

# ATTACHMENT "A"

ORDINANCE NO. \_\_\_\_\_

## AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ANTIOCH AND AMCAL ANTIOCH FUND, LP, FOR THE AMCAL FAMILY/SENIOR APARTMENTS PROJECT

The City Council of the City of Antioch does ordain as follows:

**Section 1.** To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Section 65864, *et. seq.* of the Government Code, with authorizes the City of Antioch ("City") to enter into an agreement with any person having a legal or equitable interest in real property providing for the development of such property in order to establish certainty in the development process.

**Section 2.** The City of Antioch previously adopted an implementing ordinance (Article 32 of the Zoning Ordinance) authorizing and regulating the use of Development Agreements.

**Section 3.** The Planning Commission conducted a duly noticed public hearing on May 6, 2020 at which it recommended to the City Council that the Development Agreement be approved. The City Council held a duly noticed public hearing on May 12, 2020 at which all interested persons were allowed to address the Council on the Development Agreement.

**Section 4.** The City Council finds that the Development Agreement is consistent with the City's General Plan as well as all provisions of the City's Zoning Ordinance and Municipal Code. The City Council finds that the Development Agreement implements General Plan objectives by providing housing opportunities and needed infrastructure. The Development Agreement will not be detrimental to the health, safety and general welfare and will not adversely affect the orderly development of property or the preservation of property values. The City Council has considered the effect of the Development Agreement on the housing needs of the region in which the City is situated and has balanced these needs against the public service needs of its residents and available fiscal and environmental resources by requiring funding for police and fire services. .

**Section 5.** An Initial Study/Mitigated Negative Declaration was adopted for the proposed project. The City Council has concluded that there have been no substantial changes to the project through the Development Agreement and there are no new significant environmental effects or an increase in previously identified effects. In addition, there is no new information of substantial importance which was not known and could not have been known which shows new significant

environmental effects. Therefore, no subsequent or supplemental environmental review is required under CEQA Guidelines Section 15162.

**Section 6.** The Development Agreement included as Exhibit A is hereby approved, subject to minor and clarifying revisions approved by the City Manager and City Attorney, and the City Manager is authorized and directed to sign it on behalf of the City of Antioch.

\* \* \* \* \*

**I HEREBY CERTIFY** that the foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Antioch, held on the 12th day of May, 2020, and passed and adopted at a regular meeting thereof, held on the \_\_\_\_ day of \_\_\_\_, 2020.

**AYES:**

**NOES:**

**ABSENT:**

\_\_\_\_\_  
**Sean Wright, Mayor of the City of Antioch**

**ATTEST:**

\_\_\_\_\_  
**Arne Simonsen, City Clerk of the City of Antioch**

# EXHIBIT A

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

City of Antioch  
200 H Street  
Antioch, CA 94509-1285  
Attn: City Clerk

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(Space Above This Line Is for Recorder's Use Only)

This Agreement is recorded at the request and for the benefit of the City of Antioch and is exempt from the payment of a recording fee pursuant to Government Code §§ 6103 and 27383.

## DEVELOPMENT AGREEMENT

Between

CITY OF ANTIOCH

And

AMCAL ANTIOCH FUND, LP

(3560 East 18th Street)

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## DEVELOPMENT AGREEMENT

(Pursuant to California Government Code sections 65864-65869.5)

This DEVELOPMENT AGREEMENT (the "Agreement") is dated for reference purposes as of \_\_\_\_\_, 2020 (the "Agreement Date") and is entered into by and between the City of Antioch ("City") and AMCAL Antioch Fund, LP, a California limited partnership ("Owner" and collectively with the City, the "Parties") with reference to the following recitals of fact

### RECITALS

A. Owner is the owner of that certain real property located in the City of Antioch, California located at 3560 East 18th Street, Antioch, CA 94509 (the "Property"). The Property is more particularly described in the legal description attached hereto as Exhibit A and is depicted on the site map attached hereto as Exhibit B.

B. In order to encourage investment in, and commitment to, comprehensive planning and public facilities financing, strengthen the public planning process and encourage private implementation of the local general plan, provide certainty in the approval of projects in order to avoid waste of time and resources, and reduce the economic costs of development by providing assurance to property owners that they may proceed with projects consistent with existing land use policies, rules, and regulations, the California Legislature adopted California Government Code sections 65864-65869.5 (the "Development Agreement Statute") authorizing cities and counties to enter into development agreements with persons or entities having a legal or equitable interest in real property located within their jurisdiction.

C. In recognition of the significant public benefits that this Agreement provides, the City Council has found that this Agreement: (i) is consistent with the City of Antioch General Plan as of the date of this Agreement; (ii) is in the best interests of the health, safety, and general welfare of City, its residents, and the public; (iii) is entered into pursuant to, and constitutes a present exercise of, City's police power; and (iv) is consistent and has been approved consistent with provisions of California Government Code section 65867 and the City of Antioch Municipal Code.

D. [On \_\_\_\_\_, the City's Planning Commission held a public hearing on this Agreement, made findings and determinations with respect to this Agreement, and recommended to the City Council that the City Council approve this Agreement.]

E. [On \_\_\_\_\_, the City Council also held a public hearing on this Agreement and considered the Planning Commission's recommendations and the testimony and information submitted by City staff, Owner, and members of the public. On \_\_\_\_\_, consistent with applicable provisions of the Development Agreement the City Council adopted its Ordinance No. \_\_\_\_\_ (the "Adopting Ordinance"), finding this Agreement to be consistent with the City of Antioch General Plan and approving this Agreement.]

### AGREEMENT

NOW, THEREFORE, City and Owner agree as follows:

1. Definitions. In addition to any terms defined elsewhere in this Agreement, the following terms when used in this Agreement shall have the meanings set forth below:

"Action" shall have the meaning ascribed in Section 9.10 of this Agreement.

"Adjoining Properties" shall have the meaning ascribed in Section 4.2 of this Agreement.

"Adopting Ordinance" shall mean City Council Ordinance No. \_\_\_\_\_ approving and adopting this Agreement.

"Agreement" shall mean this Development Agreement, as the same may be amended from time to time.

"Agreement Date" shall mean the date first written above, which date is the date the City Council adopted the Adopting Ordinance.

"CEQA" shall mean the California Environmental Quality Act (California Public Resources Code sections 21000-21177) and the implementing regulations promulgated thereunder by the Secretary for Resources (California Code of Regulations, Title 14, section 15000 et seq.), as the same may be amended from time to time.

"CFD No. 2018-02" shall mean City of Antioch Community Facilities District No. 2018-02 (Police Protection) (County of Contra Costa).

"CFD No. 2018-02 Fees" shall mean the then applicable fees and assessments payable to CFD No. 2018-02 by taxable properties within CFD No. 2018-02.

"City" shall mean the City of Antioch, and any successor or assignee of the rights and obligations of the City of Antioch hereunder.

"City Council" shall mean the governing body of City.

"City's Affiliated Parties" shall have the meaning ascribed in Section 11.1 of this Agreement.

"Claim" shall have the meaning ascribed in Section 11.1 of this Agreement.

"Cost Certification" shall have the meaning ascribed in Section 4.2.1 of this Agreement.

"Cure Period" shall have the meaning ascribed in Section 9.1 of this Agreement.  
"Default" shall have the meaning ascribed to that term in Section 9.1 of this Agreement.

"Develop" or "Development" shall mean to improve or the improvement of the Property for the purpose of completing the structures, improvements, and facilities comprising the Project, including but not limited to: grading; the construction of infrastructure and public facilities related to the Project, whether located within or outside the Property; the construction of all of the private improvements and facilities comprising the Project; the preservation or restoration, as required of natural and man-made or altered open space areas; and the installation of landscaping. The terms "Develop" and "Development," as used herein, do not include the maintenance, repair, reconstruction,



replacement, or redevelopment of any structure, improvement, or facility after the initial construction and completion thereof.

"Development Agreement Statute" shall mean California Government Code sections 65864-65869.5, inclusive.

"Development Exactions" shall mean any requirement of City in connection with or pursuant to any ordinance, resolution, rule, or official policy for the dedication of land, the construction or installation of any public improvement or facility, or the payment of any fee or charge in order to lessen, offset, mitigate, or compensate for the impacts of Development of the Project on the environment or other public interests.

"Development Plan" shall mean all of the land use entitlements, approvals and permits approved by the City for the Project on or before the Agreement Date, as the same may be amended from time to time consistent with this Agreement.

"Development Regulations" shall mean the following regulations as they are in effect as of the Effective Date and to the extent they govern or regulate the development of the Property, but excluding any amendment or modification to the Development Regulations adopted, approved, or imposed after the Effective Date that impairs or restricts Owner's rights set forth in this Agreement, unless such amendment or modification is expressly authorized by this Agreement or is agreed to by Owner in writing: the General Plan; the Development Plan; and, to the extent not expressly superseded by the Development Plan or this Agreement, all other land use and subdivision regulations governing the permitted uses, density and intensity of use, design, improvement, and construction standards and specifications, procedures for obtaining required City permits and approvals for development, and similar matters that may apply to Development of the Project on the Property during the Term of this Agreement. Notwithstanding the foregoing, the term "Development Regulations," as used herein, does not include any City ordinance, resolution, code, rule, regulation or official policy governing any of the following: (i) the conduct of businesses, professions, and occupations; (ii) taxes and assessments; (iii) the control and abatement of nuisances; (iv) the granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property, or (v) the exercise of the power of eminent domain.

"Effective Date" shall mean the date first written above, which date is the date the City Council adopted the Adopting Ordinance.

"Environmental Laws" shall mean all federal, state, regional, county, municipal, and local laws, statutes, ordinances, rules, and regulations which are in effect as of the Agreement Date, and all federal, state, regional, county, municipal, and local laws, statutes, rules, ordinances, rules, and regulations which may hereafter be enacted and which apply to the Property or any part thereof, pertaining to the use, generation, storage, disposal, release, treatment, or removal of any Hazardous Substances, including without limitation the following: the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601, et seq., as amended ("CERCLA"); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901, et seq., as amended ("RCRA"); the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. Sections 11001 et seq., as amended; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., as amended; the Clean Air Act, 42 U.S.C. Sections 7401, et seq., as amended; the Clean Water Act, 33 U.S.C. Section 1251, et seq., as amended; the Toxic Substances Control

Act, 15 U.S.C. Sections 2601, et seq., as amended; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Sections 136, et seq., as amended; the Federal Safe Drinking Water Act, 42 U.S.C. Sections 300f, et seq., as amended; the Federal Radon and Indoor Air Quality Research Act, 42 U.S.C. Sections 7401, et seq., as amended; the Occupational Safety and Health Act, 29 U.S.C. Sections 651, et seq., as amended; and California Health and Safety Code Section 25100, et seq.

"Future Development" shall have the meaning ascribed in Section 4.2 of this Agreement.

"General Plan" shall mean City's General Plan adopted by the City Council on \_\_\_\_\_, 20\_\_, by Resolution No. \_\_\_\_\_, excluding any amendment after the Effective Date that impairs or restricts Owner's rights set forth in this Agreement, unless such amendment is expressly authorized by this Agreement, is authorized by Sections 9 or 10 hereof, or is specifically agreed to by Owner.

