

Recording requested by
the City of Watsonville
and when recorded mail to:

City of Watsonville
250 Main Street,
Watsonville, CA 95076

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

APN: 019-226-41

(Space above for Recorder's use only)

AFFORDABLE HOUSING REGULATORY AGREEMENT
(PLHA Loan)

This Affordable Housing Regulatory Agreement (“**Agreement**”) is made this ____ day of _____, 2024, by and between the CITY OF WATSONVILLE, a municipal corporation (“**City**”), and EDEN FREEDOM INVESTORS, L.P., a California limited partnership (“**Developer**”).

RECITALS

A. Developer is the fee owner of certain land in the City of Watsonville, California, together with certain improvements thereon, and more particularly described in Exhibit A (collectively, “**Development**”).

B. Developer is constructing a fifty-three (53) unit (including one manager’s unit) housing project located on the Development (“**Project**”).

C. This Agreement is the “Regulatory Agreement” and one of the “**City Documents**” as described in that certain Loan Agreement, dated on or about even date herewith between City and Developer (“**Loan Agreement**”), which provides for a One Million and 00/100 Dollar (\$1,000,000.00) loan from City to Developer (“**City Loan**”). This Agreement is, in part, to comply with City’s obligations to the California Department of Housing and Community Development (“**HCD**”) under the PLHA Grant (as defined in the Loan Agreement).

D. As required by the PLHA Grant, as further consideration for the City Loan, and to further the interests of City, Developer has agreed to enter into and record this Agreement. The purpose of this Agreement is to regulate and restrict the occupancy, rents, operation, ownership, and management of the Development and the Project for affordable housing and related uses. The covenants in this Agreement are intended to run with the land and be binding on Developer and its successors and assigns in the Development, notwithstanding payoff of the Loan.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and City hereby agree as follow:

A. Definitions.

The following terms have the meanings and content set forth in this section wherever used in this Agreement or attached exhibits.

“Affordable Rent” means the total charges for rent and utilities to each Qualifying Household as allowed based on household size, income level and unit size pursuant to Fair Market Rents and Income Limits published annually by HUD.

“City” is the City of Watsonville.

“City Documents” is defined in Recital C.

“City Loan” is defined in Recital C.

“County” is the County of Santa Cruz, California.

“Developer” means Eden Freedom Investors, L.P., a California limited partnership, and its officers, officials, directors, employees, agents and authorized representatives.

“Development” is defined in Recital A.

“HCD” means the California Department of Housing and Community Development.

“HUD” means the Federal Department of Housing and Urban Development, or successor.

“Loan Agreement” is defined in Recital C.

“Lower Income Household” means a household whose annual income does not exceed eighty percent (80%) of the Area Median Income as determined for the City of Watsonville HUD Metro FMR Area annually by HUD and adjusted for household size.

In the event that such income determinations are no longer published by HUD, “Median Income” shall mean the median gross yearly income for households in the County, as published periodically by HCD. In the event that such income determinations are no longer published by HCD, or are not updated for a period of at least eighteen (18) months, City shall provide Developer with other income determinations which are reasonably similar with respect to method of calculation to these previously published by HCD or HUD.

“PLHA Grant” is defined in Recital C.

“Project” means the Units in the Development and any supportive services and programs provided to tenants of the Development.

“Qualifying Household” means a household that qualifies as a Lower Income Household.

“Restricted Units” is defined in Section C.1.

“TCAC” means the California Tax Credit Allocation Committee.

“Term” means the term of this Agreement described herein.

“Unit” means any one of the residential units in the Project.

B. DEVELOPER’S OBLIGATIONS.

1. **Compliance with Loan Agreement and PLHA Grant.** Developer’s actions with respect to the Development shall at all times be in full conformity with all of the requirements of the Loan Agreement and PLHA Grant, including but not limited to the insurance requirements contained therein.

2. **Use For Affordable Housing.** Developer agrees that, at all times during the Term of this Agreement, a minimum of fifty-two (52) Units in the Project will be used as affordable housing for Lower Income Households.

3. **Term of Agreement.** This Agreement shall commence upon completion of the construction of the Project, as evidenced by issuance of a final Certificate of Occupancy (“**Completion Date**”), and shall remain in full force and effect for fifty-five (55) years thereafter, or such other time as may be required to comply with the PLHA Grant, whichever is less.

C. OCCUPANCY AND RENTS.

1. **Occupancy of Units.** During the term of this Agreement, fifty-two (52) Units in the Project will be used as affordable housing for Lower Income Households (“**Restricted Units**”).

2. **Tenant Selection.** Developer shall adopt written tenant selection policies for the Restricted Units that: (i) are reasonably related to program eligibility and the applicant’s ability to perform the obligations of the applicable lease; (ii) are consistent with the purpose of providing housing for Qualifying Households; and (iii) give prompt written notification to any rejected applicant of the grounds for rejection.

3. **Nondiscrimination.** Developer shall not discriminate or segregate in the use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any units in the Project on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. Developer shall include a statement in all advertisements, notices and signs for the availability of Units for rent to the effect that Developer is an Equal Housing Opportunity Provider.

