

**EXHIBIT L-1**  
**AFFORDABLE HOUSING OBLIGATIONS**

In order to assist the Agency to meet the obligations created by the construction of the Project imposed by Health and Safety Code Section 33413 and the Central City East Redevelopment Plan to make available units affordable to very low, low, and moderate income households, Developer and the Agency agree to the following:

1. Development of Affordable Housing.

The Agency and Developer intend to promote the development of affordable rental housing in the Project by reserving those the Development Parcels identified on Exhibit E as Parcel F (approximately 1.75 acres) and Parcel G (approximately 2.7 acres) for affordable rental housing development under the terms of this Exhibit, and by funding such affordable housing development through a combination of a Developer monetary contribution, as set forth herein, and Agency funding of such development. Parcels F and Parcel G are referred to in this Exhibit as the “Affordable Housing Parcels.” The Affordable Housing Parcels will also be subject to restrictions on the type and affordability of residential units developed on those parcels, which restrictions shall be recorded against the Affordable Housing Parcels upon acquisition by the Agency. A form of those restrictions is attached as Exhibit L-2.

2. Site Improvement Work to Affordable Housing Parcels.

The work necessary (1) to render each of the Affordable Housing Parcels into a Finished Parcel, and (2) to Remediate any Hazardous Materials on, in below, or about each of the Affordable Housing Parcels as necessary to receive a “no further action letter” or other equivalent written closure determination from the appropriate Environmental Regulatory Agency, is together referred to in this Exhibit as the “Site Improvement Work.” Developer has the obligation to perform the Site Improvement Work at its sole expense for the Affordable Housing Parcels. Developer must commence and complete the Site Improvement Work for the Affordable Housing Parcels no later than the time it commences and completes the Site Improvement Work for other Development Parcels comprising Phase 1.

3. Agency Purchase of Affordable Housing Parcels.

3.1. Purchase. The Agency shall purchase the Affordable Housing Parcels for the development of affordable housing under the terms of this Exhibit. The Agency and Developer shall cause the conveyance of each of the Affordable Housing Parcels to close on or before the later to occur of (a) the date that is 90 calendar days after the Site Improvement Work has been completed for the applicable Affordable Housing Parcel or (b) the date that the purchase price has been determined for the applicable Affordable Housing Parcel.

3.2. Purchase Price. The purchase price for Parcel F shall be the greater of (1) the Fair Market Value of Parcel F at the time of purchase, less \$1 million, or (2) Developer Cost, but not to exceed the Fair Market Value of Parcel F at the time of purchase. The

purchase price for Parcel G shall be the greater of (1) the Fair Market Value of the residential portion of Parcel G at the time of purchase, less \$1 million, or (2) Developer Cost for the residential portion of Parcel G, but not to exceed the Fair Market Value of the residential portion of Parcel G at the time of purchase. The purchase price of either Affordable Housing Parcel shall be subject to an additional discount in the event of an Early Purchase by the Agency as set forth below.

As used in this Exhibit, the term “Fair Market Value” shall mean the purchase price that an unrelated party negotiating at arm’s length would pay to purchase such property, in its condition as a Finished Parcel and Remediated as required by this Exhibit, unrestricted by affordable housing requirements, taking into account all then current market factors, including without limitation the quality, design, condition and location of the property including the extent and condition of the construction completed to date, if any, the amount of any and all liens, mortgages, and encumbrances against the property, and the value of the existing improvements to such party.