"Hazardous Substances" shall mean any toxic substance or waste, pollutant, hazardous substance or waste, contaminant, special waste, industrial substance or waste, petroleum or petroleum-derived substance or waste, or any toxic or hazardous constituent or additive to or breakdown component from any such substance or waste, including without limitation any substance, waste, or material regulated under or defined as "hazardous" or "toxic" under any Environmental Law.

"Mortgage" shall mean a mortgage, deed of trust, sale and leaseback arrangement, or any other form of conveyance in which the Property, or a part or interest in the Property, is pledged as security and contracted for in good faith and for fair value.

"Mortgagee" shall mean the holder of a beneficial interest under a Mortgage or any successor or assignee of the Mortgagee.

"Notice of Default" shall have the meaning ascribed in Section 9.1 of this Agreement.

"Owner" shall mean AMCAL Antioch Fund, LP, a California limited partnership, and any successor or assignee to all or any portion of the right, title, and interest of AMCAL Antioch Fund, LP in and to ownership of all or a portion of the Property.

"Party" or "Parties" shall mean either City or Owner or both, as determined by the context.

"Project" shall mean all on-site and off-site improvements that Owner is authorized and/or required to construct with respect to each parcel of the Property, as provided in this Agreement and the Development Regulations, as the same may be modified or amended from time to time consistent with this Agreement and applicable law.

"Property" is described in Exhibit A and depicted on Exhibit B.

"Public Benefit Fee (Fire)" shall have the meaning ascribed in Section 3.1.2 of this Agreement.

"Public Benefit Fee (Fire) Payment Date" shall mean the earlier to occur of (i) the issuance of the certificate of occupancy for the final building in the Project or (ii) thirty-six (36) months from the issuance of the first building permit for the Project.

"Public Benefit Fee (Police)" shall have the meaning ascribed in Section 3.1.1 of this Agreement.

"Public Benefit Fee (Police) Payment Date" shall mean the earlier to occur of (i) the issuance of the certificate of occupancy for the final building in the Project or (ii) thirty-six (36) months from the issuance of the first building permit for the Project.

"Public Benefit Fees" shall mean, collectively, the Public Benefit Fee (Fire) and the Public Benefit Fee (Police).

"Public Improvement" shall have the meaning ascribed in Section 4.1 of this Agreement.

"Subsequent Development Approvals" shall mean all discretionary development and building approvals that Owner is required to obtain to Develop the Project on and with respect to the Property after the Agreement Date consistent with the Development Regulations and this Agreement (if any), with the understanding that except as expressly set forth herein City shall not have the right subsequent to the Effective Date and during the Term of this Agreement to adopt or impose requirements for any such Subsequent Development Approvals that do not exist as of the Agreement Date.

"Term" shall have the meaning ascribed in Section 2.4 of this Agreement.

"Termination Date" shall have the meaning ascribed in Section 2.4 of this Agreement.

"Transfer" shall have the meaning ascribed in Section 12 of this Agreement.

## 2. General Provisions.

2.1 Plan Consistency, Zoning Implementation. This Agreement and the Development Regulations applicable to the Property will cause City's zoning and other land use regulations for the Property to be consistent with the General Plan.

2.2 Binding Effect of Agreement. The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and shall be carried out in accordance with the terms of this Agreement.

2.3 Owner Representations and Warranties Regarding Ownership of the Property and Related Matters Pertaining to this Agreement. Owner and each person executing this Agreement on behalf of Owner hereby represents and warrants to City as follows: (i) that Owner is the owner of the fee simple title to the Property; (ii) if Owner or any co-owner comprising Owner is a legal entity that such entity is duly formed and existing and is authorized to do business in the State of California; (iii) if Owner or any co-owner comprising Owner is a natural person that such natural person has the legal right and capacity to execute this Agreement; (iv) that all actions required to be taken by all persons and entities comprising Owner to enter into this Agreement have been taken and that Owner has the legal authority to enter into this Agreement; (v) that Owner's entering into and performing its obligations set forth in this Agreement will not result in a

violation of any obligation, contractual or otherwise, that Owner or any person or entity comprising Owner has to any third party; (vi) that neither Owner nor any co-owner comprising Owner is the subject of any voluntary or involuntary bankruptcy or insolvency petition; and (vii) that Owner has no actual knowledge of any pending or threatened claims of any person or entity affecting the validity of any of the representations and warranties set forth in clauses (i)-(vi), inclusive, or affecting Owner's authority or ability to enter into or perform any of its obligations set forth in this Agreement.

2.4 Term. The term of this Agreement (the "Term") shall commence on the Effective Date and shall terminate on the Termination Date. The Termination Date shall be the earliest of the following dates: (i) the fifteenth (15th) anniversary of the Effective Date, as said date may be extended in accordance with Section 6.1 of this Agreement; (ii) such earlier date that this Agreement may be terminated in accordance with Articles 6, 8, and/or Section 9.3 of this Agreement and/or Sections 65865.1 and/or 65868 of the Development Agreement Statute; or (iii) completion of the Project in accordance with the terms of this Agreement, including Owner's complete satisfaction, performance, and payment, as applicable, of all Development Exactions, the issuance of all required final occupancy permits, and acceptance by City or applicable public agency(ies) or private entity(ies) of all required offers of dedication. Notwithstanding any other provision set forth in this Agreement to the contrary, the provisions set forth in Article 11 and Section 14.10 (as well as any other Owner obligations set forth in this Agreement that are expressly written to survive the Termination Date) shall survive the Termination Date of this Agreement.

### 3. Public Benefit Fees and Delayed Annexation.

#### 3.1 Public Benefit Fees.

3.1.1 As consideration for City's approval and performance of its obligations set forth in this Agreement, Owner shall pay to City a fee that shall be in addition to any other fee or charge to which the Property and the Project would otherwise be subject (herein, the "Public Benefit Fee (Police)") in the sum of [One Million Two Hundred Eighty-One Thousand Three Hundred Forty-Five Dollars (\$1,281,345.00)]. The Public Benefit Fee (Police) shall be payable upon the Public Benefit Fee (Police) Payment Date.

3.1.2 As further consideration for City's approval and performance of its obligations set forth in this Agreement, Owner shall pay to City a fee that shall be in addition to any other fee or charge to which the Property and the Project would otherwise be subject (herein, the "Public Benefit Fee (Fire)") in the sum of [Two Hundred Forty-Two Thousand One Hundred Thirty-Eight dollars (\$242,138.00)]. The Public Benefit Fee (Fire) shall be payable upon the Public Benefit Fee (Fire) Payment Date.

3.1.3 Owner acknowledges by its approval and execution of this Agreement that it is voluntarily agreeing to pay the Public Benefit Fees, that its obligation to pay the Public Benefit Fees is an essential term of this Agreement and is not severable from City's obligations and Owner's vesting rights to be acquired hereunder, and that Owner expressly waives any constitutional, statutory, or common law right it might have in the absence of this Agreement to protest or challenge the payment of such fee on any ground whatsoever, including without limitation pursuant to the Fifth and Fourteenth Amendments to the United States Constitution, California Constitution Article I, Section 19, the Mitigation Fee Act (California Government Code Section 66000 et seq.), or otherwise. In addition to any other remedy set forth in this Agreement for Owner's default, if Owner shall fail to timely pay any portion of the Public Benefit Fees when due City shall have the right to withhold issuance of any

further building permits, occupancy permits, or other development or building permits for the Project.

3.2 Annexation into CFD No. 2018-02. Commencing on the Effective Date, the Property and the Project shall be annexed into CFD No. 2018-02 (Police Protection). From that Effective Date and ending on the date which is fifteen (15) years from that date, the City shall not levy the annual tax for CFD No. 2018-02. Instead, the Property and the Project shall pay the Public Benefit Fee (Police) to the City as described in Section 3.1.1. At the end of the 15-year period, the Owner hereby consents to be taxed at the calculated tax rate for CFD 2018-02 at that time and on an annual basis thereafter.

3.3 Creation of Fire Protection Community Facility District. The Owner shall cooperate with the City in the creation of a new City of Antioch Community Facilities District (the "Fire CFD") to provide fire and emergency services to properties within the boundaries of the Fire CFD. The Owner shall not object to the formation of the Fire CFD nor the inclusion of all of the Property within the Fire CFD, provided, however the Property and the Project shall not be subject to annexation by the Fire CFD, nor to the payment of any fees associated therewith, during the period commencing with the Effective Date and ending on the date with which is fifteen (15) years from the date of the Public Benefit Fee (fire) Payment Date (the "Fire CFD Annexation Date"). Upon the Fire Annexation Date, the Property and Project shall be subject to annexation by the Fire CFD, if that district is then in existence, and the Owner hereby consents to said annexation at any time after the Fire CFD Annexation Date. Owner's consent to said annexation shall survive the Termination Date and shall be binding on any successor or assign as provided in Section 14.12 of this Agreement. This Agreement is made expressly with the understanding that the Property and the Project will annex into the Fire CFD promptly following the Fire Annexation Date. The City shall have the right to specific performance, as provided in Section 9.6, to compel Owner, or any successor or assign, to annex into the Fire CFD after the Fire CFD Annexation Date and/or the Termination Date.

#### 4. Construction of Public Improvements.

4.1 Owner, at its sole cost and expense, shall construct or install all of the on-site and off-site public improvements as set forth in Exhibit "C" attached hereto and made a part hereof (the "Public Improvements"). Prior to the commencement of construction of the Public Improvements, the City and the Owner shall execute a separate Public Improvement Agreement.

4.2 Because the construction of the Public Improvements are intended to benefit, and are in part required by the cumulative effect of the future development (the "Future Developments") of certain adjoining properties (the "Adjoining Properties"), Owner shall be entitled to reimbursement from such Future Developments for approved costs (inclusive of design and outside management costs) incurred by Owner for the design and construction of the Public Improvements as set forth below:

4.2.1 Upon completion of the work for which reimbursement is claimed by Owner and acceptance of such work by the City Engineer, Owner shall furnish to City a detailed certification (the "Cost Certification") of all construction costs incurred by Owner for such work, including the cost of design, engineering, plan check or inspection services provided by City, permit fees and construction management services provided by outside contractors retained by Owner. The cost certification shall be supported by such contracts, invoices, and other documentation as City may reasonably require to verify the accuracy of all costs claimed by Owner.

4.2.2 Upon approval of the Cost Certification by the City Engineer (which approval shall be limited to the City verifying that the costs are accurate and properly includable as reimbursable costs), City and Owner shall execute an Addendum to this Agreement to confirm the final, approved, Cost of Improvements.

4.2.3 Upon submittal of a completed application for a Future Development which may be obligated to pay a Reimbursement to Owner, City shall notify Owner of such fact and provide Owner a brief description of the proposed Future Development. Additional public records pertaining to such Future Development will be furnished to Owner upon request.

4.2.4 City will require the Future Development to pay the proportionate share of the Reimbursement allocated to a Future Development at the time the first building permit is issued for construction of the Future Development, or any portion thereof, and in any case, City will collect such proportionate share before the City issues a certificate of occupancy for such Future Development, or any portion thereof based upon the formals set for in Exhibit "C".

