

**DISPOSITION AND DEVELOPMENT AGREEMENT
(Agrihood - 1834 Worthington Circle, Santa Clara, CA 95050)**

between the

THE CITY OF SANTA CLARA

and

CORE WINCHESTER, LLC

ATTACHMENTS

ATTACHMENT A	LEGAL DESCRIPTION OF CITY PROPERTY
ATTACHMENT A-1	DESCRIPTION OF MARKET RATE PARCEL
ATTACHMENT A-2	DESCRIPTION OF MIXED INCOME PARCEL
ATTACHMENT A-3	DESCRIPTION OF AFFORDABLE HOUSING PARCEL
ATTACHMENT A-4	DESCRIPTION OF COMMON AMENITIES PARCEL
ATTACHMENT B	SCHEDULE OF PERFORMANCE
ATTACHMENT C	[RESERVED]
ATTACHMENT D	INSURANCE REQUIREMENTS
ATTACHMENT E	FINANCING SUMMARY
ATTACHMENT F	PERMITTED EXCEPTIONS
ATTACHMENT G	GROUND LEASE
ATTACHMENT H	MEMORANDUM OF GROUND LEASE
ATTACHMENT I	CITY LOAN AGREEMENT
ATTACHMENT J	CITY PROMISSORY NOTE
ATTACHMENT K	CITY DEED OF TRUST
ATTACHMENT L	CITY ASSIGNMENT OF RENTS AND LEASES
ATTACHMENT M	CITY ASSIGNMENT OF AGREEMENTS
ATTACHMENT N	PROVISIONS FOR DISBURSEMENT AGREEMENT
ATTACHMENT O	STATE REGULATORY AGREEMENT
ATTACHMENT P	CITY REGULATORY AGREEMENT
ATTACHMENT Q	GRANT DEED
ATTACHMENT R	CITY COMPLETION GUARANTY
ATTACHMENT S	CITY ENVIRONMENTAL INDEMNITY

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (Agrihood - 1834 Worthington Circle, Santa Clara, CA 95050), dated for identification purposes only as of _____, 2019, is entered into by and between the **CITY OF SANTA CLARA**, a California municipal corporation (“**City**”), and **CORE WINCHESTER, LLC**, a California limited liability company (“**Developer**”), with reference to the following:

R E C I T A L S

The following recitals are a substantive part of this Agreement:

A. The City is a California municipal corporation existing under the laws of the State of California.

B. The City has adopted a Housing Element to its General Plan pursuant to Government Code § 65580 *et seq.*, which sets forth City’s policies, goals and objectives to provide housing to all economic segments of the community, including the preservation and development of housing affordable to low and moderate income households.

C. Developer desires to acquire certain fee and leasehold interests in those certain vacant lots totaling approximately 5.8 acres located at 1834 Worthington Circle, Santa Clara, California (the “**City Property**”) as described and depicted in Attachment A. The following interests in the City Property shall be conveyed to Developer from the City, including all buildings, structures, fixtures, landscaping and other improvements erected or located thereon, and all easements, rights of way, privileges, licenses, appurtenances and other rights and benefits belonging to or in any way related to the City Property including minerals, oil and gas rights, air, water and development rights, roads, alleys, easements, streets and ways adjacent to the City Property (collectively, the “**Property**”):

(1) The City shall sell and transfer to Developer a fee interest in a parcel of approximately 1.27 acres (the “**Market Rate Parcel**”) as described and depicted in Attachment A-1, attached hereto and incorporated hereby, upon which Developer intends to construct and develop 36 market rate, for sale townhomes;

(2) The City shall sell and transfer to Developer a fee interest in a parcel of approximately 1.77 acres (the “**Mixed Income Parcel**”) as described and depicted in Attachment A-2, attached hereto and incorporated hereby, upon which Developer intends to construct and develop 160 units of rental housing, including 16 units to be leased to 120% AMI Households;

(3) The City shall lease to Developer pursuant to the Ground Lease a parcel of approximately 1.60 acres (the “**Affordable Housing Parcel**”) as described and depicted in Attachment A-3, attached hereto and incorporated hereby; and

(4) The City shall sell and transfer to Developer a fee interest in a parcel of approximately 1.16 acres (the “**Common Amenities Parcel**”) as described and depicted in Attachment A-4, attached hereto and incorporated hereby, upon which Developer intends to construct and develop the Common Amenities.

D. Developer intends to develop upon the Affordable Housing Parcel 165 units of housing. As of the date of this Agreement, the Parties anticipate that units will be leased as follows: (a) 59 units to be leased to 30% AMI Households; (b) 55 units to be leased to 40% AMI Households; (c) 17 units to be leased to 50% AMI Households; (d) 32 units to be leased to 80% AMI Households; and (e) 2 units to be leased to 120% AMI Households, provided that units to be leased to 120% AMI Households may be used as one or more resident apartment manager's units (the "**Management Unit(s)**") to the extent required under applicable law. The foregoing units to be developed on the Affordable Housing Parcel, excluding any Management Units, are referred to herein as the "**Affordable Units**". Notwithstanding the foregoing, Parties may agree to a different affordability mix of the Affordable Units prior to the Closing. Each Affordable Unit in the Affordable Project shall be leased to a "senior citizen", as defined in Civil Code Section 51.3(b)(1), and veterans shall be given a preference to lease 30% of the Affordable Units, as will be further provided in the City Regulatory Agreement. Developer's leasehold interest in the Affordable Housing Parcel, and fee interest in the Affordable Project Improvements, together with the development thereof in accordance with this Agreement, are referred to herein as the "**Affordable Project**").

E. Developer requires assistance from City in order to develop and construct the Affordable Project. City has agreed to assist Developer with a loan of up \$15,700,000 (the "**City Loan**"), provided that the Affordable Units are held for rent and rented to Qualified Tenants in accordance herewith. The total development cost of the Affordable Project is estimated to be approximately \$85,000,000. Developer intends to form a limited partnership (the "**Tax Credit Partnership**") to own and finance the Affordable Project and who will be the successor in interest under this Agreement as to the Developer's rights and obligations regarding the Affordable Project. The Tax Credit Partnership would secure other construction and permanent financing sources to cover the total cost of developing the Affordable Project. The anticipated funding sources for the Affordable Project include the sources shown in the Financing Summary attached as Attachment E to this Agreement.

F. Developer and City agree that the City Loan will facilitate the development of affordable rental housing and provide an opportunity for a more comprehensive and coordinated project consistent with and in furtherance of the goals and objectives of the City's Housing Element of its General Plan.

G. The development of the Affordable Project as contemplated by this Agreement is consistent with the City's Housing Element, is in the vital and best interest of the City, is necessary for the protection of the health, safety and welfare of the City's residents, and is in accord with the public purposes and provisions of applicable state and local laws and requirements. This Agreement further implements the City's policies for the production of housing for all economic segments of the population.

NOW, THEREFORE, the City and Developer hereby agree as follows:

1. DEFINITIONS

1.1. Defined Terms

As used in this Agreement, the following capitalized terms shall have the following meanings:

“30% AMI Household(s)” means a household whose aggregate gross income equals 30% or less of AMI, as adjusted for family size. For purposes of this definition, “adjusted for family size” means the actual number of persons in the applicable household.

“40% AMI Household(s)” means a household whose aggregate gross income equals 40% or less of AMI, as adjusted for family size. For purposes of this definition, “adjusted for family size” means the actual number of persons in the applicable household.

“50% AMI Household(s)” means a household whose aggregate gross income equals 50% or less of AMI, as adjusted for family size. For purposes of this definition, “adjusted for family size” means the actual number of persons in the applicable household.

