**EXHIBIT K**

**FORM OF AGREEMENT CONTAINING COVENANTS**

**AFFECTING REAL PROPERTY**

RECORDING REQUESTED BY )

AND WHEN RECORDED RETURN TO: )

)

AMBROSE RECREATION AND PARK )

DISTRICT )

4055 Willow Pass Road )

Bay Point, California )

Attn: General Manager )

)

Assessor’s Parcel Number: 093-081-027 )

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Recorder Use Only)\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Recording of this document is fee-exempt under Government Code Section 6103 and/or Section 27383.

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**AGREEMENT CONTAINING COVENANTS AFFECTING REAL PROPERTY**

This AGREEMENT CONTAINING COVENANTS AFFECTING REAL PROPERTY (“Covenant Agreement”) is made this \_\_\_ day of , 2024 by and between the Ambrose Recreation and Park District, a California special district (the “District”), and Alliant Strategic Development LLC, a Delaware limited liability company (“Alliant”).

**RECITALS**

**WHEREAS**, District was the fee owner of that certain parcel of real property located at 3105 Willow Pass Road and Cleveland Drive, Bay Point, California (APN 093-081-027) (the “Property”), as more particularly described in the Property Legal Description, attached hereto as **Exhibit A** and incorporated by reference herein, containing approximately 1.99 acres of land;

**WHEREAS**, District and Alliant entered into that certain Purchase and Sale Agreement and Joint Escrow Instructions, dated as of December 14, 2021 (the “PSA”), whereby District agreed to sell and Alliant agreed to purchase the Property pursuant to the stated terms and conditions contained in the PSA;

**WHEREAS**, Alliant represented to District that it intended to purchase the Property for the purpose of developing an apartment building consisting of 100 units with a mixture of one bedroom, two bedroom and three bedroom units, some of which would be affordable to low-income persons and families (“Apartments”) (collectively, the “Project”);

**WHEREAS**, District and Alliant entered into that certain First Amendment to the PSA, dated June \_\_, 2024, (the “PSA First Amendment”), whereby District and Alliant agreed to, among other things, extend the date of the close of escrow as stated in Section 11 of the PSA to allow Alliant to obtain financing for the purchase of the Property and the construction of the Project;

**WHEREAS**, District conditioned its approval to extend the date of close of escrow on Alliant’s commitment to rent or lease at least ten percent (10%) of the Apartments of the Project to individuals and families with household incomes that do not exceed eighty percent (80%) of the Area Median Income (“AMI”) in Contra Costa County (“Low-Income Renter”), as such income level is determined by and the United States Department of Housing and Urban Development or California Department of Housing and Community Development, as applicable (collectively, “HUD”), with monthly rents affordable to individuals and families with incomes that do not exceed 80% AMI;

**WHEREAS**, District and Alliant desire to enter into this Covenant Agreement to document Alliant’s commitment to develop the Project for the purpose of providing at least 10% of the Apartments as affordable to Low-Income Persons and to maintain the affordability level stated herein for a period of twenty-five (25) years following the completion of the development of the Project and the receipt of a Temporary Certificate of Occupancy (“TCO”) for the occupancy of the Apartments (the “Affordability Term”);

**WHEREAS**, District and Alliant understand and agree that this Covenant Agreement will be recorded against the Property and that its terms and conditions will run with the land for a period of 25 years and may be enforced by District or any renter or prospective renter of an Apartment in the Project.

**NOW THEREFORE**, **IN CONSIDERATION** of the aforesaid Recitals and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, District and Alliant hereby agree as follows:

**AGREEMENT**

Alliant in its rental or lease of the Apartments shall comply with the terms and conditions set forth herein.

1. **Rental of Apartments**.

Ten Percent (10%) of the Apartments in the Project shall be reserved and rented or leased to Low-Income Renters with the monthly rent to be paid by a Low-Income Renter not to exceed the maximum amount of Rent allowed herein and as otherwise established by HUD during the Affordability Term (the “Affordable Apartment Units”). However, if a previously approved Low-Income Renter is later determined to have an annual Household Income that exceeds 80% AMI but is less than one hundred and twenty percent (120%) AMI, the previously approved Low-Income Renter shall continue to be considered a Low-Income Renter for purposes of this Covenant Agreement until such renter’s annual income exceeds 120% AMI. The Affordable Apartment Units shall contain and have access to roughly the same amenities as the other Apartments, shall not be identified as affordable units on signage within the Project and shall be located throughout the Project with the other Apartments so that the Affordable Apartment Units are not concentrated in any one portion of the building.

