

RECORDING REQUESTED  
BY AND WHEN RECORDED MAIL TO:

City of Huntington Beach  
Community Development Department  
2000 Main Street, 5<sup>th</sup> Floor-Housing  
Huntington Beach, California 92648  
Attention: Housing Manager

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(Space Above For Recorder's Use)

This First Amendment to Density Bonus and Affordable Housing Agreement is recorded at the request and for the benefit of the City of Huntington Beach and is exempt from the payment of a recording fee pursuant to Government Code Sections 6103 and 27383.

**FIRST AMENDMENT TO  
DENSITY BONUS AND AFFORDABLE HOUSING AGREEMENT**

**BY AND BETWEEN**

**CITY OF HUNTINGTON BEACH,  
a California municipal corporation**

**and**

**NASH-HOLLAND 18750 DELAWARE INVESTORS, LLC  
a Delaware limited liability company**

[THIS AGREEMENT CONTAINS SUBORDINATION REQUIREMENTS  
TO PRESERVE PRIORITY OF LAND USE AND REGULATORY COVENANTS]

## FIRST AMENDMENT TO DENSITY BONUS AND AFFORDABLE HOUSING AGREEMENT

18750 Delaware Street

This FIRST AMENDMENT TO DENSITY BONUS AND AFFORDABLE HOUSING AGREEMENT (“**First Amendment**”) is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2025 (“**Effective Date**”) by and between the CITY OF HUNTINGTON BEACH, a California municipal corporation (“**City**”), and NASH-HOLLAND 18750 DELAWARE INVESTORS LLC, a Delaware limited liability company (“**Owner**”). City and Owner are hereinafter sometimes referred to collectively as the “**Parties**” and individually as a “**Party**.”

### RECITALS

- A. City and Owner are parties to that certain Density Bonus and Affordable Housing Agreement (the “**Original Agreement**”) entered into and effective as of November 1, 2022 and recorded on January 13, 2023 as Instrument No. 2023000009767 in the Official Records of Orange County, California (the “**Official Records**”). All capitalized terms used but not otherwise defined in this First Amendment shall have the meaning ascribed to such terms in the Original Agreement. The Original Agreement, as amended by this First Amendment, shall be referred to herein as the “**Density Bonus and Affordable Housing Agreement**.”
- B. The Original Agreement sets forth the terms and conditions for the implementation of the Project’s requirement to provide affordable housing units in exchange for receiving density bonus and additional incentives and concessions. Among other things, the Original Agreement specifies a mix of unit types (as defined by number of bedrooms) for the Project’s 70 affordable housing units that the Parties understood would reflect a roughly proportionate distribution of the affordable housing units among the unit types included in the Project. The unit mix for the affordable housing units is also specified in the Affordable Housing Plan (included as Exhibit D to the Original Agreement) (the “**Original Affordable Housing Plan**”) and the Regulatory Agreement (included as Exhibit H to the Original Agreement, and subsequently entered into and effective as of February 8<sup>th</sup>, 2023 and recorded on February 8, 2023 as Instrument No. 2023000028176 in the Official Records ) (the “**Original Regulatory Agreement**”). However, because two-bedroom loft units are counted as three-bedroom units, the mix of unit types for the affordable housing units specified in the Original Agreement, the Original Affordable Housing Plan and the Original Regulatory Agreement results in a disproportionate distribution of affordable housing units among the unit types included in the Project, which is not consistent with the intent of the Original Agreement, the Original Affordable Housing Plan and the Original Regulatory Agreement.
- C. The Community Development Director has approved a revision to the Original Affordable Housing Plan, attached hereto as Exhibit A (the “**Revised Affordable Housing Plan**”) that modifies the mix of unit types for the affordable housing units in order to implement the original intent of the Parties to achieve a roughly proportionate distribution of affordable housing units among the Project’s unit types.
- D. The Parties now wish to amend the Original Agreement and the Original Regulatory Agreement to conform to the Revised Affordable Housing Plan and modify the mix of unit types for the affordable housing units in order to implement the original intent of the Parties to

achieve a roughly proportionate distribution of the affordable housing unit among the Project's unit types.

## COVENANTS

NOW, THEREFORE, in consideration of the above Recitals, which are incorporated herein by this reference, and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to make certain modifications to the Original Agreement, all as more specifically set forth below:

### 1. AMENDMENTS.

1.1 The term "Agreement" as used in the Original Agreement shall mean the "Density Bonus and Affordable Housing Agreement" as defined in Recital A of this First Amendment. Without limiting the generality of the foregoing, and for the avoidance of doubt, Section 8.19 (Subordination) of the Original Agreement shall apply to the Density Bonus and Affordable Housing Agreement, including to this First Amendment.

1.2 Section 1.1.4 of the Original Agreement is hereby amended and replaced in its entirety, as follows:

1.1.4 "**Affordable Units**" means the 70 Units, consisting of twelve (12) studio units, thirty-two (32) one-bedroom units, twenty-three (23) two-bedroom units, and three (3) three bedroom units that are designated pursuant to this Agreement to be rented to and occupied by Lower Income Households within the Project.

1.3 Section 1.1.2 of the Original Agreement is hereby amended and replaced in its entirety, as follows:

1.1.2 "**Affordable Housing Plan**" means that certain affordable housing program dated August 19, 2025 and approved by the City's Director of Community Development. A copy of the approved and finalized Affordable Housing Plan is attached hereto as Exhibit "D".

1.4 Exhibit D to the Original Agreement is hereby deleted in its entirety and replaced with Exhibit A, attached hereto and incorporated herein by reference.

1.5 Exhibit H to the Original Agreement is hereby deleted in its entirety and replaced with Exhibit B, attached hereto and incorporated herein by reference.

2. The Original Agreement Remains in Full Force and Effect. Except as amended by this Amendment, the Original Agreement remains in full force and effect, and the terms thereof, as modified by this First Amendment, are hereby ratified and confirmed by the Parties, and the Density Bonus and Affordable Housing Agreement shall be deemed to be current and effective without default or outstanding obligations by either Party as of the Effective Date. In the event of any inconsistency between the terms of the Original Agreement and the terms of this First Amendment, the terms of this First Amendment shall prevail and control.

3. Entire Agreement. This First Amendment and all of its exhibits and attachments set forth and contain the entire understanding and agreement of the Parties with respect to the subject matter hereof, and there are no oral or written representations, understandings or ancillary covenants, undertakings or

agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this First Amendment.

4. Authority to Execute. The person or persons executing this First Amendment on behalf of either Party warrants and represents that he or she/they have the authority to execute this First Amendment on behalf of his or her/their agency, corporation, partnership or business entity and warrants and represents that he or she/they has/have the authority to bind the Party to the performance of its obligations hereunder.

5. Counterparts. This First Amendment may be executed by the Parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the Parties had executed the same instrument.


IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment on the day and year set forth in the preamble above.

“DEVELOPER”

NASH-Holland 18750 Delaware Investors, LLC  
a Delaware limited liability company

By: HPG 18750 Delaware, LLC  
a Washington limited liability company,  
its Operating Member

By: Holland Partner Group Management, Inc.,  
a Delaware Corporation,  
its Manager

By:   
Thomas D. Warren  
President, Development Division



“CITY”

CITY OF HUNTINGTON BEACH,  
a California municipal corporation

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

ATTEST:

\_\_\_\_\_  
City Clerk

INITIATED AND APPROVED

  
\_\_\_\_\_  
Director of Community Development

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

STATE OF WASHINGTON       )  
  ) ss.  
COUNTY OF CLARK       )

I certify that I know or have satisfactory evidence that Thomas D. Warren is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the President of Development Division of Holland Partner Group Management, Inc. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated the 8<sup>th</sup> day of July, 2025.



Rachel Brown  
Notary Public for Washington  
My Appointment Expires: 06/13/2027

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.

**ACKNOWLEDGMENT**

State of California                   )  
  )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_  
(insert name and title of the officer)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**EXHIBIT “A”**

**TO DENSITY BONUS AND AFFORDABLE HOUSING AGREEMENT**

**Affordable Housing Plan** (Approved August 19, 2025)

## **AFFORDABLE HOUSING PLAN**

### **August 19, 2025**

The Project will be located at 18750 Delaware (“Project Site”) in the Beach and Edinger Corridors Specific Plan (BECSP) area and will consist of 346 apartments (“Project”). A total of 20 percent of the units – for a total of 70 units – will be set aside for lower income units with rents set at 60 percent Area Median Income (AMI) for a total of 55 years in accordance with the Affordable Housing Overlay zone within the BECSP and the California State Density Bonus Law Program. The Project will include an above-grade parking structure and on grade parking totaling approximately 505 parking stalls based on the minimum requirement set forth in the State Density Bonus Law (Senate Bill 1818).

