" means the Regulations applicable to the HOME Investment Partnership Program established by the National Affordable Housing Act of 1990 (42 USCA § 12471, *et seq.*) (the “**HOME Program**”) as set forth in 24 CFR Part 92.

"Indemnitees" is defined in Section 10.

"Regulations" means Title 25 of the California Code of Regulations.

"Restricted Unit" means a dwelling unit which is reserved for occupancy at an Affordable Rent by a household of not more than a specified household income in accordance with and as set forth in Sections 2.1 and Section 2.2.

"Surf" is defined in Recital E.

"Very Low-Income" means an annual gross household income that is less than or equal to the qualifying limits for households of Very Low Income adjusted for actual household size, as determined periodically by HUD on the basis of gross annual household income and published by HCD in the Regulations for Alameda County. If HUD ceases to make such determination, "Very Low Income" shall be defined as not greater than fifty percent (50%) of Area Median Income adjusted for actual household size, as published by HCD in the Regulations. If both HCD and HUD cease to make such determinations, City in its reasonable discretion may designate another definition of "Lower Income" used by any other federal or state agency so long as such definition is no more restrictive than that set forth herein.

2. Use and Affordability Restrictions. Owner hereby covenants and agrees, for itself and its successors and assigns, that the Property shall be used solely for the operation of a multifamily rental housing development in compliance with the Loan Agreement and the requirements set forth herein. Owner represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the occupancy and affordability restrictions set forth in this Agreement, and Owner covenants that it shall not enter into any agreement that is inconsistent with such restrictions without the express written consent of City.

2.1 Affordability Requirements. For a term of fifty-five (55) years commencing on the Effective Date, not less than ten (10) of the residential units in the Project shall be both Rent Restricted (as defined below) and occupied (or if vacant, available for occupancy) at Affordable Rents by Eligible Households whose income is no greater than 60% of AMI. In addition, until June 30, 2058 the following additional units shall be subject to the following restrictions: not less than two (2) additional units (the “**35% Units**”) shall be both Rent Restricted and occupied (or if vacant, available for occupancy) at Affordable Rents by Eligible Households whose income is no greater than thirty-five percent (35%) of Area Median Income, no fewer than nine (9) additional units (the “**Very Low Income Units**”) shall be both Rent Restricted and occupied (or if vacant, available for occupancy) at Affordable Rents by Eligible Households of Very Low-Income, and not less than eleven (11) additional units shall be both Rent Restricted and occupied (or if vacant, available for occupancy) at Affordable Rents by Eligible Households whose income is no greater than sixty percent (60%) of Area Median Income.

In the event that recertification of tenant incomes indicates that the number of Restricted Units actually occupied by Eligible Households falls below the number reserved for each income group as specified in this Section 2.1. Owner shall rectify the condition by renting the next available dwelling unit(s) in the Project to Eligible Household(s) until the required income mix is achieved. A dwelling unit shall qualify as “**Rent Restricted**” if the gross rent charged for such unit does not exceed the Affordable Rent for the applicable household income category as set forth in this Section 2.1, subject to Section 2.2.

Notwithstanding anything to the contrary contained in this Agreement, if other Project lenders, investors or regulatory agencies restrict a greater number of units than restricted by this Agreement or require stricter household income eligibility or affordability requirements than those imposed hereby, the requirements of such other lenders, investors or regulatory agencies shall prevail.

2.1.1 HOME Restrictions. The 35% Units and the Very Low-Income Units (collectively the “**HOME Assisted Units**”) were assisted by the Existing Loan, which was funded in part by HOME Program Funds. Owner shall comply with all requirements applicable to the HOME Assisted Units pursuant to the HOME Regulations, and with respect to the HOME Assisted Units, the HOME Regulations shall prevail in the event of conflict between this Agreement and the HOME Regulations.

Without limiting the generality of the foregoing, Owner shall comply with lease terms for HOME Assisted Units as governed by 24 CFR Part 92.253 (including the requirement that tenants of the HOME Assisted Units may be evicted only for serious or repeated violation of their lease, violation of applicable federal, state or local law, or for other good cause), and with all other applicable federal HOME requirements set forth in 24 CFR Part 92.350-358. The HOME Assisted Units shall be considered “floating units” within the meaning of 24 CFR Section 92.252(j).