4.2.5 Owner's entitlement to Reimbursement from Future Development for the Cost of Improvements, as determined pursuant to the Section 4.2 shall be effective for a term of twenty (20) years from the date of final acceptance by the City of the particular Public Improvement for which reimbursement is claimed.

4.2.6 Nothing herein shall require the City to grant a development approval for any Future Development, nor shall this Agreement limit in any way the authority of the City to impose conditions or exactions upon Future Development in addition to the reimbursement condition described in this Agreement. The City shall be relieved of its obligation under this Agreement to collect the Reimbursement to Owner if the City is legally prohibited from doing so under any state or federal law, regulation, or court decision.

## 5. Development of Project.

5.1 Applicable Regulations; Owner's Vested Rights and City's Reservation of Discretion With Respect to Subsequent Development Approvals. Other than as expressly set forth in this Agreement, during the Term of this Agreement, (i) Owner shall have the vested right to Develop the Project on and with respect to the Property in accordance with the terms of the Development Regulations and this Agreement and (ii) City shall not prohibit or prevent development of the Property on grounds inconsistent with the Development Regulations or this Agreement. Notwithstanding the foregoing, nothing herein is intended to limit or restrict City's discretion with respect to (i) review and approval requirements contained in the Development Regulations, (ii) exercise of any discretionary authority City retains under the Development Regulations, (iii) the approval, conditional approval, or denial of any Subsequent Development Approvals that are required for Development of the Project as of the Effective Date, or (iv) any environmental approvals that may be required under CEQA or any other federal or state law or regulation in conjunction with any Subsequent Development Approvals that may be required for the Project, and in this regard, as to future actions referred to in clauses (i)-(iv) of this sentence, City reserves its full discretion to the same extent City would have such discretion in the absence of this Agreement. In addition, it is understood and agreed that nothing in this Agreement is intended to vest Owner's rights with respect to any laws, regulations, rules, or official policies of any other governmental agency or public utility company with jurisdiction over the Property or the Project; or any applicable federal or state laws, regulations, rules, or official policies that may be inconsistent with this Agreement and that override or supersede the

provisions set forth in this Agreement, and regardless of whether such overriding or superseding laws, regulations, rules, or official policies are adopted or applied to the Property or the Project prior or subsequent to the Agreement Date. Owner has expended and will continue to expend substantial amounts of time and money planning and preparing for Development of the Project. Owner represents and City acknowledges that Owner would not make these expenditures without this Agreement, and that Owner is and will be making these expenditures in reasonable reliance upon its vested rights to Develop the Project as set forth in this Agreement. Owner may apply to City for permits or approvals necessary to modify or amend the Development specified in the Development Regulations, provided that the request does not propose an increase in the maximum density, intensity, height, or size of proposed structures, or a change in use that generates more peak hour traffic or more daily traffic and, in addition, Owner may apply to City for approval of minor amendments to existing tentative tract maps, tentative parcel maps, or associated conditions of approval, consistent with City of Antioch Municipal Code. This Agreement does not constitute a promise or commitment by City to approve any such permit or approval, or to approve the same with or without any particular requirements or conditions, and City's discretion with respect to such matters shall be the same as it would be in the absence of this Agreement.

5.2 No Conflicting Enactments. Except to the extent City reserves its discretion as expressly set forth in this Agreement, during the Term of this Agreement City shall not apply to the Project or the Property any ordinance, policy, rule, regulation, or other measure relating to Development of the Project that is enacted or becomes effective after the Effective Date to the extent it conflicts with this Agreement. This Section 5.2 shall not restrict City's ability to enact an ordinance, policy, rule, regulation, or other measure applicable to the Project pursuant to California Government Code Section 65866 consistent with the procedures specified in Section 5.3 of this Agreement. In *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, the California Supreme Court held that a construction company was not exempt from a city's growth control ordinance even though the city and construction company had entered into a consent judgment (tantamount to a contract under California law) establishing the company's vested rights to develop its property consistent with the zoning. The California Supreme Court reached this result because the consent judgment failed to address the timing of development. The Parties intend to avoid the result of the *Pardee* case by acknowledging and providing in this Agreement that Owner shall have the vested right to Develop the Project on and with respect to the Property at the rate, timing, and sequencing that Owner deems appropriate within the exercise of Owner's sole subjective business judgment, provided that such Development occurs in accordance with this Agreement and the Development Regulations, notwithstanding adoption by City's electorate of an initiative to the contrary after the Effective Date. No City moratorium or other similar limitation relating to the rate, timing, or sequencing of the Development of all or any part of the Project and whether enacted by initiative or another method, affecting subdivision maps, building permits, occupancy certificates, or other entitlement to use, shall apply to the Project to the extent such moratorium or other similar limitation restricts Owner's vested rights in this Agreement or otherwise conflicts with the express provisions of this Agreement.

5.3 Reservations of Authority. Notwithstanding any other provision set forth in this Agreement to the contrary, the laws, rules, regulations, and official policies set forth in this Section 5.3 shall apply to and govern the Development of the Project on and with respect to the Property.

5.3.1 Procedural Regulations. Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, and any other matter of procedure shall apply to the Property,

provided that such procedural regulations are adopted and applied City-wide or to all other properties similarly situated in City.

5.3.2 Processing and Permit Fees. City shall have the right to charge and Owner shall be required to pay all applicable processing and permit fees to cover the reasonable cost to City of processing and reviewing applications and plans for any required Subsequent Development Approvals, building permits, excavation and grading permits, encroachment permits, and the like, for performing necessary studies and reports in connection therewith, inspecting the work constructed or installed by or on behalf of Owner, and monitoring compliance with any requirements applicable to Development of the Project, all at the rates in effect at the time fees are due.

5.3.3 Consistent Future City Regulations. City ordinances, resolutions, regulations, and official policies governing Development which do not conflict with the Development Regulations, or with respect to such regulations that do conflict, where Owner has consented in writing to the regulations, shall apply to the Property.

5.3.4 Development Exactions Applicable to Property. During the Term of this Agreement, Owner shall be required to satisfy and pay all Development Exactions at the time performance or payment is due to the same extent and in the same amount(s) that would apply to Owner and the Project in the absence of this Agreement; provided, however, that to the extent the scope and extent of a particular Development Exaction for the Project has been established and fixed by City in this Agreement or the conditions of approval for any of the Development Regulations approved on or before the Agreement Date City shall not alter, increase, or modify said Development Exaction in a manner that is inconsistent with such Development Regulations without Owner's prior written consent or as may be otherwise required pursuant to overriding federal or state laws or regulations (Section 5.3.5 hereinbelow). In addition, nothing in this Agreement is intended or shall be deemed to vest Owner against the obligation to pay any of the following (which are not included within the definition of "Development Exactions") in the full amount that would apply in the absence of this Agreement: (i) City's normal fees for processing, environmental assessment and review, tentative tract and parcel map review, plan checking, site review and approval, administrative review, building permit, grading permit, inspection, and similar fees imposed to recover City's costs associated with processing, reviewing, and inspecting project applications, plans, and specifications; (ii) fees and charges levied by any other public agency, utility, district, or joint powers authority, regardless of whether City collects those fees and charges; or (iii) community facility district special taxes or special district assessments or similar assessments, business license fees, bonds or other security required for public improvements, transient occupancy taxes, sales taxes, property taxes, sewer lateral connection fees, water service connection fees, new water meter fees, and the Property Development Tax payable under Section 3.12 of City's Municipal Code.

5.3.5 Overriding Federal and State Laws and Regulations. Federal and state laws and regulations that override Owner's vested rights set forth in this Agreement shall apply to the Property, together with any City ordinances, resolutions, regulations, and official policies that are necessary to enable City to comply with the provisions of any such overriding federal or state laws and regulations, provided that (i) Owner does not waive its right to challenge or contest the validity of any such purportedly overriding federal, state, or City law or regulation; and (ii) upon the discovery of any such overriding federal, state, or City law or regulation that prevents or precludes compliance with any provision of this Agreement, City or Owner shall provide to the other Party a written notice



identifying the federal, state, or City law or regulation, together with a copy of the law or regulation and a brief written statement of the conflict(s) between that law or regulation and the provisions of this Agreement. Promptly thereafter City and Owner shall meet and confer in good faith in a reasonable attempt to determine whether a modification or suspension of this Agreement, in whole or in part, is necessary to comply with such overriding federal, state, or City law or regulation. In such negotiations, City and Owner agree to preserve the terms of this Agreement and the rights of Owner as derived from this Agreement to the maximum feasible extent while resolving the conflict. City agrees to cooperate with Owner at no cost to City in resolving the conflict in a manner which minimizes any financial impact of the conflict upon Owner. City also agrees to process in a prompt manner Owner's proposed changes to the Project and any of the Development Regulations as may be necessary to comply with such overriding federal, state, or City law or regulation; provided, however, that the approval of such changes by City shall be subject to the discretion of City, consistent with this Agreement.

5.3.6 Public Health and Safety. Any City ordinance, resolution, rule, regulation, program, or official policy that is necessary to protect persons on the Property or in the immediate vicinity from conditions dangerous to their health or safety, as reasonably determined by City, shall apply to the Property, even though the application of the ordinance, resolution, rule regulation, program, or official policy would result in the impairment of Owner's vested rights under this Agreement.

5.3.7 Uniform Building Standards. Existing and future building and building related standards set forth in the uniform codes adopted and amended by City from time to time, including building, plumbing, mechanical, electrical, housing, swimming pool, and fire codes, and any modifications and amendments thereof shall all apply to the Project and the Property to the same extent that the same would apply in the absence of this Agreement.

5.3.8 Public Works Improvements. To the extent Owner constructs or installs any public improvements, works, or facilities, the City standards in effect for such public improvements, works, or facilities at the time of City's issuance of a permit, license, or other authorization for construction or installation of same shall apply.

5.3.9 No Guarantee or Reservation of Utility Capacity. Notwithstanding any other provision set forth in this Agreement to the contrary, nothing in this Agreement is intended or shall be interpreted to require City to guarantee or reserve to or for the benefit of Owner or the Property any utility capacity, service, or facilities that may be needed to serve the Project, whether domestic or reclaimed water service, sanitary sewer transmission or wastewater treatment capacity, downstream drainage capacity, or otherwise, and City shall have the right to limit or restrict Development of the Project if and to the extent that City reasonably determines that inadequate utility capacity exists to adequately serve the Project at the time Development is scheduled to commence. Notwithstanding the foregoing, City covenants to provide utility services to the Project on a non-discriminatory basis (i.e., on the same terms and conditions that City undertakes to provide such services to other similarly situated new developments in the City of Antioch as and when service connections are provided and service commences).

5.4 Tentative Subdivision Maps. City agrees that Owner may file and process new and existing vesting tentative maps for the Property consistent with California Government Code sections 66498.1-66498.9 and City of Antioch Municipal Code. Pursuant to the applicable provision of the California Subdivision Map Act (California Government Code section 66452.6(a)),

the life of any tentative subdivision map approved for the Property, whether designated a "vesting tentative map" or otherwise, shall be extended for the Term of this Agreement.

6. Amendment or Cancellation of Agreement. Other than modifications of this Agreement under Section 9.3 of this Agreement, this Agreement may be amended or canceled in whole or in part only by mutual written and executed consent of the Parties in compliance with California Government Code section 65868 and the City of Antioch Municipal Code or by unilateral termination by City in the event of an uncured default of Owner.