#### **DENSITY BONUS INFORMATION**

The Applicant proposes to comply with Section 2.2.4 of the BECSP by reserving 20 percent of the total units in the Project (70 units) for lower income household as defined by California Health and Safety Code Section 50079.5, or a successor statute, for a period of 55 years. For this Project, the Applicant will be reserving the 70 units at 60 percent AMI for Orange County.

The BECSP constitutes a “forms-based” zoning code, where the development capacity of a housing development is determined by application of zoning criteria and requirements to the proposed project and project site on a case-by-case basis. The BECSP does not limit the residential capacity of a housing development by floor-area-ratio or dwelling unit density. Applying the BECSP’s zoning criteria and requirements to the Project Site results in an approximate development capacity of 233-unit residential units assuming a typical multifamily mix of unit types and unit sizes, which constitutes the Project Site’s “base density.”

The Project proposes 346 total units. To achieve this level of density (a 48 percent density bonus), California Government Code 65915 would require setting aside only 24 percent of the Project’s base density, or 56 units, for Lower Income households. The Project’s proposed 70 lower income units substantially exceeds the minimum number of lower income units (56 units) required per Section 230.14 and California Government Code 65915 to achieve the Project’s density bonus.

The Applicant has requested four incentives, concessions, and waivers of City’s development standards to enable development and construction of the Project, which standards would otherwise limit the development capacity of the Project Site to its base density (233 units), and thereby deprive the Project of the density bonus to which it is entitled under the BECSP, Zoning Code, and California Government Code 65915. Government Code 65915 requires that three incentives or concessions be granted for projects that reserve at least 24 percent of the total units for lower income households. In addition to incentives and concessions, California Government Code Section 65915 and Section 230.14 also provide that, upon application, waiver or modification of development standards (which are not limited in number) shall be granted for waiver or reduction of development standards that will have the effect of physically precluding the density bonus project.

Government Code Section 65915(e) provides that “in no case may a city... apply any development standard that will have the effect of physically precluding the construction of a [density bonus project].”

The incentives, concessions and waivers requested by the Applicant are as follows:

- (i) The 4-story maximum height limitation of BECSP Section 2.3.1;



- (ii) The 30-foot front yard setback requirement of BSCP Section 2.4.3
- (iii) The 10-foot top floor setback requirement of BSCP Section 2.4.3; and
- (iv) The 50 sf/unit public open space requirement of BECSP Section 2.6.1.

It should be noted that the Applicant is making the four requests referenced above as waivers.

## **INCOME & AFFORDABILITY RESTRICTIONS**

The Project affordability mix is as follows:

**Table 1. Unit & Affordable Mix Summary**

	<b>Studio Units</b>	<b>1-Bedroom Units</b>	<b>2-Bedroom Units</b>	<b>3-Bedroom Units</b>	<b>Total Units</b>
Lower Income (60 percent)	12	32	23	3	70
<b>Total Units</b>	<b>12</b>	<b>32</b>	<b>23</b>	<b>3</b>	<b>70</b>

The City's affordable housing restrictions will not be subordinated to other lenders and will run with the land for a 55-year term from the date of the Certificate of Occupancy (COO) or sign off of all final building permits.

### **Household Income Restrictions**

The low-income restrictions are defined in Section 50079.5 of the California Health and Safety Code (H&SC). Table 2 provides the maximum household income levels for 2022 as published by California Department of Housing and Community Development ("HCD") for households earning up to 60 percent of the Orange County AMI:

**Table 2. 2022 Orange County Income Limits**

<b>2022 Orange County Income Category</b>	<b>1 Person</b>	<b>2 Persons</b>	<b>3 Persons</b>	<b>4 Persons</b>	<b>5 Persons</b>	<b>6 Persons</b>	<b>7 Persons</b>
Low Income	\$75,900	\$86,750	\$97,600	\$108,400	\$117,100	\$125,750	\$134,450

### **Maximum Rent Restrictions**

The restricted income limits must comply with the State Income Limits for Orange County determined and published annually by the California Department of Housing and Community Development (collectively, "Lower Income Units") as referenced in California Health and Safety Code (H&SC) Section 50079.5 for Lower Income households. Therefore, Developer agrees that it shall incorporate into the Project and set aside, or cause to be set aside, 70 Lower Income units to be income restricted per H&SC

and rented at an affordable rent as defined and published by the California Tax Credit Allocation Committee (“CTCAC”). For the purposes of determining the maximum affordable rents, Lower Income units shall be restricted to a maximum affordable rent up to 60 percent AMI for Orange County as determined and published annually by CTCAC for a family of a size appropriate to the unit. Table 3 shows the maximum gross rents as published in the 2022 CTCAC schedule.

**Table 3. 2022 Gross Rent Limits for City Density Bonus Regulatory Agreement**

Income Category	Studio Units	1-Bedroom Units	2-Bedroom Units	3-Bedroom Units
Lower Income	\$1,423	\$1,524	\$1,830	\$2,114

**Table 4. 2022 Orange County Utility Allowances**

The gross rents are to be deducted by the utility allowances associated with the tenant paid utilities. The utility allowances are published annually by the Orange County Housing Authority and are as follows for 2022:

**2022 Utility Allowance Schedule**

The following utility allowances will be used by the Orange County Housing Authority for administration of the Housing Choice Voucher Program effective December 1, 2021.

Bedroom	0	1	2	3	4	5
Gas						
Cooking	3	4	6	7	9	11
Heating	16	18	21	22	25	27
Water Heating	9	10	14	20	26	31
Natural Gas Base Charge	3					
Electric						
Basic	30	35	49	65	82	100
Cooking	6	7	12	17	21	25
Heating	19	22	25	28	30	35
Water Heating	17	22	31	37	44	51
Other						
Air Conditioning	9	10	17	23	30	38
Water	45	49	71	104	138	171
Sewer	9	9	11	13	16	18
Trash	23					
Refrigerator	12					
Stove	11					

The rental rates and income limits shown in this document will be updated prior to the commencement of rental activities to reflect then current income limits, utility allowances and any changes in applicable regulations and statutes. It should be noted that the City’s Density Bonus Regulatory Agreement income and affordability restrictions may be one of several affordability and income restrictions placed on the units. Therefore, the most restrictive income and rent restrictions consistent with the requirements of Government Code Section 65915 as of the date of this Agreement will prevail.

**EXHIBIT “B”**

**Regulatory Agreement and Declaration of Covenants and Restrictions for Lower Income  
Affordable Housing**

**and**

**First Amendment to Regulatory Agreement and Declaration of Covenants and Restrictions for  
Lower Income Affordable Housing**

**[Attached]**

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED RETURN TO:

City of Huntington Beach  
Community Development Department  
2000 Main Street, 5th Floor-Housing  
Huntington Beach, CA 92648  
Attn.: Director of Community Development  
and Housing Manager

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

This Regulatory Agreement and Declaration of  
Covenants and Restrictions is recorded at the request  
and for the benefit of the City of Huntington Beach and  
is exempt from the payment of a recording fee pursuant  
to Government Code Sections 6103 and 27383.

**REGULATORY AGREEMENT AND  
DECLARATION OF COVENANTS AND RESTRICTIONS FOR LOWER INCOME  
AFFORDABLE HOUSING  
18750 DELAWARE STREET, HUNTINGTON BEACH**

This REGULATORY AGREEMENT AND DECLARATION OF COVENANTS AND RESTRICTIONS FOR LOWER INCOME AFFORDABLE HOUSING (“**Agreement**”) is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the CITY OF HUNTINGTON BEACH, a California municipal corporation (“**City**”), the HOUSING AUTHORITY OF THE CITY OF HUNTINGTON BEACH (“**Authority**”) and NASH-HOLLAND 18750 DELAWARE INVESTORS, LLC, a Delaware limited liability company (“**Owner**”) (hereinafter, City and Owner are sometimes referred to collectively as “**Parties**” and individually as a “**Party**”). At the option of the City and Authority, the Authority may enforce this Agreement in place of the City.

**RECITALS**

A. Owner is the owner in fee of that certain real property located at 18750 Delaware Street, Huntington Beach, California 92648 consisting of approximately 178,056 square feet (4.09 acres) lots and including Assessor Parcel Nos. 159-121-25, 26, 37 and 38, and more particularly described in the legal description attached hereto as Attachment “1” (the “**Property**”).

B. Owner submitted to City plans to develop the Property as a three-hundred and forty-six (346) unit apartment development (the “**Project**”). Owner will build the Project in multiple phases and lease individual units to individual tenants.