2.2 Rents for Restricted Units. Rents for Restricted Units shall be limited to Affordable Rents for households of the applicable income limit in accordance with Section 2.1. Notwithstanding the foregoing, no tenant qualifying for a Restricted Unit shall be denied continued occupancy of a unit in the Project because, after admission, such tenant's adjusted income increases to exceed the qualifying limit for such Restricted Unit. A household which at initial occupancy qualifies in a particular income category shall be treated as continuing to be of such income category so long as the household's gross income does not exceed 140% of the applicable income limit. In the event the gross household income of a household that qualified at the applicable income limit at initial occupancy exceeds the applicable income limit for a unit, that unit will continue to be considered as satisfying the applicable income limit if the unit remains Rent-Restricted.

If upon recertification of tenant incomes, Owner determines that a tenant has a household income exceeding the maximum qualifying income for such tenant's unit, the tenant shall be permitted to continue to occupy the unit, and upon expiration of the tenant's lease and upon sixty (60) days' written notice, Owner may increase the rent for such unit to the lesser of one-twelfth of thirty percent (30%) of the tenant's actual household income or the fair market rent, and Owner shall rent the next available unit to a tenant whose household income does not exceed the applicable income limit in order to achieve the affordability requirements of this Agreement.

With respect to the HOME Assisted Units, the HOME Regulations shall prevail in the event of inconsistency between the provisions of Section 2.1 or Section 2.2 and the HOME Regulations .

2.4 Unit Sizes, Design and Location. The Restricted Units shall be of comparable design quality as unrestricted units in the Project, but may have reduced interior amenities. Tenants of Restricted Units shall have access to all common facilities of the Project equal to that of tenants of units in the Project that are not Restricted Units.

2.5 Manager's Unit. One dwelling unit in the Project may be used as a resident manager's unit, and shall be exempt from the occupancy and rent restrictions set forth in this Agreement.

2.6 No Condominium Conversion. Owner shall not convert the residential units in the Project to condominium or cooperative ownership or sell condominium or cooperative rights to the residential portion of the Project or any part thereof during the

term of this Agreement.

2.7 Non-Discrimination; Compliance with Fair Housing Laws.

2.7.1 Preferences. Owner shall give first priority for the rental of Restricted Units to Eligible Households who have been displaced by rehabilitation of the Project.

2.7.2 Fair Housing. Owner shall comply with state and federal fair housing laws in the marketing and rental of the units in the Project. Owner shall accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing Section 8 program or any successor thereto.

2.7.3 Non-Discrimination. Owner shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Owner covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Owner or any person claiming under or through Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in, of, or for the Property or part thereof. Owner shall include such provision in all deeds, leases, contracts and other instruments executed by Owner, and shall enforce the same diligently and in good faith.

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

(a) (1) In Deeds, the following language shall appear:

“Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or

through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.”

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

(b) (1) In Leases, the following language shall appear:

“The lessee herein covenants by and for the lessee and lessee’s heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased.”

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

(c) In Contracts the following language shall appear:

“There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the

sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to selection, location, number, use or occupancy of tenants, lessee, subtenants, sublessees or vendees of the land.”

2.8 Relocation. Persons residing on the Property as of the Effective Date shall not be displaced before suitable replacement housing is available either in the residential units undergoing rehabilitation as part of the Project or in comparable replacement housing. Owner shall ensure that all occupants of the Property receive all notices, benefits and assistance to which they are entitled in accordance with California Relocation Assistance Law (Government Code Section 7260 *et seq.*), all state and local regulations implementing such law, and all other applicable local, state and federal laws and regulations (collectively “**Relocation Laws**”) relating to the displacement and relocation of eligible persons as defined in such Relocation Laws. Any and all costs incurred in connection with the temporary and/or permanent displacement and/or relocation of occupants of the Property, including without limitation payments to a relocation consultant, moving expenses, and payments for temporary and permanent relocation benefits pursuant to Relocation Laws shall be paid by Owner. Owner shall indemnify, defend (with counsel reasonably approved by City) and hold harmless the Indemnitees (defined in Section 10) from and against any and all Claims (defined in Section 10) arising in connection with the breach of Owner’s obligations set forth in this Section except to the extent such Claims arise from the gross negligence or willful misconduct of the Indemnitees. Owner’s indemnification obligations set forth in this Section 2.8 shall survive the expiration or earlier termination of this Agreement.