2. **Definitions**.

For the purposes of this Covenant Agreement, the following terms shall have the meanings set forth below. Any term not so defined herein shall have the meaning ascribed to it in the PSA.

(a) Household Income. "Household Income" means the current gross amount of income of all adult household members that is anticipated to be received during the coming twelve (12)-month period, including the income of temporarily absentee family members, welfare assistance payments, and other such criteria determined in accordance with the definition of Annual Income found in 24 CFR §5.609, formerly referred to as the Section 8 definition of income.

(b) Maximum Monthly Rent. The Maximum Monthly Rent that may be charged for each of the Affordable Apartment Units shall not exceed thirty percent (30%) of eighty percent (80%) of AMI divided by twelve (12) during the Affordability Term.

(c) Rent. “Rent” means the consideration, including any bonus, benefits, or gratuity, demanded by or received by Alliant for, or in connection with: (1) the use or occupancy of an Affordable Apartment Unit and land and facilities associated therewith, (2) any separately charged fees or service charges assessed by Alliant which are required of all renters, other than security deposits, (3) a reasonable Utility Allowance, and (4) 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 Alliant. (1), (2), (3) and (4) shall be an average of estimated costs for the next twelve (12) months.

(d) Utility Allowance. “Utility Allowance” means an amount determined using the California Utility Allowance Calculator method as a reasonable estimate of the cost of utilities for a Low-Income Renter for purposes of calculating the Maximum Monthly Rent per Apartment.

3. **Rental Restrictions**.

(a) Each Affordable Apartment Unit shall only be rented to Low-Income Renters during the Affordability Term, except as otherwise provided herein. The Maximum Monthly Rent that may be charged and collected from a Low-Income Renter is the amount set forth in Section 2(b), as such amount may be increased to reflect increases in the AMI as determined by HUD, but not more than one time per year.

(b) Prior to renting any of the Affordable Apartment Units, Alliant shall certify that the prospective renter qualifies as a Low-Income Renter. Such certification may be accomplished by, among other methods, self-certification by the prospective renter; however, Alliant shall request Household Income verification documents, including, but not limited to income tax records, paystubs, bank statements and/or benefit statements, from the prospective renter prior to entering into a rental agreement or lease to confirm that the prospective renter qualifies as a Low-Income Renter.

(c) In the event that Alliant fails to reasonably verify the prospective renter’s Low-Income Renter eligibility and rents or leases to persons or families whose Household Income exceeds 80% AMI, except as otherwise stated herein, District and/or any Low-Income Renter or prospective renter may pursue a civil action to enforce this term of this Covenant Agreement. If District and/or a Low-Income Renter prevails in any such enforcement action, then that party shall be entitled to an award of attorney’s fees and costs.

(d) In the event Alliant charges a Low-Income Renter monthly Rent above the amount specified in Section 2(b), above, Alliant shall repay the Low-Income Renter the difference between the monthly Rent charged and the Maximum Monthly Rent allowed under this Covenant Agreement for the period that the disallowed monthly Rent was being charged within ten (10) days of District’s or the Low-Income Renter’s written request. District and/or the affected Low-Income Renter may pursue a civil action to enforce this term of the Covenant Agreement. If District and/or a Low-Income Renter prevails in any such enforcement action, then that party shall be entitled to an award of attorney’s fees and costs.

(e) Alliant shall maintain books and records that document the certification of each Low-Income Renter and the amount of monthly rent paid by each Low-Income Renter during the Affordability Term. Such books and records shall be made available for inspection by District or an affected Low-Income Renter during normal business hours of 9:00 am to 5:00 pm, with two (2) business days’ notice. District or any Low-Income Renter may, at their cost, audit Alliant’s books and records to verify Allaint’s compliance with the terms and conditions of this Covenant Agreement. Alliant agrees to reasonably accommodate in any such audit.

(f) Upon the expiration of the Affordability Term the terms and conditions shall be of no further force or effect. Upon Alliant’s written request, District agrees to take such actions to release this Covenant Agreement against the Property. However, at the end of the Affordability Term Alliant shall only evict a Low-Income Renter from an Apartment as authorized under the law.

4.       **Required Provisions for Rental or Lease Agreements**.

