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AND WHEN RECORDED MAIL TO:**

City of Millbrae  
621 Magnolia Avenue  
Millbrae, CA 94030  
Attn: City Manager

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GOVERNMENT CODE §§6103, 27383

A.P.N. \_\_\_\_\_.

Space above this line for Recorder's use.

**AFFORDABLE HOUSING REGULATORY AGREEMENT**

**AND**

**DECLARATION OF RESTRICTIVE COVENANTS**

**by and between**

**THE CITY OF MILLBRAE**

**AND**

**VAM MILLBRAE LINDEN, LLC**

**AND**

**MILLBRAE EL CAMINO LLC**

**AND VAM MILLBRAE SERRA, LLC**

This Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this “**Agreement**” or “**Regulatory Agreement**”) is made and entered into as of \_\_\_\_\_, 2018 (“**Agreement Date**” or “**Effective Date**”) by and between the City of Millbrae, California, a municipal corporation organized and existing under the laws of the State of California (“**City**”), VAM Millbrae Serra, LLC, a California limited liability company, VAM Millbrae Linden, LLC, a California limited liability company, and Millbrae El Camino LLC, a California limited liability company (collectively, “**Developer**”). City and Developer may also be referred to individually as “**Party**,” and collectively as the “**Parties**.”

#### RECITALS

A. Developer owns the real property located in the City of Millbrae that is part of a Transit Oriented Development (“**TOD**”) site and referred to as TOD #1 (the “**Project**”) in the Millbrae Station Area Specific Plan (“**MSASP**”). The Property (“**Property**”) currently consists of five legal assessor parcels (024-154-200, 024-154-460, 024-337-010, 024-337-090, and 024-337-080) and contains 23 lots, as described and depicted in **Exhibit A** of the Development Agreement (“**Development Agreement**” or “**DA**”), that are master planned as one mixed-use Project and re-subdivided into three new legal parcels. Two of the three new parcels are shown on the proposed Vested Tentative Map in **Exhibit B** of the DA as: VTM Lot 1, which is approved for building R1 at 200 El Camino Real with not less than 119 residential units (and approximately 4,255 square feet of gross leasable retail only use along the El Camino frontage) with public parking as described on **Exhibit A-1 of the DA**; and VTM Lot 2, which is approved for building R2 at 150 Serra Avenue with not less than 325 residential units with public parking as described on **Exhibit A-2 of the DA**; and VTM Lot 3, which is approved for a nine-story, class one, office building with approximately 290,000 gross square feet of office space and approximately 13,500 gross square feet of retail space and public parking. All three buildings will share unbundled and un-assigned parking among the three building’s occupants, together with any excess available for public parking all to be offered at monthly and annual market rental rates on an hourly or daily basis.

B. The City has approved Developer’s construction of 444 residential units with the obligation to provide fifteen percent (15% without rounding up) or 67 units as Below Market Rate (“**BMR**”) units, as allowed under the DA. All BMR units shall be subject to this Regulatory Agreement. This computes to an allocation of approximately 17 units of the R1 building’s 119 units and approximately 49 units of the R2 building’s 325 units that shall, upon completion of construction of each residential building, be subject to the terms of this Regulatory Agreement and the DA. All non-BMR units (“**Market Rate Units**”), retail space, offices and parking in each Project building shall be unrestricted by the terms of this Regulatory Agreement, and Developer shall have the right to set their rental rates without regard to this Regulatory Agreement.

C. Developer intends to construct, own and operate the Project on the Property in accordance with that certain Development Agreement executed by and between the Parties and dated as of \_\_\_\_\_, 2018, a memorandum of which shall be recorded upon execution of the Development Agreement by the parties thereto. Capitalized terms used and not defined in this Agreement shall have the meaning ascribed to them in the Development Agreement.

D. Developer intends to deliver a BMR program that promotes living opportunities primarily to people who either live or work in the City, with priority to qualified persons who work in the City of Millbrae within one-half mile of the Project boundary so as to support and maintain the Project's commitment to its Traffic Demand Management Program that reduces residents' reliance on single occupancy vehicles, while encouraging walking, biking and the use of adjacent mass transit. This Agreement and the Development Agreement ensure long-term preservation of BMR units by providing that, for a period of not less, nor more than fifty-five (55) years from the occupancy date of the first Affordable Unit in each building separately, fifteen percent (15%) of the rental or condominium units in the Project (without rounding up of the Project's total BMR unit count) shall be sold or rented at affordable prices to eligible households.

E. The Parties have agreed to enter into and record this Agreement to satisfy the conditions described in the foregoing Recitals. The Parties intend the covenants set forth in this Agreement to run with the land and to be binding upon Developer and Developer'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. **Definitions.** The following terms have the meanings set forth in this Section wherever used in this Agreement or the attached exhibits. In the event of any inconsistencies between this Agreement and the Development Agreement, the Development Agreement shall control. The terms Low-Income and Moderate Income are defined in the City of Millbrae Housing Element adopted on May 12, 2015

(a) "**Actual Household Size**" means the actual number of persons in the applicable household at the time of application and on each anniversary date.