3. Reporting Requirements.

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

- (a) The identity of each household member; and
- (b) The total gross household income,

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

3.2 Annual Report; Inspections. By not later than April 30 of each year during the term of this Agreement, Owner shall submit an annual report (“**Annual Report**”) to the City in form satisfactory to City, together with a certification that the Project is in compliance with the requirements of this Agreement. The Annual Report shall, at a minimum, include the following information for each dwelling unit in the Project: (i) unit

number; (ii) number of bedrooms; (iii) current rent and other charges; (iv) dates of any vacancies during the previous year; (v) number of people residing in the unit; (vi) total gross household income of residents; (vii) documentation of source of household income; and (viii) the information required by Section 3.1.

Owner shall include with the Annual Report, an income recertification for each household, documentation verifying tenant eligibility, and such additional information as City may reasonably request from time to time in order to demonstrate compliance with this Agreement. The Annual Report shall conform to the format requested by City; provided however, during such time that the Project is subject to a regulatory agreement restricting occupancy and/or rents pursuant to requirements imposed in connection with the use of state or federal low-income housing tax credits, Owner may satisfy the requirements of this Section by providing City with a copy of compliance reports required in connection with such financing.

Owner shall permit representatives of City to enter and inspect the Property and the Project during reasonable business hours in order to monitor compliance with this Agreement upon 48-hours advance notice of such visit to Owner or to Owner's management agent.

4. Term of Agreement.

4.1 Term of Restrictions. This Agreement shall remain in effect through the fifty-fifth (55th) anniversary of the Effective Date.

4.2 Effectiveness Succeeds Conveyance of Property and Repayment of Loan. This Agreement shall remain effective and fully binding for the full term hereof, as such may be extended pursuant to Section 4.1, regardless of (i) any sale, assignment, transfer, or conveyance of the Property or the Project or any part thereof or interest therein, (ii) any payment, prepayment or extinguishment of the Loan or Note, or (iii) any reconveyance of the Deed of Trust.

4.3 Reconveyance. Upon the termination of this Agreement, the Parties agree to execute and record appropriate instruments to release and discharge this Agreement; provided, however, the execution and recordation of such instruments shall not be necessary or a prerequisite to the termination of this Agreement upon the expiration of the term as such may be extended pursuant to Section 4.1.

5. Binding Upon Successors; Covenants to Run with the Land. Owner hereby subjects its interest in the Property and the Project to the covenants and restrictions set forth in this Agreement. The City and Owner hereby declare their express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of Owner and City, regardless of any sale, assignment, conveyance or transfer of the Property, the Project or any part thereof or interest therein. Any successor-in-interest to Owner, including without limitation any purchaser, transferee or lessee of the Property or the Project (other than the tenants

of the individual dwelling units or retail/commercial space within the Project) shall be subject to all of the duties and obligations imposed hereby for the full term of this Agreement. Each and every contract, deed, ground lease or other instrument affecting or conveying the Property or the Project or any part thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, ground lease or other instrument. If any such contract, deed, ground lease or other instrument has been executed prior to the date hereof, Owner hereby covenants to obtain and deliver to City an instrument in recordable form signed by the parties to such contract, deed, ground lease or other instrument pursuant to which such parties acknowledge and accept this Agreement and agree to be bound hereby.

Owner agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Property and the Project in favor of City.

6. Property Management; Repair and Maintenance; Marketing.

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

6.2 Management Entity. City shall have the right to review and approve, the qualifications of the management entity proposed by Owner for the Project. The contracting of management services to a management entity shall not relieve Owner of its primary responsibility for proper performance of management duties. City hereby approves Eden Housing Management, Inc., as the initial management entity for the Project.

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

Property and the improvements located thereon in good condition and repair.

6.3.1 City's Right to Perform Maintenance. In the event that Owner breaches any of the covenants contained in Section 6.3, and such default continues for a period of ten (10) days after written notice from City (with respect to graffiti, debris, and waste material) or thirty (30) days after written notice from City (with respect to landscaping, building improvements and general maintenance), then City, in addition to any other remedy it may have under this Agreement or at law or in equity, shall have the right, but not the obligation, to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and the landscaped areas on the Property. All costs expended by City in connection with the foregoing, shall constitute an indebtedness secured by the Deed of Trust, and shall be paid by Owner to City upon demand. All such sums remaining unpaid thirty (30) days following delivery of City's invoice therefor shall bear interest at the lesser of 10% per annum or the highest rate permitted by applicable law. Notwithstanding anything to the contrary set forth in this Section, Agency agrees that it will provide Owner with not less than thirty (30) days' written notice prior to undertaking any work for which Owner will incur a financial obligation.