7. Enforcement. Unless this Agreement is amended, canceled, modified, or suspended as authorized herein or pursuant to California Government Code section 65869.5, this Agreement shall be enforceable by either Party despite any change in any applicable general or specific plan, zoning, subdivision, or building regulation or other applicable ordinance or regulation adopted by City (including by City's electorate) that purports to apply to any or all of the Property.

8. Annual Review of Owner's Compliance With Agreement.

8.1 General. City shall review this Agreement once during every twelve (12) month period following the Effective Date for compliance with the terms of this Agreement as provided in Government Code section 65865.1. Owner (including any successor to the owner executing this Agreement on or before the Agreement Date) shall pay City a reasonable fee in an amount City may reasonably establish from time to time to cover the actual and necessary costs for the annual review. City's failure to timely provide or conduct an annual review shall not constitute a Default hereunder by City.

8.2 Owner Obligation to Demonstrate Good Faith Compliance. During each annual review by City, Owner is required to demonstrate good faith compliance with the terms of the Agreement. Owner agrees to furnish such evidence of good faith compliance as City, in the reasonable exercise of its discretion, may require, thirty (30) days prior to each anniversary of the Effective Date during the Term.

8.3 Procedure. The City Council of City shall conduct a duly noticed hearing and shall determine, on the basis of substantial evidence, whether or not Owner has, for the period under review, complied with the terms of this Agreement. If the City Council finds that Owner has so complied, the annual review shall be concluded. If the City Council finds, on the basis of substantial evidence, that Owner has not so complied, written notice shall be sent to Owner by first class mail of the City Council's finding of non-compliance, and Owner shall be given at least ten (10) days to cure any noncompliance that relates to the payment of money and thirty (30) days to cure any other type of noncompliance. If a cure not relating to the payment of money cannot be completed within thirty (30) days for reasons which are beyond the control of Owner, Owner must commence the cure within such thirty (30) days and diligently pursue such cure to completion. If Owner fails to cure such noncompliance within the time(s) set forth above, such failure shall be considered to be a Default and City shall be entitled to exercise the remedies set forth in Article 8 below.

8.4 Annual Review a Non-Exclusive Means for Determining and Requiring Cure of Owner's Default. The annual review procedures set forth in this Article 8 shall not be the exclusive means for City to identify a Default by Owner or limit City's rights or remedies for any such Default.

9. Events of Default.

9.1 General Provisions. In the event of any material default, breach, or violation of the terms of this Agreement ("Default"), the Party alleging a Default shall have the right to deliver a written notice (each, a "Notice of Default") to the defaulting Party. The Notice of Default shall specify the nature of the alleged Default and a reasonable manner and sufficient period of time twenty (20) days if the Default relates to the failure to timely make a monetary payment due hereunder and not less than thirty (30) days in the event of non-monetary Defaults) in which the Default must be cured (the "Cure Period"). During the Cure Period, the Party charged shall not be considered in Default for the purposes of termination of this Agreement or institution of legal proceedings. If the alleged Default is cured within the Cure Period, then the Default thereafter shall be deemed not to exist. If a non-monetary Default cannot be cured during the Cure Period with the exercise of commercially reasonable diligence, the defaulting Party must promptly commence to cure as quickly as possible, and in no event later than thirty (30) days after it receives the Notice of Default, and thereafter diligently pursue said cure to completion.

9.2 Default by Owner. If Owner is alleged to have committed Default and it disputes the claimed Default, it may make a written request for an appeal hearing before the City Council within ten (10) days of receiving the Notice of Default, and a public hearing shall be scheduled at the next available City Council meeting to consider Owner's appeal of the Notice of Default. Failure to appeal a Notice of Default to the City Council within the ten (10) day period shall waive any right to a hearing on the claimed Default. If Owner's appeal of the Notice of Default is timely and in good faith but after a public hearing of Owner's appeal the City Council concludes that Owner is in Default as alleged in the Notice of Default, the accrual date for commencement of the thirty (30) day Cure Period provided in Section 9.1 shall be extended until the City Council's denial of Owner's appeal is communicated to Owner.

9.3 City's Option to Terminate Agreement. In the event of an alleged Owner Default, City may not terminate this Agreement without first delivering a written Notice of Default and providing Owner with the opportunity to cure the Default within the Cure Period, as provided in Section 9.1, and complying with Section 9.2 if Owner timely appeals any Notice of Default with respect to a non-monetary Default. A termination of this Agreement by City shall be valid only if good cause exists and is supported by evidence presented to the City Council at or in connection with a duly noticed public hearing to establish the existence of a Default. The validity of any termination may be judicially challenged by Owner. Any such judicial challenge must be brought within ninety (90) calendar days of service on Owner, by first class mail, postage prepaid, of written notice of termination by City or a written notice of City's determination of an appeal of the Notice of Default as provided in Section 9.2.

9.4 Default by City. If Owner alleges a City Default and alleges that the City has not cured the Default within the Cure Period, Owner may pursue any equitable remedy available to it under this Agreement, including, without limitation, an action for a writ of mandamus, injunctive relief, or specific performance of City's obligations set forth in this Agreement. Upon a City Default, any resulting delays in Owner's performance hereunder shall neither be an Owner Default nor constitute grounds for termination or cancellation of this Agreement by City and shall, at Owner's option (and provided Owner delivers written notice to City within thirty (30) days of the commencement of the alleged City Default), extend the Term for a period equal to the length of the delay.

9.5 Waiver. Failure or delay by either Party in delivering a Notice of Default shall not waive that Party's right to deliver a future Notice of Default of the same or any other Default.

9.6 Specific Performance Remedy. Due to the size, nature, and scope of the Project, it will not be practical or possible to restore the Property to its pre-existing condition once implementation of this Agreement has begun. After such implementation, both Owner and City may be foreclosed from other choices they may have had to plan for the development of the Property, to utilize the Property or provide for other benefits and alternatives. Owner and City have invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement. It is not possible to determine the sum of money which would adequately compensate Owner or City for such efforts. For the above reasons, City and Owner agree that damages would not be an adequate remedy if either City or Owner fails to carry out its obligations under this Agreement. Therefore, specific performance of this Agreement is necessary to compensate Owner if City fails to carry out its obligations under this Agreement or to compensate City if Owner fails to carry out its obligations under this Agreement.

9.7 Monetary Damages. The Parties agree that monetary damages shall not be an available remedy for either Party for a Default hereunder by the other Party provided, however, that (i) nothing in this Section 9.7 is intended or shall be interpreted to limit or restrict City's right to recover the Public Benefit Fees due from Owner as set forth herein; and (ii) nothing in this Section 9.7 is intended or shall be interpreted to limit or restrict Owner's indemnity obligations set forth in Article 10 or the right of the prevailing Party in any Action to recover its litigation expenses, as set forth in Section 9.10.

9.8 Additional City Remedy for Owner's Default. In the event of any Default by Owner, in addition to any other remedies which may be available to City, whether legal or equitable, City shall be entitled to receive and retain any Development Exactions applicable to the Project or the Property, including any fees, grants, dedications, or improvements to public property which it may have received prior to Owner's Default without recourse from Owner or its successors or assigns.

9.9 No Personal Liability of City Officials, Employees, or Agents. No City official, employee, or agent shall have any personal liability hereunder for a Default by City of any of its obligations set forth in this Agreement.

9.10 Recovery of Legal Expenses by Prevailing Party in Any Action. In any judicial proceeding, arbitration, or mediation (collectively, an "Action") between the Parties that seeks to enforce the provisions of this Agreement or arises out of this Agreement, the prevailing Party shall recover all of its actual and reasonable costs and expenses, regardless of whether they would be recoverable under California Code of Civil Procedure section 1033.5 or California Civil Code section 1717 in the absence of this Agreement. These costs and expenses include expert witness fees, attorneys' fees, and costs of investigation and preparation before initiation of the Action. The right to recover these costs and expenses shall accrue upon initiation of the Action, regardless of whether the Action is prosecuted to a final judgment or decision.

10. Force Majeure. Neither Party shall be deemed to be in Default where failure or delay in performance of any of its obligations under this Agreement is caused, through no fault of the Party whose performance is prevented or delayed, by floods, earthquakes, other acts of God, fires, wars, riots or similar hostilities, strikes or other labor difficulties, state or federal regulations, or court actions. Except as specified above, nonperformance shall not be excused because of the act or omission of a third person. In no event shall the occurrence of an event of force majeure operate to extend the Term of this Agreement. In addition, in no event shall the time for

performance of a monetary obligation, including without limitation Owner's obligation to pay Public Benefit Fees, be extended pursuant to this Section.

11. Indemnity Obligations of Owner.

11.1 Indemnity Arising From Acts or Omissions of Owner. Except to the extent caused by the intentional misconduct or negligent acts, errors or omissions of City or one or more of City's officials, employees, agents, attorneys, and contractors (collectively, the "City's Affiliated Parties"), Owner shall indemnify, defend, and hold harmless City and City's Affiliated Parties from and against all suits, claims, liabilities, losses, damages, penalties, obligations, and expenses (including but not limited to reasonable attorneys' fees and costs) (collectively, a "Claim") that may arise, directly or indirectly, from the acts, omissions, or operations of Owner or Owner's agents, contractors, subcontractors, agents, or employees in the course of Development of the Project or any other activities of Owner relating to the Property or pursuant to this Agreement. City shall have the right to select and retain counsel to defend any Claim filed against City and/or any of City's Affiliated Parties, and Owner shall pay the reasonable cost for defense of any Claim. The indemnity provisions in this Section 11.1 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

11.2 Third Party Litigation. In addition to its indemnity obligations set forth in Section 11.1, Owner shall indemnify, defend, and hold harmless City and City's Affiliated Parties from and against any Claim against City or City's Affiliated Parties seeking to attack, set aside, void, or annul the approval of this Agreement, the Adopting Ordinance, any of the Development Regulations for the Project (including without limitation any actions taken pursuant to CEQA with respect thereto), any Subsequent Development Approval, or the approval of any permit granted pursuant to this Agreement. Said indemnity obligation shall include payment of reasonable attorney's fees, expert witness fees, and court costs. City shall promptly notify Owner of any such Claim and City shall cooperate with Owner in the defense of such Claim. If City fails to promptly notify Owner of such Claim, Owner shall not be responsible to indemnify, defend, and hold City harmless from such Claim until Owner is so notified and if City fails to cooperate in the defense of a Claim Owner shall not be responsible to defend, indemnify, and hold harmless City during the period that City so fails to cooperate or for any losses attributable thereto. City shall be entitled to retain separate counsel to represent City against the Claim and the City's defense costs for its separate counsel shall be included in Owner's indemnity obligation, provided that such counsel shall reasonably cooperate with Owner in an effort to minimize the total litigation expenses incurred by Owner. In the event either City or Owner recovers any attorney's fees, expert witness fees, costs, interest, or other amounts from the party or parties asserting the Claim, Owner shall be entitled to retain the same (provided it has fully performed its indemnity obligations hereunder). The indemnity provisions in this Section 11.2 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

