

**RECORD WITHOUT FEE
PURSUANT TO GOV'T CODE SECTION 6103**

Recording Requested by:
Office of the City Attorney
City of Santa Clara, California

When Recorded, Mail to:
DD Warburton Group LLC
5150 El Camino Real Suite E20
Los Altos, CA 94022
And
Attn: Office of the City Clerk
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Re: Unit 11

SPACE ABOVE RESERVED FOR RECORDERS USE

**AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
AND
DUTCHINTS DEVELOPMENT, LLC**

PREAMBLE

This Affordable Housing Agreement (the "Agreement") is entered into on this _____ day of _____, 2020, (the "Effective Date") between DD Warburton Group LLC, with its principal place of business located at 5150 El Camino Real Suite E20, Los Altos, CA 94022 (the "Developer"), and the City of Santa Clara, a chartered municipal organization, with its primary business address located at 1500 Warburton Avenue, Santa Clara, CA 95050 (the "City"). City and Developer may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. The purpose of this Agreement is to increase, improve and preserve the supply of moderate income housing in the City by ensuring the Developer's construction and sale of housing affordably priced for Median Income Household(s), as defined in Section 1.c below.
- B. Developer owns certain real property (the "Project Site") located within the jurisdiction of the City, which is described in Attachment A attached hereto and incorporated herein.
- C. Developer intends to construct twelve (12) townhome housing units ("Units") on the Project Site pursuant to the July 2018 City Council land use approvals ("Project").

- D. As a condition of Project entitlement by the City, and to satisfy the City's Inclusionary Housing Policy, the Developer is required to designate one (1) Townhome housing unit, as shown on Attachment B attached hereto and incorporated herein, to be marketed and made available for sale exclusively to Moderate Income Household(s), for a below market price (the "BMP Units") and to pay an in-lieu fee for the fractional unit that is required by the Project's conditions of approvals and the City's Below Market Purchase Program Policies and Procedures Guidelines (the BMP Program Policies & Procedures").
- E. The BMP Units will be sold at a price not to exceed an Affordable Sales Price as defined in Section 1.b below.
- F. "Developer," for purposes of this Agreement, includes Developer and any assignee or successor in interest.

The Parties therefore agree as follows:

AGREEMENT PROVISIONS

1. DEVELOPER OBLIGATIONS.

As provided in this Agreement, in compliance with the Project conditions of approval and subject to the approval of the City, the Developer hereby designates one (1) of the units to be completed on the Project Site as BMP Units. Such BMP Units shall be the units designated as such on Attachment B attached. Developer agrees to complete the 1 BMP unit (unit 11) in a single phase of development, and shall meet the following criteria:

- a. The BMP Units shall all have the standard amenities available to market rate units, including equivalent parking facilities, and shall have 3 bedrooms and 2.5 bathrooms. The BMP units shall be offered for sale by the City or its designee.
- b. The BMP Unit shall be sold at the following "Affordable Sales Price":
 - i. **Unit #11, 3 bedroom/ and 2.5 Bath, Plan 2 \$445,000 100% AMI**
- c. The BMP Units shall be sold exclusively to and for occupancy by persons and families whose affordable housing costs are not less than 25 percent of the gross income of the household, nor which exceeds the product of 35 percent times 100 percent of area median income adjusted for family size ("Median Income Household(s)").
- d. The BMP Units shall be marketed and made available for sale by the City or its designee to Moderate Income Households at the applicable Affordable Sales Price. The City reserves the right to use consultants as necessary to qualify eligible buyers and to market the BMP Units. Developer agrees not to engage in direct marketing of the BMP Units without prior written approval of the City.
- e. Developer agrees to abide by the BMP Program Policies & Procedures, as they may be amended from time to time. A true and correct copy of the current BMP

Program Policies & Procedures is attached hereto and incorporated herein as Attachment C.