6.4 Marketing and Management Plan. Within sixty (60) days following the Effective Date of this Agreement, Owner shall submit for City review and approval, a plan for marketing and managing the Property ("**Marketing and Management Plan**" or "**Plan**"). The Marketing and Management Plan shall address in detail how Owner plans to market the Restricted Units to prospective Eligible Households in accordance with fair housing laws and this Agreement, Owner's tenant selection criteria, and how Owner plans to certify the eligibility of Eligible Households. The Plan shall also describe the management team and shall address how the Owner and the management entity plan to manage and maintain the Property and the Project. The Plan shall include the proposed management agreement and the form of rental agreement that Owner proposes to enter into with Project tenants. Owner shall abide by the terms of the Marketing and Management Plan in marketing, managing, and maintaining the Property and the Project, and throughout the term of this Agreement, shall submit proposed modifications to City for review and approval.

6.5 Approval of Amendments. If City has not responded to any submission of the Management and Marketing Plan, the proposed management entity, or a proposed amendment or change to any of the foregoing within thirty (30) days following City's receipt of such plan, proposal or amendment, the plan, proposal or amendment shall be deemed approved by City.

6.6 Fees, Taxes, and Other Levies. Owner shall be responsible for payment of all fees, assessments, taxes, charges, liens and levies applicable to the Property or the Project, including without limitation possessory interest taxes, if applicable, imposed by any public entity, and shall pay such charges prior to delinquency. However, Owner shall not be required to pay any such charge so long as (a) Owner is contesting such charge in good faith and by appropriate proceedings, (b) Owner maintains reserves adequate

to pay any contested liabilities, and (c) on final determination of the proceeding or contest, Owner immediately pays or discharges any decision or judgment rendered against it, together with all costs, charges and interest. Nothing in this Section 6.6 is intended to prohibit Owner from applying for any exemption from property taxes and fees that may be available to the owners of low-income housing.

6.7 Insurance Coverage. Throughout the term of this Agreement Owner shall comply with the insurance requirements set forth in Exhibit B, and shall, at Owner's expense, maintain in full force and effect insurance coverage as specified in Exhibit B.

6.8 Property Damage or Destruction. If any part of the Project is damaged or destroyed, Owner shall repair or restore the same, consistent with the occupancy and rent restriction requirements set forth in this Agreement. Such work shall be commenced as soon as reasonably practicable after the damage or loss occurs and shall be completed within one year thereafter or as soon as reasonably practicable, provided that insurance proceeds are available to be applied to such repairs or restoration within such period and the repair or restoration is financially feasible. During such time that lenders or low-income housing tax credit investors providing financing for the Project impose requirements that differ from the requirements of this Section the requirements of such lenders and investors shall prevail.

7. Recordation; Subordination. This Agreement shall be recorded in the Official Records of Alameda County. Owner hereby represents, warrants and covenants that with the exception of easements of record, absent the written consent of City, this Agreement shall not be subordinated in priority to any lien (other than those pertaining to taxes or assessments), encumbrance, or other interest in the Property or the Project. If at the time this Agreement is recorded, any interest, lien, or encumbrance has been recorded against the Project in position superior to this Agreement, upon the request of City, Owner hereby covenants and agrees to promptly undertake all action necessary to clear such matter from title or to subordinate such interest to this Agreement consistent with the intent of and in accordance with this Section 7, and to provide such evidence thereof as City may reasonably request. Notwithstanding the foregoing, the City agrees that it will not withhold consent to reasonable requests for subordination of this Agreement to deeds of trust provided for the benefit of lenders identified in the Financing Plan approved in connection with the Loan Agreement, provided that the instruments effecting such subordination include reasonable protections to the City in the event of default, including without limitation, extended notice and cure rights.