C. On or about \_\_\_\_, 2022, City and Owner entered into that certain Density Bonus and Affordable Housing Agreement (“**Density Bonus Agreement**”), which set forth the terms and conditions for the development of the Project and implemented Government Code Sections 65915-65918 (the “**State Density Bonus Law**”) and the implementing ordinance in Section 230.14 of the City of Huntington Beach Zoning and Subdivision Ordinance (“**Zoning Ordinance**”) by requiring Owner to restrict no less than 56 residential units to Lower Income Households (As set forth below, the Project shall consist of 70 residential units restricted to Lower Income Households). The Density Bonus Agreement is incorporated herein by reference and is a public record available for inspection at City Hall of the City of Huntington Beach. All of the terms, conditions, provisions and covenants set forth in the Density Bonus Agreement are incorporated in this Agreement by reference as though written out at length herein and the Density Bonus Agreement and this Agreement shall be deemed to constitute a single instrument or document.

D. Pursuant to the Density Bonus Agreement, City and Owner desire to enter into this Agreement to place certain covenants and restrictions on the Property and use and operation of the Project, including the imposition of affordability covenants requiring that no less than 70 residential units will be used and occupied or available for use and occupancy by Lower (Low) Income Households as defined in Health and Safety Code Section 50079.5 at the time of this Agreement at affordable rent for the Total Density Bonus Agreement Term (as defined below).

E. It is the intent of the City and Owner that Owner's fee interest in the Property shall be subject to this Regulatory Agreement and that the terms hereof shall be binding on the Owner and its successors in interest in the Property for so long as this Regulatory Agreement shall remain in effect.

### **AGREEMENT**

NOW, THEREFORE, the Parties hereby agree and covenant as follows:

#### **1. DEFINITIONS.**

1.1 **Density Bonus Agreement.** In addition to the terms defined elsewhere in this Agreement, the following terms shall have the meanings in this Agreement given below unless expressly provided to the contrary, and any capitalized terms not otherwise defined below shall have the same meaning as set forth in the Density Bonus Agreement:

1.1.1 **"Adjusted for household size appropriate to the unit"** means a household of one person in the case of a studio unit, a household of two persons in the case of a one-bedroom unit, a household of three persons in the case of a two- bedroom unit, and a household of four persons in the case of a three-bedroom unit.

1.1.2 **"Affordable Rent"** means for a Lower Income Household the maximum Monthly Rent that does not exceed the amount of rent (including a reasonable utility allowance) for a low income household authorized pursuant to Health and Safety Code Section 50079.5 as such statute exists on the date hereof (a copy of which, is attached to the Density Bonus Agreement as Exhibit "C"), which for this Project specifically is the product of thirty percent (30%) times sixty percent (60%) of Median Income, adjusted for household size appropriate to the unit as authorized pursuant to Health and Safety Code Section 50053, which is also attached hereto at Exhibit "C" . An example of the calculation of Affordable Rent is attached to the Density Bonus Agreement as Exhibit "E".

1.1.3 **"Affordable Units"** means the 70 Units consisting of twelve (12) studio units, thirty-two (32) one-bedroom units, nineteen (19) two-bedroom units, and seven (7) three bedroom units that are designated pursuant to the Density Bonus Agreement to be rented to and occupied by Lower Income Households within the Project.

1.1.4 **"Certification of Continuing Program Compliance"** means the certificate described in Section 9 of this Agreement.

1.1.5 **"City Monitoring Fee"** means the fee paid every year after the Effective Date in the amount of twenty-five dollars (\$25.00) per completed Affordable Unit, to be paid to City (or City's designee) by Owner to defray the costs incurred by City for monitoring compliance with the affordability covenants set forth in this Agreement. The twenty-five dollar (\$25.00) base amount (effective on the Effective Date) shall be increased annually by the percentage increase (between September of the year preceding and September of the current year) in the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics, for Urban Wage Earners and Clerical

Workers, Los Angeles-Long Beach-Anaheim Average, All Items (1984 = 100). A “completed Affordable Unit” shall mean an Affordable Unit that has received a certificate of occupancy by City.

1.1.6 “**Density Bonus Agreement**” means the agreement referenced in Recital C of this Agreement.

1.1.7 “**Effective Date**” means the date the City Council of City approved the Density Bonus Agreement.

1.1.8 “**Eligible Tenant**” means a Household that complies with all income verification requirements of this Agreement and, for Affordable Units designated as Affordable Units to Lower Income Households, a Household that qualifies as a Lower Income Household as defined herein.

1.1.9 “**For Rent Affordable Units**” means the Affordable Units designated by Owner and rented by or available for rental by Lower Income Households at Affordable Rent not to exceed 60 percent of Median Income.

1.1.10 “**Home Office**” means a separate area or room in an Affordable Unit used for business purposes and claimed as a business expense pursuant to federal and state income tax laws. Any room used for business purposes shall not reduce the number of bedrooms that are required to be within an Affordable Unit pursuant to this Agreement and the Density Bonus Agreement.

1.1.11 “**Household**” means all persons residing in a Unit.

1.1.12 “**Housing Regulations**” means the regulations published from time to time by the California Department of Housing and Community Development pursuant to Health and Safety Code Section 50093, as they exist as of the Effective Date, a copy of which is attached to the Density Bonus Agreement as Exhibit “C”.

1.1.13 “**Lower Income Household**” **Income Household**” means a Household whose income does not exceed the qualifying limits for lower income households pursuant to Health and Safety Code Section 50079.5, a copy of which is attached to the Density Bonus Agreement as Exhibit “C”, which for this Project is those Households earning sixty percent (60%) or less of Median Income, adjusted for household size. The income level of a Household shall be determined in accordance with the Housing Regulations.

1.1.14 “**Market Rate Units**” means the Units within the Project to be rented by Owner to a Household without restriction.

1.1.15 “**Median Income**” means the Orange County area median income, as established by the United States Department of Housing and Urban Development, and as published periodically by the California Department of Housing and Community Development in Section 6932 of Title 25 of the California Code of Regulations, or successor regulation. The Median Income figures for 2021, along with other pertinent affordable housing regulations, are set forth in Exhibit “G” to the Density Bonus Agreement. Upon request by Owner, City shall provide to Owner the amount of the Median Income.

1.1.16 “**Monthly Rent**” means the total of monthly payments for (a) use and occupancy of each Affordable Unit and land and facilities associated therewith, (b) any separately charged fees or service charges assessed by Owner which are required of all tenants, other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities not included in (a) or (b) above, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration

fuels, if such utilities are paid for separately by the tenant and which allowance shall be based on the schedules determined by the County of Orange Housing and Community Development; but not including telephone, internet or cable service, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than Owner. In the event that all utility charges are paid by the landlord rather than the tenant, no utility allowance shall be deducted from the rent.

1.1.17 “**Owner**” means NASH-Holland 18750 Delaware Investors, LLC, and its successors and assigns to all or any part of the Property.

1.1.18 “**Project**” means that certain housing development as more particularly described in Recital B of this Agreement.

1.1.19 “**Project Rental Period**” means the period from the Effective Date until the expiration of the Total Density Bonus Agreement Term.

1.1.20 “**Property**” means that certain real property more particularly described in the legal description in Attachment “1” to this Agreement, and improvements thereon.

1.1.21 “**State Density Bonus Law**” means Government Code Sections 65915-65918 as they exist on the Effective Date.

1.1.22 “**Substitute Affordable Unit**” means an equivalent Unit in terms of level of affordability restriction (Lower Income Household) and number of bedrooms for a previously designated Affordable Unit, substituted during the Project Rental Period, in accordance with the Density Bonus Agreement.

1.1.23 “**Tenant Income Certification Form and Questionnaire**” shall mean the forms used to determine and certify whether a potential renter is an Eligible Tenant in a form approved by the City. City hereby approves the forms attached hereto and incorporated herein as Attachment 2 to this Agreement.

1.1.24 “**Total Affordability Term**” means the fifty-five (55) year period for which an Affordable Unit shall be restricted for use and occupancy by a Lower Income Household.

1.1.25 “**Total Density Bonus Agreement Term**” means the term that shall commence on the Effective Date and shall continue until the expiration of the Total Affordability Terms for all of the Affordable Units.

1.1.26 “**Unit**” means a residential dwelling unit within the Project to be rented by Owner pursuant to this Agreement.

2. DEVELOPMENT OF THE PROJECT. The City has approved Owner’s right to develop the Property with the Project as a 346 unit residential rental community in accordance with and subject to all applicable entitlements and permits; provided, however, that nothing in this Agreement shall obligate Owner to develop the Property with the Project, which decision is reserved to Owner’s sole business discretion.

### 3. TERMS.

3.1 Terms of Affordability Covenants. Each Affordable Unit designated for Lower Income Households shall be restricted to use and occupancy by a Lower Income Household, for a total period of no less than fifty-five (55) years (the “**Total Affordability Term**”). The Total Affordability Term for an Affordable Unit shall commence on the date that the Affordable Unit receives all required occupancy permits from the City. By way of explanation of the foregoing two sentences, it is possible that the Total Affordability Period for one Affordable Unit will neither commence on the same date nor terminate on the same date as another Affordable Unit, and it is possible that the Total Affordability Terms for all Affordable Units will commence on different days and terminate on different days. Owner may elect to substitute an equivalent Unit in terms of number of bedrooms (the “**Substitute Affordable Unit**”) for an Affordable Unit. In that event, the remaining portion of the Total Affordability Term for the Affordable Unit shall be transferred to the Substitute Affordable Unit.