As used in this Exhibit, the term “Developer Cost” shall mean the aggregate of (1) a pro rata share of the cost to enter into the Option Agreement and acquire the Project Site (including, but not limited to, the purchase price payable under the Option Agreement, financing costs, feasibility study costs and attorneys fees and settlement costs related to the negotiation and drafting of the Exclusive Negotiation Agreement and Option Agreement and the settlement of the lawsuits related to the Option Agreement and the adoption of the Central City East Redevelopment Plan); (2) a pro rata share of the cost to acquire the Project Approvals (including, but not limited to, consultant fees, application fees, processing and plan check fees, and attorneys fees, court costs and settlement costs associated with the defense of any action filed to challenge the Project Approvals); (3) a pro rata share of the cost to Remediate any Hazardous Materials for Phase 1 (including, but not limited to, remediation costs, consultants fees, regulatory fees and insurance premiums); (4) a pro rata share of the cost to design and construct the off-site and on-site infrastructure for Phase 1; (5) holding costs associated with the Affordable Housing Parcel being acquired; (6) Developer overhead (but not including Developer profit); and (7) Developer’s return on equity equal to 10% per annum. The pro rata share for items (1) and (2) shall be calculated on the basis of the developable square footage of the Affordable Housing Parcel being acquired compared to the developable square footage of all Development Parcels within the Project Site; and the pro rata share for items (3) and (4) shall be calculated on the basis of the developable square footage of the Affordable Housing Parcel being acquired compared to the developable square footage of all Development Parcels included in Phase 1.

- 3.3. Determination of Fair Market Value. The Fair Market Value of the Affordable Housing Parcel to be acquired by the Agency shall be initially determined by an independent appraisal obtained by Developer. Developer shall submit the appraisal for the Affordable Housing Parcel being acquired no later than 120 days after the Site Improvement Work has been completed for that the applicable Affordable Housing Parcel or, in the case of an Early Purchase, within 120 calendar days after the Agency has delivered written notice of its intent to exercise the Agency’s option for an Early Purchase. If the Agency

disputes the Fair Market Value set forth in an appraisal submitted by Developer, the Agency shall notify Developer in writing within 30 calendar days of its receipt of such appraisal, which notice shall set forth the Agency's determination of the Fair Market Value. The Agency and Developer shall thereupon attempt to resolve their differences within ten business days following Developer's receipt of the Agency's notice. If the Agency and Developer cannot agree on Fair Market Value during such ten-business day period, the Agency shall retain an appraiser to appraise the Fair Market Value. The Agency's appraiser shall complete its written determination of Fair Market value within 30 calendar days after the appointment of such appraiser. If the valuations vary by ten percent or less of the higher value, the Fair Market Value shall be the average of the two valuations. If the valuations vary by more than ten percent of the higher value, the two appraisers shall, within ten calendar days after submission of the Agency's appraisal report, appoint a third disinterested appraiser. If the two appraisers are unable to agree in a timely manner on the selection of the third appraiser, then either appraiser, on behalf of both, may request appointment of such third appraiser by the presiding judge of the Superior Court of Alameda County. Such third appraiser shall, within 15 calendar days after appointment, make a determination of Fair Market Value by selecting one of the prior appraisals. The third appraiser shall have no right to select a Fair Market Value other than as determined by one of the prior appraisals. All appraisers retained pursuant to this Section shall be an M.A.I. and a State of California licensed general appraiser experienced in appraising commercial and residential real estate in Alameda County, and all appraisals must conform to the current Uniform Standards of Professional Appraisal practice (USPAP).

The parties shall mutually agree upon the form of appraisal instructions to direct the appraisers to determine the Fair Market Value of the residential portion of Parcel G (as distinct from the Fair Market Value of the commercial portion of Parcel G).

- 3.4. Determination of Developer Cost. Developer shall submit a written certification of Developer Cost no later than 120 days after the Site Improvement Work has been completed for that the applicable Affordable Housing Parcel. The Agency shall have the right, at Developer's cost, to retain a third party consultant to review Developer's certification. If the Agency disputes Developer's determination of Developer Cost as contained in Developer's notice, the Agency shall notify Developer in writing within 30 calendar days of its receipt of Developer's notice, which notice shall set forth the Agency's determination of Developer Cost. The Agency and Developer shall thereupon attempt to resolve their differences within 10 business days following Developer's receipt of the Agency's notice. If the Agency and Developer cannot agree on Developer Cost during such 10 business day period, the Agency and Developer shall jointly retain a nationally or regionally recognized accounting firm to audit Developer's project books and determine Developer Cost based on the parameters set forth in this Section. The auditor's determination shall be binding on both parties.