11.3 Environmental Indemnity. In addition to its indemnity obligations set forth in Section 11.1, from and after the Agreement Date Owner shall indemnify, defend, and hold harmless City and City's Affiliated Parties from and against any and all Claims for personal injury or death, property damage, economic loss, statutory penalties or fines, and damages of any kind or nature whatsoever, including without limitation reasonable attorney's fees, expert witness fees, and costs, based upon or arising from any of the following: (i) the actual or alleged presence of any Hazardous Substance on or under any of the Property in violation of any applicable Environmental Law; (ii) the actual or alleged migration of any Hazardous Substance from the Property through the soils or groundwater to a location or locations off of the Property; and (iii) the storage, handling, transport, or disposal of any Hazardous Substance on, to, or from the Property and any other area disturbed, graded, or developed by Owner in connection with

Owner's Development of the Project. The indemnity provisions in this Section 11.3 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

12. Assignment. Owner shall have the right to sell, transfer, or assign (hereinafter, collectively, a "Transfer") Owner's fee title to the Property, in whole or in part, to a Permitted Transferee (which successor, as of the effective date of the Transfer, shall become the "Owner" under this Agreement) at any time from the Agreement Date until the Termination Date; provided, however, that no such Transfer shall violate the provisions of the Subdivision Map Act (Government Code Section 66410 et seq.) or City's local subdivision ordinance and any such transfer shall include the assignment and assumption of Owner's rights, duties, and obligations set forth in or arising under this Agreement as to the Property or the portion thereof so Transferred and shall be made in strict compliance with the following conditions precedent: (i) no transfer or assignment of any of Owner's rights or interest under this Agreement shall be made unless made together with the Transfer of all or a part of the Property; and (ii) prior to the effective date of any proposed Transfer, Owner (as transferor) shall notify City, in writing, of such proposed Transfer and deliver to City a written assignment and assumption, executed in recordable form by the transferring and successor Owner and in a form subject to the reasonable approval of the City Attorney of City (or designee), pursuant to which the transferring Owner assigns to the successor Owner and the successor Owner assumes from the transferring Owner all of the rights and obligations of the transferring Owner with respect to the Property or portion thereof to be so Transferred, including in the case of a partial Transfer the obligation to perform such obligations that must be performed outside of the Property so Transferred that are a condition precedent to the successor Owner's right to develop the portion of the Property so Transferred. Any Permitted Transferee shall have all of the same rights, benefits, duties, obligations, and liabilities of Owner under this Agreement with respect to the portion of the Property sold, transferred, and assigned to such Permitted Transferee; provided, however, that in the event of a Transfer of less than all of the Property no such Permitted Transferee shall have the right to enter into an amendment of this Agreement that jeopardizes or impairs the rights or increases the obligations of the Owner with respect to the balance of the Property. Notwithstanding any Transfer, the transferring Owner shall continue to be jointly and severally liable to City, together with the successor Owner, to perform all of the transferred obligations set forth in or arising under this Agreement unless there is full satisfaction of all of the following conditions, in which event the transferring Owner shall be automatically released from any and all obligations with respect to the portion of the Property so Transferred: (i) the transferring Owner no longer has a legal or equitable interest in the portion of the Property so Transferred other than as a beneficiary under a deed of trust; (ii) the transferring Owner is not then in Default under this Agreement and no condition exists that with the passage of time or the giving of notice, or both, would constitute a Default hereunder; (iii) the transferring Owner has provided City with the notice and the fully executed written and recordable assignment and assumption agreement required as set forth in the first paragraph of this Section 12; and (iv) the successor Owner either (A) provides City with substitute security equivalent to any security previously provided by the transferring Owner to City to secure performance of the successor Owner's obligations hereunder with respect to the Property or the portion of the Property so Transferred or (B) if the transferred obligation in question is not a secured obligation, the successor Owner either provides security reasonably satisfactory to City or otherwise demonstrates to City's reasonable satisfaction that the successor Owner has the financial resources or commitments available to perform the transferred obligation at the time and in the manner required under this Agreement and the Development Regulations for the Project.

13. Mortgagee Rights.

13.1 Encumbrances on Property. The Parties agree that this Agreement shall not prevent or limit Owner in any manner from encumbering the Property, any part of the Property, or any improvements on the Property with any Mortgage securing financing with respect to the construction, development, use, or operation of the Project.

13.2 Mortgagee Protection. This Agreement shall be superior and senior to the lien of any Mortgage. Nevertheless, no breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value. Any acquisition or acceptance of title or any right or interest in the Property or part of the Property by a Mortgagee (whether due to foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination, or otherwise) shall be subject to all of the terms and conditions of this Agreement. Any Mortgagee who takes title to the Property or any part of the Property shall be entitled to the benefits arising under this Agreement.

13.3 Mortgagee Not Obligated. Notwithstanding the provisions of this Section 13.3, a Mortgagee will not have any obligation or duty under the terms of this Agreement to perform the obligations of Owner or other affirmative covenants of Owner, or to guarantee this performance except that: (i) the Mortgagee shall have no right to develop the Project under the Development Regulations without fully complying with the terms of this Agreement; and (ii) to the extent that any covenant to be performed by Owner is a condition to the performance of a covenant by City, that performance shall continue to be a condition precedent to City's performance.

13.4 Notice of Default to Mortgagee; Right of Mortgagee to Cure. Each Mortgagee shall, upon written request to City, be entitled to receive written notice from City of: (i) the results of the periodic review of compliance specified in Article 7 of this Agreement, and (ii) any default by Owner of its obligations set forth in this Agreement. Each Mortgagee shall have a further right, but not an obligation, to cure the Default within thirty (30) days after receiving a Notice of Default with respect to a monetary Default and within sixty (60) days after receiving a Notice of Default with respect to a non-monetary Default. If the Mortgagee can only remedy or cure a non-monetary Default by obtaining possession of the Property, then the Mortgagee shall have the right to seek to obtain possession with diligence and continuity through a receiver or otherwise, and to remedy or cure the non-monetary Default within sixty (60) days after obtaining possession and, except in case of emergency or to protect the public health or safety, City may not exercise any of its judicial remedies set forth in this Agreement to terminate or substantially alter the rights of the Mortgagee until expiration of the sixty (60)-day period. In the case of a non-monetary Default that cannot with diligence be remedied or cured within sixty (60) days, the Mortgagee shall have additional time as is reasonably necessary to remedy or cure the Default, provided the Mortgagee promptly commences to cure the non-monetary Default within sixty (60) days and diligently prosecutes the cure to completion.

#### 14. Miscellaneous Terms.

14.1 Senior Housing Term. The senior housing component of the project shall be maintained for a period of 55 years from the date of execution in order to receive the discounted senior rate for fees paid to the East Contra Costa Regional Fee and Finance Authority (ECCRFFA). Any proposed changes to the age restrictions of the senior housing component within this 55-year term shall be subject to the prior written approval of ECCRFFA.

14.2 Notice. Any notice or demand that shall be required or permitted by law or any provision of this Agreement shall be in writing. If the notice or demand will be served upon a Party, it either shall be personally delivered to the Party; deposited in the United States mail,

certified, return receipt requested, and postage prepaid; or delivered by a reliable courier service that provides a receipt showing date and time of delivery with courier charges prepaid. The notice or demand shall be addressed as follows:

TO CITY: City of Antioch  
200 H Street  
Antioch, CA 94509-1285  
Attention: City Manager

With a copy to: City Attorney  
City of Antioch  
200 H Street  
Antioch, CA 94509-1285

TO OWNER: AMCAL Antioch Fund, LP  
c/o AMCAL Multi-Housing, Inc.  
30141 Agoura Hills Road, Suite 100  
Agoura Hills, CA 91301  
Attention: President

With a copy to: Bocarsly Emden Cowan Esmail & Arndt LLP  
633 West Fifth Street, 64th Floor  
Los Angeles, CA 90017  
Attention: Kyle Arndt

Either Party may change the address stated in this Section 14.1 by delivering notice to the other Party in the manner provided in this Section 14.1, and thereafter notices to such Party shall be addressed and submitted to the new address. Notices delivered in accordance with this Agreement shall be deemed to be delivered upon the earlier of: (i) the date received or (iii) three business days after deposit in the mail as provided above.

14.3 Project as Private Undertaking. The Development of the Project is a private undertaking. Neither Party is acting as the agent of the other in any respect, and each Party is an independent contracting entity with respect to the terms, covenants, and conditions set forth in this Agreement. This Agreement forms no partnership, joint venture, or other association of any kind. The only relationship between the Parties is that of a government entity regulating the Development of private property by the owner of the property.

14.4 Cooperation. Each Party shall cooperate with and provide reasonable assistance to the other Party to the extent consistent with and necessary to implement this Agreement. Upon the request of a Party at any time, the other Party shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record the required instruments and writings and take any actions as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

14.5 Estoppel Certificates. At any time, either Party may deliver written notice to the other Party requesting that that Party certify in writing that, to the best of its knowledge: (i) this Agreement is in full force and effect and is binding on the Party; (ii) this Agreement has not been amended or modified either orally or in writing or, if this Agreement has been amended, the Party providing the certification shall identify the amendments or modifications; and (iii) the requesting Party is not in Default in the performance of its obligations under this Agreement and no event or situation has occurred that with the passage of time or the giving of Notice or both



would constitute a Default or, if such is not the case, then the other Party shall describe the nature and amount of the actual or prospective Default. The Party requested to furnish an estoppel certificate shall execute and return the certificate within thirty (30) days following receipt.

14.6 Rules of Construction. The singular includes the plural; the masculine and neuter include the feminine; "shall" is mandatory; and "may" is permissive.

14.7 Time Is of the Essence. Time is of the essence regarding each provision of this Agreement as to which time is an element.

14.8 Waiver. The failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, and failure by a Party to exercise its rights upon a Default by the other Party, shall not constitute a waiver of that Party's right to demand strict compliance by the other Party in the future.

14.9 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be identical and may be introduced in evidence or used for any other purpose without any other counterpart, but all of which shall together constitute one and the same agreement.

14.10 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter addressed in this Agreement.

14.11 Severability. The Parties intend that each and every obligation of the Parties is interdependent and with the other, and if any provision of this Agreement or the application of the provision to any Party or circumstances shall be held invalid or unenforceable to any extent, it is the intention of the Parties that the remainder of this Agreement or the application of the provision to persons or circumstances shall be rendered invalid or unenforceable. The Parties intend that neither Party shall receive any of the benefits of the Agreement without the full performance by such Party of all of its obligations provided for under this Agreement. Without limiting the generality of the foregoing, the Parties intend that Owner shall not receive any of the benefits of this Agreement if any of Owner's obligations are rendered void or unenforceable as the result of any third party litigation, and City shall be free to exercise its legislative discretion to amend or repeal the Development Regulations applicable to the Property and Owner shall cooperate as required, despite this Agreement, should third party litigation result in the nonperformance of Owner's obligations under this Agreement. The provisions of this Section 14.10 shall apply regardless of whether the Effective Date occurs and after the Termination Date.

14.12 Construction. This Agreement has been drafted after extensive negotiation and revision. Both City and Owner are sophisticated parties who were represented by independent counsel throughout the negotiations or City and Owner had the opportunity to be so represented and voluntarily chose to not be so represented. City and Owner each agree and acknowledge that the terms of this Agreement are fair and reasonable, taking into account their respective purposes, terms, and conditions. This Agreement shall therefore be construed as a whole consistent with its fair meaning, and no principle or presumption of contract construction or interpretation shall be used to construe the whole or any part of this Agreement in favor of or against either Party.