“60% AMI Household(s)” means a household whose aggregate gross income equals 60% or less of AMI, as adjusted for family size. For purposes of this definition, “adjusted for family size” means the actual number of persons in the applicable household.

“80% AMI Household(s)” means a household whose aggregate gross income equals 80% or less of AMI, as adjusted for family size. For purposes of this definition, “adjusted for family size” means the actual number of persons in the applicable household.

“120% AMI Household(s)” means a household whose aggregate gross income equals 120% or less of AMI, as adjusted for family size. For purposes of this definition, “adjusted for family size” means the actual number of persons in the applicable household.

“Affiliate” means any person or entity directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Developer which, if the party is a partnership or limited liability company, shall include each of the constituent members or general partners, respectively, thereof, or an entity in which Developer has an equity interest and is the managing member, managing partner or controlling shareholder. The term “control” as used in the immediately preceding sentence, means, with respect to a person that is a corporation, the right to the exercise, directly or indirectly, more than 50% of the voting rights attributable to the shares of the controlled corporation, and, with respect to a person that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled person.

“Affordable Housing Parcel” is defined in Recital C.

“Affordability Period” means the period commencing upon Conversion (as defined in the City Loan Agreement) and terminating on the fifty-fifth (55th) anniversary thereof.

“Affordable Project” is defined in Recital D.

“Affordable Project Improvements” means and includes any Improvements existing or constructed on, under, or over the Affordable Housing Parcel.

“Affordable Rent” means an amount of monthly rent, including a reasonable utility allowance, that does not exceed the maximum rent to be charged by Developer and paid by the Qualified Tenant occupying the Affordable Units as determined pursuant to the TCAC Regulations. The tenant utility allowance shall be determined by the Housing & Community Services Division of the City. The calculation of Affordable Rent shall be performed annually.

“Affordable Units” is defined in Recital D.

“Agreement” means this Disposition and Development Agreement by and between the City and the Developer, including (i) the Recitals set forth herein, and (ii) all attachments hereto, which are incorporated herein by this reference.

“AMI” or “Area-wide Median Income” means (I) with respect to the Affordable Project, the median family income figures and standards (adjusted for actual Household size) utilized by TCAC; and (II) with respect to the Mixed Income Parcel, a “120% AMI Household” shall be a household described in California Health and Safety Code Section 50093.

“Business Day(s)” means Monday through Friday, except for federal and state holidays.

“CC&Rs” is defined in Section 3.4.

“City” means the City of Santa Clara, a California municipal corporation.

“City Advance” is defined in Section 3.14.

“City Assignment of Agreements” shall mean the Assignment of Agreements substantially in the form attached to this Agreement as Attachment M, subject to such changes as the Construction Lender and the Investor Limited Partner may request that are reasonably approved by the City.

“City Assignment of Rents and Leases” shall mean the Assignment of Rents and Leases substantially in the form attached to this Agreement as Attachment L, subject to such changes as the Construction Lender and the Investor Limited Partner may request that are reasonably approved by the City.

“City Deed of Trust” means the Subordinated Leasehold Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents) securing the City Loan, in substantially the form attached to this Agreement as Attachment K, subject to such changes as the Construction Lender and the Investor Limited Partner may request that are reasonably approved by the City.

“City Environmental Indemnity” means the Environmental Indemnity, in substantially the form attached to this Agreement as Attachment S, subject to such changes as the Construction Lender and the Investor Limited Partner may request that are reasonably approved by the City.

“City Guaranty” shall mean a completion guaranty made by Guarantor for the benefit of the City guaranteeing the full performance of Developer’s obligations to construct the Affordable Project, substantially in the form attached to this Agreement as Attachment R, subject to such changes as the Construction Lender and the Investor Limited Partner may request that are reasonably approved by the City.

“City Indemnitees” means City and its departments, divisions, agencies, elected officials, boards, officers, employees, representatives and agents.

“City Lender Policy” is defined in Section 3.5.2

“City Loan” is defined in Recital E.

“City Loan Agreement” means the affordable housing loan agreement in substantially the form attached to this Agreement as Attachment I, subject to such changes as the Construction Lender and the Investor Limited Partner may request that are reasonably approved by the City.

“City Loan Documents” means the City Loan Agreement, the City Promissory Note, the City Deed of Trust, the City Assignment of Rents and Leases, the City Assignment of Agreements, the City Environmental Indemnity, the City Regulatory Agreement, the City Guaranty and any amendments and modifications thereto.

“City Promissory Note” means the Promissory Note evidencing the City Loan in substantially the form attached to this Agreement as Attachment J, subject to such changes as the Construction Lender and the Investor Limited Partner may request that are reasonably approved by the City.

“City Property” is defined in Recital C.

“City Regulatory Agreement” means the affordable housing regulatory agreement entered into in connection with the City Loan substantially in the form attached to this Agreement as Attachment P, subject to such changes as the Construction Lender and the Investor Limited Partner may request that are reasonably approved by the City.

“City Representative” means the City Manager of the City or his or her designated representative.

“City’s Conditions Precedent to Closing” is defined in Section 3.7.1.

“Closing” means the date following Developer’s delivery of the Closing Notice to City upon which the conditions precedent set forth in Section 3.7.1 and 3.7.2 are satisfied or waived in writing and the Conveyance Documents are recorded in the Official Records conveying the Property to Developer and the City has made the City Loan to Developer.

“Closing Notice” is defined in Section 3.3.

“Common Amenities Parcel” is defined in Recital C.

“Common Amenities Parcel Grant Deed” means the grant deed conveying title to the Common Amenities Parcel to Developer, substantially in the form attached to this Agreement as Attachment Q.

“Construction Budget” means the schedule of construction expenses actually and expected to be incurred by the Developer in connection with the Affordable Project and reasonably approved by the City prior to the Closing, and as may be amended or modified pursuant to the City Loan Documents.

“Construction Contract” is defined in Section 5.3.

“Construction Lender” means a lender providing construction financing for the Affordable Project selected by Developer in its sole and absolute discretion.

“Construction Loan” means the loan for construction of the Affordable Project from Construction Lender.

“Construction Loan Documents” means any agreements and documents evidencing or securing the Construction Loan and includes all attachments, modifications and amendments thereto.

“Conveyance Documents” means, collectively, the Common Amenities Parcel Grant Deed, the Market Rate Parcel Grant Deed, the Mixed Income Parcel Grant Deed and the Ground Lease Memorandum.

“County” means Santa Clara County.

“County Loan” means that certain proposed loan from County to Developer in the amount of up to Twenty Three Million Five Hundred Fifty Thousand Dollars (\$23,550,000).

“Developer” means Core Winchester, LLC, a California limited liability company, and its successors and assigns as permitted pursuant to this Agreement.

“Developer’s Conditions Precedent to Closing” is defined in Section 3.7.2.

“Development Costs” shall mean the total cost of developing and constructing the Affordable Project, as set forth in the Construction Budget.

“Disbursement Agreement” means a disbursement agreement between the City, the Construction Lender, and the Developer, in substantially the form attached to this Agreement which shall substantially include the terms and conditions in the list attached hereto as Attachment N, subject to such changes as the Construction Lender and the Investor Limited Partner may request that are reasonably approved by the City.

“Effective Date” means the date upon which this Agreement shall have been signed by Developer and the City and the City Advance has been paid to the City.