City shall have the right to review and verify said records to ensure that the commencement date specified by Owner for an Affordable Unit or Substitute Affordable Unit coincides with the date that the initial Affordable Unit received all permits from City required for occupancy of the Unit. In the event that a conflict exists between the date specified by Owner for the commencement of the Total Affordability Term for an Affordable Unit and the date specified by City’s issuance of all required permits for occupancy of the Unit, the date specified by City’s issuance of all required permits for occupancy of the Unit shall control.

3.2 Total Regulatory Agreement Term. The term of this Agreement (which shall coincide with the “**Total Density Bonus Agreement Term**” as defined in the Density Bonus Agreement) shall commence on the Effective Date and shall continue and remain binding and in full force and effect until the expiration of the Total Density Bonus Agreement Term.

3.3 City Monitoring Fee. For purposes of defraying the monitoring activities required to ensure compliance with recorded affordability covenants governing the affordable units, the owner(s) of the project, or their successor(s) in interest, shall pay a City Monitoring Fee of \$25 per affordable unit per year increasing annually based on the Consumer Price Index or such other City accepted index as may exist during the term of affordability no later than December 31 of each year. The City shall deliver to the owner(s) of the project an invoice for the City Monitoring Fee no later than November 30 of the same year for which payment will be due on December 31. In the event that City fails to deliver an invoice for the City Monitoring Fee on or before November 30 of a given year but subsequently delivers an invoice prior to December 31 of such year, project owner shall have thirty (30) days from the date of the Owner’s receipt of the invoice to pay the City Monitoring Fee for said year. In the event the City fails to deliver an invoice for the City Monitoring Fee for the applicable year by December 31, then owner shall have no obligation to pay the City Monitoring Fee for that year only, and project owner shall not be relieved of the payment obligation for any future City Monitoring Fees for which City timely delivers an invoice. The City shall ensure that the funds received from the City Monitoring Fee shall be used to monitor compliance with the affordability covenants required for the project. Upon City’s written request to Developer, Developer shall provide within fifteen (15) days of delivery of City’s written request the mailing and delivery information for any owner of a project for which the City has not received mailing and delivery information.

4. USE; AFFORDABILITY COVENANTS. For the entirety of the term of this Agreement, Owner shall own, operate, and maintain the Project by renting out the Affordable Units in accordance with the covenants and conditions of this Section 4.

4.1 General. The Project shall be comprised of a residential rental community with no less than seventy (70) Units to be rented to and occupied or held available for occupancy by Eligible Tenants who are Lower Income Households at Affordable Rent (collectively, the “**For Rent Affordable Units**”).



The Project distribution of studio, one and two-bedroom Affordable Units shall be as designated in the Affordable Housing Plan attached to the Density Bonus Agreement, and the average square footage for the Affordable Units shall be approximately the same as the average square footage for Market Rate Units of the same number of bedrooms. Nothing herein shall preclude Owner from increasing the number of Affordable Units. The For Rent Affordable Units shall be located and disbursed throughout all buildings in the Project so that no one area of the Project has an unreasonable concentration of Affordable Units. Owner may re-designate which Units shall be For Rent Affordable Units so long as the covenants and conditions of this Agreement and the Density Bonus Agreement are not or will not be in default. The For Rent Affordable Units shall be constructed with the same exterior appearance and interior features, fixtures, and amenities and shall use the same type and quality of materials as provided for the balance of the Units in the Project.

4.2 Use of Affordable Rental Units. The Affordable Units shall not at any time be utilized on a transient basis or rented for a period of less than thirty (30) consecutive days, nor shall they be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, rest home day care facilities, or non-residential uses (other than to maintain a Home Office); provided that the use of the Affordable Units for guests on an intermittent basis shall not be considered transient use for purposes of this Agreement. All of the Affordable Units shall be available for rental on a continuous basis to members of the general public, and Owner shall not give preference to any particular class or group in renting the Affordable Units, except to the extent that Affordable Units are required to be rented to Eligible Tenants. A vacated Affordable Unit shall be held vacant until re-leased to an Eligible Tenant or until another unit at the Property with the same number of bedrooms is leased to an Eligible Tenant and therefore becomes a Substitute Affordable Unit hereunder. Owner shall exercise diligent efforts to lease any such vacated Affordable Unit to an Eligible Tenant in an expeditious manner.

4.3 Location and Designation of Affordable Units. Subject to the terms of this Section 4.3, the Affordable Units shall be permitted to float among all 346 apartment units in the Project. The Affordable Units shall be constructed with the same exterior appearance and interior features, fixtures, and amenities, and shall be constructed with the same type and quality of materials as provided for the apartment Units in the Project that are not Affordable Units. The Affordable Units shall be distributed throughout the apartment portion of the Project and shall not be clustered in one area or building.

4.4 Income Eligibility; Certification. The Affordable Units are to be rented to and occupied only by Eligible Tenants. Immediately prior to any occupancy of an Affordable Unit, Owner shall obtain from each applicant for the Affordable Unit and maintain on file a Tenant Income Certification Form and Questionnaire, certifying the income of the applicant based upon the current income of each member of the Household. The Tenant Income Certification Form and Questionnaire shall be dated immediately prior to the date of initial occupancy of the Affordable Unit by the applicant. Owner shall use diligent efforts to verify that the income provided by an applicant is accurate by obtaining the following as a part of the verification process: (a) three (3) pay stubs for the most recent pay periods; (b) three most recent statements for all asset accounts, including checking, savings, retirement, 401K, etc. for all household members; (c) copies of the federal and state income tax returns if filed by the applicant for the prior two (2) calendar years; (d) a written verification of income and employment from the applicant's current employer if the applicant is employed; (e) an income verification form from the Social Security Administration and/or California Department of Social Services if the applicant receives assistance from either agency; (f) a certification as to the income and household size of the applicant; (g) if an applicant is unemployed or did not file an income tax return for the previous calendar year, such other information as reasonably necessary to verify the applicant's income; and (g) any other information that City may reasonable require to verify the income of the proposed tenant. Owner shall maintain on file a copy of each Tenant Income Certification Form and Questionnaire along with the information obtained to verify the applicant's income for a period of five (5) years. Owner shall provide such information to City upon request by City. An Affordable Unit

occupied by a tenant who qualifies as an Eligible Tenant at the commencement of the occupancy shall be treated as occupied by an Eligible Tenant until a recertification of such Eligible Tenant's income demonstrates that such tenant no longer qualifies as an Eligible Tenant, as further set forth in Section 4.5 below.

4.5 Recertification. Annually, during the term hereof, on or before the anniversary of the move-in date for each Eligible Tenant with respect to an Affordable Unit, Owner shall recertify the income of each Eligible Tenant by obtaining a completed Tenant Income Certification Form and Questionnaire based upon the current income of each member of the Household of the Affordable Unit. In the event that recertification demonstrates that a Household's income exceeds the income permitted for Eligible Tenant status, Owner shall perform either of the following: (i) to the extent permitted by applicable law, the occupants' lease shall not be renewed and said occupants shall be required to vacate the unit within one hundred eighty (180) days after the recertification; or (ii) the next available Market Rate Unit in the Project with the same number of bedrooms shall be leased as a For Rent Affordable Unit at Affordable Rent to an Eligible Tenant so that the Project will be in compliance with the covenants and conditions of this Agreement, and the previous For Rent Affordable Unit shall be re-designated as a Market Rate Unit and the occupants thereof may be charged the amount of rent for a Market Rate Unit.

4.6 Selection of Tenants. The Affordable Units shall be available for rental on a continuous basis and Owner shall not give preference to any particular class or group in renting Affordable Units, except to the extent that Affordable Units are required to be rented to Eligible Tenants. Owner shall market the Affordable Units to the citizens of the City of Huntington Beach on a nonexclusive basis.

4.7 The initial lease-up of the Affordable Units shall be done pursuant to a lottery system. Pursuant to the Density Bonus Agreement, prior to commencing any marketing activities, Owner shall submit to City for City's review and approval Owner's proposed marketing plan, and procedures for conducting the interest list and subsequent lottery. A representative of City shall attend the lottery.

4.8 Following the initial lease-up of the Affordable Units, Owner shall maintain a waiting list of persons interested in renting an Affordable Unit. Subject to Section 4.9 below, at such time as an Affordable Unit becomes available for rental, Owner shall rent such Affordable Unit to the first person on the waiting list that qualifies as an Eligible Tenant to rent the Affordable Unit. Owner shall use commercially reasonable efforts to lease Affordable Units that become available as quickly as possible.