(b) "**Adjusted for Family Size Appropriate for the Unit**" shall be determined consistent with Section 50052.5(h) of the California Health and Safety Code as defined below:

Studio – 1 person

One Bedroom – 2 persons

Two Bedroom – 3 persons

Three Bedroom – 4 persons

(c) "**Affordable Unit**" shall mean one of the Low Income or Moderate Income Units offered by the Developer to be rented or sold to Eligible Households at Affordable Rents.

(d) "**Area Median Income**" or "**AMI**" means the median income for San Mateo 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).

(e) “**Claims**” is defined in Section 10.108.

(f) “**Eligible Household**” means a household for which gross household income does not exceed the applicable maximum income level for a BMR Unit.

(g) “**Indemnitees**” is defined in Section 10.108.

(h) “**Low-Income**” or “**Lower Income**” means an annual gross household income that is less than or equal to the qualifying limits for households of Lower Income adjusted in the manner stated in subsection (d) above in the definition of Area Median Income for Actual Household Size, as determined periodically by HUD based on gross annual household income and published by HCD from time to time in the Regulations for San Mateo County. If HUD ceases to make such determination, “Lower Income” shall be defined as less than or equal to 80% 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.

(i) “**Moderate-Income**” means an annual gross household income that is greater than 80% and does not exceed 120% of AMI, adjusted for actual household size as determined periodically by HCD based on gross annual household income and published in the Regulations for San Mateo County.

(j) “**Regulations**” means Title 25 of the California Code of Regulations.

(k) “**Affordable Rent**” means all monthly payments, other than deposits, paid by the tenant of an Affordable Unit for (1) the use and occupancy of an Affordable Unit and land and all facilities associated with the Affordable Unit, including but not limited to, bicycle storage, and use of all common area (2) any Rent Increase allowed by, and imposed in accordance with the terms of this Agreement, and (3) any separately charged fees or service charges assessed by the Developer which are required of and equally assessed to all tenants of all units in the Project, including, but not limited to garbage collection and building common area electricity.. Rent excludes all parking fees and utilities that are commonly individually metered or charged including but not limited to water, internet, telephone EV charging and cable TV services, all of which shall be the financial responsibility of Tenant to each 3rd party provider. “**Maximum Monthly Rent**” shall ~~have the meaning stated be defined as set forth~~ in Section 2.2 below.

2. Use and Affordability Restrictions. Developer hereby covenants and agrees, for itself and its successors and assigns that, upon completion of construction of each of the Project’s residential buildings described in the Development Agreement, each shall be used - for the operation of a mixed-use, condominium or rental development in compliance with the DA and in compliance with this Agreement.

### 2.1 Affordability Requirements.

2.1.1 200 El Camino Real Property. For a term of fifty-five (55) years commencing upon the date of the first Inclusionary Unit’s Certificate of Occupancy for this building, eleven (11) of the condominium or rental units in Building R-1 shall be rented to or

sold to and occupied by Eligible Households whose income is no greater than eighty percent (80%) of Area Median Income, and no fewer than six (6) units in this building shall be rented to or sold to and occupied by Eligible Households whose income is greater than 80% and does not exceed one hundred twenty percent (120%) of Area Median Income.

2.1.2 150 Serra Avenue Property. For a term of fifty-five (55) years commencing upon the date of issuance of Certificate of Occupancy in this building, not less than thirty-three (33) of the condominium or rental units in the R-2 Building shall be rented to or sold to and occupied by Eligible Households whose income is no greater than eighty percent (80%) of Area Median Income, and no fewer than sixteen (16) units in the Project shall be rented to or sold to and occupied by Eligible Households whose income is greater than 80% and does not exceed one hundred twenty percent (120%) of Area Median Income.

2.2 Maximum Monthly Rent. Except as otherwise stated in the Definition of Rent above, monthly rents for Affordable Units for Low Income households shall not exceed one-twelfth of thirty percent (30%) of eighty percent (80%) of Area Median Income. The monthly rents for the Affordable Units for the Moderate Income households shall not exceed one-twelfth of thirty percent (30%) of one hundred twenty percent (120%) of Area Median Income.

2.3 Prohibited Transfers. Developer may prohibit any assignment of any Affordable Unit at any time, except to that Affordable Unit's previously listed, existing, and identified Eligible Household Member under 3.1(a) below. Any attempted assignment or assignment, sublease or attempted sublease, license or attempted license of such a unit to anyone, except an existing identified Eligible Household Member under 3.1 (a) below, shall be made a material default under any lease.