“Eligible Project Costs” means all costs and expenses permitted and approved pursuant to this Agreement as set forth in the Construction Budget which are customarily incurred and shall have been actually incurred by Developer for the development and construction of the Affordable Project and shall include, without limitation, the following: construction costs; a developer fee in an amount not to exceed that permitted by the TCAC Regulations; property taxes and assessments; security services; utilities fees; insurance; and such other costs, fees and expenses, as agreed to in writing by the City; provided, however, that payment to parties related to Developer for Eligible Project Costs must not exceed reasonable and customary market rates.

“Entitlements” means and includes any and all general plan amendments, zoning approvals or changes, required approvals and certifications under the California Environmental Quality Act, tentative and final tract maps, variances, conditional use permits, demolition permits, excavation/foundation permits, grading permits, building permits, inspection reports and approvals, certificates of occupancy, and other approvals, permits, certificates, authorizations, consents, orders, entitlements, filings or registrations, and actions of any nature whatsoever

required from any applicable governmental authorities in order to commence and complete the construction of the Affordable Project or any of the proposed development on the Fee Parcels.

“Environmental Laws” means any and all present and future federal, state and local laws (whether under common law, statute, ordinance, rule, regulation or otherwise), court or administrative orders or decrees, requirements of permits issued with respect thereto, and other requirements of governmental authorities relating to the environment or to any Hazardous Materials or Hazardous Materials Activity (including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601, *et seq.*), as heretofore or hereafter amended from time to time (“CERCLA”), and the applicable provisions of the Health & Safety Code and the Water Code, and any and all successor statutes and regulations, orders, decrees, guidelines, or pronouncements promulgated thereunder).

“Escrow” is defined in Section 3.3.

“Escrow Agent” means Chicago Title Company or such other escrow agent reasonably approved by the City and Developer.

“Escrow Costs” is defined in Section 3.3.

“Event of Default” is defined in Section 7.1.

“Evidence of Financing” is defined in Section 5.1.

“Fee Parcels” shall mean the Common Amenities Parcel, the Market Rate Parcel, and the Mixed Income Parcel.

“Final Map” means the final subdivision map reasonably approved by the City and Developer to be recorded by the City against the City Property based upon the vesting tentative map for the Agrihood Project that creates the Common Amenities Parcel, the Market Rate Parcel, the Mixed Income Parcel, and the Affordable Housing Parcel as separate legal parcels.

“Financing Summary” means the Financing Summary attached as Attachment E and incorporated hereby, which shows the estimated sources and uses for the development and construction of the Affordable Project, as may be updated in accordance herewith; upon approval of a Project Pro Forma by the City, the approved Project Pro Forma shall constitute the Financing Summary.

“General Contractor” shall mean CORE General Contractor Inc., or such other general contractor as may be approved by City.

“Governmental Regulations” means any local, state, and federal laws, ordinances, rules, requirements, resolutions, policy statements and regulations (including, without limitation, those relating to land use, subdivision, zoning, Environmental Laws, labor relations, prevailing wage, notification of sale to employees, Hazardous Materials, occupational health and safety, water, earthquake hazard reduction and building and fire codes; and including the National Environmental Policy Act (NEPA) and all Environmental Laws) bearing on the demolition, alteration, replacement, repair, refurbishing, improvement, construction, maintenance, management, use, or operation of the Affordable Project.

“Ground Lease” means the Ground Lease between the City, as landlord, and Developer, as tenant, providing Developer with a leasehold interest in the Affordable Housing Parcel substantially in the form attached to this Agreement as Attachment G, subject to such changes as the Construction Lender and the Investor Limited Partner may request that are reasonably approved by the City.

“Ground Lease Memorandum” means the Memorandum of Ground Lease between the City, as landlord, and Developer, as tenant, evidencing the Ground Lease, to be recorded against the Affordable Housing Parcel in the Official Records upon the Closing, in substantially the form attached to this Agreement as Attachment H, subject to such changes as the Construction Lender and the Investor Limited Partner may request that are reasonably approved by the City.

“Guarantor” means, collectively, all person(s) that provide any guaranty to the Construction Lender or Investor Limited Partner in connection with the Affordable Project.

“Hazardous Materials” means any substance, material, or waste which is or becomes, regulated by any local governmental authority, the State, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a “hazardous waste,” “extremely hazardous waste,” or “restricted hazardous waste” under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Materials Account Act), (iii) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Materials), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated biphenyls, (viii) methyl tertiary butyl ether, (ix) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to Article 11 of Title 22 of the California Code of Regulations, Division 4, Chapter 20, (x) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317), (xi) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, *et seq.* (42 U.S.C. Section 6903) or (xii) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Sections 9601, *et seq.*, but shall not include, customary building maintenance and cleaning products, construction products, and landscape maintenance products as are used, stored, handled, transported, treated and disposed of in compliance with Environmental Laws by owners and operators of properties similar to the Affordable Project.

“Household” means one or more persons occupying an Affordable Unit.

“Improvements” means and includes any buildings, structures, fixtures, foundations, excavation, parking, landscaping, or underground installations.

“Infrastructure Reimbursement” is defined in Section 3.15.

“Insurance Requirements” means the City’s insurance requirements attached as Attachment D and incorporated hereby.

“Investor Limited Partner” means, collectively, one or more investor limited partners selected by Developer in its sole and absolute discretion to be the limited partner(s) in the Tax Credit Partnership.

“Loan Proceeds” means funds disbursed from the City Loan.

“Losses and Liabilities” means and includes all claims, suits, causes of action, arbitration proceedings, administrative proceedings, regulatory proceedings, expenses, liabilities, losses, damages (including, without limitation, penalties, fines and monetary sanctions), injuries, charges, penalties or costs of whatsoever character, nature and kind, including reasonable attorney’s fees and costs, expert witness fees, court costs, interest and defense costs, consultant fees, investigation and laboratory fees, and remedial and response costs incurred by the indemnified party with respect to counsel of its choice, whether to property or to person, whether by direct or derivative action, and whether known or unknown, suspected or unsuspected, latent or patent, actual alleged or threatened.

“Management Unit(s)” is defined in Recital D.

“Market Rate Parcel” is defined in Recital C.

“Market Rate Parcel Grant Deed” means the grant deed conveying title to the Market Rate Parcel to Developer, in substantially in the form attached to this Agreement as Attachment Q.

“Mixed Income Affordable Housing Agreement” means an Affordable Housing Agreement to be entered into by Developer or any transferee of Developer pursuant to a Permitted Transfer (the **“Developer Party”**) and the City and to be recorded against the Mixed Income Parcel upon the Closing, which shall contain the following terms: (a) no more than 160 units of residential rental housing shall be developed on the Mixed Income Parcel; (b) 16 of the residential units on the Mixed Income Parcel shall be leased to 120% AMI Households, which 16 units shall be of similar mix of housing size and type as all 160 units, interspersed throughout the Improvements located on the Mixed Income Parcel, and shall be fixed units designated by Developer Party but subject to the reasonable approval of the City; (c) until a temporary certificate of occupancy has been issued for the last of the 120% AMI Household units to be constructed on the Mixed Income Parcel, the owner of the Mixed Income Parcel (or any transferee thereof) shall be any party that is directly or indirectly controlled or managed by Developer, its Affiliate, or any other party approved by the City, which approval shall not be unreasonably withheld, conditioned or delayed, provided that certain permitted transfers shall be allowed without the City’s consent, including but not limited to (i) the granting of any security interest in the Mixed Income Parcel or any portion thereof or interest therein, or the granting of any security interest in or pledge of any direct or indirect owner thereof (and any transfer of title to the Mixed Income Parcel or transfer of interests in any direct or indirect owner thereof pursuant to foreclosure, deed in lieu of foreclosure, or other conveyance in lieu of foreclosure in connection therewith), including to any lender of a construction loan, permanent loan, or mezzanine financing with respect to the Mixed Income Parcel, and any transferee, successor, or assignee of such lender, (ii) the removal and/or replacement of an original direct or indirect