4.9 Affordable Rent. The rent for the Affordable Units shall not exceed Affordable Rent.

4.10 Occupancy Levels. The number of persons permitted to occupy each Affordable Unit shall not exceed the occupancy permitted pursuant to the requirements of the United States Department of Housing and Urban Development which, as of the Effective Date, is two persons per bedroom, plus one person (e.g., for a two bedroom unit the maximum number of persons residing in the unit can be five persons). The lease for each Affordable Unit shall include a provision limiting the number of persons permitted to occupy each Affordable Unit in accordance with the preceding sentence and Owner shall enforce such occupancy restrictions. Further, the minimum household size permitted for the lease of an Affordable Unit shall be one (1) person per bedroom, such as, for example, that a two (2) bedroom Affordable Unit may not be leased to a household consisting of less than two (2) persons.

4.11 Principal Residence. The lease for each Affordable Unit shall provide that the Affordable Unit shall be used as the principal residence of the Affordable Unit's Eligible Tenant and for no other purpose. The lease for an Affordable Unit may allow the Eligible Tenant to have a Home Office so long as the Affordable Unit is the Eligible Tenant's principal residence. The lease shall further provide that

the Eligible Tenant shall not lease or sublease its Affordable Unit or its right of occupancy. Owner shall enforce such restrictions.

4.12 Rental Agreement. The form of the lease used by Owner for the rental of the Affordable Units shall be approved in advance by City. Once approved, no material changes shall be made to the form of the lease to the total rent to be paid by an Eligible Tenant, subject to periodic adjustments in Affordable Rent as authorized pursuant to Health and Safety Code Section 50053, the qualification of an Eligible Tenant, usage of the Affordable Unit, or any other provision that is required to be included in the form lease pursuant to the terms of this Agreement and the Density Bonus Agreement, without City's prior written consent, which shall not be unreasonably withheld. The form lease shall obligate the Eligible Tenants to comply with the provisions set forth in this Agreement that are applicable to the Eligible Tenants, and an Eligible Tenant who violates such requirements shall be in default under the lease and, if requested by City, Owner shall take necessary action to evict the tenant. Each lease entered into with an Eligible Tenant shall include a provision to the effect that the Owner has relied on the information provided by the Eligible Tenant on the Tenant Income Certification Form and Questionnaire and all other supporting information supplied by the Eligible Tenant in determining qualification for occupancy of the applicable Affordable Unit, and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease. Each lease for an Affordable Unit (or addendum thereto) also shall contain a provision that failure to cooperate with the annual recertification process may disqualify the Eligible Tenant as such and will be cause for immediate termination of such lease. In addition, each lease for an Affordable Unit (or addendum thereto) shall contain a provision requiring the Eligible Tenant to waive any right to relocation assistance from City. Any termination shall be subject to fair housing laws and other laws designed to protect the rights of tenants.

4.13 Records and Reports; Inspection. Owner shall maintain complete and accurate records pertaining to the Affordable Units and the matters pertaining to this Agreement for a period of no less than five (5) years (unless a longer period of time is expressly set forth herein), and shall permit any duly authorized representative of City to inspect the books and records of Owner pertaining to the tenants and rents of the Affordable Units during normal business hours not less than seventy-two (72) hours written notice.

5. TERMINATION AND RELEASE. The provisions for the release of this Agreement as an encumbrance upon title to the Property shall be as set forth in Section 5 of the Density Bonus Agreement.

6. NO DISCRIMINATION. In addition to any other nondiscrimination provisions applicable to the Property under federal, state or local law, Owner by and for itself, its successors and assigns, and all persons claiming under and through them, covenants that there shall be no discrimination against, or segregation of, any persons, or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the enjoyment, sale, lease or development of the Property, nor shall Owner itself, or any person claiming under or through it, establish or permit any such practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property or any portion thereof. The foregoing covenants shall run with the land.

7. REPAIR AND MAINTENANCE OF PROJECT. Owner shall maintain or cause to be maintained the Project, including the Affordable Units, in good condition and repair (and, as to landscaping, in a healthy condition) and in accordance with all applicable laws, rules, ordinances, orders, and regulations of all federal, state, county, municipal, and other governmental agencies and

bodies having jurisdiction including, without limitation, any applicable City laws or regulations pertaining to building maintenance, landscape maintenance, and the removal of trash and graffiti. In the event that Owner breaches any of the covenants contained in this Section 7, and such default continues for a period of five (5) days after written notice from City (with respect to landscaping, graffiti, debris, waste material, and general maintenance) or thirty (30) days after written notice from City (with respect to building improvements) (provided, that if such building improvement default cannot reasonably be cured within such thirty (30) day period, such period shall be extended for the time reasonably necessary to cure the default if Owner commences to cure within said thirty (30) day period and diligently prosecutes such cure to completion) then City in addition to whatever other remedy it may have at law or in equity, shall have such rights of entry to perform or cause to be performed all such acts and work necessary to cure the default authorized by City Ordinance, including but not limited to any right to place a lien on the Property, or to assess the Property, as authorized by City Ordinance..

8. MANAGEMENT. Owner shall manage or cause to be managed the Project in accordance with this Agreement and the Density Bonus Agreement, and the standards and practices of prudent and qualified managers that manage properties similar to the Property. Owner may contract with a management company or manager to operate the Project and maintain the Property (“**Property Manager**”); provided, however, that in the event that the City Manager gives notice that “Continuing **Gross Mismanagement**” (as that term is defined below) of the Property is occurring, Owner shall confer with City regarding what steps are necessary to ensure that the Continuing Gross Mismanagement does not continue to occur, including but not limited to the replacement of the Property Manager (if any), the Owner shall take such steps as Owner shall reasonably determine to ensure that Continuing Gross Mismanagement does not continue. “Continuing **Gross Mismanagement**” shall mean management of the Project in a manner which materially violates the terms of this Agreement and shall include, but is not limited to, continuing or repeated instances of the following:

8.1 knowingly allowing an Affordable Unit to be occupied by a person who does not qualify as an Eligible Tenant or renting an Affordable Unit for more than the Affordable Rent;

8.2 knowingly allowing the prescribed occupancy levels to be exceeded without taking immediate action to stop such overcrowding;

8.3 failure to maintain the Property in the manner prescribed in Section 7 after notice and an opportunity to cure, as set forth in said Section 7;

8.4 failure to timely submit reports required under this Agreement after notice, and an opportunity to cure, as set forth in Section 12.1; and/or

8.5 failure to reasonably cooperate with the Huntington Beach Police Department in maintaining a crime free environment on the Property after notice and an opportunity to cure, as set forth in Section 12.1.

9. CERTIFICATION OF CONTINUING PROGRAM COMPLIANCE. During the term of this Agreement, on or before each June 1, Owner shall annually advise the City of the status of the occupancy of the Affordable Units during the immediately prior April 1 - March 31 period. Owner shall advise City of the status of the occupancy of the Affordable Units by delivering a Certification of Continuing Program Compliance in a form approved by City, which shall provide, among other information, (a) whether the Affordable Units in the Project have been rented to and are occupied by Eligible Tenants, and (b) whether either (i) non-remedied default has occurred under this Agreement,

or (ii) a default has occurred, in which event the Certification of Continuing Program Compliance shall describe the nature of the default and set forth the measures being taken by the Owner to remedy such default. Owner shall have the obligation to conduct a reasonable investigation of the Affordable Units to ensure the information in the Certification of Continuing Program Compliance, to the best of Owner's knowledge, is true and correct.

10. COMPLIANCE WITH LAWS; RIGHT TO INSPECT. Owner shall comply with all applicable laws, regulations, and rules of any governmental agencies having jurisdiction with regard to any activities conducted on the Property and the Project. Owner shall indemnify City for any relocation obligations arising from the performance or implementation of this Agreement. City shall have the right to inspect the Property and the For Rent Affordable Units for purposes of assuring compliance with this Agreement during normal business hours on not less than seventy-two (72) hours written notice.

11. INDEMNIFICATION. Owner shall defend (with counsel of City's choosing and the reasonable consent of Owner, which may be joint defense counsel upon City's and Owner's consent, in each of their sole and absolute discretion), indemnify and hold harmless City and City's officers, officials, agents, employees, representatives, and volunteers (each, an "**Indemnitee**") from and against any loss, damage, costs, expenses, liability, claim, or judgment (collectively, "claims") relating in any manner to the Property and the operation of the Project and Units as rental properties thereon, or Owner's performance under this Agreement, except to the extent claims caused by the negligence or misconduct of an Indemnitee.