2.4 Unit Sizes, Design and Location. The BMR Units in the Project shall be of comparable design and construction quality as Market Rate Units in the Project. Eligible Households of Affordable Units shall have access to all common facilities of each residential building in the Project equal to that of Market Rate Units. The Affordable Units shall be equally distributed on floors of the building that contain such units, provided that the BMR units shall exist on only the first four floors of each residential building. Affordable Units shall all have similar standard fixtures, finishes and appliances as the Market Rate Units, but the Affordable Units shall not be required to have or include fireplaces (which, if any, will be limited for structural reasons to only the top residential floors of each residential building), nor shall either residential building be required to provide Affordable Units with any above standard, fixtures, finishes or appliances. Affordable Units shall not be required to have any panoramic or any particular views from either building.

## 2.5 Non-Discrimination; Compliance with Fair Housing Laws.

2.5.1 Preferences. In order to ensure that there is an adequate supply of affordable housing within the City for its residents and employees, to the extent permitted by fair housing law and other laws, at initial lease up and during the term of this Regulatory Agreement, Developer shall give an overriding preference in the renting or sale of the Affordable Units in the Project to Eligible Households that include at least one applicant member who at the time of his or her initial application for housing, has a place of full-time employment in Millbrae and such

place of employment is located within a one-half mile radius of the perimeter of the Project at the time of application for housing in the Project and upon the date of initial occupancy.

2.5.2 Fair Housing. Developer shall comply with state and federal fair housing laws in the rental, marketing and/or sale of the units in the Project. No service or amenity provided to market rate units in each building shall be denied to, or be charged at higher rates to, occupants of Affordable Units.

2.5.3 Non-Discrimination. Developer shall not restrict the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any Affordable Unit, based on race, color, religion, creed, sex, gender identity or status, sexual orientation, disability, marital status, ancestry, or national origin of any person. Developer covenants during Developer's ownership and control 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 Developer during Developer's ownership and control or any person claiming under or through Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of Eligible Households. Developer shall include such a provision in all deeds, contracts and other instruments executed by Developer, during Developer's ownership and control.

3. Reporting Requirements. In performing under this Regulatory Agreement, Developer has the right to retain as agent for Developer any qualified third party approved by the City including, but not limited to, a nonprofit housing organization, with experience in qualifying low income households in San Francisco or San Mateo County, provided that no such action shall relieve Developer from its obligations under this Agreement.

3.1. Eligible Household Certification. Developer, or Developer's authorized agent, shall obtain from each household prior to initial occupancy of each Affordable Unit, and on every anniversary thereafter, a written certificate containing at least all the following, in such format and with such supporting documentation, as City and Developer may reasonably require:

- (a) The identity of each household member;
- (b) The number of household members; and
- (c) The total gross household income (i.e., inclusive of all household members' individual income).

Developer 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.

~~3.24~~ Certified Annual Report. By not later than April 30th of each year during the term of this Agreement, Developer shall submit an annual report to the City ("**Annual Report**") for the prior calendar or portion of any prior calendar year that the Affordable Units start or cease being required under the terms of this Agreement with a certification that the Project complies with this Agreement. The Annual Report shall, at a minimum, include the following information for each Affordable 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 all residents living in the unit; (vii) documentation of source of household income including if applicable, place of any employment and the type and number of motor vehicles owned, leased or rented and regularly parked on site by any of the Affordable Unit occupants since the prior reporting period, if any.

~~3.3.4.4~~ Developer shall include with the Annual Report, an income recertification for each household, documentation verifying Eligible Household 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, Developer may satisfy the requirements of this Section by providing City with a copy of compliance reports required in connection with such financing.

~~3.1.24~~. The Developer shall obtain, complete and maintain on file, immediately prior to initial occupancy and annually thereafter, income statement certifications for each Low-Income and Moderate-Income tenant renting any of the Affordable Units. The Developer shall make a good faith effort to verify and document that the income statement provided by applicants for a Low-Income or Moderate-Income Unit is accurate by taking at least two (2) of the following steps as a part of the Developer's verification process:

- (i) obtain a minimum of the three (3) most current pay stubs and/or obtain a verification of income from the applicant's and household members current employer(s) for all adults age eighteen (18) or older who are employed;
- (ii) Obtain an income tax return from the applicant and household members for the most recent tax year;
- (iii) Obtain the three (3) most current savings and checking account(s) bank/financial institution statements from the applicant and each household member;
- (iv) Obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant or household member receives assistance from either of such agencies;
- (v) If the applicant or household member is unemployed and has no such tax return, obtain another form of independent verification.

~~3.1.3.5~~ Requirement of Occupancy of Affordable Units by Eligible Households. The Developer shall not permit a household to occupy an Affordable Unit designated for Low-Income or Moderate-Income households unless the household is determined to be an Eligible Household. The Developer shall recertify the income eligibility of the Low- and Moderate-Income

Households occupying the Affordable Units on not less than an annual basis to determine the continuing eligibility of the Eligible Household. If the household no longer qualifies as an Eligible Household, as defined herein, the provisions of Section 3.74-5, below, shall apply. No units shall be subleased or assigned at any time, nor shall any Affordable Unit be rented in whole or part via short term rental platforms.