- f. Unless otherwise released from this Agreement as provided herein, Developer and City agree that concurrently with the closing of the sale of each BMP Unit: (i) City and the BMP Unit buyer shall execute and record against the BMP Unit covenants substantially in the form of Exhibit A of the BMP Program Policies & Procedures; (ii) the BMP Unit buyer shall execute a promissory note substantially in the form of Exhibit B of the BMP Program Policies & Procedures; and (iii) the BMP Unit buyer shall execute and record against the BMP Unit a deed of trust substantially in the form of Exhibit C of the BMP Program Policies & Procedures.

2. CITY OBLIGATIONS.

The City agrees to make a good faith effort to initiate marketing of the BMP Units itself or through its designee, within 30-days of the Developer providing notice to the City of completion of construction, and availability for sale, of the BMP Units. The City, at its sole discretion, may consent to a Developer's request to conduct earlier marketing efforts.

3. TERM OF AGREEMENT.

The term of this Agreement shall begin on the Effective Date, and shall terminate when all BMP Units have received certificates of occupancy and escrow has closed on all BMP Units, thereby transferring title to City-approved buyers. Upon such transfer of title to the BMP Units, Developer shall have no further obligations or liabilities with respect to the BMP Units, including without limitation, any responsibility for compliance by the buyer or its successors with the terms and conditions of the resale restrictions applicable to such BMP Units.

4. ASSIGNMENT OF AGREEMENT; SUCCESSORS IN INTEREST.

No interest in this Agreement shall be assigned or transferred, either voluntarily or by operation of law, without the prior written approval of the City, which approval shall not be unreasonably withheld.

5. RELATIONSHIP OF CITY AND DEVELOPER.

No written or verbal statement, including but not limited to this Agreement, shall be deemed or construed to create a partnership, tenancy, joint venture or co-ownership between the City and the Developer. The City shall not be responsible or liable for the debts, losses, obligations or duties of the Developer with respect to the Project Site, the Project or otherwise.

6. NO THIRD PARTY BENEFICIARY.

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties other than the record owner of title to the Project Site, and no other third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

7. FAIR EMPLOYMENT.

Developer shall not discriminate against any employee because of race, color, creed, national origin, gender, sexual orientation, age, disability, religion, ethnic background, or marital status, in violation of state or federal law in the performance of this Agreement.

8. HOLD HARMLESS/INDEMNIFICATION.

Developer agrees to defend, hold harmless and indemnify the City, its Council members, officers, employees, volunteers and agents from any claim, injury, liability, loss, cost, and/or expense or damage arising from or in any way connected with the this Agreement and the performance thereof, including any such claim, etc., arising from the actual or alleged presence of hazardous substances on the Property, or any environmental claim relating in any way to the Property or Project.

9. COMPLIANCE WITH ENVIRONMENTAL LAWS.

Developer shall comply with all environmental laws and environmental permits applicable to the operations of the Developer on the Project Site and the ownership or use of the Project Site and the Project, shall immediately pay or cause to be paid all costs and expenses incurred by reason of such compliance, shall keep the Project Site and Project free and clear of any environmental claims or liens imposed pursuant to any environmental law, and shall obtain and renew all environmental permits required for ownership or use of the Project Site and the Project.

10. INSURANCE REQUIREMENTS.

During the term of this Agreement, and for any required time thereafter as set forth below, Developer shall purchase and maintain in full force and effect, at no cost to City, the following insurance policies:

- Commercial general liability policy (bodily injury and property damage);
- Comprehensive automobile liability policy; and
- Workers' compensation and employer's liability policy

Said policies shall be maintained with respect to employees and vehicles assigned to the performance of work under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as set forth in Attachment E, attached hereto and incorporated herein.

11. INTEGRATED DOCUMENT; AMENDMENT.

This Agreement and its terms and conditions, and the Project's conditions of approval, embody the entire agreement between the Parties. No other understanding, agreements, or conversations with any officer, agent, or employee of City shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. It is mutually understood and agreed that, except for the City's periodic updates of its BMP Program Policies & Procedures and related documents, no amendment to this Agreement shall be valid unless made in writing and signed by the Parties.