For purposes of calculating the Developer Cost for the residential portion of Parcel G, the Developer Cost for Parcel G shall be pro rated by a fraction where the numerator is the

Fair Market Value of the residential portion of Parcel G and the denominator is the Fair Market Value of the entire mixed-use (residential and commercial) project for Parcel G.

- 3.5. Escrow Fees and Costs. The Agency shall pay all applicable title and escrow fees and city and county transfer taxes associated with the purchase of the Affordable Housing Parcels.
- 3.6. Title. At the close of escrow transferring title to the Affordable Housing Parcels to the Agency, title to the Affordable Housing Parcel being acquired shall be subject only to the following exceptions:
  - 3.6.1. Liens for property taxes and assessments not yet due and payable;
  - 3.6.2. Such title exceptions as are reasonably necessary to develop the Project Site into the Project (including, but not limited to, this Agreement, easements shown on the applicable final map, deed restrictions required pursuant to the Remediation of any Hazardous Materials on the Project Site, any restrictions set forth in any Project approval or permit issued by a local, state or federal agency, the CSD and the CFD and any community facilities districts (or other mechanisms) to finance construction or acquisition of public improvements within the Project);
  - 3.6.3. With respect to Parcel G only, the obligation to develop the commercial component and the option/put rights set forth in Section 7, below; and
  - 3.6.4. Any other agreed upon title exceptions.
- 3.7. Feasibility Investigations. The Agency and its employees, contractors, agents, or assignees may enter the Affordable Housing Parcels for purposes of inspection, survey, tests, or other actions reasonably related to acquisition of the property by the Agency. The Agency shall indemnify and defend Developer from and against any liability, claims or damages arising from such entry, unless the liability, claims or damages are caused by the negligence or willful misconduct of Developer. The Agency shall name Developer as an additional insured on a Commercial General Liability insurance policy with limits of liability not less than \$2 million prior to any entry upon the Affordable Housing Parcels.
- 3.8. Assignment of Agency Purchase Rights. The Agency's right to purchase either Affordable Housing Parcel, including its optional rights to an Early Purchase, shall be assignable by the Agency to an Affordable Housing Developer selected according to the selection process and approved by Developer pursuant to Section 4, below.
- 3.9. Early Purchase.
  - 3.9.1. Early Purchase Option. The Agency may in its sole discretion elect to purchase either Affordable Housing Parcel, or both, prior to the completion of the Site Improvement Work for the Affordable Housing Parcel (an "Early Purchase").

The Agency may exercise its option to make an Early Purchase at any time after Developer acquires title to the Affordable Housing Parcels by delivering written notice of the Agency's intent to exercise this option to Developer. The purchase and sale under an Early Purchase shall be on those terms and conditions as set forth above, except as modified in this Section 3.9.