14.13 Successors and Assigns; Constructive Notice and Acceptance. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure

to, all successors in interest to the Parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to Development of the Property: (i) is for the benefit of and is a burden upon every portion of the Property; (ii) runs with the Property and each portion thereof; and (iii) is binding upon each Party and each successor in interest during its ownership of the Property or any portion thereof. Every person or entity who now or later owns or acquires any right, title, or interest in any part of the Project or the Property is and shall be conclusively deemed to have consented and agreed to every provision of this Agreement. This Section 14.12 applies regardless of whether the instrument by which such person or entity acquires the interest refers to or acknowledges this Agreement and regardless of whether such person or entity has expressly entered into an assignment and assumption agreement as provided for in Section 12.

14.14 No Third Party Beneficiaries. The only Parties to this Agreement are City and Owner. This Agreement does not involve any third party beneficiaries, and it is not intended and shall not be construed to benefit or be enforceable by any other person or entity.

14.15 Applicable Law and Venue. This Agreement shall be construed and enforced consistent with the internal laws of the State of California, without regard to conflicts of law principles. Any action at law or in equity arising under this Agreement or brought by any Party for the purpose of enforcing, construing, or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the Contra Costa County, State of California, or the United States District Court for the Northern District of California. The Parties waive all provisions of law providing for the removal or change of venue to any other court.

14.16 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect construction or interpretation of this Agreement.

14.17 Incorporation of Recitals and Exhibits. All of the Recitals are incorporated into this Agreement by this reference. Exhibits A and B are attached to this Agreement and incorporated by this reference as follows:

- Exhibit A      Legal Description of Property
- Exhibit B      Depiction of the Property
- Exhibit C      Public Improvements

14.18 Recordation. The City Clerk of City shall record this Agreement and any amendment, modification, or cancellation of this Agreement in the Office of the County Recorder of the Contra Costa County within the period required by California Government Code section 65868.5. The date of recordation of this Agreement shall not modify or amend the Effective Date or the Termination Date.

[SIGNATURE PAGE FOLLOWS]

**SIGNATURE PAGE TO  
DEVELOPMENT AGREEMENT**

**“OWNER”**

AMCAL ANTIOCH FUND, LP,  
a California limited partnership

By: AMCAL Multi-Housing, Inc.,  
a California corporation,  
its general partner

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

**“CITY”**

CITY OF ANTIOCH

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

Approved as to form:

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

EXHIBIT A

**LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED ANTIOCH, IN THE COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

All that certain real property situate in the City of Antioch, County of Contra Costa, State of California, described as follows:

Being all of the lands described in that certain Corrective Grant Deed recorded on October 1, 2019 as Document Number 2019-0165265-00, Official Records of said County, being more particularly described as follows:

BEGINNING at that monument at the monument line intersection of Holub Avenue with East 18<sup>th</sup> Street, as shown on that map entitled, "Amended Parcel Map Subdivision MS 1-92", filed for record March 24, 1995 in Book 166 of Parcel Maps, Page 20; Thence leaving said monument along the northerly prolongation of the westerly line of that land shown in that Record of Survey map, filed for record on December 16, 1975 and recorded in Book 60 LSM, Page 03, South 00°46'28" West, 42.00 feet to the southerly right of way line of East 18<sup>th</sup> Street, said point also being the TRUE POINT OF BEGINNING of this description; Thence leaving said right of way line, along said westerly line, South 00°46'28" West, 1,940.50 feet to the northerly line of Parcel B as shown on that certain map entitled, "Parcel Map MS 14-86", filed for record December 03, 1986 in Book 125 of Parcel Maps, Pages 17-18; Thence leaving said westerly line, along said northerly line, North 89°46'18" West, 335.48 feet to the easterly subdivision line of that certain map entitled, "Subdivision 8880, Almondridge East", filed for record October 09, 2008 in Book 508 of Maps, Pages 27-32; Thence leaving said northerly line, along said easterly subdivision line and its northerly prolongation, North 00°53'48" East, 1,940.30 feet to the said southerly right of way line of East 18<sup>th</sup> Street; Thence leaving said easterly line, along said right of way line, South 89°48'48" East, 331.35 feet to the TRUE POINT OF BEGINNING.

Pursuant to the "Lot Merger", recorded March 16, 2020, Instrument No. 2020-0049680, Official Records.

APN: 051-200-025, 051-200-026

EXHIBIT B

DEPICTION OF PROPERTY

EXHIBIT C

**PUBLIC IMPROVEMENTS**

Pursuant to the terms of the Conditions of Approval, the Owner shall undertake the construction of the following on-site and off-site public improvement (collectively, the "Public Improvements"):

1. The design and construction of approximately 280 linear feet along Holub Lane from East Eighteenth Street to the City as street right-of-way ("Holub Lane Improvements").
2. The design and construction Filbert Street ("Filbert Street Improvements").
3. The design and construction of a traffic signal and interconnect to adjacent signal(s) (including conduits, wire, and pull boxes) at the intersection of East Eighteenth Street and Holub Lane ("Traffic Signal Improvements").

The following is the relative payment responsibility for each of the Public Improvements as between Owner and the Future Developments.

Improvement	Owner Responsibility	Aasen Responsibility	Holub Responsibility	Mansouri Responsibility
Holub Lane Improvements				
Filbert Street Improvements				
Traffic Signal Improvements				

# ATTACHMENT "B"

## RESOLUTION NO. 2019/74

### RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH APPROVING A SENIOR HOUSING DENSITY BONUS, USE PERMIT, DESIGN REVIEW AND LOT MERGER FOR THE AMCAL FAMILY/SENIOR APARTMENTS PROJECT

**WHEREAS**, the City received an application from AMCAL Multi-Housing for approval of an Initial Study / Mitigated Negative Declaration, rezone to High Density Residential (R-25) and Senior Housing Overlay District (SH), a Senior Housing Density Bonus, Lot Merger, Use Permit, and Design Review, for the development of a 394-unit multi-family residential development on 14.85 acres.

**WHEREAS**, the project site is located southwest of the intersection of East Eighteenth Street and Holub Lane (APN's 051-200-025, and 051-200-026);

**WHEREAS**, an Initial Study / Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program and Errata was prepared in accordance with the California Environmental Quality Act (CEQA) Guidelines Section 15162, and considered by the Planning Commission on May 1, 2019;

**WHEREAS**, the Planning Commission recommended adoption of the Initial Study / Mitigated Negative Declaration, Mitigation Monitoring and Reporting Program and Errata to the City Council;

**WHEREAS**, on May 1, 2019, the Planning Commission recommended approval of a rezone to High Density Residential District (R-25) and Senior Housing Overlay (SH) to the City Council;

**WHEREAS**, the City Council duly gave notice of public hearing as required by law;

**WHEREAS**, on May 14, 2019, the City Council duly held a public hearing on the matter, and received and considered evidence, both oral and documentary;

**WHEREAS**, on May 14, 2019, the City Council duly held a public hearing on the matter, and received and considered evidence, both oral and documentary, and adopted the mitigated negative declaration, MMRP and Errata; and

**WHEREAS**, on May 14, 2019, the City Council introduced an ordinance to rezone the subject property to High Density Residential (R-25) and Senior Housing Overlay (SH).

**NOW THEREFORE BE IT RESOLVED**, that the City Council does hereby make the following findings for approval of a Lot Merger:

1. The merger will not interfere with any dedication or offer of dedication for present or prospective public purposes.

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May 14, 2019

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2. The contiguous parcels are under common ownership.
3. The merger will not result in a violation of this code, and that the merger will be consistent with the purposes and intent of this chapter and the Subdivision Map Act.

**BE IT FURTHER RESOLVED**, that the City Council does hereby make the following required findings for approval of the requested use permit:

1. The granting of such use permit will not be detrimental to the public health or welfare or injurious to the property or improvements in such zone or vicinity because the project has been designed and conditioned to comply with the requirements of the City of Antioch Municipal Code.
2. The use applied at the location indicated is properly one for which a use permit is authorized because the City of Antioch Zoning Ordinance requires a use permit for all multi-family development applications.
3. The site for the proposed use is adequate in size and shape to accommodate such use, and all yards, fences, parking, loading, landscaping, and other features required, for other uses in the neighborhood. The site plan complies with the City of Antioch's High-Density Residential Development standards.
4. The site abuts streets adequate in width and pavement type to carry the kind of traffic generated by the proposed use. The project site will construct street improvements, which are designed to meet City standards for adequate width and pavement.
5. The granting of such use permit will not adversely affect the comprehensive General Plan because the proposed uses and design are consistent with the City of Antioch General Plan. The General Plan land use designation for the project site is High Density Residential, which allows for the type of use being developed by the project.
6. The Conditions of approval protect the public safety, health and general welfare of the users of the project and surrounding area. In addition, the conditions ensure the project is consistent with City standards.

**BE IT FURTHER RESOLVED** that the City Council of the City of Antioch does hereby **APPROVE** a senior housing density bonus, lot merger, use permit, and design review for the development of a 394-unit multi-family affordable residential development on a 14.85-acre project site located southwest of the intersection of East Eighteenth



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Street and Holub Lane (APN's 051-200-025, and 051-200-026) subject to the following conditions:

**A. GENERAL CONDITIONS**

1. The development and all proposed improvements shall comply with the City of Antioch Municipal Code and City Standards, unless a specific exception is granted thereto or approved by the City Engineer.
2. This approval expires two years from the date of approval, May 14, 2021, unless a building permit has been issued and construction has diligently commenced thereon and has not expired, or an extension has been approved by the Zoning Administrator. Requests for extensions must be received in writing with the appropriate fees prior to the expiration of this approval. No more than one one-year extension shall be granted.
3. All required easements or rights-of-way shall be obtained by the applicant at no cost to the City of Antioch. Advance permission shall be obtained from any property or easement holders for any work done within such property or easements.
4. City staff shall inspect the site for compliance with conditions of approval prior to final inspection approval.
5. The applicant shall obtain an encroachment permit for all work to be done within the public right-of-way or easement, and peak commute-hour traffic shall not be impeded by construction-related activity.
6. All existing easements shall be identified on the site plan and all plans that encroach into existing easements shall be submitted to the easement holder for review and approval, and advance written permission shall be obtained from any property owner or easement holder for any work done within such property or easement.

**B. CONSTRUCTION CONDITIONS**

1. The use of construction equipment shall be as outlined in the Antioch Municipal Code. Construction is restricted to weekdays between the hours of 8:00 AM and 5:00 PM. Requests for alternative days/times may be submitted in writing to the City Engineer for consideration.
2. The project shall comply with and supply all the necessary documentation for AMC § 6-3.2: Construction and Demolition Debris Recycling.

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3. Standard dust control methods shall be used to stabilize the dust generated by construction activities. The developer shall post dust control signage with the contact number of the Developer, the Bay Area Air Quality Management District and the City.
4. Driveway access to neighboring properties shall be maintained at all times during construction.