manager of the owner of the Mixed Income Parcel, provided that the City has approved the replacement manager, which approval shall not be unreasonably withheld, conditioned or delayed (“**Replacement Event**”), and (iii) the granting of easements or permits to facilitate the development of the Mixed Income Parcel, provided that there shall be no restrictions on transfers of the Mixed Income Parcel after the issuance of a temporary certificate of occupancy for the last of the 120% AMI Household units and the City shall record a memorandum providing third parties with notice that the temporary certificate of occupancy has been issued and the restriction on transfers no longer applies; (d) have a term commencing upon Closing and terminating 55 years after a certificate of occupancy has been issued for the 16 restricted units; (e) the Mixed Income Parcel and the improvements thereon, and any portion thereof, shall not be subdivided or converted to condominiums; (f) requirements for marketing and lease up plans and monitoring and periodic reporting; (g) to the extent permitted by all applicable laws, including fair housing laws, preference shall be given to residents of the City as to the 16 restricted units; and (h) such other terms as may be mutually, reasonably, and in good faith agreed to by the City and Developer.

“**Mixed Income Parcel**” is defined in Recital C.

“**Mixed Income Parcel Grant Deed**” means the grant deed conveying title to the Mixed Income Parcel to Developer substantially in the form attached to this Agreement as Attachment Q.

“**Notice**” means a notice in the form prescribed by Section 8.1 hereof.

“**Official Records**” means the official records of the Santa Clara County Recorder’s Office.

“**Outside Closing Date**” is the date indicated in the Schedule of Performance.

“**Parcel(s)**” means, individually and collectively, the Fee Parcels and the Affordable Housing Parcel.

“**Parties**” means the City and Developer, and any permitted successors and assigns thereof.

“**Permanent Loan**” shall mean any permanent loan, in an amount not to exceed the Construction Loan except as reasonably approved by the City, for the Project to be made to Borrower by the Construction Lender or other lender (“**Permanent Lender**”) in accordance with the Project Pro Forma following Conversion, secured by a deed of trust against the Affordable Project.

“**Permitted Transfer**” is defined in Section 2.3.2.

“**Project Pro Forma**” means the financial information to be prepared by Developer, and any updates and amendments thereto, including without limitation, the Affordable Project construction budget, estimated sources and uses of financing, and the Affordable Project’s operating budget and reasonably approved by the City as of the date of Closing.

“**Property**” is defined in Recital C.

“Property Purchase Price” means the purchase price with respect to the Property equal to the amount of \$15,700,000, subject to the terms and conditions set forth herein.

“Qualified Tenant(s)” means a Household who qualifies as a 30%, 40%, 50%, 80%, and/or 120% AMI Household, as applicable.

“Right of Reverter Modification” is defined in Section 3.13.

“Schedule of Performance” means the Schedule of Performance attached hereto as Attachment B and incorporated hereby as may be amended from time to time, which establishes the dates and/or time periods by which certain obligations set forth in this Agreement must be accomplished, subject to Events of Force Majeure.

“Senior Lender” means any lender of a Senior Loan.

“Senior Loan” means the Construction Loan and the Permanent Loan (but sequentially and not concurrently), and any other loan in the Project Pro Forma with a principal amount in excess of the City Loan.

“Senior Loan Documents” means any agreements and documents evidencing or securing a Senior Loan and includes all attachments, modifications and amendments thereto.

“Social Services” means the social services to be provided to residents of the Affordable Project, which shall include, at a minimum, adult education and either a health and wellness program or a skill building program.

“State” means the State of California.

“State Grant Deed” means the State of California Grant Deed (Senior Housing Site) recorded against the City Property in the Official Records on January 5, 2012 as document number 21485774, as modified by the State of California Modification of Grant Deed (Senior Housing Site) recorded against the City Property in the Official Records on January 4, 2017 as document number 23550600.

“State Purchase Agreement” means the Purchase and Sale Agreement made and entered into on July 5, 2005 by and between the State of California, Department of General Service and the City (as successor in interest to The Redevelopment Agency of the City of Santa Clara), as amended by that certain First Amendment to Purchase and Sale Agreement dated December 13, 2011 and that certain Agreement to Amend Post Closing Covenants and Modification of Grant Deed dated December 19, 2016.

“State Regulatory Agreement” means that certain agreement in substantially the form attached to this Agreement as Attachment O, which is required to be recorded against the Affordable Housing Parcel upon the transfer of all or any portion of the City Property to Developer pursuant to State Purchase Agreement.

“Subordination Agreement” means an agreement between a Senior Lender and the City in such form as is reasonably approved by the City that subordinates the City Loan and City Loan Documents to the applicable Senior Loan and Senior Loan Documents and contains

such other terms as may be required by the applicable Senior Lender that are reasonably approved by the City.

“Tax Credit Partnership” is defined in Recital E.

“Tax Credit Regulatory Agreement” means the regulatory agreement that will be recorded against the Affordable Project with respect to the Tax Credits.

“Tax Credits” means Low Income Housing Tax Credits granted pursuant to Section 42 of the Internal Revenue Code.

“TCAC” means the California Tax Credit Allocation Committee.

“TCAC Regulations” means the California Tax Credit Regulations Implementing the Federal and State Low Income Housing Tax Credit Laws, California Code of Regulations, Title 4, Division 17, Chapter 1.

“Title Company” means Chicago Title Company.

“Unit(s)” means any or all of the apartment units in the Affordable Project, including the Affordable Units and/or the Management Unit(s).

“Westfield License Agreement” means that certain License Agreement Granting Right of Entry to and Allowing Access on City Owned Property, dated November 30, 2017, by and between the Housing Authority of the City of Santa Clara, and V F MALL, LLC, a Delaware limited liability company, with respect to a portion of the City Property.

1.2. Singular and Plural Terms

Any defined term used in the plural herein shall refer to all members of the relevant class and any defined term used in the singular shall refer to any number of the members of the relevant class.

1.3. Accounting Principles

Any accounting term used and not specifically defined herein shall be construed in conformity with, and all financial data required to be submitted herein shall be prepared in conformity with, generally accepted accounting principles applied on a consistent basis or in accordance with such other principles or methods as are reasonably acceptable to the City Representative.

1.4. References and Other Terms

Any reference to any document shall include such document both as originally executed and as it may from time to time be modified. References herein to Sections and Attachments shall be construed as references to this Agreement unless a different document is named. References to subparagraphs shall be construed as references to the same Section in which the reference appears. The term “document” is used in its broadest sense and encompasses agreements, certificates, opinions, consents, instruments and other written material of every kind. The terms “including” and “include” mean “including (include), without limitation.”

1.5. Attachments Incorporated; Attachments Additional Consideration

All Attachments, as now existing and as the same may from time to time be modified, are incorporated herein by this reference. Each Attachment or agreement delivered by Developer or another party substantially in the form of an Attachment hereto in connection with this Agreement is required as and constitutes consideration for the City to make the City Loan.

2. REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1. Representations by City.

City represents and warrants to Developer, as of the Effective Date and as of the Closing, as follows:

2.1.1. Authority.

City is a California municipal corporation possessed of full right, power and lawful authority to perform its obligations hereunder, and the execution, delivery, and performance of this Agreement by City has been fully authorized by all requisite actions on the part of the City Council.

2.1.2. No Conflict.

City's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which City is a party or by which City is bound.

2.1.3. No Litigation or Other Proceeding.

To City's current actual knowledge, no litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of City to perform its obligations under this Agreement, or that would adversely affect the City Property, or Developer's use and development of the Property.