8. Transfer and Encumbrance.

8.1 Restrictions on Transfer and Encumbrance. During the term of this Agreement, except as permitted pursuant to the Loan Agreement or this Agreement, Owner shall not 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, or the improvements located on the Property, without the prior written consent of the City,

which approval shall not be unreasonably withheld. In addition, prior to the expiration of the term of this Agreement, except as expressly permitted by this Agreement or the Loan Agreement, Owner shall not undergo any significant change of ownership without the prior written approval of City. For purposes of this Agreement, a “significant change of ownership” shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Owner, taking all transfers into account on a cumulative basis; provided however, neither the admission of an investor limited partner, nor the transfer by the investor limited partner to subsequent limited partners shall be restricted by this provision.

8.2 Permitted Transfers. Notwithstanding any contrary provision hereof, the prohibitions on Transfer set forth herein shall not be deemed to prevent: (i) the granting of easements or permits to facilitate development of the Property; (ii) the dedication of any property required pursuant to the Loan Agreement; (iii) the lease of individual dwelling units to tenants for occupancy as their principal residence in accordance with this Agreement and the lease of commercial space to retail and commercial tenants, if applicable; (iv) assignments creating security interests for the purpose of financing the acquisition, construction, or permanent financing of the Project or the Property in accordance with the Loan Agreement, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; (v) a Transfer to an entity which is under the direct control of or under common control with Eden Housing, Inc., a California nonprofit public benefit corporation (“**Controlled Affiliate**”); (vi) the admission of limited partners and any transfer of limited partnership interests in accordance with Owner’s agreement of limited partnership (the “**Partnership Agreement**”) provided that the Partnership Agreement provides for development and operation of the Property and Project in a manner consistent with the Loan Agreement and this Agreement; (vii) the removal of the general partner by the investor limited partner for a default under the Partnership Agreement, provided the replacement general partner is Alliant Capital, Ltd., or an affiliate thereof, or an entity that is reasonably satisfactory to City; or (viii) the transfer of the General Partner’s interest to a nonprofit entity that is tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986 as amended, provided such replacement general partner is reasonably satisfactory to City.

In addition, City shall not withhold its consent to the sale, transfer or other disposition of the Project, in whole or in part, provided that (1) the Project is and shall continue to be operated in compliance with this Agreement; (2) the transferee expressly assumes all obligations of Owner imposed by this Agreement; (3) the transferee executes all documents reasonably requested by the City with respect to the assumption of the Owner’s obligations under this Agreement, and upon City’s request, delivers to the City an opinion of its counsel to the effect that such document and this Agreement are valid, binding and enforceable obligations of such transferee; and (4) either (A) the transferee has at least three years’ experience in the ownership, operation and management of low-income multifamily rental housing projects of similar size to that of the Project, without any record of material violations of nondiscrimination provisions or other state or federal laws or regulations applicable to such projects, or (B) the

transferee agrees to retain a property management firm with the experience and record described in subclause (A).

Consent to any proposed Transfer may be given by the City's Executive Director unless the Executive Director, in his or her discretion, refers the matter of approval to the City's governing board. If a proposed Transfer has not been approved by City in writing within thirty (30) days following City's receipt of written request by Owner, it shall be deemed rejected.

Owner shall reimburse City for all City costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to effect a Transfer under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee within ten (10) days following City's delivery of an invoice detailing such costs.

8.3 Encumbrances. Owner agrees to use best efforts to ensure that all deeds of trust or other security instruments and any applicable subordination agreement recorded against the Property, the Project or part thereof for the benefit of a lender other than City ("**Third-Party Lender**") shall contain each of the following provisions: (i) Third-Party Lender shall use its best efforts to provide to City a copy of any notice of default issued to Owner concurrently with provision of such notice to Owner; (ii) City shall have the reasonable right, but not the obligation, to cure any default by Owner within the same period of time provided to Owner for such cure extended by an additional 90 days; (iii) provided that City has cured any default under Third-Party Lender's deed of trust and other loan documents, City shall have the right to foreclose City's Deed of Trust and take title to the Project without acceleration of Third-Party Lender's debt; and (iv) City shall have the right to transfer the Project without acceleration of Third-Party Lender's debt to a nonprofit corporation or other entity which shall own and operate the Project as an affordable rental housing Project, subject to the prior written consent of the Third-Party Lender. Owner agrees to provide to City a copy of any notice of default Owner receives from any Third-Party Lender within three (3) business days following Owner's receipt thereof.