12. DEFAULTS AND REMEDIES.

12.1 Defaults. The failure or delay by either party to perform any term or provision of this Agreement shall constitute a default. Except where a shorter period of time is specified in this Agreement, the defaulting party shall have thirty (30) days after receipt of written notice from the other party specifying the nature of the default to cure, correct or remedy the default, or for defaults that cannot reasonably be cured, corrected, or remedied within such thirty (30) day time period, the defaulting party shall have thirty (30) days after receipt of the notice to commence to cure such failure or delay and shall diligently prosecute such cure, correction or remedy to completion within an additional sixty (60) days following the conclusion of such thirty (30) day period (for a total of ninety (90) days). Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. Except as required to protect against further damages, the injured party may not institute legal proceedings against the party in default until expiration of the cure period.

12.2 Remedy for Excessive Rent Charge. It shall constitute a default for Owner to charge or accept for any Affordable Unit rent amounts in excess of the Affordable Rent. In the event that Owner charges or receives such higher rental amounts, in addition to any other equitable remedy City shall have for such default, Owner shall be required to pay to the tenant so overcharged the difference between the monthly rent charged and received by Owner and the Affordable Rent allowed by this Agreement together with accrued interest at the lesser of the maximum legal rate or ten percent (10%) within ten (10) days of the City's written request. Written proof of such repayment shall be provided to the City within thirty (30) days of such repayment.

12.3 Remedy for Failing to Verify Income. In the event that Owner fails to use good faith reasonable efforts to verify that owner is renting to an Eligible Tenant and rents to a tenant whose income exceeds Lower Household Income limits, Owner agrees to pay the City all rents received for each day of occupancy by such unqualified tenant.

12.4 Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

### 13. TRANSFERS AND ASSIGNMENTS

13.1 Permitted Assignment and Transfer by Owner. Except for any rental lease entered into between Owner and a tenant of a Unit (Affordable or Market Rate) during the Total Affordability Term pursuant to the terms and conditions of this Agreement and the Density Bonus Agreement, Owner shall: (i) notify City in writing of the sale, transfer, or assignment of all or any portion of the Property, and (ii) deliver to City an assignment and assumption agreement (or other agreement) executed by Owner and its transferee/assignee pursuant to which Owner's transferee/assignee assumes all of the Owner's covenants and obligations set forth herein with respect to the Property or the portion thereof so transferred in such form as reasonably approved by City. If the transfer is for a portion of the Property, the agreement must specify to City's reasonable approval how the affordable housing requirements herein will be satisfied and allocated to each parcel.

13.2 Release of Assigning Owner. Upon any sale, transfer, or assignment that complies with the provisions of Sections 13.1 above, City shall deliver to Owner upon request a release in writing by City, which release shall be provided by City upon the full satisfaction by Owner of the following conditions:

(a) Owner no longer has a legal or equitable interest in all or any part of the Property or Project assigned.

(b) Owner is not then in default under this Agreement.

(c) Owner has provided City and City has reasonably approved written evidence of the assignment and assumption of the rights, duties and obligations arising under or from this Agreement

13.3 Subsequent Assignment. As used in this Agreement, the term "**Owner**" shall be deemed to include any such transferee or assignee after the date such sale, transfer, or assignment occurs in compliance with this Agreement.

13.4 Assignment by City. City shall have the right to assign in its sole and absolute discretion all or any part of its interests in this Agreement without Owner's approval to a non-profit organization of its choosing. City shall provide notice to Owner of any such assignment.

### 14. MISCELLANEOUS.

14.1 Entire Agreement. This Agreement and the Density Bonus Agreement and all of the exhibits and attachments thereto set forth and contain the entire understanding and agreement of the Parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein or therein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

14.2 Attorneys' Fees and Costs. If either Party to this Agreement commences an action against the other Party arising out of or in connection with this Agreement, each Party shall bear its own attorneys' fees and costs.

14.3 Interpretation; Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California without regard to conflict of law principles. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

14.4 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement.

14.5 Third Party Beneficiaries. No person or entity, other than City, the Authority, and Owner shall have any right of action based upon any provision of this Agreement.

14.6 Notices.

14.6.1 Delivery. As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder. All notices shall be in writing and shall be considered given either: (i) when delivered in person to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below; or (iii) two (2) days after deposit in the United States mail in a sealed envelope, first class mail and postage prepaid, and addressed to the recipient named below; or (iv) one (1) day after deposit with a known and reliable next-day document delivery service (such as FedEx), charges prepaid and delivery scheduled next-day to the recipient named below, provided that the sending party receives a confirmation of delivery from the delivery service provider; or (v) the first business day following the date of transmittal of any facsimile, provided confirmation of successful transmittal is retained by the sending Party. All notices shall be addressed as follows:

If to CITY:

City of Huntington Beach  
2000 Main Street, 5th Floor-Housing  
Huntington Beach, CA 92648  
Attn: Director of Community  
Development & Housing Manager  
Fax: (714) 374-1540

If to OWNER:

NASH-Holland 18750 Delaware Investors, Inc.  
5000 E. Spring Street  
Suite 500  
Long Beach, CA 90815  
Attn: President, Development Division

14.6.2 Change of Address. Either Party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

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

14.8 Singular and Plural. As used herein, the singular of any word includes the plural, and vice versa, as context so dictates. Masculine, feminine, and neuter forms of any word include the other as context so dictates.

14.9 Joint and Several Obligations. If at any time during the term of this Agreement the Property and/or Project is owned, in whole or in part, by more than one Owner, all obligations of such Owner under this Agreement shall be joint and several, and the default of any such Owner shall be the default of all such Owners.

14.10 Computation of Days. Unless otherwise specified in this Agreement, the term "days" shall mean calendar days. For purposes of this Agreement, "business days" shall mean every day of the week that City Hall of the City is open for business to the general public.

14.11 Waiver. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Party with the terms of this Agreement thereafter.

14.12 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the Party benefited thereby of the covenants to be performed hereunder by such benefited Party.

14.13 Successors in Interest. 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:

- (a) is for the benefit of and is a burden upon every portion of the Property and the Project;
- (b) runs with the Property and the Project and each portion thereof; and, (c) is binding upon each Party and each successor in interest during ownership of the Property and the Project or any portion thereof.

14.14 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a Party hereto 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 County of Orange, State of California, or in the Federal District Court in the Central District of California, and the Parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

14.15 Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions



of this Agreement or to evidence or consummate the transactions contemplated by this Agreement. City hereby authorizes City Manager to take such other actions as may be necessary or proper to fulfill the City's obligations under this Agreement. The City Manager may delegate her or his powers and duties under this Agreement to an authorized management level employee of the City.

14.16 Covenants Run with the Land. The Property shall be held, sold, conveyed, hypothecated, encumbered, used, occupied and improved subject to the covenants, conditions, and restrictions set forth herein. The covenants, conditions, restrictions, reservations, equitable servitudes, liens and charges set forth in this Agreement shall run with the Property and shall be binding upon Owner and all persons having any right, title or interest in the Property, or any part thereof, their heirs, and successive owners and assigns, shall inure to the benefit of City and its successors and assigns, and may be enforced by City and its successors and assigns. The covenants established in this Agreement shall, without regard to technical classification and designation, be binding for the benefit and in favor of City and its successors and assigns, and the parties hereto expressly agree that this Agreement and the covenants herein shall run in favor of City, without regard to whether City is or remains an owner of any land or interest therein to which such covenants relate. However, all such covenants and restrictions shall be deemed to run in favor of all real property owned by City which real property shall be deemed the benefited property of such covenants and this Agreement shall create equitable servitudes and covenants appurtenant to all real property owned by City and running with the Property in accordance with the provisions of Civil Code Section 1468. Owner hereby declares its understanding and intent that the burden of the covenants set forth herein touch and concern the land and that the Owner's interest in the Property is rendered less valuable thereby. Owner hereby further declares its understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Property by the citizens of City and by furthering the health, safety, and welfare of the residents of City.

14.17 Subordination. City's approval of the necessary land use entitlements that authorize Owner to develop, operate, and maintain the Project was based upon Owner's obligation to provide no less than the fifty-six (56) Affordable Units pursuant to the State Density Bonus Law (Project will provide 70 Affordable Units) and the terms and conditions of this Agreement and the Density Bonus Agreement. For the Project Rental Period, this Agreement shall have priority over any and all mortgages, deeds of trust, and other similar forms of secured financing (each a "**Deed of Trust**") recorded against the Property or any portion thereof. Notwithstanding the preceding sentence, a Deed of Trust obtained by Owner for the acquisition of the Property or development of the Project thereon, or both, from a reputable lender (collectively, "**Lenders**") that is regularly engaged in the business of making or owning loans of similar types to the financing provided to Owner for the Project (hereinafter, the "**Priority Obligations**"), shall, upon request of Owner or the beneficiary of a Deed of Trust securing any Priority Obligation (hereinafter, the "**Holder**"), have priority over this Agreement if: (i) Holder obtains City's approval, which shall not be unreasonably withheld or delayed, prior to executing the Deed of Trust securing a Priority Obligation, and (ii) Holder and City execute in recordable form a subordination agreement (or other necessary document) confirming subordination of this Agreement to the lien of the Deed of Trust securing the Priority Obligation. The City Manager shall have the authority on behalf of City to execute a subordination agreement in such form as reasonably approved by the City Attorney. Any subordination agreement must preserve the affordability requirements herein in the event of a default on the Deed of Trust securing a Priority Obligation, it being expressly understood and agreed by Owner that state law requires preservation of affordability covenants in connection with the approval of this density bonus project.