~~3.4.4.6.~~ Criteria for Selection of Eligible Households. The Developer shall not be obligated to rent an Affordable Unit unless the applicant for the Affordable Unit meets the Developer's normal tenant selection criteria, including, but not limited to satisfactory credit and rent history, in accordance with state and federal discrimination laws.

~~3.7.4.5~~ Consequences of Affordable Unit Occupant's Income Status Changing. If the income of a tenant upon re-certification exceeds the upper limit for Low-Income or Moderate-Income households, the Developer may increase the rent to existing market rate rents for a comparable unit after providing the tenant with sixty (60) days' notice, with the condition that Developer will make up the unit by providing an alternative comparable Affordable Unit in the project.

(a) If the tenant was certified as a Low-Income household, and still qualifies as a Moderate-Income household, then the tenant may remain in the Affordable Unit and the rent will be increased to the rent for a Moderate-Income household. The next time a Moderate-Income unit is vacated, it shall be rented to a Low-Income household so that the Affordable Unit distribution conforms to the distribution set out in Section 2.1 above.

(b) If the tenant was certified as a Moderate-Income household, and now qualifies as a Low-Income household, then the tenant may remain in the Affordable Unit and the rent shall be decreased to the rent for a Low-Income household. The next time a Low-Income Unit is vacated, it may be rented to a Moderate-Income Household so that the Affordable Unit distribution conforms to the distribution set ~~forth out in the table~~ in ~~S~~section 2.1 above.

~~(c)~~ If the tenant vacates the Unit, the Unit shall remain in the Affordable Unit category and shall be rented to a new Eligible Household or Eligible Tenant for the applicable income level for that Unit.

~~3.4.68.~~ Obligation of Developer When No Unit Is Available. If the events identified in subsections 3.1.5 (a), (b) or (c) above occur, and no unit is immediately available for rent as an Affordable Unit at the applicable Low-Income or Moderate-Income rent level, the Developer shall nonetheless be deemed in compliance with this Regulatory Agreement, so long as the next comparable vacant unit for the applicable Low-Income or Moderate-Income rent level is rented to an Eligible Household as outlined in subsections 3.74-5 (a), (b) and (c) above.

~~3.4.79.-~~ Notice of the Termination of Affordability Restrictions. The date that the affordability restrictions will terminate shall be clearly set out in all leases to Eligible Households. Additionally, the Developer shall provide a minimum of sixty (60) days written notice to Eligible

Households before increasing their rents after a change in or termination of affordability restrictions.

~~3.1-810.~~ Absence of Liability in the Case of Fraud or Misrepresentation. The Developer and any manager it employs shall not incur any liability under this Regulatory Agreement or the City's Zoning "Inclusionary Housing Requirements" (if any) as a result of fraud or misrepresentation (intentional or unintentional) by an applicant or household member for an Affordable Unit or by a tenant of such unit.

~~3.1-911.~~ Accounting Records. The Developer shall maintain records and books accurately and fully showing the amount of rent charged to and received from each of the Affordable Units. The Developer shall not be required to maintain such records and books relating to a particular rental of a particular Affordable Unit for more than five (5) years following termination of a tenancy.

~~3.1-402.~~ Annual Monitoring Fees. The Developer shall pay to the City on or before April 1 of each year for the term of this Regulatory Agreement an annual fee covering the period of the immediately preceding fiscal year ending June 30, in the amount of \$40.00 per Affordable Unit to defray a portion of the cost incurred by the City to monitor the Developer's compliance with the terms of this Regulatory Agreement. The Annual Monitoring Fee may be increased on an annual basis by the lesser of three percent (3%) of the then current fee or the increase in the Consumer Price Index ("CPI") for each corresponding year

#### 4. Term of Agreement.

4.1 Term of Restrictions. This Agreement shall only remain in effect for each building through the 55<sup>th</sup> anniversary of the date of the first Inclusionary Unit's Certificate of Occupancy in such building (the "Term"). After the end of the Term, this Agreement and all of its restrictions shall irrevocably and permanently terminate as to such building and its BMR units without any act, cost or fee due from Developer or occupant of the Project except as provided in Section 4.3.

4.2 Effectiveness Succeeds Conveyance of Property and Repayment of Loan. This Agreement, subject to the terms of the Development Agreement or any future written amendment by the Parties, shall remain effective and fully binding for the full fixed 55-year Term hereof, described in Section 4.1, regardless of any sale, assignment, transfer, or conveyance of the Property or the Project or any part thereof or interest therein.

4.3 Conveyance. Upon the termination of this Agreement, the Parties agree to execute and record appropriate instruments at no cost to the Developer, except for the reimbursement of any City incurred title report, title insurance, drafting of instruments fees and costs, and recording fees incurred, if any; 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.