8.4 Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon all or any portion of the Project or the Property, and the purchaser at any trustee's sale or foreclosure sale shall not be liable for any violation of any provision hereof occurring prior to the acquisition of title by such purchaser. Such purchaser shall be bound by and subject to this Agreement from and after such trustee's sale or foreclosure sale. Promptly upon determining that a violation of this Agreement has occurred, City shall give written notice to the holders of record of any mortgages or deeds of trust encumbering the Project or the Property that such violation has occurred.

9. Default and Remedies.

9.1 Events of Default. The occurrence of any one or more of the following

events shall constitute an event of default hereunder ("**Event of Default**"):

- (a) The occurrence of a Transfer in violation of Section 8 hereof;
- (b) Owner's failure to maintain insurance on the Property and the Project as required hereunder, and the failure of Owner to cure such default within 10 days;
- (c) Subject to Owner's right to contest the following charges, Owner's failure to pay taxes or assessments due on the Property or the Project or failure to pay any other charge that may result in a lien on the Property or the Project, and Owner's failure to cure such default within sixty (60) days of delinquency, but in all events prior to the date upon which the holder of any lien has the right to pursue foreclosure thereof;
- (d) 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;
- (e) A default arises under the Loan Agreement, the Note, the Deed of Trust or any other City Document (as defined in the Loan Agreement) and remains uncured beyond the expiration of all applicable cure periods; and
- (f) Owner's default in the performance of any term, provision or covenant under this Agreement (other than an obligation enumerated in this Subsection 9.1), and unless such provision specifies a shorter cure period for such default, the continuation of such default for ten (10) days in the event of a monetary default or thirty (30) days in the event of a non-monetary default following the date upon which City shall have given written notice of the default to Owner, or if the nature of any such non-monetary default is such that it cannot be cured within 30 days, Owner's failure to commence to cure the default within thirty (30) days and thereafter prosecute the curing of such default with due diligence and in good faith, but in no event longer than 120 days from receipt of the notice of default.

The limited partners of Owner shall have the right to cure any default of Owner hereunder pursuant to the terms of the Loan Agreement. Provided that City has been given written notice of the address for delivery of notices to the limited partners, City shall provide any notice of default hereunder to the limited partners concurrently with the provision of such notice to Owner, and as to the limited partners, the cure periods specified herein and in the Loan Agreement shall commence upon the date of delivery of such notice in accordance with Subsection 11.3.

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

- A. Bring an action for equitable relief seeking the specific performance of the

terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking declaratory relief;

- B. Accelerate and declare the balance of the Note and interest accrued thereon immediately due and payable and proceed with foreclosure under the Deed of Trust;
- C. For violations of obligations with respect to rents for Restricted Units, impose as liquidated damages a charge in an amount equal to the actual amount collected in excess of the Affordable Rent;
- D. Pursue any other remedy allowed at law or in equity.

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

10. Indemnity. Owner shall indemnify, defend (with counsel reasonably approved by City) and hold City, and its elected and appointed officers, officials, employees, agents, and representatives (collectively, the “**Indemnitees**”) harmless from and against all liability, loss, cost, expense (including without limitation attorneys’ fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively “**Claims**”) arising directly or indirectly, in whole or in part, as a result of or in connection with Owner’s rehabilitation, management, or operation of the Property and the Project or any failure to perform any obligation as and when required by this Agreement. Owner’s indemnification obligations under this Section 10 shall not extend to Claims resulting solely from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 10 shall survive the expiration or earlier termination of this Agreement. It is further agreed that City does not and shall not waive any rights against Owner that it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or the deposit with City by Owner, of any of the insurance policies described in this Agreement or the Loan Agreement.

11. Miscellaneous.

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

11.2 No Waiver. Any waiver by City of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by City to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by City at any time to require strict performance by Owner of any provision of this Agreement or to exercise any election

contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

11.3 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt; or (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

City: City of San Leandro
835 East 14th Street
San Leandro, CA 94577
Attention: City Manager

Owner: Eden Surf Associates, L.P.
c/o Eden Housing, Inc.
22645 Grand Street
Hayward, CA 94541-5031
Attention: Executive Director

With a copy to:

Alliant Capital, Ltd.
21600 Oxnard Street, Suite 1200
Woodland Hills, CA 91367
Attention: Brian Goldberg
Telephone: (818) 668-6800
Telecopy: (818) 668-2828

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

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

11.6 Action by the City. Except as may be otherwise specifically provided

herein, whenever any approval, notice, direction, consent or request by the City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City Executive Director or by any person who shall have been designated by the City Executive Director, without further approval by the governing board of the City.