4. **Income Certification and Increases In Tenant Income.** Developer shall certify the incomes of all prospective tenants in the Restricted Units prior to their initial occupancy of a Unit and shall recertify their incomes annually. If upon recertification, a tenant’s income exceeds the maximum designated for a Lower Income Household, Developer may increase the rent for such tenants to no more than 30% of the tenant’s income and the tenant may be permitted to continue to occupy a Unit in the Project. Developer shall provide City an annual report on the income recertification evidencing that Project occupants meet the requirements of Qualified

Households.

5. **Rental Charges.** Total charges for rent, utilities and related services for each Unit in the Project shall not exceed the Affordable Rent for that Unit. If upon recertification, a tenant's income exceeds the Qualifying Household limit for the applicable Unit type, Developer may increase the rent for such tenants to no more than 30% of the Tenant's monthly income less utility and other mandatory charges.

6. **Conflicts With Other Regulatory Requirements.** If any other regulatory agreement executed by Developer enforces the requirements of any loan program or low income housing tax credits as a means of providing financing or equity for the Development or Project are more restrictive than the rent and income restrictions contained in this Agreement, compliance with the rent and income restrictions of any such regulatory agreements shall be deemed compliance with this Agreement.

D. PROPERTY MANAGEMENT.

1. **Management Responsibilities.** Developer is responsible for all management functions with respect to the Project, including without limitation the selection of tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. City shall have no responsibility over management of the Development or the Project.

2. **Review of Management Policies.** Developer shall submit its written management policies with respect to the Project and Program to City for its review, and shall amend such policies in any way necessary to insure that such policies comply with the provisions of this Agreement and the requirements of all parties providing financing for the Development and/or the Project.

3. **Inspection and Records.** Developer shall maintain records that clearly document Developer's performance of its obligations to operate the Development under the terms of this Agreement. Developer shall submit any records to City within ten (10) business days of City's request. Developer shall permit City to enter and inspect the Project for compliance with obligations under this Agreement upon seventy-two (72) hours advance notice of such visit by City to Developer or Developer's management agent and to tenants of any Units.

4. **Annual Report.** Developer shall submit to City each year, on or prior to the date such report is required to be submitted to TCAC, a report for the preceding calendar year showing the necessary information to allow City to determine Developer's compliance with this Agreement, and within thirty (30) days after receipt of a written request, any other information or completed forms requested by City in order to comply with City reporting requirements.

E. GENERAL PROVISIONS.

1. **Default and Remedies.** In the event of any Developer breach of any agreement or obligation under this Agreement, City shall provide written notice to Developer and Developer's limited partner(s) (as identified in Section 9 of this Agreement) of such breach. Developer shall have an opportunity to cure the breach within thirty (30) days from Developer's receipt of such

written notice or such longer period of time as City determines is necessary to cure the breach if Developer diligently undertakes to cure. If Developer fails to perform a timely cure, City may proceed with any remedy provided under the City Documents (subject to any subordination agreement) allowed by law to enforce the terms and conditions of this Agreement. Developer's limited partner(s) shall have the right, but not the obligation, to cause a cure of any such breach or default upon the same terms and conditions afforded to Developer. A cure by any other Project lender or Developer's limited partner(s) shall be accepted or rejected on the same basis as if made or tendered by Developer.

2. **Binding Upon Successors.** All provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferee, and assigns of Developer and City, and shall run with the land for the full term of this Agreement, regardless of any subordination, cancellation, surrender, assignment or any conveyance or transfer of the Development or Project or portion thereof, or any payment, prepayment, modification or expiration of any other City Documents.

3. **Non-Liability of Officials, Employees and Agents.** No officers, directors, employees and agents of City shall be personally liable to Developer for any obligation created under the terms of this Agreement.

4. **Indemnity.** Developer shall indemnify and hold City free and harmless against any losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including reasonable attorneys' fees) which City may incur as a direct or indirect consequence of Developer's failure to perform any obligations as and when required by this Agreement. This indemnity obligation shall not extend to any claim arising solely from the gross negligence or willful acts of City, its agents, and its employees. Developer's duty to indemnify City shall survive the term of this Agreement. Notwithstanding the foregoing or anything else to the contrary contained herein, no foreclosing lender or its successors and/or assigns shall be responsible or liable for any indemnity obligations that accrue hereunder prior to the completion of foreclosure (or acceptance of a deed in lieu thereof).

5. **Primacy of PLHA Grant.** This Agreement is subject to all applicable requirements of the PLHA Grant. In the event that any provisions of this Agreement and PLHA Grant conflict, the terms of the PLHA Grant shall control.

6. **Governing Law.** This Agreement shall be interpreted under and be governed by the laws of the State of California applicable to contracts executed and wholly performed in that State, except for those provisions preempted by federal law.

7. **Agreement Controls.** Notwithstanding any provisions of the Loan Agreement, in the event that any provisions of this Agreement and Loan Agreement conflict, the terms of this Agreement shall control.