4.4 Lease Provisions. The Developer shall use a form of tenant lease (the "Tenant Lease") approved by the City for the Affordable Units. The Tenant Lease shall, among other

matters:

(a) provide for termination of the lease for failure: (1) to provide any information required under this Agreement (or subject to the City's approval on a case to case basis, any additional information reasonably requested by the Developer) to establish or recertify the Tenant's qualification, or the qualification of the Tenant's household, as an Eligible Household in accordance with this Agreement, or (2) to qualify as an Eligible Household as a result of any prior or current material misrepresentation made by such Tenant with respect to the Household Income computation or certification;

(b) provide that the Maximum Monthly Rent may not be raised more often than once every twelve (12) months. The Developer will provide each Tenant with at least sixty (60) days written notice of any increase in rent if it exceeds the Maximum Rent applicable to such Tenant because the Tenant is no longer an Eligible Household;

(c) prohibit subleasing or assignment or daily or weekly rental platforms as to an Affordable Unit or any portion of the Affordable Unit or any spaces reserved for the use of the Tenant;

(d) contain nondiscrimination provisions;

(e) contain the Tenant's obligation to inform the Developer in writing of any need for maintenance or repair;

(f) contain each Tenant's obligation to cooperate timely with the annual income certification process by providing all reasonably-requested information in accordance with Section 3, above;

(g) include reasonable rules of conduct consistent with California law;

(h) allow termination of the tenancy for an increase in Tenant's Household Income above qualifying income for Eligible Households or for good cause, including violation of the terms and conditions of the Tenant Lease, violations of applicable federal, state, or local law, or other good cause; and

(i) include the obligation for Tenant to provide and maintain a security deposit not exceeding two months' c current rent.

#### 4.5. Marketing, Income Certification and Reporting.

(a) Required City Approvals. Six months before the Project receives a final inspection or certificate of occupancy, the Developer or its designated representative (such as a consultant qualified to determine eligibility of applicants) shall notify City of the availability of the Affordable Units and provide to the City its proposed marketing plan for the Affordable Units as described below; its management policies; the proposed form of Tenant Lease to confirm conformance with the provisions of this Agreement; and proposed Affordable Rents for the Affordable Units, all for City review and approval.

(b) Marketing and Management Plan. The Marketing and Management Plan shall address, in detail, how Developer plans to market the BMR Units to prospective Eligible Households in accordance with fair housing laws and this Agreement ("**Marketing and Management Plan**" or "**Plan**"). The Developer's marketing plan shall be consistent with the provisions of this subsection (b). Upon receipt of the marketing plan, the City shall promptly review the marketing plan and shall reasonably approve or disapprove it within forty-five (45) days after City determines that the application for approval is complete. If the marketing plan is not approved, the City shall provide Developer with a written description of the changes required to obtain approval, and the Developer shall submit a revised marketing plan within thirty (30) days of receipt of such comments, which the City will again review and reasonably approve or disapprove within fifteen (15) days, again stating reasons for disapproval and corrections required as detailed above. If the parties are unable to agree on an approved marketing plan, the dispute resolution procedures of the Development Agreement shall apply. If City has not responded to any submission of the marketing plan, the proposed management entity, or a proposed amendment or change to any of the foregoing within the time periods stated above, then the plan, proposal or amendment shall be deemed approved by City. The timing of when the Plan is submitted is stated in Section 6.2 below.

i) Section 8 Vouchers and Certificate Holders. The Developer will review applications from prospective tenants of Affordable Units, on the same basis as all other prospective tenants, should prospective tenants be recipients of federal certificates for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act or any successor. The Developer shall not apply or permit the application of management policies or lease provisions with respect to the Project which have the effect of precluding occupancy of Affordable Units by tenants who are recipients of federal certificates for rent subsidies pursuant to such Section 8.

(ii) Marketing Materials. The marketing plan submitted to the City shall include the following: means to be used to advertise Affordable Units to the public upon initial occupancy and as vacancies occur and maintenance of a waiting list; the amount of any application screening fee based on reasonable costs of processing applications by Developer, and information to be provided to applicants, including priority to be given to workers whose place of employment is within one-half mile of the boundaries of the project, conditions and restrictions applicable to occupancy of the Affordable Units, current Affordable Rent, permitted Rent increases, maximum qualifying income for an Eligible Household, requirement for annual Household Income recertification, preferences, and requirement to vacate the Affordable Unit if the Tenant's Household Income exceeds the maximum qualifying income.

5. Binding Upon Successors; Covenants to Run with the Land. Upon issuance of the notice of completion of construction and issuance of the City's final certificate of occupancy for each residential building, Developer hereby subjects its interest in that parcel of the Property and Project to the covenants and restrictions set forth in this Agreement, as they may apply to that residential building. The Parties 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 the Parties, regardless of any sale, assignment, conveyance or transfer of a portion of the Property or any part thereof or interest therein. Any successor-in-interest

to Developer, including, without limitation, any purchaser, transferee or lessee of a portion of the Property shall be subject to all the duties and obligations imposed hereby for the full Term of this Agreement. Each contract, deed, ground lease or other instrument affecting or conveying a portion of the Property or that portion of the Project or any part related to that residential building, 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.

