

**REIMBURSEMENT AGREEMENT
FOR LEGAL SERVICES FOR THE TASMAN EAST SPECIFIC PLAN**

PREAMBLE

This Reimbursement Agreement ("Agreement") is by and between Tasman East Urban Housing, LLC, a Delaware limited liability company ("Related"), [Entity], a _____, ("Ensemble"), NASH – Holland Calle De Luna Investors, LLC, a Delaware limited liability company, ("Holland"), [Entity], a _____, ("St. Anton"), [Entity], a _____, ("Summerhill"), and the City of Santa Clara, California, a chartered California municipal corporation ("City"). Related, Ensemble, Holland, St. Anton, and Summerhill may be referred to collectively as "Applicants." City and Applicants may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. The City has initiated a Specific Plan and related General Plan Amendment and environmental review pursuant to the California Environmental Quality Act ("CEQA") for the Tasman East Specific Plan ("Proposed Project").
- B. Applicants desire to develop various projects within the Tasman East Specific Plan area.
- C. Implementation of the Proposed Project will require City to incur various costs and expenses including attorneys' fees and costs. City intends to retain a law firm with expertise in CEQA and land use matters ("Outside Counsel") to assist in the drafting, preparation, negotiation, and review of administrative draft documents associated with the Proposed Project.
- D. Applicants are willing to reimburse City for certain Eligible Costs to be incurred by City in connection with the Proposed Project, as set forth herein.

In consideration of the recitals and mutual promises contained herein, the Parties agree as follows:

AGREEMENT PROVISIONS

1. PURPOSE OF AGREEMENT

The purpose of this Agreement is to provide for payment by Applicants of all Eligible Costs (defined below) directly or indirectly incurred by City in connection with the Proposed Project.

2. REIMBURSEMENT OBLIGATION

- A. Applicants shall reimburse the City for Outside Counsel's fees associated with the negotiation, drafting, and implementation of the Proposed Project, including Outside Counsel's fees and costs incurred in connection with the legal

defense of the Proposed Project (collectively, the “Eligible Costs”) in accordance with this Agreement. Each Applicant shall pay a pro rata share of Eligible Costs based on a percentage calculated as: [total acreage of Applicant’s project site] divided by [total acreage of Tasman East Specific Plan] (“Applicant’s Share”).

B. The total amount of Eligible Costs is estimated to be \$100,000 (“Estimated Budget”). City agrees to use its best efforts to stay within the Estimated Budget. In the event that additional services are required that would exceed the Estimated Budget, City shall give the Applicants 10 business days’ advance written notice prior to authorizing any work that would cause the Eligible Costs to exceed the Estimated Budget, which notice shall document the budget for additional services that would exceed the Estimated Budget (“Additional Budget”). If City and Applicants cannot agree to the scope and cost of said additional services in writing, this Agreement may be terminated or extended pursuant to Section 7. Applicants shall provide Applicant’s Share of such additional costs prior to the commencement of additional services, unless the Parties agree to an alternate funding allocation as part of the review and approval of the scope and cost of said additional services.

C. City reserves the right to seek reimbursement for costs incurred by City from any parties who submit development applications for properties within or in the vicinity of the Tasman East Specific Plan in the future.

3. PAYMENT OF ELIGIBLE COSTS

A. Upon execution of this Agreement, each Applicant shall deposit with City the sum equivalent to [Applicant’s Share] multiplied by [Estimated Budget] in cash or other immediately available funds (“Payment”) in satisfaction of Applicant’s obligation to pay Applicant’s Share of Eligible Costs.

B. If the City provides notice pursuant to Section 2.B of this Agreement that additional services are required that would cause the Eligible Costs to exceed the Estimated Budget, each Applicant shall deposit with City the sum equivalent to [Applicant’s Share] multiplied by [Additional Budget] in cash or other immediately available funds (“Additional Payment”) in satisfaction of Applicant’s obligation to pay Applicant’s Share of Eligible Costs.

C. City shall withdraw from the Payment and Additional Payment, if any, as necessary to cover the Eligible Costs. On a monthly basis, City shall provide written notice to all Applicants documenting: (1) the amount of Eligible Costs incurred to date; (2) the amount of Payments and Additional Payments, if any, that the City has used to pay Eligible Costs incurred to date; and (3) the remaining balance of each Applicant’s Payment and Additional Payments, if any.

D. Each Applicant makes this commitment without regard to the City’s ultimate decision whether to approve the Proposed Project or certify the EIR.

4. REFUND OF UNEXPENDED BALANCE

A. In the event this Agreement is terminated as provided in Section 7 below, City shall return to each Applicant within 30 days following the effective date of termination that portion of the Payment or Additional Payment, if any, that has not been expended or committed by City as provided herein.

B. Any unexpended funds shall be returned to the Applicants within 45 days after (1) the City Council makes a determination on whether to certify the Final Environmental Impact Report (FEIR), or (2) after any litigation challenging the FEIR or the Proposed Project has concluded, whichever is later. Subject to any redactions determined to be necessary by the City Attorney to preserve the privilege recognized in Section 6 below, at Applicant's request, City shall provide copies of invoices and other documents to verify final costs for services.

5. NO COMMITMENT AS TO FUTURE APPROVALS

Nothing in this Agreement shall be construed as a commitment to grant or issue any preliminary or final approvals in connection with the Proposed Project. Each Applicant acknowledges and agrees that nothing in this Agreement limits City's discretion, in any manner, with respect to any aspect of the Proposed Project. Each Applicant agrees that it shall remain obligated to pay Applicant's Share of all Eligible Costs, regardless of whether any aspect of the Proposed Project is approved.