14.18 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

14.19 Authority to Execute. The person or persons executing this Agreement on behalf of Owner warrants and represents that he or she/they have the authority to execute this Agreement on behalf

of his or her/their corporation, partnership or business entity and warrants and represents that he or she/they has/have the authority to bind Owner to the performance of its obligations hereunder.

14.20 Counterparts. This Agreement may be executed by the Parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the Parties had executed the same instrument.

[Signatures on next page)

**IN WITNESS WHEREOF**, City and Owner have caused this instrument to be executed on their behalf by their respective officers or agents herein duly authorized as of the date set forth above.

“DEVELOPER”

NASH-Holland 18750 Delaware Investors,  
LLC  
a Delaware limited liability company

By: HPG 18750 Delaware, LLC  
a Washington limited liability company,  
its Operating Member

By: Holland Partner Group Management, Inc.,  
a Delaware Corporation,  
its Manager

By: \_\_\_\_\_  
Thomas D. Warren  
President, Development Division

“CITY”

CITY OF HUNTINGTON BEACH,  
a California municipal corporation

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

ATTEST

\_\_\_\_\_  
City Clerk

INITIATED AND APPROVED

\_\_\_\_\_  
Director of Community Development

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

*pe*

## ACKNOWLEDGEMENT

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**ATTACHMENT "1" TO REGULATORY AGREEMENT**

**LEGAL DESCRIPTION OF PROPERTY**

Real property in the City of Huntington Beach, County of Orange, State of California, described as follows:

PARCEL 1A:

THE NORTH HALF OF LOT 6 IN BLOCK "G" OF TRACT NO. 7, IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 9, PAGE 8 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 1B:

THE SOUTH HALF OF LOT 6 IN BLOCK "G" OF TRACT NO. 7, IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 9, PAGE 8 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL2A:

THE WESTERLY 50 FEET OF THE SOUTHERLY 180 FEET OF LOT 7 IN BLOCK "G" OF TRACT NO. 7, IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 9, PAGE 8 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL3A:

LOT 7 IN BLOCK "G" OF TRACT NO. 7, IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 9, PAGE 8 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN 159-121-25; APN 159-121-26; APN 159-121-37; APN 159-121-38

**ATTACHMENT “2” TO REGULATORY AGREEMENT**

**TENANT INCOME CERTIFICATION FORM AND QUESTIONNAIRE**

**[Attached]**

<b>TENANT INCOME CERTIFICATION QUESTIONNAIRE</b> <i>One Form per Adult Member of the Household</i>	
Name: _____  Y Initial Certification Y Re-certification Y Other	TELEPHONE NUMBER: _____  BIN # _____  Unit # _____

**INCOME INFORMATION**

Yes      No		Monthly Gross Income
1.	Y      Y	I am self-employed. (List nature of self-employment)  (use <u>net</u> income from self-employment only) \$ _____
2.	Y      Y	I have a job and receive wages, salary, overtime pay, commissions, fees, tips, bonuses, and/or other compensation. List the businesses and/or companies that pay you: <u>Name of Employer</u> 1) _____ 2) _____ 3) _____  \$ _____ \$ _____ \$ _____
3.	Y      Y	I receive cash contributions of gifts including rent or utility payments, on an ongoing basis from persons not living with me. \$ _____
4.	Y      Y	I receive unemployment benefits. \$ _____
5.	Y      Y	I receive Veteran's Administration, GI Bill, or National Guard/Military benefits/income. \$ _____
6.	Y      Y	I receive periodic social security payments. \$ _____
7.	Y      Y	The household receives <u>unearned</u> income from family members age 17 or under (example: Social Security, Trust Fund disbursements, etc.). \$ _____
8.	Y      Y	I receive Supplemental Security Income (SSI). \$ _____
9.	Y      Y	I receive disability or death benefits other than Social Security. \$ _____
10.	Y      Y	I receive Public Assistance Income (examples: TANF, AFDC) \$ _____
11.	Y      Y Y      Y Y      Y Y      Y	I am entitled to receive child support payments. I am currently receiving child support payments. If yes, from how many persons do you receive support? ____ I am currently making efforts to collect child support owed to me. List efforts being made to collect child support: _____ _____ _____
12.	Y      Y	I receive alimony/spousal support payments \$ _____
13.	Y      Y	I receive periodic payments from trusts, annuities, inheritance, retirement funds or pensions, insurance policies, or lottery winnings. If yes, list sources: 1) _____ \$ _____ \$ _____
14.	Y      Y	I receive income from real or personal property.  (use <u>net</u> earned income) \$ _____
15.	Y      Y	Student financial aid (public or private, not including student loans) Subtract cost of tuition from Aid received \$ _____ <i>*For Households receiving Section 8 Assistance Only</i>

**ASSET INFORMATION**

Yes      No		INTEREST RATE	CASH VALUE
16.	Y      Y	I have a checking account(s). If yes, list bank(s) 1) _____ 2) _____  _____% _____%	\$ _____ \$ _____
17.	Y      Y	I have a savings account(s) If yes, list bank(s) 1) _____ 2) _____  _____% _____%	\$ _____
18.	Y      Y	I have an EBT, Debit Visa, MasterCard account(s). (Including Social Security wages, Unemployment, Public Assistance, Disability, Etc... ) If yes, list sources(s) of income being received/type of account(s)	

		1) _____ 2) _____ 3) _____		\$ _____ \$ _____ \$ _____
19.	Y	Y	I have a revocable trust(s) If yes, list bank(s) 1) _____	_____% \$ _____
20.	Y	Y	I own real estate. If yes, provide description: _____	\$ _____
21.	Y	Y	I own stocks, bonds, or Treasury Bills If yes, list sources/bank names 1) _____ 2) _____ 3) _____	_____% _____% _____% \$ _____ \$ _____ \$ _____
22.	Y	Y	I have Certificates of Deposit (CD) or Money Market Account(s). If yes, list sources/bank names 1) _____ 2) _____ 3) _____	_____% _____% _____% \$ _____ \$ _____ \$ _____
23.	Y	Y	I have an IRA/Lump Sum Pension/Keogh Account/401K. If yes, list bank(s) _____ 1) _____ 2) _____	_____% \$ _____ \$ _____
24.	Y	Y	I have a whole life insurance policy. If yes, how many policies	_____% \$ _____
25.	Y	Y	I have cash on hand.	% \$ _____
26.	Y	Y	I have disposed of assets (i.e. gave away money/assets) for less than the fair market value in the past 2 years. If yes, list items and date disposed: 1) _____ 2) _____	_____% _____% \$ _____

# INCOME INFORMATION

Yes	No	
Y	Y	Does the household consist of all persons who are <u>full-time</u> students (Examples: K-12, College, Trade School, etc.)?
Y	Y	Does the household consist of all persons who have been a <u>full-time</u> student 5 months in the current calendar year?
Y	Y	Does your household anticipate becoming an all full-time student household in the next 12 months?
Y	Y	If you answered yes to any of the previous three questions are you:
Y	Y	<ul style="list-style-type: none"> <li>Receiving assistance under Title IV of the Social Security Act (AFDC/TANF/Cal Works - not SSA/SSI)</li> </ul>
Y	Y	<ul style="list-style-type: none"> <li>Enrolled in a job training program receiving assistance through the Job Training Participation Act (JTPA) or other similar program</li> </ul>
Y	Y	<ul style="list-style-type: none"> <li>Married and filing (or are entitled to file) a joint tax return</li> </ul>
Y	Y	<ul style="list-style-type: none"> <li>Single parent with a dependent child or children and neither you nor your child(ren) are dependent of another individual</li> </ul>
Y	Y	<ul style="list-style-type: none"> <li>Previously enrolled in the Foster Care program (currently age 18-24)</li> </ul>

UNDER PENALTIES OF PERJURY, I CERTIFY THAT THE INFORMATION PRESENTED ON THIS FORM IS TRUE AND ACCURATE TO THE BEST OF MY/OUR KNOWLEDGE. THE UNDERSIGNED FURTHER UNDERSTANDS THAT PROVIDING FALSE REPRESENTATIONS HEREIN CONSTITUTES AN ACT OF FRAUD. FALSE, MISLEADING OR INCOMPLETE INFORMATION WILL RESULT IN THE DENIAL OF APPLICATION OR TERMINATION OF THE LEASE AGREEMENT/

PRINTED NAME OF APPLICANT/TENANT	SIGNATURE OF APPLICANT/TENANT	DATE
WITNESSED BY (SIGNATURE OF OWNER/REPRESENTATIVE)		DATE



RECORDING REQUESTED  
BY AND WHEN RECORDED MAIL TO:

City of Huntington Beach  
Community Development Department  
2000 Main Street, 5<sup>th</sup> Floor-Housing  
Huntington Beach, California 92648  
Attention: Housing Manager

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(Space Above For Recorder's Use)

This First Amendment to Regulatory Agreement and Declaration of Covenants and Restrictions is recorded at the request and for the benefit of the City of Huntington Beach and is exempt from the payment of a recording fee pursuant to Government Code Sections 6103 and 27383T and 27383.

