

RECORDING REQUESTED BY :
County of San Mateo Department of Housing

**Exempt from Fee
per Government Code Sections 27383 and 6103**

WHEN RECORDED, MAIL TO :

County of San Mateo Dept of Housing
262 Harbor Blvd. Bldg. A
Belmont, Ca. 94002
PONY # DOH 209

Attn: Marina Yu

(This Space for Recorder's Use Only)

**AMENDMENT TO
COVENANT AND AGREEMENT REGARDING AFFORDABILITY RESTRICTIONS
FOR LA TERRAZZA AT COLMA STATION**

This Amendment is entered into this ____ day of _____, 20____, by and between EQR-La Terrazza at Colma Station Limited Partnership, a Delaware limited partnership and successor interest to Colma Apartment Associates, L.P.; the San Mateo County Transit District (“SamTrans”); and the County of San Mateo (the “County”), and amends the Covenant and Agreement Regarding Affordability Restrictions for La Terrazza at Colma Station, dated March 8, 2005 (“Covenant”), Board of Resolution Number 067205.

WITNESSETH:

WHEREAS, La Terrazza at Colma Station (“Project”), located on El Camino Real on an incorporated site owned by SamTrans and more particularly described in Exhibit A, was constructed in compliance with the requirements of the Colma BART Area Specific Plan and the San Mateo County Density Bonus Ordinance; and

WHEREAS, the Project comprises 153 units, of which 31 are restricted to very low income households for a period of not less than 55 years; and

WHEREAS, the Covenant authorizes the County to monitor the affordability of the 31 restricted units; and

WHEREAS, the Department of Housing, which did not formally exist at the time of County execution of the Covenant, has assumed responsibility for the affordability compliance monitoring and collecting the monitoring fee; and

WHEREAS, the Covenant authorized the Board of Supervisors to set the annual monitoring fee starting in 2007, and to make annual adjustments to the fee beginning in 2008 by a percentage not to exceed the percentage change in the Consumer Price Index (CPI); and

WHEREAS, it is felt that the Department of Housing is better poised to research and monitor CPI changes and to respond more timely to making any necessary changes to the annual monitoring fee;

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. Section 3.09 shall be amended in its entirety and replaced with the following:

3.09 Monitoring Fee. For each affordable rent unit provided under this agreement, the Owner shall pay an annual monitoring fee each year for the term of the required affordability. The amount of the County's monitoring fee for the year 2009 is \$50 per affordable unit per year. Starting in 2010, the amount of the per unit annual monitoring fee shall be set by the Director ("Director") of the County Department of Housing and may be adjusted annually as necessary to cover only the County's actual costs to monitor the affordable units. In no event will the adjusted per unit fee exceed the original \$50 as adjusted by the Consumer Price Index (CPI) for housing in the San Francisco-Oakland-San Jose area. In setting the annual monitoring fee, the Director may make a determination regarding banking increases that are less than one percent and deferring the fee increase to a subsequent period. The Owner of the Project will be given 60 days' notice of any fee increases.

2. All other terms and conditions of the Covenant shall remain in full force and effect.

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deliberately blank.**

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: _____
President, Board of Supervisors

Date: _____

Attest: _____
Clerk of the Board

OWNER

EQR-LA TERRAZZA AT COLMA STATION LIMITED PARTNERSHIP, a Delaware limited partnership

By: Hearthstone/EQR JV, LLC, a California limited liability company, its managing general partner

By: Hearthstone Housing Foundation, a California nonprofit public benefit corporation, its sole member

By: _____
Name: Socorro Vasquez
Title: Executive Director
Date: _____

AND

EQR-LA TERRAZZA AT COLMA STATION LIMITED PARTNERSHIP, a Delaware limited partnership

By: ERP Operating Limited Partnership, an Illinois limited partnership, its sole member

By: Equity Residential, a Maryland real estate investment trust, its general partner

By: _____
Name: _____
Title: _____
Date: _____

SAMTrans
San Mateo County Transit District

By: _____
Signature/ Title

Date: _____

Exhibit A