6. ATTORNEY-CLIENT RELATIONSHIP

Each Applicant recognizes that City will be the client of Outside Counsel, and that attorney-client privilege will apply to all communications between City and Outside Counsel, whether verbal, written, or electronically transmitted, including but not limited to exchanges of administrative draft documents and discussions about administrative draft documents. Applicants do not have an attorney-client relationship with Outside Counsel and shall not have access to any such communications, except as authorized by the City Attorney.

7. TERM; TERMINATION OF AGREEMENT

A. The term of this Agreement shall be from the Effective Date until the date the services identified in Recital C have been fully performed and paid for, unless terminated earlier.

B. Any Party may terminate this Agreement without cause by giving the other Parties written notice ("Notice of Termination") which clearly expresses that Party's intent to terminate the Agreement. Notice of Termination shall become effective no less than ten (10) calendar days after all Parties receive such notice. No Applicant shall have an obligation to pay any Eligible Costs incurred on or after the effective date of the termination, but shall remain responsible for any Eligible Costs incurred prior to the effective date of the termination. In the event an Applicant elects to terminate this Agreement, the City and the remaining

Applicants shall meet and confer regarding the potential amendment or extension of this or a replacement Agreement to fund Outside Counsel's costs for completion of the Tasman East Specific Plan and related CEQA review on terms that are mutually agreed upon by the City and non-terminating Applicants.

C. In the event of termination of this Agreement, City shall prepare a statement for all services rendered by City. City will refund any unexpended balance of Applicants' funds to Applicants in accordance with Section 4 of this Agreement.

8. ASSIGNMENT

An Applicant may assign its interest in this Agreement with the prior written notice to City and all other Applicants.

9. AMENDMENT

This Agreement may only be amended in a writing signed by all Parties. City and Applicants acknowledge and agree that subsequent parties may be added to this Agreement by way of amendment to establish such subsequent parties' responsibility for their proportional share of Eligible Costs.

10. INTEGRATED DOCUMENT

This Agreement represents the entire agreement between City and Applicants. No other understanding, agreements, conversations, or otherwise, with any representative of any Party prior to execution of this Agreement shall affect or modify any of the terms or obligations of this Agreement. Any verbal agreement shall be considered unofficial information and is not binding upon any Party.

11. SEVERABILITY CLAUSE

In case any one or more of the provisions in this Agreement 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.

12. WAIVER

Waiver 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.

13. NOTICES

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

City of Santa Clara
Attention: Jeff Schwilk, Associate Planner
1500 Warburton Avenue
Santa Clara, California 95050
or by facsimile at (408) 247-9857

to Related addressed as follows:

Related Santa Clara, LLC
c/o Related California
44 Montgomery St., Suite 1300
San Francisco, CA 94104
Attn: Nicholas Vanderboom

to Ensemble addressed as follows:

to Holland addressed as follows:

c/o Holland Partner Group
1970 Broadway, Suite 300
Oakland, CA 94612
Attn: John Wayland

to St. Anton addressed as follows:

to Summerhill addressed as follows:

SUMMERHILL Apartments Communities Investments LLC
777 California Avenue
Palo Alto, CA 94304
Attn: General Counsel
Fax: (650) 213-8183
Email: jbiggs@shhousinggroup.com

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.

14. CAPTIONS

The captions of the various sections, paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

15. LAW GOVERNING CONTRACT AND VENUE

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by any Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

16. COUNTERPARTS AND SIGNATURES

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. The Effective Date is the date that the final signatory executes the Agreement. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

[Signatures on following pages]

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:

Dated: _____

BRIAN DOYLE
City Attorney

ATTEST:

JENNIFER YAMAGUMA
Acting City Clerk

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

TASMAN EAST URBAN HOUSING, LLC
a Delaware limited liability company

Dated: _____

By: _____
(Signature)

Name: _____

Title: _____

Local _____

Address: _____

Email _____

Address: _____

Telephone: () _____

Fax: () _____

"RELATED"

ENTITY NAME

a _____

Dated: _____

By: _____
(Signature)

Name: _____

Title: _____

Local

Address: _____

Email

Address: _____

Telephone: () _____

Fax: () _____

“ENSEMBLE”

NASH – HOLLAND CALLE DE LUNA INVESTORS, LLC

a Delaware limited liability company

Dated: _____

By: HPG Calle De Luna, LLC, a Washington limited liability
company,

its Operating Member

By: Holland Partner Group Management, Inc., a Delaware
corporation,

its Manager

By: _____
(Signature)

Name: _____

Title: _____

Local

Address: _____

Email

Address: _____

Telephone: () _____

Fax: () _____

“HOLLAND”

ENTITY NAME

a _____

Dated: _____

By: _____
(Signature)

Name: _____

Title: _____

Local
Address: _____

Email
Address: _____

Telephone: () _____

Fax: () _____

“ST. ANTON”

SUMMERHILL APARTMENT COMMUNITIES INVESTMENTS LLC

a California limited liability company

Dated: _____

By: _____
(Signature)

Name: _____

Title: _____

By: _____
(Signature)

Name: _____

Title: _____

Local
Address: 777 S. California Avenue
Palo Alto, CA 94304

Email
Address: _____

Telephone: () _____

Fax: () _____

“SUMMERHILL ”