2.1.4. Eminent Domain.

To City's actual current knowledge there are no condemnation or eminent domain proceedings which are pending or have been threatened that affect the City Property.

2.1.5. Condition of City Property.

City has no notice of any pending or threatened action or proceeding arising out of the condition of the City Property or any alleged violation of any Environmental Law or Governmental Regulations. To City's actual current knowledge, the City Property is in compliance with all Environmental Laws and Governmental Regulations.

2.1.6. No Reversion of City Property.

The development of the "Proposed Master Development" (as defined in the State Grant Deed) commenced on or before the "Commencement of Development Date" (as

defined in the State Grant Deed), and the City Property has not reverted to the State of California for disposal pursuant to the State Grant Deed.

2.1.7. No Default Under State Documents.

The City is not in default under the State Grant Deed or the State Purchase Agreement, and, except for obligations and duties yet to be performed in accordance therewith, the City is not aware of any facts or circumstances which, with the passing of time or giving of notice of both, would constitute a default under the Stated Grant Deed or the State Purchase Agreement.

Each of the foregoing representations in this Section 2.1 shall be deemed to be an ongoing representation and warranty, and until the expiration or earlier termination of this Agreement, City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.1 not to be true, promptly give written notice of such fact or condition to Developer. Notwithstanding anything to the contrary in this Agreement, the foregoing representations and warranties of City shall survive the Closing of this Agreement for a period of twelve (12) months. After Closing, the City's liability for any breach of this Section 2.1 shall be limited to the City Advance.

2.2. Representations by Developer.

Developer represents and warrants to the City, as of the Effective Date and as of the Closing, as follows:

2.2.1. Organization

Developer is duly organized, validly existing and in good standing under the laws of the State of California and has the power and authority to own property and carry on its business as now being conducted and as contemplated hereby. The copies of the documents evidencing the organization of Developer delivered to the City are true and correct copies of the originals as of the Effective Date.

2.2.2. Authority

Developer has the legal power, right and authority to execute, deliver and enter into this Agreement, and to perform and observe the terms and provisions of this Agreement. Developer has been fully authorized to execute this Agreement and all other documents or instruments to be executed and delivered, pursuant to this Agreement, and all actions required under Developer's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments executed and delivered, or to be executed and delivered pursuant hereto, have been duly taken.

2.2.3. Valid and Binding Agreements

This Agreement and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will constitute when so executed and delivered, legal, valid and binding

obligations of Developer enforceable against it in accordance with the terms of each respective document or instrument.

2.2.4. Litigation

No action, suit or proceedings are pending or, to Developer's current actual knowledge, threatened before any governmental department, commission, board, bureau, agency or instrumentality to which the Developer is or may be made a party or to which any of its property is or may become subject, which has not been fully disclosed to the City and which could adversely affect the ability of the Developer to carry out its obligations hereunder.

2.2.5. No Conflict

Developer's execution and delivery of this Agreement and any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, and the performance of any provision, condition, covenant or other term hereof or thereof, do not or will not conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on Developer, or any provision of the organizational documents of Developer, or will conflict with or constitute a breach of or a default under any agreement to which Developer is a party, or will result in the creation or imposition of any lien upon any assets or property of Developer, other than liens established pursuant hereto.

2.2.6. No Developer Bankruptcy

No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, receivership or other proceedings are pending or, to Developer's current actual knowledge, threatened against the Developer or any other parties affiliated with Developer, nor are any of such proceedings contemplated by Developer or any parties affiliated with Developer.

2.2.7. Financing Summary; Project Pro Forma

For purposes hereof, the Financing Summary attached hereto shall constitute the Financing Summary as of the Effective Date. The Financing Summary and any written updates thereto provided to the City constitute Developer's reasonable estimates as of the anticipated financing for the development of the Affordable Project. To Developer's actual knowledge after due inquiry, there are no material omissions from the Financing Summary, and Developer agrees and acknowledges that the City is relying on the information set forth therein in making the City Loan.

Developer shall submit to the City for approval a Project Pro Forma within 60 days of the Effective Date. The Project Pro Forma and any written updates thereto provided to the City constitute Developer's reasonable estimates as of the date of the Project Pro Forma with respect to the information set forth therein, and shall include the Financing Summary and any updates thereto. Developer shall submit to the City any changes or updates to the Project Pro Forma within 15 days of such change or update. To the actual knowledge of Developer after due inquiry, there are no material omissions from the Financing Summary or any updates thereto, and Developer agrees and acknowledges that the City is relying on the information set forth therein in making the City Loan.

Each of the foregoing representations in this Section 2.2 shall be deemed to be an ongoing representation and warranty, and until the expiration or earlier termination of this Agreement, Developer shall upon learning of any fact or condition which would cause any of the representations and warranties in this Section 2.2 not to be true, promptly give written notice of such fact or condition to City. Notwithstanding anything to the contrary in this Agreement, the foregoing representations and warranties of Developer shall survive the Closing of this Agreement for a period of twelve (12) months. After Closing, the Developer's liability for any breach of this Section 2.2 shall be limited to a maximum amount of Two Hundred Forty Five Thousand Dollars (\$245,000.00).

2.3. Limitation Upon Change in Ownership, Management and Control of Developer

The identity and qualifications of Developer and its respective members, officers and/or partners as experienced and successful developers and operator/managers of affordable housing are of particular concern to the City. It is because of this identity and these qualifications that the City has entered into this Agreement with Developer. No voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein.

2.3.1. Prohibition

Except for Permitted Transfers, Developer shall not transfer or assign all or any part of this Agreement, or any interest herein, permit any change in the management or control of Developer, or permit a transfer of more than 25% of the equity interests Developer, without the prior written approval of the City, which may be withheld in its sole and absolute discretion. Any such change (or assignment of this Agreement in connection therewith) shall be by instruments satisfactory to the City, and be subject to the approval by the City of evidence of the proposed assignee's qualifications to meet the obligations of the Developer under this Agreement.

2.3.2. Permitted Transfers by Developer

Notwithstanding any other provision of this Agreement, the City approval of an assignment of this Agreement or any interest herein shall not be required in connection with any of the following (each a "**Permitted Transfer**"): (I) nominating (a) the Tax Credit Partnership to take title to the Affordable Project at the Closing, provided that the City has reasonably approved all general partners thereof, (b) any party to take title to the Market Rate Parcel at the Closing, (c) any party to take title to the Mixed Income Parcel at the Closing which is directly or indirectly controlled or managed by Developer, an Affiliate thereof, or any other party approved by the City, which approval shall not be unreasonably withheld, conditioned or delayed, and/or (d) any party that the City reasonably approves to take title to the Common Amenities Parcel at the Closing (and the City agrees that the property owners association that administers the CC&Rs, the Tax Credit Partnership that takes title to the Affordable Project, and the party that takes title to the Mixed Income Parcel are hereby pre-approved as parties that may take title to the Common Amenities Parcel at Closing; provided that the City has reasonably approved the financing, operating and management plan with respect to the Common Amenities Parcel); and (II) any assignment or transfer of this Agreement to the foregoing parties taking title with respect to the applicable portion of the Property.

2.3.3. City Consideration of Requested Transfer

Except for Permitted Transfers, Developer shall provide the City with thirty (30) calendar days' prior written notice of its intent to assign or transfer all or any part of this Agreement or effect a change in the management or control of Developer and shall request any approval sought for such assignment or transfer, which approval may be withheld by the City in its sole and absolute discretion. The notice shall be accompanied by evidence regarding the proposed transferee's development, operation and management qualifications and experience and its financial commitments and resources sufficient to enable the City to evaluate whether the proposed assignee or purchaser is qualified and capable to perform the Developer's obligations pursuant to this Agreement.