- 3.9.2. Initial Early Purchase Price. The initial purchase price for Parcel F under an Early Purchase shall be the Fair Market Value of Parcel F at the time of the Early Purchase, less \$1 million, and less the Early Purchase Discount as provided for below. The initial purchase price for Parcel G under an Early Purchase shall be the Fair Market Value of the residential portion of Parcel G at the time of Early Purchase, less \$1 million, and less the Early Purchase Discount as provided for below. The initial purchase price for an Affordable Housing Parcel shall be paid at close of escrow on the Affordable Housing Parcel, with a later upward adjustment to such price as provided for below. The "Early Purchase Discount" shall be a dollar amount equal to the Fair Market Value of the Affordable Housing Parcel being acquired (or, in the case of Parcel G, the Fair Market Value of the residential portion of Parcel G) at the time of the Early Purchase, less \$1 million, multiplied by the "Early Purchase Discount Rate." The "Early Purchase Discount Rate" shall be a percentage equal to the number of years the Affordable Housing Parcel is purchased prior to the expected completion of the Site Improvement Work for Phase 1 multiplied by the Blended Rate. The "Blended Rate" shall be a rate equal to Developer's cost of debt financing and preferred rate of return on equity for Phase 1, weighted by the relative proportion of debt and equity that will be used to finance Phase 1. For example, if Developer's cost of debt financing is 8 percent and Developer's preferred rate of return on equity is 10 percent, and the proportions of debt and equity for Phase 1 are 75 percent and 25 percent respectively, then the Blended Rate would be 8.5 percent. If the Early Purchase of Parcel F in this example occurred two years prior to the expected completion of the Site Improvement Work for Phase 1, then the initial purchase price for Parcel F would be discounted by 17 percent of the Fair Market Value of Parcel F at the time of the Early Purchase less \$1 million.
- 3.9.3. Adjustment to Initial Early Purchase Price. In the event of an Early Purchase, the initial purchase price paid by the Agency as provided for above shall be subject to a possible upward adjustment at the completion of the Site Improvement Work based on a calculation of Developer Cost. Within 120 days after the completion of the Site Improvement Work for an Affordable Housing Parcel, Developer shall submit a written certification of Developer Cost, and Developer Cost shall be determined pursuant to the process set forth above. If Developer Cost exceeds the initial purchase price for the Affordable Housing Parcel, then the final purchase price for the Affordable Housing Parcel shall be adjusted to Developer Cost; provided that under no circumstances, and irrespective of the final determination of Developer Cost, may the final purchase price exceed the Fair Market Value of the Affordable Housing Parcel (or, in the case of Parcel G, the Fair Market Value of the residential portion of Parcel G) at the time of completion of the Site

Improvement Work, less the Early Purchase Discount. In the case where an adjustment is warranted, the Agency shall reimburse Developer for the difference between the initial purchase price and the final purchase price within 60 days of the final determination of Developer Cost.

3.9.4. Early Purchase Site Improvements. Developer shall continue to have an obligation to perform the Site Improvement Work at its expense on the Affordable Housing Parcels as set forth in this Exhibit, notwithstanding an Early Purchase by the Agency. Notwithstanding the definition of Fair Market Value set forth in Section 3.2, above, to the contrary, the appraisal of Fair Market Value under an Early Purchase shall consider the Affordable Housing Parcel's value based on its condition as a Finished Parcel and Remediated as required by this Exhibit even though such work has not been performed as of the date of the Early Purchase.

3.9.5 Environmental Remediation. In the event of an Early Purchase, the Agency and the selected Affordable Housing Developer shall be entitled to the same rights and protections, including without limitation Developer duties to Remediate and provide financial assurance, environmental insurance coverage, and environmental indemnity and access to liability limiting measures, with respect to Hazardous Materials and Remediation of the Affordable Housing Parcels that the City will receive under this Development Agreement for the Public Open Space.

#### 4. Selection of Affordable Housing Developer.

The Agency and Developer shall work together to identify, recruit, and select an experienced developer or developers of affordable housing (singularly or collectively, the "Affordable Housing Developer") to purchase the Affordable Housing Parcels and develop affordable housing on the Affordable Housing Parcels. The Affordable Housing Developer shall be selected as follows: Developer shall have the right to propose one or more affordable housing developers, with respect to each Affordable Housing Parcel, prior to the earlier to occur of (a) one year after the Agency's acquisition of the Affordable Housing Parcel or (b) the date that is 120 days after the completion of the Site Improvement Work. The Agency shall have the right to approve or reject an affordable housing developer proposed by Developer, which approval shall not be unreasonably withheld, conditioned or delayed. The Agency's approval or disapproval of the proposed affordable housing developer shall be in writing and, in the event of a disapproval, state with specificity the basis for such disapproval. If the Agency disapproves of Developer's proposed affordable housing developer, then the Agency shall then have the right to propose one or more affordable housing developers. The Agency may conduct a Request for Proposals ("RFP") process or other competitive process to identify a prospective developer. Developer shall then have the right to approve or reject the affordable housing developer proposed by the Agency. Developer shall have the right to participate in the development and distribution of the RFP. This right to reject may be exercised only where Developer can demonstrate that the proposed developer does not meet the following criteria: a nationally or regionally recognized affordable housing development company which (a) has developed, on its own or through its assembled development team, an urban residential project similar to the project