11.7 Non-Liability of City Officials, Employees and Agents. No member, official, employee or agent of the City or the City shall be personally liable to Owner or any successor in interest, in the event of any default or breach by the City, or for any amount of money which may become due to Owner or its successor or for any obligation of City under this Agreement.

11.8 Headings; Construction. The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party.

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

11.10 Governing Law. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law.

11.11 Attorneys' Fees and Costs. If any legal or administrative action is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

11.12 Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

11.13 Entire Agreement; Exhibits. This Agreement, together with the Loan Agreement, the Note, the Deed of Trust and the other City Documents contains the entire agreement of Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto. Exhibits A and B, attached hereto are incorporated herein by this reference.

11.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

SIGNATURES ON FOLLOWING PAGE.

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

CITY

CITY OF SAN LEANDRO, a municipal corporation

By: _____

Name: _____

Title: _____

ATTEST:

By: _____,
City Clerk

APPROVED AS TO FORM:

By: _____,
City Attorney

OWNER

EDEN SURF ASSOCIATES L.P., a California limited partnership

By: Eden Surf LLC, a California limited liability company

Its: General Partner

By: Eden Investments, Inc., a California nonprofit public benefit corporation

Its: Managing Member

By: _____
Linda Mandolini, Executive Director

SIGNATURES MUST BE NOTARIZED.

STATE OF CALIFORNIA)
)
COUNTY OF ALAMEDA)

On _____, 20__, before me, _____, (here 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)

STATE OF CALIFORNIA)
)
COUNTY OF ALAMEDA)

On _____, 20__, before me, _____, (here 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)

Exhibit A

PROPERTY

(Attach legal description.)

Exhibit B

INSURANCE REQUIREMENTS

Throughout the term of this Agreement, Owner shall obtain and maintain the following policies of insurance:

(a) a commercial general liability policy in the amount of One Million Dollars (\$1,000,000) each occurrence, Two Million Dollars (\$2,000,000) annual aggregate, together with Three Million Dollars (\$3,000,000) excess liability coverage, or such other policy limits as City may require in its reasonable discretion, including coverage for bodily injury, property damage, products, completed operations and contractual liability coverage. Such policy or policies shall be written on an occurrence basis and shall name the Indemnitees as additional insureds.

(b) a comprehensive automobile liability coverage in the amount of One Million Dollars (\$1,000,000), combined single limit including coverage for owned and non-owned vehicles and shall furnish or cause to be furnished to City evidence satisfactory to City that Owner and any contractor with whom Owner has contracted for the performance of work on the Property or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law. Automobile liability policies shall name the Indemnitees as additional insureds.

(c) Upon commencement of construction and continuing until issuance of a Certificate of Completion, Owner and all contractors working on behalf of Owner shall maintain a policy of builder's all-risk insurance in an amount not less than the full insurable cost of the Project on a replacement cost basis naming City as loss payee.

(d) Property insurance covering all risks of loss (other than earthquake), including flood (if required) for 100% of the replacement value of the Project with deductible, if any, in an amount acceptable to City, naming City as loss payee.

(e) Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A: VII. The Commercial General Liability and comprehensive automobile policies required hereunder shall name the Indemnitees as additional insureds. Builder's Risk and property insurance shall name the City as loss payee as its interests may appear.

(f) Prior to commencement of construction work on the Project, Owner shall furnish City with certificates of insurance in form acceptable to City evidencing the required insurance coverage and duly executed endorsements evidencing such additional insured status. The certificates shall contain a statement of obligation on the part of the carrier to notify City of any material adverse change, cancellation, termination or non-renewal of the coverage at least thirty (30) days in advance of the effective date of any such material adverse change, cancellation, termination or non-renewal.

(g) If any insurance policy or coverage required hereunder is canceled or reduced, Owner shall, within fifteen (15) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with City certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, City may, without further notice and at its option, procure such insurance coverage at Owner's expense, and Owner shall promptly reimburse City for such expense upon receipt of billing from City.

(h) Coverage provided by Owner shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by City, and the policies shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the City. Owner shall furnish the required certificates and endorsements to City prior to the commencement of construction of the Project, and shall provide City with certified copies of the required insurance policies upon request of City.