Within thirty (30) calendar days, or, if board or council approval is required, forty-five (45) calendar days, after the receipt of Developer's written request for the City approval of an assignment or transfer pursuant to this Section 2.3.3, the City shall respond in writing either approving or disapproving the proposed assignee or transferee or requesting further information required by the City in order to determine whether or not to grant the requested approval. Upon receipt of such a request for further information, Developer shall promptly furnish to the City such requested information.

If the City fails to approve or disapprove the requested transfer or assignment within the thirty (30) calendar days after receipt of Developer's written request (or receipt of any further information reasonably requested by City), Developer may send a second and final notice, together with a clear statement indicating that if City does not act upon such request within fifteen (15) days following receipt of this second notice, the request shall be deemed approved. Failure of the City to act within this fifteen (15) day period shall be deemed an approval of the request, provided Developer has included a statement to that effect in its second and final notice and has provided in a timely manner all other information required in connection with City's review of such request. The City shall not unreasonably withhold, condition or delay its approval of an assignment or transfer to a proposed assignee or transferee who, in the reasonable opinion of the City, is financially capable and has the development and operational qualifications and experience to perform the duties and obligations of Developer hereunder. Developer shall promptly pay the City's costs of evaluating and consummating any request for assignment or transfer, including any reasonable attorneys' fees or costs.

3. DISPOSITION OF SITE; ENVIRONMENTAL MATTERS

3.1. Transfer of the Property

The City is the owner in fee of the City Property. In consideration of payment of the Property Purchase Price and such other covenants and consideration as set forth in this Agreement, upon payment of the Property Purchase Price and the satisfaction or waiver of the City's Conditions Precedent to Closing, the City shall convey the Property to Developer. Developer agrees to purchase the Fee Parcels and to enter into the Ground Lease and Ground Lease Memorandum upon satisfaction or waiver of Developer's Conditions Precedent to Closing. The Closing shall occur no later than the Outside Closing Date, subject to Events of Force Majeure. The City shall convey the Property to Developer by the Conveyance Documents and the Ground Lease. The City and Developer agree and acknowledge that the Property Purchase Price represents the fair market value of the Property.

3.2. Access; Condition of the Property; Environmental

3.2.1. Access to Property

Prior to the Closing, City shall cooperate to enable representatives of Developer to obtain the right of access to all portions of the City Property for the purpose of obtaining data and making surveys and tests which Developer determines are reasonably necessary or desirable, including the investigation of the soils and environmental condition of the City Property. Developer agrees to provide written notice to City at least twenty-four (24) hours prior to undertaking any studies or work upon the City Property. Developer shall keep the City Property free and clear of any liens and indemnify, defend, protect and hold City harmless from any claims arising out of the acts, omissions, negligence or willful misconduct of Developer or its employees, agents, contractors or representatives in connection with such studies and investigations, except for claims arising from or related to any pre-existing condition on or of the City Property or claims to the extent caused by the negligence or willful misconduct of City or its employees, agents, contractors or representatives. If any inspection or test conducted by or expressly on Developer's behalf disturbs the Property, Developer will restore the Property to substantially the same condition as existed prior to any such inspection or test. Prior to any entry or access to the City Property, Developer will provide the City with evidence that the Developer has in place a policy of commercial general liability insurance in an amount not less than \$2,000,000.00 per occurrence covering any accident arising in connection with Developer or its employees and authorized agents, representatives, contractors and consultants entry upon the City Property, naming the City as additional insured. The obligations of the Developer under this Section 3.2.1 shall survive the termination of the Agreement.

3.2.2. Disclosure

The City hereby represents and warrants to Developer that, to the best of the City's knowledge, the City has not received any prior written notice or communication from any government agencies having jurisdiction over the City Property, or from any other third party, notifying the City or any third party of the presence of surface or subsurface zone Hazardous Materials in, on, adjacent to, or under the City Property, or any portion thereof. Developer hereby acknowledges receipt, review and approval of the Final Environmental Impact Report, State Clearinghouse No. 2003072093.

3.2.3. Developer's Investigation of the Property

Developer has had full access to Property and the opportunity to obtain additional information and documentation as Developer deems necessary to evaluate the Property, to investigate and study the condition of the Property, and to make submissions and applications to all applicable governmental authorities with respect to the Entitlements. Developer acknowledges that except for the representations, warranties and covenants of the City contained in this Agreement, Developer has relied and shall rely solely upon (i) its own expertise and that of Developer's consultants in purchasing the Property, and (ii) Developer's own knowledge of the Property based on its investigations and inspections of the Property. Developer has conducted such inspections and investigations of the Property as Developer deemed or shall deem necessary, including, but not limited to, the physical and environmental conditions of the Property. Except for the City's representations, warranties and

covenants and as may be expressly provided herein, upon Closing, Developer acknowledges and, as between the City and Developer, shall assume the risk, that there may be adverse matters, including, but not limited to, adverse physical and environmental conditions, that are not known to the City and that may not have been revealed by Developer's inspections and investigations. Developer acknowledges and agrees that except for the representations and warranties of the City herein, upon Closing, the City shall convey to Developer and Developer shall accept the Property "AS IS, WHERE IS," with all faults and defects (latent and apparent). Except for the representations and warranties of the City contained herein and in any documents executed and delivered by the City at Closing pursuant to this Agreement, Developer further acknowledges and agrees that there are no oral agreements, warranties or representations, collateral to or affecting the Property by the City or any agent, employee or contractor of the City or any third party. The City is not liable or bound in any manner by any oral or written statements, representations, or information pertaining to the Property furnished by the City, or any real estate broker, contractor, agent, employee, servant or other person, unless the same are specifically set forth in this Agreement or any other documents executed and delivered by the City at Closing pursuant to this Agreement. Developer acknowledges that the Property Purchase Price reflects the "as is" nature of this sale and any faults, liabilities, defects or other adverse matters that may be associated with the Property. Developer has fully reviewed the disclaimers and waivers set forth in this Agreement with its counsel and understands the significance and effect thereof.

3.3. Escrow

Not later than sixty (60) days prior to Closing, the Parties shall open escrow (the "**Escrow**") with Escrow Company for the Conveyance and the closing of the City Loan. The Closing shall occur no later than the "Outside Closing Date" stated in the Schedule of Performance, subject to Events of Force Majeure. The Closing shall occur on a date selected by Developer in a written notice to City received at least 30 days in advance of the selected Closing date (the "**Closing Notice**"). If the City does not receive a Closing Notice at least 30 days prior to the Outside Closing Date, the Closing shall occur on the Outside Closing Date.

Developer shall pay and be solely responsible for any documentary transfer taxes in connection with the conveyance of the Property to Developer, and any and all title, recording, escrow and closing costs in connection herewith (the "**Escrow Costs**"), except for the costs and expense of the City's own consultants, and Developer shall prepare and enter into such escrow instructions as are reasonably acceptable to Developer, the City and Escrow Agent.

3.4. CC&Rs

Prior to the Closing date, Developer and the City shall agree upon (a) the allocation of any costs and expenses for the construction, development, operation and maintenance of common areas, common amenities, parking infrastructure and subdivision improvements that will be used by the Affordable Project and any of the Fee Parcels, including any of the same that may be located on the Common Amenities Parcel, and (b) an open / common space and "Agrihood" operating plan and budget, which agreement shall be reflected in one or more written instruments to be recorded against the City's fee interest in the Affordable Housing Parcel and any applicable Fee Parcels, which instruments shall be referred to herein collectively as the "**CC&Rs**". At the election of the City, the City may record the CC&Rs

against the City Property prior to the Closing. The CC&Rs shall also govern ownership and the transferability of the Common Amenities Parcel.