12. SEVERABILITY CLAUSE.

In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

13. WAIVER.

Developer agrees that waiver by a Party of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

14. NOTICES.

All notices to the Parties shall, unless otherwise requested in writing, be addressed as follows:

City: Housing & Community Services Division
 City of Santa Clara
 1500 Warburton Avenue
 Santa Clara, California 95050
 or by facsimile at (408) 248-3381

Developer: Dutchints Development LLC
 5150 El Camino Real Suite E20
 Los Altos, CA 94022

If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday.

15. GOVERNING LAW; VENUE.

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. In the event that suit shall be brought by either Party, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, in the United States District Court, Northern District of California.

16. COMPLIANCE WITH LAWS.

Developer shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments, applicable to the Project Site and Project.

17. DISPUTE RESOLUTION.

- a. Unless otherwise mutually agreed to by the Parties, any controversies between Developer and the City regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party

after the service of that request on the other Party. Submission to mediation shall be a pre-condition to filing of any litigation.

- b. The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement. The costs of mediation shall be borne by the Parties equally.

18. CONFLICTS OF INTEREST.

Developer certifies that to the best of its knowledge no City employee or officer has any pecuniary interest in the business of Developer and that no person associated with Developer has any interest that would conflict in any manner or degree with the performance of this Agreement. Developer represents that it presently has no interest and shall not acquire any interest, direct or indirect, which could conflict in any manner or degree with the faithful performance of this Agreement. Developer is familiar with the provisions of California Government Code section 87100 and following, and certifies that it does not know of any facts that constitute a violation of said provisions. Developer will advise City if a conflict arises.

19. COVENANTS RUNNING WITH THE LAND.

The Parties agree that this Agreement shall run with the land, and, subject to the terms hereof, shall bind any and all successors in interest. The Parties agree that this Agreement shall be duly recorded with the County of Santa Clara against each legal parcel associated with the BMP Units within twenty (20) days after the date the Final Map creating the separate legal parcels associated with the BMP Units is recorded.

20. COMPLIANCE WITH ETHICAL STANDARDS.

As a condition precedent to entering into this Agreement, Developer shall review and agrees to comply with the City's "Ethical Standards Ethical Standards For Contractors Seeking To Enter Into An Agreement With The City Of Santa Clara, California" (viewable at <http://santaclaraca.gov/home/showdocument?id=58299>).

21. MARKET RATE UNITS.

Upon the request of the Developer, the City shall execute one or more agreements in recordable form certifying that a market rate unit within the Project is not subject to the requirements of this Agreement.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date first set forth above.

**CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation**

APPROVED AS TO FORM:

Dated: _____

"CITY"

BRIAN DOYLE
City Attorney

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050

Telephone: (408) 615-2210
Fax: (408) 241-6771

DUTCHINTS DEVELOPMENT , LLC
A California limited liability company

Dated: _____

By: _____

5/3/20


(Signature of Person executing the Agreement on behalf of
Developer)

Name: _____
Vahe Tashjian

Title: _____
Managing Director

Local Address: _____
5150 El Camino Real Suite E20

Los Altos, CA 94022

Email Address: _____
Vahe@dutchints.com

Telephone: _____
650.397.5297

Fax: _____

"DEVELOPER"

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)

) ss:

COUNTY OF Santa Clara)

On May 3, 2020 before me,
Ruby G. Gulapa-Ngo

Notary Public (insert name and title of the officer),

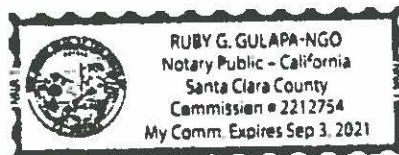
personally appeared Vahke Tashjian, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) 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: [Signature]

[Seal]



AFFORDABLE HOUSING AGREEMENT
by and between the
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AND

DD Warburton Group LLC

LEGAL DESCRIPTION OF PROJECT SITE

ATTACHMENT A

EXHIBIT A

The land referred to is situated in the County of Santa Clara, City of Santa Clara, State of California, and is described as follows:

Beginning at a point in the Southeasterly line of Wistar Street, as said line was established by Deed from J.J. Inman et ux to City of Santa Clara, a municipal corporation, dated January 20, 1958, recorded February 5, 1958 in [Book 3999 Official Records, Page 259](#), Santa Clara County Records, at the Northernmost corner of that certain tract of land described in the Deed from Lois Elizabeth Inman to Saverio La Barbera, dated February 10, 1958, recorded February 11, 1958 in [Book 4004 Official Records, Page 124](#), Santa Clara County Records; thence from said point of beginning South 0° 18' 50" East along the Easterly line of land so described in the Deed to said La Barbera and along the Easterly line of that certain 1.067 acre tract of land described in the Deed from Lois Elizabeth Inman to Saverio La Barbera, dated July 9, 1956, recorded July 10, 1956 in [Book 3545 Official Records, Page 307](#), Santa Clara County Records for a distance of 150.00 feet; thence at right angles North 89° 41' 10" East 135.00 feet; thence North 0° 18' 50" West and parallel with the Easterly line of said 1.067 acre tract 216.55 feet to a point in the said Southeasterly line of Wistar Street; thence Southwesterly along said last mentioned line along an arc of a curve to the left from a tangent bearing South 60° 03' 41" West with a radius of 465.00 feet through a central angle of 2° 42' 35" for an arc distance of 21.99 feet; thence continuing along said Southeasterly line of Wistar Street along a reverse curve to the right with a radius of 535.00 feet through a central angle of 13° 48' 25" for an arc distance of 128.92 feet to the point of beginning.

APN: 224-20-027

AFFORDABLE HOUSING AGREEMENT

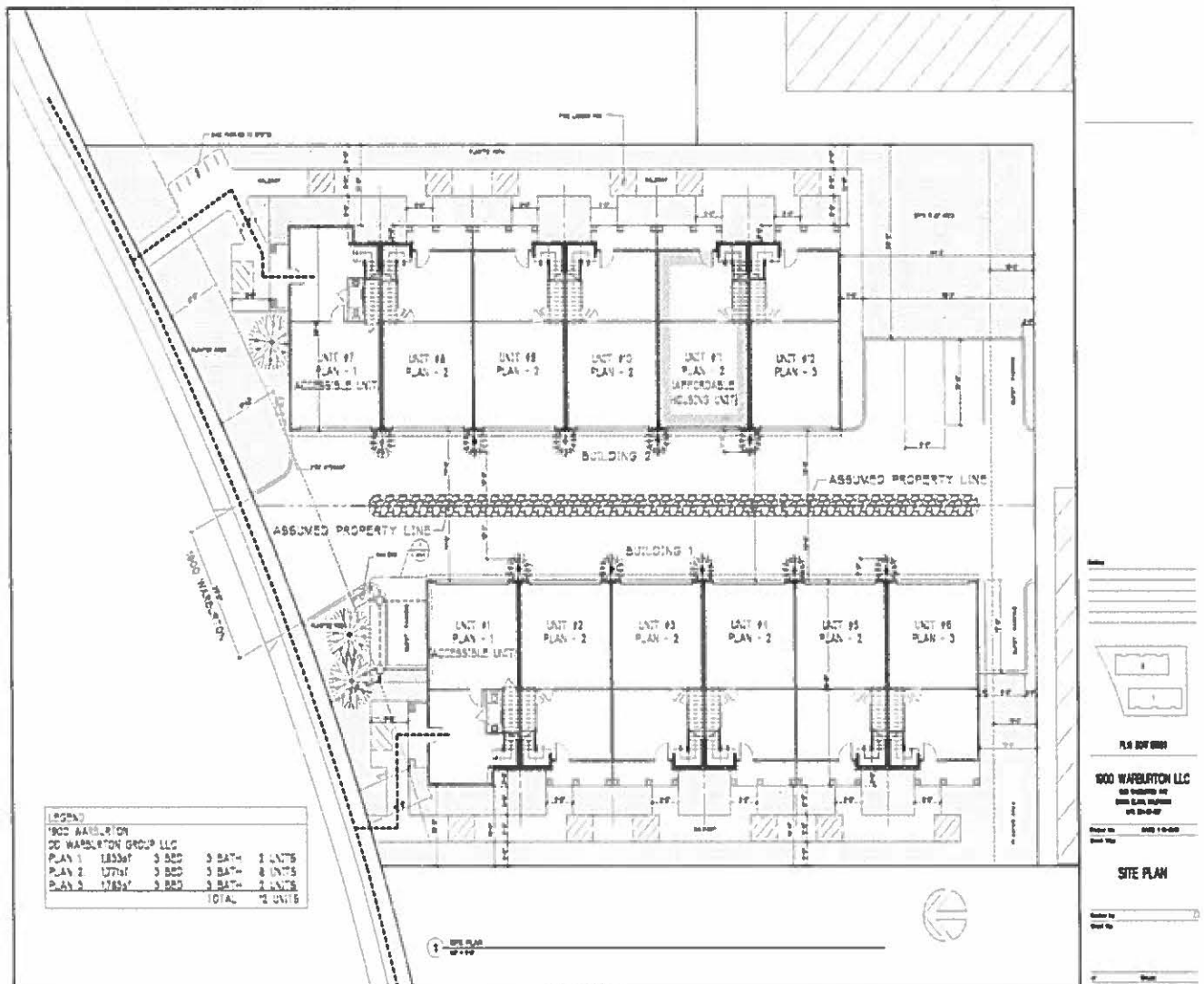
**by and between the
CITY OF SANTA CLARA, CALIFORNIA,
AND**