contemplated for the Affordable Housing Parcel (as applicable) within the proceeding ten-year period, (b) has an established track record for developing projects that exhibit excellence in architectural design, quality of construction and operation, (c) has the financial capacity to complete the development of the subject Affordable Housing Parcel, and (d) neither it nor its principals, members or partners have been convicted, found or admitted or assumed (including any plea of no contest) liability for any felony, criminal fraud or misrepresentation or any act of moral turpitude.

As between the City, Agency and the selected Affordable Housing Developer, the Agency, the City, and the Affordable Housing Developer will be responsible for negotiating the terms and conditions of the sale of the Affordable Housing Parcels to the Affordable Housing Developer, the development of affordable housing on the Affordable Housing Parcels, any Agency or City funding of or other assistance to the affordable housing projects on those Development Parcels, and the affordability restrictions that would attach to the Affordable Housing Parcels as a condition of such assistance.

5. Agency Funding of Affordable Housing.

The Agency shall reserve any funds deposited into the Agency's Low and Moderate Income Housing Fund from tax increment revenues generated by the Project to subsidize the development of affordable housing on the Affordable Housing Parcels. Any such reservation shall be subordinate and subject to any obligations in connection with any tax allocation bonds that have been issued or will be issued by the Agency. The Agency and/or City may allocate additional subsidy funds to such development, consistent with the Agency's and City's guidelines, policies and processes for funding affordable housing development.

6. Timeline for Affordable Housing Development.

It is anticipated that the project developed on Parcel F will consist of approximately 150 affordable housing units, while the project developed on Parcel G will consist of approximately 315 affordable housing units, along with the commercial component set forth below. It is anticipated that the Parcel G affordable housing project will be developed in three phases. The Agency shall cause the Affordable Housing Developer to develop the affordable housing projects when it is economically feasible for the Affordable Housing Developer to do so. A project shall be considered economically feasible when, given (1) the projected cost of development (hard and soft costs) of the project, (2) the planned levels of affordability of the project, and (3) the Agency and City's guidelines and policies for providing development funding to affordable housing projects then in effect, adequate private and public financing and subsidy sources (such as bond proceeds, low income housing tax credits, state funding, federal funding, tax increment revenue from the Central City East Redevelopment Area, and the Agency's Low and Moderate Income Housing Fund) are available to complete construction of and operate the project. Following the Effective Date, the Agency's governing board shall annually review the projected level of funding that would be available to develop the Affordable Housing Parcels, relative to the Agency's overall projected levels of affordable housing funds and current and proposed Agency commitments to fund other affordable housing development. Notwithstanding the foregoing

to the contrary, a project for one or both of the Affordable Housing Parcels shall be considered economically feasible if the Low and Moderate Income Housing Funds generated by the Project and reserved for affordable housing development pursuant to Section 5 are sufficient (alone or along with other available sources) to complete construction and operate the project, irrespective of whether the use of such reserved funds is consistent with the Agency's guidelines and policies for funding affordable housing.

Subject to economic feasibility, the Agency (or the Affordable Housing Developer) shall commence construction of the affordable housing projects according to the following schedule:

- a. Parcel F, Phase 1 (150 units): Not later than the later of (1) July 1, 2013, or (2) the completion of the 1,000<sup>th</sup> market rate unit in the Project.
- b. Parcel G, Phase II (132 units): Not later than the later of (1) July 1, 2016, or (2) the completion of the 1,800<sup>th</sup> market rate unit in the Project.
- c. Parcel G, Phase III (77 units): Not later than the later of (1) July 1, 2017, or (2) the completion of the 2,100<sup>th</sup> market rate unit in the Project.
- d. Parcel G, Phase IV (106 units): Not later than the later of (1) July 1, 2018, or (2) the completion of the 2,300<sup>th</sup> market rate unit in the Project.