3.5. Title Insurance

3.5.1 Concurrently with the Closing, Title Company shall issue to Developer (or its permitted nominees or assignees), at Developer's cost, such owner's policies of title insurance, in such amounts and with such endorsements as determined by Developer in its reasonable discretion, which may include zoning, survey, access, parcel contiguity, environmental, tax parcel, and subdivision endorsements provided that Developer satisfies all requirements therefor, for each of the Fee Parcels and for the Affordable Project, which at Developer's option may be ALTA extended coverage owner's policies provided that Developer satisfies all requirements therefor (each a "**Developer Title Policy**" and collectively the "**Developer Title Policies**") (provided, however, that it shall not be a Developer Condition Precedent to Closing that any Developer Title Policy be in any amount that is in excess of the Property Purchase Price) as may be required by Developer and Developer's lenders and investors, insuring that Developer has valid fee ownership interest in each of the Fee Parcels and a valid leasehold interest in the Affordable Project, subject only to (A) the lien of non-delinquent real property taxes and assessments, (B) the exceptions to title identified on Attachment G hereto (the "**Permitted Exceptions**"), and (C) agreements expressly required by this Agreement to be recorded at the Closing. The City shall, at no cost or expense to the City, cooperate with and assist Developer in obtaining such policies, including providing any required indemnities or affidavits that are customary and commercially reasonable.

3.5.2 Concurrently with the Closing, Title Company shall issue to the City, at Developer's cost, a lender's policy of title insurance in the amount of the City Loan, which at City's option may be a 2006 ALTA extended coverage lender's policy, together with such endorsements as are reasonably requested by the City (the "**City Lender Policy**"), insuring the lien of the City Deed of Trust to be a first priority lien on the Affordable Project after the lien of the Senior Loans, and containing such endorsements as the City may reasonably require, which may include zoning, survey, access, parcel contiguity, environmental, tax parcel, and subdivision endorsements, subject only to the (A) the lien of non-delinquent real property taxes and assessments, (B) the Permitted Exceptions, (C) agreements expressly required by this Agreement to be recorded at the Closing, (D) the lien of the Senior Lenders, and (E) any exception to title which may be approved by the City.

3.6. Submittals into Escrow for the Closing

The Parties shall submit documents and funds into Escrow for the Closing as set forth in this Section.

3.6.1 Submittals by Developer

At least five (5) Business Day prior to Closing (unless otherwise indicated below), Developer shall submit into Escrow the following:

(A) The CC&Rs, duly executed by Developer and acknowledged where appropriate, if not previously recorded.

(B) The Conveyance Documents to the extent signed by Developer, duly executed by Developer and acknowledged.

(C) The Ground Lease, duly executed by Developer.

(D) The Mixed Income Affordable Housing Agreement, duly executed by Developer and acknowledged.

(E) The State Regulatory Agreement, duly executed by Developer and acknowledged.

(F) The City Loan Documents, duly executed by Developer and acknowledged where appropriate.

(G) The Disbursement Agreement, duly executed by City, Developer, and the Construction Lender (which may be deposited with Escrow one (1) Business Day prior to the Closing date).

(H) Any other documents or other deliverables reasonably requested by the City or the Escrow Agent (which may be deposited with Escrow one (1) Business Day prior to the Closing date).

(I) Sufficient funds to pay the Property Purchase Price, the Infrastructure Reimbursement and all costs of escrow and title to effect the conveyance of the Property to Developer (which amounts may be deposited with Escrow on the Closing date).

3.6.2 Submittals by the City

At least one (1) Business Day prior to Closing, the City shall submit into Escrow the following:

(A) The CC&Rs, duly executed by the City and acknowledged.

(B) The Conveyance Documents, duly executed by the City and acknowledged.

(C) The Ground Lease, duly executed by the City.

(D) The Mixed Income Affordable Housing Agreement, duly executed by Developer and acknowledged.

(J) The State Regulatory Agreement, duly executed by City and acknowledged.

(E) The City Loan Documents, duly executed by the City and acknowledged where appropriate.

(F) The Disbursement Agreement, if applicable.

(G) A non-foreign transferor certification in accordance with the requirements of Section 1445 of the Internal Revenue Code of 1986, as amended, and a

California Form 593 certificate, each in a form acceptable to Developer and Escrow Agent and executed by City.

(H) Any other documents or other deliverables reasonably requested by Developer or the Escrow Agent.

(I) The proceeds of the City Loan, in accordance with the City Loan Documents.

3.7. Conditions Precedent to Closing

The Closing is conditioned upon satisfaction of the terms and conditions set forth in this Section.

3.7.1 The City's Conditions.

The City's obligation to close Escrow and convey the Property to Developer is conditioned upon the satisfaction or written waiver of each and every one of the conditions precedent described below ("**City's Conditions Precedent to Closing**"), which are solely for the benefit of the City, and which shall be satisfied or waived by the time periods provided for herein. The City at its option may terminate this Agreement if any of the conditions precedent set forth below are not satisfied by the Developer or waived in writing by the City by the Outside Closing Date, subject to Events of Force Majeure.

(A) Execution of Documents. Developer and any third party shall have executed and delivered into Escrow the documents listed in Section 3.6.1.

(B) Deposit of Funds. Developer shall have deposited or caused to be deposited all funds necessary for the Closing or otherwise required pursuant to this Agreement, including for payment of the Infrastructure Reimbursement.

(C) Certificates of Good Standing; Authority. Developer shall have delivered to the City certificates of good standing, dated within thirty (30) days of the Closing, and resolutions or consent of the Developer authorizing the acquisition of the Property.

(D) Evidence of Financing. Developer shall have submitted and the City Representative shall have approved Developer's Evidence of Financing in accordance with this Agreement.

(E) City Loan. Developer shall have satisfied all conditions precedent to the closing of the City Loan set forth in Attachment No. 6 of the City Loan Agreement.

(F) City Lender Policy. The City shall have received from Title Company an irrevocable commitment to issue the City Lender Policy upon the recordation of the City Deed of Trust.

(G) Entitlements. The City shall have received evidence reasonably acceptable to it that Developer has obtained all Entitlements necessary for the construction of the Affordable Project, provided that ready-to-issue letters with respect to building permits shall be acceptable.

(H) Labor Compliance. The City shall have received evidence reasonably acceptable to it that the construction of the Affordable Project and the payment of all wages in connection therewith shall be in accordance with the provisions of California Labor Code §§ 1720 through 1861 (the “**Prevailing Wage Law**”) as if compliance with the Prevailing Wage Law were required under applicable law, even if the Prevailing Wage Law would not otherwise, as a matter of law, be applicable to the construction of the Affordable Project.

(I) Insurance. Developer, at its cost, shall have procured and be maintaining in full force and effect insurance consistent with the Insurance Requirements, and Developer shall have provided the City with evidence of insurance.

(J) No Litigation. No litigation shall be pending or threatened by any third parties which seeks to enjoin the transactions contemplated herein or challenge or overturn the Entitlements.

(K) No Default. There shall exist no condition, event or act which would constitute an Event of Default under this Agreement, or which, upon the giving of notice or the passage of time, or both, would constitute an Event of Default.

(L) Representations and Warranties. All representations and warranties of Developer herein contained and contained in this Agreement shall be true and correct in all material respects as if made on and as of the date of Closing.