DD Warburton Group LLC

ATTACHMENT B

BMP UNIT LOCATIONS

(Map Attached)



AFFORDABLE HOUSING AGREEMENT

**by and between the
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AND**

DD Warburton Group LLC

ATTACHMENT C

BMP PROGRAM POLICIES AND PROCEDURES

(Attached hereto)

AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
AND

DD WARBURTON GROUP LLC

ATTACHMENT D

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AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
AND

DD Warburton Group LLC

ATTACHMENT E

INSURANCE COVERAGE REQUIREMENTS

Without limiting the Developer's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Developer shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$1,000,000 Each Occurrence
\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations aggregate
\$1,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Developer; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Developer to comply with the insurance - requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion, which precludes coverage for claims or suits by one insured against another;
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability;
 - d. Coverage shall contain no Contractor's' limitation endorsement limiting the scope of coverage for liability arising from pollution, personal injury, Owners' and Contractor's' protective Liability; and

- e. Contractual Liability coverage shall expressly include all liability assumed under this Agreement.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Developer and/or its sub-contractor's involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Developer included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Developer or any sub-contractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. The City of Santa Clara, its officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Developer's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Developer shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from any other insurance, which the indemnities may possess, including any self-insurance or self-insured retention

they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Developer's insurance.

3. Cancellation.

- a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
- b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Attachment E, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Developer and City agree as follows:

1. Developer agrees to ensure that sub-contractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Developer, provide the same minimum insurance coverage required of Developer, except as with respect to limits. Developer agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Developer agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such sub-contractors and others engaged in the project will be submitted to City for review.
2. Developer agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Developer for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

3. The City reserves the right to withhold payments from the Developer in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Developer, and each and every sub-contractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Developer shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection

G. EVIDENCE OF COMPLIANCE

Developer or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Developer shall submit to City copies of the actual insurance policies or renewals or replacements.

Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.
The City of Santa Clara
Housing & Community Services Division
P.O. Box 100085 – S2 or 1 Ebix Way
Duluth, GA 30096 John's Creek, GA 30097

Telephone number: 951-766-2280
Fax number: 770-325-0409
Email address: ctsantaclara@ebix.com

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Developer shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.