The Agency may elect to cause the construction of the affordable housing projects sooner, provided sufficient funding is available.

#### 7. Commercial Development of Parcel G.

As a condition of the sale of Parcel G to the Affordable Housing Developer, the Affordable Housing Developer shall have the obligation to include an approximately 42,000 square foot retail condominium (cold shell) and a 400 space parking condominium within the Parcel G project (each designed to specifications supplied by Developer). The terms of the sale of Parcel G to the Affordable Housing Developer shall include an option right in favor of Developer to purchase and a put right in favor of the Affordable Housing Developer to require Developer to purchase the retail and parking condominiums. Either option shall be exercisable within 30 calendar days after the issuance of a temporary certificate of occupancy by the City for the retail and parking condominiums, and the purchase by Developer shall close on or before the later to occur of (a) the date that is 30 calendar days after exercise, (b) the date that is 30 days after the determination of the purchase price and (c) the creation of the retail condominium and parking condominium as a separate legal parcel. The purchase price for the retail and parking condominiums shall be equal to the Affordable Housing Developer's development costs (including hard and soft costs, financing and equity costs, holding costs, entitlement costs, and the Affordable Housing Developer overhead, but not including land acquisition costs or the Affordable Housing Developer profit) for the commercial portion of the Parcel G project. To the extent that the development costs associated with the commercial portion of the project cannot be determined separately from the development costs associated with the Parcel G project as a whole, the development costs of the entire project shall be prorated to the commercial portion of the project based on the

relative square footage of the commercial portion in relation to the square footage of the project as a whole.

8. Rights to Purchase or Transfer Affordable Housing Development Rights.

Developer may propose to purchase the right to develop market rate units on Parcel G from the Agency or the Affordable Housing Developer. Such a purchase shall not affect Developer's obligation to make the Developer Contribution to affordable housing as set forth below. Developer may also propose to develop market rate units on Parcel G, in exchange for granting the Agency or the Affordable Housing Developer the right to develop a like number of affordable housing units elsewhere in Phase 1. The Agency and the Affordable Housing Developer reserve the right to reject any Developer proposal to purchase or transfer development rights.

9. Developer Contribution to Affordable Housing.

Developer shall contribute a minimum of \$2 million (the "Developer Contribution") to the Agency to be used by the Agency to subsidize affordable housing. In addition, should the City elect to pay from City sources any costs to Remediate the Public Open Space that would otherwise be the responsibility of the Developer under this Development Agreement, the Developer Contribution to the Agency shall be increased by an amount equal to the amount of such City payments, with interest accruing on such payments when disbursed by the City until the Developer Contribution is paid at the Local Agency Investment Fund rate in effect at the time of City disbursement. Developer shall pay the Developer Contribution, less \$1 million, to the Agency no later than the first issuance of a building permit by the City for the first affordable housing project on an Affordable Housing Parcel, and Developer shall pay the remaining \$1 million in Developer Contribution no later than the first issuance of a building permit by the City for the affordable housing project on the other Affordable Housing Parcel. The increase in the Developer Contribution shall be limited to funds received from the City as a reimbursement for Remediation Costs and shall not apply to any other funds received from the City.

10. Further Assurances.

Developer, the Agency, the City and the Affordable Housing Developer shall negotiate in good faith and enter into any additional agreements and documents as needed to effect the transactions contemplated by this Exhibit consistent with the purpose and intent of this Exhibit.

11. Defined Terms.

Terms capitalized in this Exhibit shall have that meaning set forth in this Exhibit or elsewhere in this Development Agreement.