For the rental of the Affordable Apartment Units Alliant shall use a form of rental or lease agreement which includes provisions to assure compliance with the terms and conditions of this Covenant Agreement, such as the following:

(a)  Provide for termination of the rental or lease agreement and immediate eviction for the renter’s failure: (1) to provide any information required by this Covenant Agreement or reasonably requested by Alliant to establish or re-certify the renter’s Low-Income Renter qualification or the Household Income qualification of the Low-Income Renter for occupancy of an Affordable Apartment Unit in accordance with the standards set forth in this Covenant Agreement; or (2) to qualify as a Low-Income Renter as the result of any material misrepresentation made by such renter with respect to their income computation or certification; or (3) if not prohibited by applicable law, in the event the renter no longer qualifies as a Low-Income Renter.

(b)   Prohibit the subleasing of an Affordable Apartment Unit (this includes listing any Affordable Apartment Unit for vacation/short-term rental on Airbnb or like websites) without the certification of the sublessee as a Low-Income Renter.

5. **Annual Determinations**.

Upon initial occupancy of each Affordable Apartment Unit, and at least annually thereafter, Alliant shall determine and certify the Household Income of each eligible Low-Income Renter. If a previously eligible Low-Income Renter is later determined to no longer be a Low-Income Renter, then refer to Sections 1 or 4, above.

6. **Right to Inspect**.

District reserves the right to visit the Project and inspect each Apartment to assess Alliant’s satisfactory compliance with this Covenant Agreement. For routine inspections, five (5) business days written notice (counted from the date of mailing of the notice) will be provided to Alliant via U.S. Mail. Alternatively, District may provide such notice by electronic mail.

7. **Federal and State Laws**.

Notwithstanding the above provisions, nothing contained herein shall require Alliant to do anything contrary to or refrain from doing anything required by Federal and State laws and regulations promulgated thereunder applicable to the construction, management, maintenance, and rental of the Apartments.

8. **Binding on Successors and Assigns**.

The obligations herein shall be binding upon Alliant and its successors, assigns and transferees in ownership of the Property, including, but not limited to affiliated business entities of Alliant and any limited liability corporation established by Alliant to own or operate the Project or Property or any portion thereof.

9. **Condominium Conversions**.

Alliant shall not convert any Affordable Apartment Unit to condominiums or cooperative ownership during the Affordability Term unless such condominiums or cooperative ownership units are sold to individuals and families with incomes that do not exceed 80% of AMI, except as otherwise stated herein.

10. **Notices**.

All notices required herein shall be sent to the parties as set forth in Section 17.6 of the PSA. District and Alliant shall keep each other apprised of any changes to the location as to which notice shall be given.

11. **Rights of Enforcement**.

In addition to the other enforcement provisions stated herein, the terms and conditions of this Covenant Agreement may be enforced by District, Alliant, any Low-Income Renter or any prospective Low-Income Renter who is not certified as an eligible Low-Income Renter. Any such party may commence and maintain actions for damages or to restrain and enjoin any actual or threatened breach of any provision herein.  Any remedy provided for herein shall not be exclusive or preclude the parties hereto or their respective successors, heirs and assigns from exercising any other remedy available under this Covenant Agreement, or under provisions of law, nor shall any action taken in the exercise of any remedy be deemed a waiver of any right or remedies available to such parties.  It is understood and agreed that no waiver of a breach of any of the provisions herein shall be construed as a waiver of any other breach; nor shall failure to enforce any portion herein be construed as a waiver of any of the other conditions herein. In any such enforcement action the prevailing party shall be entitled to an award of reasonable attorney’s fees and costs.

12 . **Governing Law**.

This Covenant Agreement shall be interpreted and be governed by the laws of the State of California. Any action to interpret or enforce the provisions herein shall be filed in a court of competent jurisdiction in the County of Contra Costa.

13. **Severability**.

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

**IN WITNESS WHEREOF**, District and Alliant have caused this Covenant Agreement to be executed by their duly authorized representatives as of the date first set forth above.

**BUYER**:

**ALLIANT STRATEGIC DEVELOPMENT LLC**,   
a Delaware limited liability company

By:   
Name:   
Title:

**SELLER**:

**AMBROSE RECREATION AND PARK DISTRICT,** a California special district

By:   
Name: Doug Long  
Title: General Manager

**Notary 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 CONTRA COSTA )

On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, before me, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person, or the entity upon behalf of which the person 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) |

**Notary 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 CONTRA COSTA )

On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, before me, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person, or the entity upon behalf of which the person 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”**

**Property Legal Description**

[Attached hereto]