8. **Consents and Approvals.** Any consent or approval of City required under this Agreement shall not be unreasonably withheld. Any approval must be in writing and executed by an authorized representative of City.

9. **Notices, Demands and Communication.** Formal notices, demands and communications between Developer and City shall be sufficiently given and shall not be deemed

given unless dispatched by (i) delivered personally or by courier, (ii) sent by overnight express delivery, or (iii) mailed by registered or certified mail (return receipt requested), postage prepaid, to the principal offices of Developer and City as follows:

City: 275 Main Street,
Watsonville, CA 95076
Attention: City Manager

With a copy to: City of Watsonville
275 Main Street,
Watsonville, CA 95076
Attention: City Attorney

Developer: Eden Freedom Investors, L.P.
c/o Eden Investment's Inc.
22645 Grand Street
Hayward, CA 94541
Attention: Chief of Real Estate Development

With a copy to: Gubb & Barshay LLP.
235 Montgomery Street
San Francisco, CA 94104
Attention: Evan Gross, Esq.

Limited Partner:
U.S. Bancorp Community Development Corporation
1307 Washington Avenue, Suite 300
Mail Code: SL MO RMCD
St. Louis, MO 63103
Attn.: Director of LIHTC Asset Management

Phone: (314) 335-2600

With a copy to: Kutak Rock LLP
1650 Farnam Street
Omaha, Nebraska 68102
Attn: Jill H. Goldstein, Esq.

10. Relationship of Parties. The relationship of Developer and City during the term of this Agreement is solely that of borrower and lender and shall not be construed as a joint venture, equity venture, or partnership.

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

12. Amendments and Modifications. Any amendments or modifications to this Agreement must be in writing, and shall be made only if executed by both Developer and City.

13. Severability. Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

[Signature Pages Follow]

IN WITNESS WHEREOF, City and Developer have caused this Regulatory Agreement to be executed by their duly authorized representatives.

CITY:

CITY OF WATSONVILLE,
a California municipal corporation

By: _____
_____,
City Manager

ATTEST:

By: _____
_____,
City Clerk

APPROVED AS TO FORM:

By: _____
_____,
City Attorney

DEVELOPER:

EDEN FREEDOM INVESTORS, L.P.,
a California limited partnership

By: Eden Freedom, LLC,
a California limited liability company,
its general partner

By: Eden Investments, Inc.,
a California nonprofit public benefit corporation,
its sole member/manager

By: _____
Andrea Osgood,
Chief of Real Estate Development

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

State of California)

County of _____)

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

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

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

State of California)

County of _____)

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

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

**EXHIBIT A
LEGAL DESCRIPTION**

That land in the City of Watsonville, County of Santa Cruz, State of California, and more particularly described as follows:

BEING A PART OF THE RANCHO BOLSA DEL PAJARO AND BEGINNING ON THE NORTHEASTERN SIDE OF THE WATSONVILLE SANTA CRUZ HIGHWAY AND ON THE BOUNDARY LINE BETWEEN THE SAID RANCHO BOLSA DEL PAJARO AND THE RANCHO CORRALITOS; SAID POINT OF BEGINNING BEING THE SOUTHWESTERN CORNER OF LANDS OF ONE GEORGE WHITE; AND RUNNING THENCE FROM SAID POINT OF BEGINNING ALONG THE SAID NORTHEASTERN SIDE OF SAID HIGHWAY 38° 18' EAST 168.00 FEET; THENCE LEAVING HIGHWAY NORTH 56° 38' EAST 466.70 FEET TO THE LANDS OF ONE HART; THENCE ALONG THE BOUNDARY OF SAID LANDS OF HART NORTH 25° 23' WEST 248.00 FEET TO THE AFORESAID RANCHO BOUNDARY; AND THENCE ALONG SAID RANCHO BOUNDARY SOUTH 48° WEST 521.40 FEET TO THE PLACE OF BEGINNING.

EXCEPTING THEREFROM THE LAND DEEDED TO THE COUNTY OF SANTA CRUZ PURSUANT TO DEED RECORDED IN VOLUME 341 OF OFFICIAL RECORDS OF THE COUNTY RECORDER OF THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA, AT PAGE 171 THEREOF.

ALSO EXCEPTING THEREFROM THE LANDS CONVEYED TO THE CITY OF WATSONVILLE BY DEED RECORDED JULY 29, 1980 IN VOLUME 3219 PAGE 211 OFFICIAL RECORDS COUNTY OF SANTA CRUZ.

ALSO EXCEPTING THEREFROM THE LANDS CONVEYED TO THE CITY OF WATSONVILLE BY DEED RECORDED MARCH 28, 2006 AS DOCUMENT NO. 2006-17265 OFFICIAL RECORDS, AND AS CORRECTED BY GRANT DEED RECORDED APRIL 10, 2017 AS DOCUMENT NO. 2017-0011836 OFFICIAL RECORDS COUNTY OF SANTA CRUZ.

APN: 019-226-41