**C. FIRE REQUIREMENTS**

1. All requirements of the Contra Costa County Fire District shall be met.

**D. FEES**

1. The developer shall pay all City fees which have been established by the City Council and as required by the Antioch Municipal Code.
2. The developer shall pay all pass-through fees. Fees include but are not limited to:
  - East Contra Costa Regional Fee and Financing Authority (ECCRFFA) Fee in effect at the time of building permit issuance.
  - Contra Costa County Fire Protection District Fire Development Fee in effect at the time of building permit issuance.
  - Development Impact Fee
  - Traffic Signal Fees
  - Gravity Flow Sewer Assessment Fee
  - School Impact Fees
  - Delta Diablo Sewer Fee
  - Contra Costa Water District Fee
3. Prior to issuance of a building permit the developer shall pay the Contra Costa County Flood Control District Drainage Area fee per letter dated September 20, 2018 and the Contra Costa County map maintenance fee, in effect at the time of the filing of the lot merger.
4. Prior to issuance of a building permit, the applicant shall pay sewer connection charges for APN 051-200-025 (\$20,558.62) and APN 051-200-026 (\$10,952.02) per City Council Resolution 2001/155 dated December 12, 2001.
5. Prior to the earlier to occur of (i) the issuance of the certificate of occupancy for the final building in the Project or (ii) thirty-six (36) months from the issuance of the first building permit, the developer shall pay the City of Antioch a Public Benefit

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Impact Fee of \$1,281,345 to compensate the City for the financial impact of the development by funding the provision of additional police protection services and construction of police facilities, as needed.

**E. PROPERTY MAINTENANCE**

1. The following requirements which shall be the responsibility of the property owner:
  - a. Maintenance of the storm water detention basin.
  - b. Compliance with all City Codes regarding property maintenance.
  - c. Maintenance of all slopes to property line.
  - d. Maintenance of all onsite and frontage landscaping.
2. A parking lot sweeping program shall be implemented that, at a minimum, provides for sweeping immediately prior to the storm season and prior to each storm event.
3. The site shall be kept clean of all debris (boxes, junk, garbage, etc.) at all times.

**F. GRADING**

1. The grading operation shall take place at a time and in a manner so as not to allow erosion and sedimentation. The slopes shall be landscaped and reseeded as soon as possible after the grading operation ceases. Erosion measures shall be implemented during all construction phases in accordance with an approved erosion and sedimentation control plan.
2. The final grading plan for this development shall be approved by the City Engineer and signed by a California licensed civil engineer. No grading is allowed without a grading permit issued by the Building Department.
3. All elevations shown on the grading and improvement plans shall be on the USGS 1929 sea level datum or NAVD 88 with conversion information, or as approved by the City Engineer.
4. All slopes shall drain to approved drainage facilities as approved by the City Engineer.
5. Wall and fence locations and elevations shall be included on the grading plan.
6. Any existing wells or septic systems on the property shall be properly abandoned under permit from the Contra Costa County Environmental Health Department.
7. All grading shall be accomplished in a manner that precludes surface water drainage across any property line.

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8. Swales adjacent to structures shall have a minimum of a 1% slope or as directed by the City Engineer.
9. All off-site grading is subject to the coordination and approval of the affected property owners and the City Engineer. The developer shall submit written authorization to “access, enter, or grade” adjacent properties prior to performing any work.
10. Retaining walls shall be of masonry construction and shall not be constructed in City right-of-way or other City maintained parcels unless approved by the City Engineer.
11. All retaining walls shall be reduced in height to the maximum extent practicable and any walls or signage shall meet the height requirements in the setback and sight distance triangles as required by the City Engineer.

**G. CONSERVATION/NPDES**

1. Water conservation measures, including low volume toilets, flow restrictors in showers and the use of drought tolerant landscaping, shall be used.
2. That the project shall comply with all Federal, State, and City regulations for the National Pollution Discharge Elimination System (NPDES) (AMC § 6-9). (Note: Per State Regulations, NPDES Requirements are those in affect at the time of the Final Discretionary Approval.) Under NPDES regulations, the project is subject to provision C.3: New development and redevelopment regulations for storm water treatment. Provision C.3 requires that the project include storm water treatment and source control measures, as well as run-off flow controls, so that post-project runoff does not exceed estimated pre-project runoff. C.3 regulations require the submittal of a Storm Water Control Plan (SWCP) that demonstrates how compliance will be achieved. The SWCP shall be submitted simultaneously with the project plans. For the treatment and flow-controls identified in the approved SWCP, a separate Operation and Maintenance Plan (O&M) shall be submitted and approved before the Building Division will issue Certificate of Occupancy. Both the approved SWCP and O&M plans shall be included in the project CC&Rs. Prior to building permit final and issuance of a Certificate of Occupancy, the developer shall execute any agreements identified in the Storm Water Control Plan that pertain to the transfer of ownership and/or long-term maintenance of storm water treatment or hydrograph modification BMPs.
3. The following requirements of the federally mandated NPDES program (National Pollutant Discharge Elimination System) shall be complied with as appropriate, or as required by the City Engineer:

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- a. Prior to issuance of permits for building, site improvements, or landscaping, the developer shall submit a permit application consistent with the developer's approved Storm Water Control Plan, and include drawings and specifications necessary for construction of site design features, measures to limit directly connected impervious area, pervious pavements, self-retaining areas, treatment BMPs, permanent source control BMPs, and other features that control storm water flow and potential storm water pollutants.
- b. The Storm Water Control Plan shall be certified by a registered civil engineer, and by a registered architect or landscape architect as applicable. Professionals certifying the Storm Water Control Plan shall be registered in the State of California and submit verification of training, on design of treatment measures for water quality, not more than three years prior to the signature date by an organization with storm water treatment measure design expertise (e.g., a university, American Society of Civil Engineers, American Society of Landscape Architects, American Public Works Association, or the California Water Environment Association), and verify understanding of groundwater protection principles applicable to the project site (see Provision C.3.i of Regional Water Quality Control Board Order R2 2003 0022).
- c. Prior to building permit final and issuance of a Certificate of Occupancy, the developer shall submit, for review and approval by the City, a final Storm Water BMP Operation and Maintenance Plan in accordance with City of Antioch guidelines. This O&M plan shall incorporate City comments on the draft O&M plan and any revisions resulting from changes made during construction.
- d. Prior to building permit final and issuance of a Certificate of Occupancy, the developer shall execute and record any agreements identified in the Storm Water Control Plan which pertain to the transfer of ownership and/or long-term maintenance of storm water treatment or hydrograph modification BMP's.
- e. Prevent site drainage from draining across sidewalks and drive aisles in a concentrated manner.
- f. Collect and convey all storm water entering, and/or originating from, the site to an adequate downstream drainage facility without diversion of the watershed. Submit hydrologic and hydraulic calculations with the Improvement Plans to Engineering Services for review and approval.

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- g. Prior to issuance of the grading permit, submit proof of filing of a Notice of Intent (NOI) by providing the unique Waste Discharge Identification Number (WDID#) issued from the Regional Water Quality Control Board.
- h. Submit a copy of the Storm Water Pollution Prevention Plan (SWPPP) for review to the Engineering Department prior to issuance of a building and/or grading permit. The general contractor and all subcontractors and suppliers of materials and equipment shall implement these BMP's. Construction site cleanup and control of construction debris shall also be addressed in this program. Failure to comply with the approved construction BMP may result in the issuance of correction notices, citations, or a project stop work order.
- i. Install appropriate clean water devices at all private storm drain locations immediately prior to entering the public storm drain system. Implement Best Management Practices (BMP's) at all times.
- j. Install "No Dumping, Drains to River" decal buttons on all catch basins.
- k. If sidewalks are pressure washed, debris shall be trapped and collected to prevent entry into the storm drain system. No cleaning agent may be discharged into the storm drain. If any cleaning agent or degreaser is used, wash water shall be collected and discharged to the sanitary sewer, subject to the approval of the sanitary sewer District.
- l. Include erosion control/storm water quality measures in the final grading plan that specifically address measures to prevent soil, dirt, and debris from entering the storm drain system. Such measures may include, but are not limited to, hydro seeding, gravel bags and siltation fences and are subject to review and approval of the City Engineer. If no grading plan is required, necessary erosion control/storm water quality measures shall be shown on the site plan submitted for an on-site permit, subject to review and approval of the City Engineer. The developer shall be responsible for ensuring that all contractors and subcontractors are aware of and implement such measures.
- m. Sweep or vacuum the parking lot(s) a minimum of once a month and prevent the accumulation of litter and debris on the site. Corners and hard to reach areas shall be swept manually.
- n. Ensure that the area surrounding the project such as the streets stay free and clear of construction debris such as silt, dirt, dust, and tracked mud coming in from or in any way related to project construction. Areas that are exposed for extended periods shall be watered regularly to reduce wind

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erosion. Paved areas and access roads shall be swept on a regular basis. All trucks shall be covered.

- o. Clean all on-site storm drain facilities a minimum of twice a year, once immediately prior to October 15 and once in January. Additional cleaning may be required if found necessary by City Inspectors and/or City Engineer.
  - p. Install full trash capture device(s) in storm water catch basins that collect water from the project site. A “full trash capture device” is defined as any device or series of devices that traps all particles retained by a 5mm mesh screen and has a design treatment capacity of not less than the peak flow rate resulting from a one-year, one-hour, storm in the tributary drainage catchment area. Selected devices must be detailed on the building permit plan submittal and approved by Public Works prior to installation.
4. All impervious surfaces to be constructed as part of the project, including off-site roadways, are subject to C.3 requirements per State Regulations.

**H. UTILITIES**

- 1. All existing and proposed utilities (e.g. transformers and PMH boxes) shall be undergrounded and subsurface in accordance with the Antioch Municipal Code, except existing P.G.& E. towers, if any, or as approved by the City Engineer.
- 2. Prior to issuance of a building permit, the applicant shall submit hydrologic and hydraulic calculations to the Contra Costa County Flood Control District for review, proving that existing Line ‘C’ of Drainage Area 29G is adequate to accept the runoff of the entire project site for the 10-year storm, as approved by the City Engineer.
- 3. Prior to issuance of a building permit, the applicant shall submit hydrologic and hydraulic calculations for review to the City for design and construction of storm drain facilities that adequately collect and convey stormwater entering or originating within the development to the nearest adequate man-made drainage facility or natural watercourse, without diversion of watershed.
- 4. All storm water flows shall be collected onsite and discharged into an approved public storm drain system.
- 5. Trash enclosures shall drain to sanitary sewer and shall incorporate methods to contain runoff at the front-gate and pedestrian access point to prevent storm water from entering the enclosure.
- 6. The sewer collection system shall be constructed to function as a gravity system.

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7. A reduced pressure backflow preventer assembly shall be installed on all City water meter services.
8. All onsite utilities outside a public utility easement or as determined by the City Engineer, shall be privately owned and maintained and connected to public facilities in accordance with City Standards.
9. Double detector check valve backflow assemblies shall be installed at each end of the private fire line and enclosed within easements granted to the City.
10. The developer shall provide adequate water pressure and volume to serve this development, as approved by the City Engineer. This will include a minimum residual pressure of 20 psi with all losses included at the highest point of water service and a minimum static pressure of 50 psi.
11. The applicant shall install all infrastructure to serve the site. Infrastructure for access to the site (sewer, water, storm, joint trench, and surface improvements) shall be completed prior to issuance of building permits.
12. All proposed drainage facilities, including open ditches, shall be constructed of Portland Concrete Cement or as approved by the City Engineer.