**FIRST AMENDMENT TO  
REGULATORY AGREEMENT AND  
DECLARATION OF COVENANTS AND RESTRICTIONS FOR LOWER INCOME  
AFFORDABLE HOUSING  
18750 DELAWARE STREET, HUNTINGTON BEACH**

**BY AND BETWEEN**

**CITY OF HUNTINGTON BEACH,  
a California municipal corporation**

**And**

**HOUSING AUTHORITY OF THE CITY OF HUNTINGTON BEACH,**

**And**

**NASH-HOLLAND 18750 DELAWARE INVESTORS, LLC  
a Delaware limited liability company**

**FIRST AMENDMENT TO REGULATORY AGREEMENT AND DECLARATION OF  
COVENANTS AND RESTRICTIONS FOR LOWER INCOME AFFORDABLE HOUSING  
18750 DELAWARE STREET, HUNTINGTON BEACH**

This FIRST AMENDMENT TO REGULATORY AGREEMENT AND DECLARATION OF COVENANTS AND RESTRICTIONS FOR LOWER INCOME AFFORDABLE HOUSING 18750 DELAWARE STREET, HUNTINGTON BEACH (“**First Amendment**”) is entered into as of the \_\_\_\_ day of \_\_\_\_, 2025 (“**Effective Date**”) by and between the CITY OF HUNTINGTON BEACH, a California municipal corporation (“**City**”), the HOUSING AUTHORITY OF THE CITY OF HUNTINGTON BEACH (“**Authority**”) and NASH-HOLLAND 18750 DELAWARE INVESTORS LLC, a Delaware limited liability company (“**Owner**”). City and Owner are hereinafter sometimes referred to collectively as the “**Parties**” and individually as a “**Party**.”

RECITALS

- A. City, Authority and Owner are parties to that certain Regulatory Agreement And Declaration Of Covenants And Restrictions For Lower Income Affordable Housing (the “**Original Agreement**”) entered into and effective as of February 8<sup>th</sup>, 2023 and recorded on February 8, 2023 as Instrument No. 2023000028176 in the Official Records of Orange County, California (the “**Official Records**”). All capitalized terms used but not otherwise defined in this First Amendment shall have the meaning ascribed to such terms in the Original Agreement.
- B. The Parties entered into the Original Agreement in order to place certain covenants and restrictions on the Property and the use and operation of the Project, including the imposition of affordability covenants requiring that no less than 70 residential units will be used and occupied or available for use and occupancy by Lower (Low) Income Households as defined in Health and Safety Code Section 50079.5 at the time of the Original Agreement at affordable rent for the Total Density Bonus Agreement Term. The Original Agreement was entered pursuant to the Density Bonus and Affordable Housing Agreement (the “**Original Density Bonus Agreement**”) entered by City and Owner and effective as of November 1, 2022, and recorded on January 13, 2023 as Instrument No. 2023000009767 in the Official Records. The Original Density Bonus Agreement, the Affordable Housing Plan (included as Exhibit D to the Original Density Bonus Agreement) and the Original Agreement specify a mix of unit types (as defined by number of bedrooms) for the Project’s 70 affordable housing units that the Parties understood would reflect a roughly proportionate distribution of the affordable housing units among the unit types included in the Project.
- C. However, because two-bedroom loft units are counted as three-bedroom units, the mix of unit types for the affordable housing units specified in the Original Agreement, the Original Affordable Housing Plan and the Original Density Bonus Agreement results in a disproportionate distribution of affordable housing units among the unit types included in the Project, which is not consistent with the intent of the Original Density Bonus Agreement, the Original Affordable Housing Plan and the Original Agreement.
- D. The City and the Owner have entered into that certain First Amendment To Density Bonus And Affordable Housing Agreement as of the \_\_\_\_ day of \_\_\_\_, 2025, (the “**First Amendment to Density Bonus Agreement**”) which amends the Original Density Bonus Agreement to modify the mix of unit types for the affordable housing units in order to implement the original intent to achieve a roughly proportionate distribution of affordable housing units among the Project’s

unit types. The Original Density Bonus Agreement, as amended by the First Amendment to Density Bonus Agreement, shall be referred to herein as the “**Revised Density Bonus Agreement.**”

- E. Pursuant to the Revised Density Bonus Agreement, the Parties now wish to amend the Original Agreement to revise the covenants and restrictions placed on the Property by the Original Agreement and conform those covenants and restrictions to the Revised Density Bonus Agreement and the Revised Affordable Housing Plan by modifying the mix of unit types for the affordable housing units in order to implement the original intent of the Parties to achieve a roughly proportionate distribution of the affordable housing unit among the Project’s unit types. The Original Agreement, as amended by this First Amendment, shall be referred to herein as the “**Regulatory Agreement.**”

### COVENANTS

NOW, THEREFORE, the Parties hereby agree and covenant as follows:

6. AMENDMENTS.

6.1 The term “Agreement” as used in the Original Agreement shall mean the “Regulatory Agreement” as defined in Recital E of this First Amendment.

6.2 Section 1.1.3 of the Original Agreement is hereby amended and replaced in its entirety, as follows:

1.1.3 “**Affordable Units**” means the 70 Units, consisting of twelve (12) studio units, thirty-two (32) one-bedroom units, twenty-three (23) two-bedroom units, and three (3) three bedroom units that are designated pursuant to this Agreement to be rented to and occupied by Lower Income Households within the Project.

6.3 Section 1.1.6 of the Original Agreement is hereby amended and replaced in its entirety, as follows:

1.1.6 “**Density Bonus Agreement**” means the Revised Density Bonus Agreement referenced in Recital D of this First Amendment.

7. Covenants Run with the Land. The Property shall be held, sold, conveyed, hypothecated, encumbered, used, occupied and improved subject to the covenants, conditions, and restrictions set forth herein. The covenants, conditions, restrictions, reservations, equitable servitudes, liens and charges set forth in this First Amendment shall run with the Property and shall be binding upon Owner and all persons having any right, title or interest in the Property, or any part thereof, their heirs, and successive owners and assigns, shall inure to the benefit of City and its successors and assigns, and may be enforced by City and its successors and assigns.

8. The Original Agreement Remains in Full Force and Effect. Except as amended by this First Amendment, the Original Agreement remains in full force and effect, and the terms thereof, as modified by this Amendment, are hereby ratified and confirmed by the Parties, and the Regulatory Agreement shall be deemed to be current and effective without default or outstanding obligations by either Party as of the Effective Date. In the event of any inconsistency between the terms of the Original

Agreement and the terms of this First Amendment, the terms of this First Amendment shall prevail and control.

9. Entire Agreement. This First Amendment and all of its exhibits and attachments set forth and contain the entire understanding and agreement of the Parties with respect to the subject matter hereof, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this First Amendment.

10. Authority to Execute. The person or persons executing this First Amendment on behalf of either Party warrants and represents that he or she/they have the authority to execute this First Amendment on behalf of his or her/their agency, corporation, partnership or business entity and warrants and represents that he or she/they has/have the authority to bind the Party to the performance of its obligations hereunder.

11. Counterparts. This First Amendment may be executed by the Parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the Parties had executed the same instrument.

**IN WITNESS WHEREOF**, City and Owner have caused this instrument to be executed on their behalf by their respective officers or agents herein duly authorized as of the date set forth above.

“DEVELOPER”

“CITY”

NASH-Holland 18750 Delaware Investors,  
LLC  
a Delaware limited liability company

CITY OF HUNTINGTON BEACH,  
a California municipal corporation

By: HPG 18750 Delaware, LLC  
a Washington limited liability company,  
its Operating Member

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

By: Holland Partner Group Management, Inc.,  
a Delaware Corporation,  
its Manager

By: \_\_\_\_\_  
Thomas D. Warren  
President, Development Division

ATTEST

\_\_\_\_\_  
City Clerk

INITIATED AND APPROVED

\_\_\_\_\_  
Director of Community Development

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

*re*

### ACKNOWLEDGEMENT

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)