6. Property Management and Marketing.

6.1 Management Responsibilities. The City places prime importance on quality maintenance to ensure that all developments within the City which include affordable housing units are not allowed to deteriorate due to below-average maintenance. Developer shall provide the Affordable Units with the same quality level of maintenance as the market rate units, including performance of repairs and periodic replacement of fixtures equivalent to at least the original quality and type. The Developer agrees to maintain all interior and exterior improvements, including landscaping, on the Property in good condition and repair (and, as to landscaping, in a healthy condition, subject to state and local drought restrictions) and in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials. Developer shall not maintain the BMR units and common area around such units in any less condition than Developer maintains non-BMR units. Developer, so long as Developer is Landlord or Lessor, shall be responsible for all management functions with respect to the Property and the Project, including, without limitation, the selection of Eligible Households, and certification and recertification of household income and eligibility. Upon sale of more than seventy five percent (75%) of residential units in a particular building as condominiums, the Homeowners Association (“HOA”) and owners of the individual units collectively shall be responsible for such management functions. City shall have no responsibility for management or maintenance of the Property or the Project.

6.2 Marketing and Management Plan. Within 180 days prior to completion of construction of each residential building, R-1 and R-2, and prior to issuance of each residential building’s certificate of occupancy, Developer shall submit for City review and approval, a plan for marketing and managing the BMR Units.

7. Recordation; Subordination. This Agreement shall be recorded in the Official Records of San Mateo County. Developer hereby represents, warrants and covenants that 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 a portion of the Property or the Project. If, at the time this Agreement is recorded, any interest, lien, or encumbrance has been recorded against a portion of the Project in a position superior to this Agreement, upon the request of City, Developer 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,

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pursuant to Health and Safety Code Section 33334.14(a) (4), the City will not withhold consent to reasonable requests for subordination of this Agreement to deeds of trust, provided that the instruments effecting such subordination include reasonable protections to the City in the event of default consistent with the requirements of Health and Safety Code Section 33334.14(a) (4), including without limitation, extended notice and cure rights.

8. Transfer and Encumbrance.

8.1 Permitted Transfers. Notwithstanding any contrary provision hereof, the Permitted Transfers ("**Permitted Transfers**") are as follows: (i) the granting of easements or permits to facilitate development of the Property; (ii) the dedication of any property required pursuant to the DA; (iii) the sale, lease or rental of the individual Affordable Units to Eligible Households for occupancy as their principal residence ~~during the 55 year~~ ~~during the 55-year term in term in~~ accordance with this Agreement and the DA, and the market rate sale, lease or rental of any Affordable Units following the end of the 55 year Term ~~to anyone at then market rates~~; (iv) assignments creating security interests for the purpose of financing the acquisition, construction, or permanent financing of the Project or the Property or portions of the Project or Property or the reconstruction, repair of the Project or Property, or portions of the Project or Property, in accordance with the DA, or as may be permitted by law, or Permitted Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; or (v) a Permitted Transfer to the estate of Vincent A Muzzi or any legal entity in which he, or his heirs, assigns or estate is a majority owner or controlling interest of fee title or a possessory interest to the Property or portion thereof, or to a publicly traded corporation or private REIT with a then current year's audited financial statement net worth of over \$150 million for residential building R-1 and \$200 million for residential building R-2 or \$350 million for both residential buildings, if transferred to one such entity prior to the completion of construction of each building, ~~unless approved by the City and/or as provided for in the DA.~~

8.2 Each transferee shall agree: that (1) the Project is and shall, during the Term of this Agreement, continue to be operated in compliance with this Agreement and (2) the transferee expressly assumes all obligations of Developer imposed by this Agreement.

8.3 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. Violation of Regulatory Agreement.

9.1 Events of Default. Any violation, non-performance or breach by the Developer of any representation, obligation, warranty or covenant hereunder, which is not cured within thirty (30) days after notice thereof given by the City, or where cure is not possible within thirty (30)

days, whose cure is not commenced within thirty (30) days and diligently prosecuted to completion shall constitute an Event of Default, in which event the City shall be entitled to declare a default and to the following nonexclusive list of legal and equitable remedies:

- (a) Specific performance of this Regulatory Agreement. It is agreed by the Developer that the injury to the City arising from a default under any of the terms of this Regulatory Agreement would be irreparable and that the amount of compensation which would provide adequate relief to the City would be impossible to ascertain.
- (b) Monetary Penalty For Default~~Prosecution of the default as a misdemeanor.~~ As to a monetary default under this Agreement, Developer shall be subject to a \$100 per day fine starting ten (10) days from the date of a Notice from City advising Developer of a Default. As to non-monetary defaults under this Agreement, Developer shall be subject to the same daily penalty starting thirty (30) days from the date of a Notice from the City advising Developer of a default; provided, however, where Developer has shown to City's reasonable satisfaction that such non-monetary default cannot be cured within that thirty (30) day period, Developer shall have an additional thirty (30) days to cure such default. --
- (c) Other remedies. Seek such other remedies as may be available under law or equity including an injunction, except that Developer shall not be liable for any consequential or punitive damages.
- (d) Notice to Lien Holders. Written notice to any lender then holding a lien on the Property declaring that the Developer is in default under this Regulatory Agreement and providing the lender the opportunity to cure the Developer's default.