### I. LANDSCAPING

1. Sight distance triangles shall be maintained per AMC § 9-5.1101, Site Obstructions at Intersections, or as approved by the City Engineer. Landscaping and signage shall not create a sight distance problem.
2. Detailed landscaping and irrigation plans for the entire site shall be submitted to the City for review and approval. All landscaping and irrigation shall be installed in accordance with approved plans prior to the issuance of certificates of occupancy for this building.
3. Landscaping for the project shall be designed to comply with the applicable requirements of City of Antioch Ordinance No. 2162-C-S the State Model Water Efficient Landscape Ordinance (MWELo). Prior to issuance of a building permit, the applicant shall demonstrate compliance with the applicable requirements of the MWELo in the landscape and irrigation plans submitted to the City.
4. Landscape shall show immediate results. Landscaped areas shall be watered, weeded, pruned, fertilized, sprayed, and/or otherwise maintained as necessary. Plant materials shall be replaced as needed to maintain the landscaping in accordance with the approved plans.



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5. The tree and shrub sizes shall be as detailed on the project plans.

**J. LOT MERGER**

1. Prior to the issuance of a building permit the applicant shall record a lot merger to consolidate APN 051-200-025 and APN 051-200-026 into one parcel.
2. Approval of the lot merger is subject to the City of Antioch Municipal Code and the time lines established in the State of California Subdivision Map Act.
3. Prior to recordation of the lot merger, a certificate of lot merger shall be submitted to the City Engineer for review and approval.
4. Prior to or concurrent with recordation of the lot merger, the applicant shall annex into CFD 2018-02 (Police Protection) for senior and multi-family units or execute an alternative agreement with the City of Antioch that provides funding for police services equivalent to those that would be assessed through annexation into CFD 2018-02.
5. Prior to recordation of the lot merger, the applicant shall annex into Street Light and Landscape Maintenance District 2A Zone 3 and accept a level of annual assessments sufficient to maintain street lights and landscaping adjacent to the project. The annual assessment shall cover the actual annual cost of maintenance as described in the Engineer's Report.
6. Prior to or concurrent with recordation of lot merger, the applicant shall dedicate, design and construct approximately 280 linear feet along Holub Lane from East Eighteenth Street to the City as street right-of-way.
7. Prior to or concurrent with recordation of lot merger, the applicant shall provide an irrevocable offer of dedication to the City of approximately 555 linear feet of Holub Lane as street right-of-way, which the City will not accept at the time of dedication.
8. Prior to or concurrent with recordation of lot merger, the applicant shall dedicate to the City as street right-of-way, design and construct Filbert Street.
9. Prior to building permit the applicant shall design and construct a traffic signal and interconnect to adjacent signal(s) (including conduits, wire, and pull boxes) at the intersection of East Eighteenth Street and Holub Lane, as approved by the City Engineer. The City will require future Developers of adjoining properties to pay their fair share of the traffic signal improvements. The City will cooperate with the developer in establishing a financing mechanism or reimbursement agreement for the traffic signal improvements so reimbursement is provided when adjacent properties develop. Should an adjacent developer construct the traffic signal first,

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the applicant shall pay 25% (as determined by the traffic impact analysis and approved by the City Engineer) of the cost of design and construction of the traffic signal to the City of Antioch for reimbursement to the adjacent developer(s). The applicant shall acquire and dedicate right-of-way or easements to the City of Antioch for the traffic signal at no cost to the City and to the satisfaction of the City Engineer.

10. Prior to or concurrent with recordation of the lot merger, the applicant may record a public improvement agreement for the deferment of the public improvements above provide appropriate security to ensure completion as required by the City Engineer.

**K. FINAL IS/MND AND MITIGATION MONITORING AND REPORTING PROGRAM**

1. The applicant shall comply with all mitigation measures identified in the Mitigation Monitoring and Reporting Program.
2. The applicant shall mitigate any impacts on wildlife, including State and Federally listed threatened and endangered species, and their habitat by compliance with one of the following:
  - a. Implementing, or making enforceable commitments to implement, all applicable mitigation measures in the project environmental documents, as well as any additional measures as may be required by the California Department of Fish & Wildlife (CDFW) or the U.S. Fish & Wildlife Service (FWS), and obtaining a letter(s) from CDFW and FWS stating that the project has fulfilled the requirements of applicable State and Federal wildlife protection laws and regulations; or
  - b. Complying with applicable terms and conditions of the ECCC HCP/NCCP, as determined in written "Conditions of Coverage" by the East Contra Costa County Habitat Conservancy (Conservancy), provided that the City has first entered into an agreement with the Conservancy for coverage of impacts to ECCCHCP/NCCP Covered Species; or
  - c. Complying with a habitat conservation plan and/or natural community conservation plan developed and adopted by the City, including payment of applicable fees, provided that CDFW and FWS have approved the conservation plan.

**L. PROJECT SPECIFIC CONDITIONS**

1. This senior housing density bonus, lot merger, use permit, and design review approval applies to the construction of 394 affordable multi-family units for families

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and seniors as depicted on the project plans and described in the project description submitted to the City of Antioch on February 5, 2019. Any forthcoming plans submitted for any purpose shall be entirely consistent with these received plans, project description and conditions of approval herein. Minor modifications require the approval of the Zoning Administrator per AMC § 9-5.2708, Changed Plan; New Applications. Issuance of a Building Permit, Grading Permit or other permit does not negate or supersede this requirement.

2. Filbert Street shall be designed and constructed 40' wide (curb-to-curb) at the western project boundary, necking down to 36' wide (curb-to-curb) at the eastern project boundary, with 5'-wide sidewalks on both sides of the street and a turnaround at the eastern end as approved by the Fire Department and the City Engineer.
3. The secondary access driveway on Filbert Street shall be "in-and-out" and for residents only. The slope of the secondary drive aisle and parking spaces adjacent to the senior apartments shall be "flattened" as much as possible to improve access for seniors and the grade difference between building eleven and the parking lot and Filbert Street landscape frontage shall be reduced to the extent feasible. The applicant shall provide landscaping or other reasonable measures to block the view of the secondary access driveway into the adjacent property.
4. No structures, trash enclosures or invasive trees shall be located within public easements, as approved by the City Engineer.
5. Prior to building permit, the applicant shall submit a detailed plan of the entry gates for review and approval by the City Engineer. The design shall allow for adequate vehicle storage and turnaround. Gated entrances to the site shall include rapid access technology for Fire, Police and other emergency responders.
6. Driveway cuts along East Eighteenth Street shall be removed and replaced with City standard curb, gutter and six-foot (6') wide sidewalk.
7. All on-site curbs, gutters and sidewalks shall be constructed of Portland cement concrete.
8. Asphalt paving shall be designed for a minimum traffic index (TI) of 5.5 and shall have a minimum slope of 2%, concrete paving shall have a minimum slope of 0.75%, and asphalt paving for identified accessible parking stalls and access routes may have a minimum slope of 1.5% and a maximum 2% slope, or as approved by the City Engineer.
9. All access drive aisles shall be constructed per current ADA and City standards, subject to review and approval by the City Engineer.

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10. The applicant shall install and maintain parking lot and pathway lights and landscaping within the project area at no cost to the City.
11. The parking lot striping and signing plan shall be approved by the City Engineer.
12. All parking spaces shall be double-striped, and all parking lot dimensions shall meet minimum City of Antioch Municipal Code requirements.
13. The applicant shall show a turning template on the site plan verifying that trucks can safely ingress, egress, and successfully maneuver throughout the site.
14. All cracked, broken or damaged concrete curb, gutter and/or sidewalks along E. Eighteenth Street (in the public right-of-way along the project frontage) shall be removed and replaced as required by the City Engineer and at no cost to the City.
15. An additional accent color shall be added to the north, west, and east elevation of building #1 and to the east and west elevation of building #2. The accent color shall be brighter and complementary to the proposed color palette. A revised elevation shall be submitted for the review and approval of the Zoning Administrator.
16. The trash enclosures shall be screened with a combination of landscaping and/or evergreen vines and painted to match the building design. The trash enclosure shall comply with AMC § 9-5.1401 Refuse Storage Area Design Guidelines
17. The transformers shall be screened with landscaping.
18. All mechanical equipment shall be screened from the public right of way.
19. All rooftop mechanical equipment shall be screened from the public right-of-way. A line of sight study shall be submitted with the building permit submittal confirming the equipment is screened.
20. The back of all parapets shall be finished to match the front.
21. The six-foot high fence along East Eighteenth Street shall be set back 15-feet from the property line.
22. Carport roofs and supports shall be painted to match the buildings.
23. All tandem parking spaces shall be assigned to the same apartment unit.
24. The six-foot high solid noise barrier adjacent to the pool area required for noise mitigation in the MMRP shall be compatible with the project architecture. An

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elevation of the barrier shall be included with the building permit submittal and shall be subject to the review and approval of the Zoning Administrator.

- 25. The monument sign shall be located in an area free of visual obstructions. Additional landscaping shall be added around the base of the sign to make the entry into the site more prominent. The color and materials of the sign shall be compatible with the project design.
- 26. The senior units shall be restricted to tenants aged 55 or older.
- 27. Prior to building permits being issued for the site, the applicant shall enter into a Senior Housing Density Bonus Agreement with City of Antioch per the requirements of Title 9, Chapter 5, Article 34 of the Antioch Municipal Code.
- 28. In anticipation of a formal update and assumed increase to the Fire Protection Facility Fee in the coming months, the applicant shall pay an enhanced Fire Protection Facility Fee of \$460 at the time of building permits. Should the formal update occur prior to building permits and a lesser amount is determined for this type of project, the applicant shall be entitled to the lesser amount at that time.
- 29. The applicant shall agree to participate and/or assist in the formation of a Community Facilities District (CFD) to fund the incremental cost of fire protection and ambulance service delivery. At minimum, the applicant shall remit payment equivalent to five (5) years of participation prior to occupancy of the building. The specific values and terms of such arrangement shall be formalized in any forthcoming Development Agreement.

\* \* \* \* \*

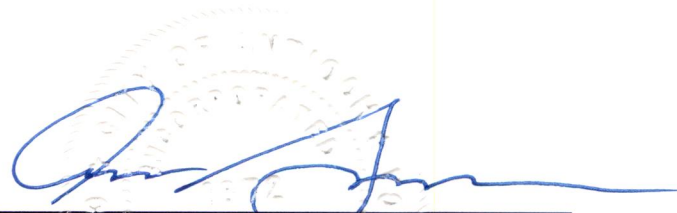
**I HEREBY CERTIFY** that the foregoing resolution was passed and adopted by the City Council of the City of Antioch, at a regular meeting thereof, held on the 14<sup>th</sup> day of May 2019 by following vote:

**AYES:** Council Members Wilson, Motts, Thorpe, Ogorchock and Mayor Wright

**NOES:** None

**ABSTAIN:** None

**ABSENT:** None



**ARNE SIMONSEN, CMC**  
**CITY CLERK OF THE CITY OF ANTIOCH**