9.2 Return of Excessive Rents. In the event that the breach, non-performance or violation involves ~~the~~ rents to BMR tenants or other charges in excess of those permitted under this Regulatory Agreement, the City shall be entitled to require, as an additional remedy, the return of such excess rents or other charges to the affected households, if such households can be located within a reasonable amount of time by Developer's good faith search for such households. If in fact such households cannot be found within a reasonable amount of time after Developer's good faith search, then Developer shall return such excess rents or other charges to the City of Millbrae.-

9.3 Violations by the City. Any violation, non-performance or breach by the City of any representation, obligation, warranty or covenant hereunder, which is not cured within thirty (30) days after notice thereof given by the Developer, or where cure is not possible within thirty days, whose cure is not commenced within thirty (30) days and diligently prosecuted to completion shall constitute an Event of Default, in which event the Developer shall be entitled to declare a default and to seek all remedies at law or in equity, except that City shall not be liable for any consequential or punitive damages.

10. Miscellaneous.

10.1 Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties and recorded thereafter.

10.2 Transition to For-Sale Project. Notice to City. In the event that either residential building in the Project is converted to a for-sale residential project sale during the 55-year Term of this Agreement, and the Developer elects to place the Affordable Units in that building on the market for sale, the Developer shall notify the City, in writing, of that decision at least six (6) months before any Affordable Units are listed for sale or any sales agreements are executed. City and Developer shall meet and confer to determine procedures to be utilized for sale of the Affordable Units.

- (a) The Affordable Units shall be sold to and occupied by Eligible Households at an Affordable Sales Price. Each Affordable Unit shall first be offered for sale to the existing tenant at the Affordable Sales Price. If City has created a waiting list of Eligible Households, the Affordable Units shall next be offered for sale to any household on the City's list of Eligible Households.
- (b) The initial and any subsequent purchasers ("Purchaser") of an Affordable Unit shall execute those instruments or agreements approved by and provided by the City restricting the resale price of the Affordable Unit in accordance with City Ordinances for a 55-year period from the date of sale of the Affordable Unit to each Purchaser. Such instruments or agreements shall be recorded, as applicable, against each individual Affordable Unit sold and shall contain such provisions as the City may reasonably require to ensure continued compliance by the Purchaser with City's existing Ordinances. The instruments or agreements shall be in a form substantially similar to those used in the City's existing Below Market Rate Program, except as may be required to comply with the Development Agreement, this Regulatory Agreement, changes to state or federal law, or as may mutually be agreed to by the City and the Developer. Developer and City shall cooperate to ensure that the instruments and agreements provided by the City are executed by the Purchaser and recorded, as appropriate, at Developer's sale of the Affordable Units.
- (c) The "Affordable Sales Price" for Affordable Units at initial sale by the Developer shall be determined by the City within 60 days of the Developer's notice of intent to sell, after consultation with the Developer, based on a reasonable down payment and total monthly costs (as those costs exist on the date of City's determination) that do not exceed Maximum Monthly Rent. Total monthly costs shall include mortgage interest and principal, property taxes, mortgage insurance, homeowner's insurance, and homeowners' association dues.
- (d) Developer shall comply with all applicable provisions of the Subdivision Map

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Act, the Subdivided Lands Act, and other applicable law if Developer elects to place the Affordable Units on the market for sale.

This subparagraph 10.2 shall not apply to the bulk sale of either R-1 or R-2 residential buildings or the bulk sale of either the R-1 and/or R-2 buildings' Affordable Units by the Developer or Developer's successors in interest, although it would apply to the sale of individual units following such bulk sale.

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10.3 No Waiver. Any waiver by City or Developer of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by City or Developer to act on any breach or default hereunder or to pursue any remedy allowed under this Agreement, the DA, or applicable law. Except as otherwise provided herein, no failure or delay by City at any time to require strict performance by Developer 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.

10.4 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:

- (a) personal delivery, in which case notice is effective upon delivery;
- (b) 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;
- (c) 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;
- (d) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

**City:** City of Millbrae  
621 Magnolia Avenue  
Millbrae, CA 94030  
Attention: City Manager  
Facsimile: (650) \_\_\_\_\_

with copies to: Hanson Bridgett LLP  
425 Market Street  
26th Floor  
San Francisco CA 94015  
Attn: Joan L. Cassman

and: City of Millbrae  
621 Magnolia Avenue  
Millbrae, CA 94030  
Attn: Community Development Director

**Developer:** Millbrae Serra Station, LLC  
1818 Gilbreth Road, Suite 123  
Burlingame, CA 94010  
Attn: Vincent A. Muzzi  
Email: vince@vmuzzi.com

and: Sheppard Mullin Law Firm  
Four Embarcadero Center 17th Floor  
San Francisco, CA 94111  
Attn: Jennifer Renk, Esq.

10.5 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.

10.6 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.

10.7 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 Manager or by any person who shall have been designated by the City Manager, without further approval by the governing board of the City at the discretion of the City Manager.

10.8 Non-Liability of Developer, City Officials, Employees and Agents. No partner, shareholder, member, employee, officer, agent or affiliate of the Developer shall have any liability under this Agreement. No member, official, employee or agent of the City shall be personally liable to Developer 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 Developer or its successor or for any obligation of City under this Agreement.

10.9 Indemnification. To the fullest extent permitted by law, the Developer agrees to

defend (with legal counsel selected by the City), including, without limitation, cost and reasonable fees of litigation, indemnify and hold harmless the City, its elected and appointed officials, officers, attorneys, agents, and employees and each of them from and against any and all liability, loss, damage, expense, costs of every nature arising out of or in connection with the Developer's performance hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the negligence or willful misconduct of the City.

(a) General. This obligation to indemnify and defend the City as set forth herein is binding on the successors, assigns, or heirs of the Developer and shall survive the termination of this Regulatory Agreement or this Section 10.98. By execution of this Regulatory Agreement, the Developer acknowledges and agrees that it has read and understands the provisions hereof and that this Section is a material element of consideration to the City. The parties agree that if any part of this indemnification is found to conflict with applicable laws, such part shall be unenforceable only insofar as it conflicts with said laws, and that this indemnification shall be judicially interpreted and rewritten to provide the broadest possible indemnification legally allowed and shall be legally binding upon the Developer.

(b) Survival. The Developer's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Regulatory Agreement for the full period of time allowed by law; provided, however, that upon a Permitted Transfer of any residential building in accordance with the DA, the Developer shall only be liable for its actions or omissions which have occurred prior to such Permitted Transfer, and the Developer shall not be required to indemnify or defend the City for any acts or omissions which occur subsequent to a Permitted Transfer of any residential building.-

10.10 Hold Harmless. Developer will indemnify and hold harmless (without limit as to amount) City and its elected officials, officers, employees and agents in their official capacity (hereinafter collectively referred to as "Indemnitees"), and any of them, from and against all loss, all risk of loss and all damage (including expense) ("Claims") sustained or incurred because of or by reason of any and all claims, demands, suits, actions, judgments and executions for damages of any and every kind and by whomever and whenever made or obtained, allegedly caused by, arising out of or relating in any manner to the Project, the Affordable Units, or Developer's performance or non-performance under this Agreement, including claims pursuant to California Labor Code Section 1720 et seq., and shall protect and defend Indemnitees, and any of them with respect thereto, except to the extent arising from the negligence or willful misconduct of the Indemnitees. The provisions of this Section shall survive expiration or other termination of this Agreement or any release of part or all of the Property from the burdens of this Agreement, and the provisions of this Section shall remain in full force and effect.

10.11 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.

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

10.13 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.

10.14 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.

10.15 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.

10.16 Entire Agreement; Exhibits. This Agreement, together with the DA, 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 through C, attached hereto are incorporated herein by this reference.

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

10.18 No Third Party Beneficiaries; Except as otherwise provided herein, City and Developer hereby renounce the existence of any third party beneficiary to this Regulatory Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status.

11. Miscellaneous.

11.1 Amendments.

This Agreement may be amended or modified only by a written instrument signed by both Parties and recorded thereafter.

~~11.22~~ No Waiver. No delay, neglect or forbearance by either party in enforcing against the other any provision of this agreement shall be a waiver by, or in any way prejudice any right, of that party under this Agreement.

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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: THE CITY OF MILLBRAE,  
a municipal corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Joan L. Cassman, City Attorney

**DEVELOPER: VAM Millbrae Linden,  
LLC**

By: \_\_\_\_\_

Typed Name: Vincent A. Muzzi  
Title: Managing Member

**Millbrae El Camino LLC**

By \_\_\_\_\_

Typed Name: Vincent A. Muzzi  
Title: Managing Member

**VAM Millbrae Serra, LLC, a California limited liability company:**

By \_\_\_\_\_

Typed Name: Vincent A. Muzzi

Title: Managing Member

**SIGNATURES MUST BE NOTARIZED.**

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

STATE OF CALIFORNIA )  
COUNTY OF SAN MATEO )

On \_\_\_\_\_, 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)

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

STATE OF CALIFORNIA )  
COUNTY OF SAN MATEO )

On \_\_\_\_\_, 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-1

**200 EL CAMINO REAL PROPERTY**

(Attach legal description.)

Exhibit A-2

**150 SERRA AVENUE PROPERTY**

(Attach legal description.)

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