3.7.2 Developer’s Conditions

Developer’s obligation to close Escrow on the Property is conditioned upon the satisfaction or written waiver by Developer of each and every one of the conditions precedent described below (the “**Developer’s Conditions Precedent to Closing**”), which are solely for the benefit of Developer, and which shall be satisfied or waived by the time periods provided for herein. The Developer at its option may terminate this Agreement if any of the conditions precedent set forth below are not satisfied or waived in writing by the Developer by the Outside Closing Date, subject to Events of Force Majeure:

(A) Execution of Documents. The City shall have executed and delivered into Escrow the documents listed in Section 3.6.2.

(B) No Litigation. No litigation shall be pending or threatened by any third parties which seeks to enjoin the transactions contemplated herein.

(C) No Default. There shall exist no condition, event or act which would constitute an Event of Default by the City under this Agreement, or which, upon the giving of notice or the passage of time, or both, would constitute an Event of Default.

(D) Representations and Warranties. All representations and warranties of the City herein contained and contained in this Agreement shall be true and correct as if made on and as of the date of Closing.

(E) Developer Title Policies. The Title Company shall be irrevocably committed to issue the Developer Title Policies upon recordation of the Conveyance Documents.

(F) No Material Adverse Change. There shall not have occurred between the Effective Date and the Closing any material adverse change to the physical or environmental condition of the Property, except to the extent caused by Developer.

(G) No Leases or Parties in Possession. City shall have terminated any and all leases, licenses, and any other occupancy agreements affecting the Property, including but not limited to the Westfield License Agreement, effective no later than the Closing, and City shall have demonstrated the ability to deliver valid fee title to the Fee Parcels and leasehold title to the Affordable Project to Developer free and clear of any tenants, lessees, licensees or any third party occupants or parties in possession. Furthermore, Westfield shall have completed all of its removal and restoration obligations under the Westfield License Agreement to the reasonable satisfaction of Developer.

(H) Subordination Agreement. The City shall have executed and delivered to Escrow for recordation in the Official Records the Subordination Agreement(s) as provided in the City Loan Agreement.

3.7.3 Close of Escrow.

Provided that both Developer's Conditions Precedent to Closing and the City's Conditions Precedent to Closing have been satisfied or waived in writing, the conveyance of the Property to Developer shall close on the date selected by Developer in the Closing Notice. The Closing shall occur on or before the Outside Closing Date, subject to Events of Force Majeure.

3.7.4 Failure of Conditions to Close of Escrow.

In the event any of the City's Conditions Precedent to Closing or the Developer's Conditions Precedent to Closing are not satisfied prior to the Outside Closing Date, then the respective rights of the parties shall be determined under Section 7.2.

3.8. Funding of the City Loan

The City shall not be obligated to disburse any proceeds of the City Loan until the Closing has occurred.

3.9. Indemnification

Following the conveyance of the Property to Developer, Developer agrees to save, protect, defend, indemnify and hold harmless the City Indemnitees from and against any and all Losses and Liabilities (including, without limitation, reasonable attorneys' and consultants' fees, investigation and laboratory fees, and remedial and response costs), but excluding the extent to which such Losses and Liabilities arises from the gross negligence or intentional misconduct of the City, the City Indemnitees, and/or their agents, representatives, invitees, licensees, consultants, and contractors, which may now or in the future be incurred or suffered by the City Indemnitees, by reason of, resulting from, in connection with, or arising in any manner whatsoever as a direct or indirect result of (i) the ownership (or possession) of all or any part of the Property for purposes of any Governmental Regulations regulating Hazardous Materials with respect to any environmental or other condition of the Property relating to any Hazardous Materials not existing before the Closing and first released onto the Property and/or

occurring following the Closing and not caused by the gross negligence or willful misconduct City or City Indemnitees, (ii) any act or omission on the part of Developer, or its representatives, contractors, volunteers, or invitees with respect to the Property; (iii) the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person resulting from the negligence, intentional acts or omissions of Developer, its officers, agents, volunteers, contractors or employees, in the performance of its obligations under this Agreement, (iv) the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from the Property of any Hazardous Materials first released and/or occurring on the Property following the Closing and not caused by the gross negligence or willful misconduct City or City Indemnitees, (v) any environmental or other condition of the Property relating to any Hazardous Materials not existing before the Closing and first released and/or occurring following the Closing and not caused by the gross negligence or willful misconduct City or City Indemnitees. Developer's obligations under this Section shall survive the termination of this Agreement.

3.10. Occupants of the Property

The Property shall be conveyed to Developer free of any possession or right of possession by party except that of Developer. City shall terminate the Westfield License Agreement prior to the Closing and shall cause Westfield to have completed all of its removal and restoration obligations under the Westfield License Agreement to the reasonable satisfaction of Developer prior to the Closing.

3.11. Zoning of the Property

It is the responsibility of Developer, without cost to the City, to ensure that zoning of the Property and all applicable City land use requirements will be such as to permit development of the Affordable Project and the use, operation and maintenance of the Affordable Project Improvements in accordance with the provisions of this Agreement. Nothing contained herein shall be deemed to entitle Developer to any City permit or other City approval necessary for the development of the Property, or waive any applicable City requirements relating thereto. This Agreement does not (a) grant any land use entitlement to Developer, (b) supersede, nullify or amend any condition which may be imposed by the City in connection with approval of the development described herein, (c) guarantee to Developer or any other party any profits from the development of the Property, or (d) amend any City laws, codes or rules. This Agreement is not a development agreement as provided in Government Code Section 65864 et seq.

3.12. Release

On and after the Closing, Developer hereby waives, releases and discharges the City Indemnitees, from any and all present and future claims, demands, suits, legal and administrative proceedings, and from all liability for damages, losses, costs, liabilities, fees and expenses (including, without limitation, attorneys' fees), including any special or consequential damages, arising out of or in any way connected with the City's or Developer's use, maintenance, ownership or operation of the Property, any Hazardous Materials on the Property, or the existence of Hazardous Materials contamination in any state on the Property, however the Hazardous Materials came to be placed there, except for those arising out of (i) the gross negligence, intentional misconduct, or fraud of the City or its employees, officers or agents, or

(ii) any breach by City of this Agreement (including but not limited to breaches of representations and warranties of City expressly set forth herein) or the other agreements that City enters into pursuant to this Agreement, including but not limited to the Ground Lease and the City Loan Documents, and (iii) any third party breach of contract claim or third party tort claims brought against Buyer for personal injury, wrongful death or personal property damage, in each case arising out of events occurring during City's ownership of the Property. Developer acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." To the extent of the release set forth in this Section, Developer hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

3.13. Existing Covenants on the Property

Developer hereby agrees and acknowledges that the City Property is subject to the State Grant Deed and the State Purchase Agreement. Developer has had the opportunity to review and acknowledges receipt of the State Grant Deed and the State Purchase Agreement.

City shall cooperate, without cost and expending material staff time, with Developer to obtain a release, amendment, subordination, release, standstill or other form of modification of the right of reverter set forth in the State Grant Deed from the State of California, in a form acceptable to Developer in its sole discretion, and which will allow for the financing and development of the Fee Parcels and the Affordable Project (the "**Right of Reverter Modification**"); provided that (a) the City is not required to obtain the Right of Reverter Modification, (b) the Right of Reverter Modification shall not be a Developer's Condition Precedent to Closing or a City's Condition Precedent to Closing, and (c) failure to obtain the Right of Reverter Modification shall not be an Event of Default by the City or Developer.

3.14. City Advance. Within five (5) business days of execution of this Agreement, Developer shall pay to City the amount of \$245,000 (the "**City Advance**"). The City Advance shall be credited toward the Property Purchase Price at the Closing. The City Advance shall be returned to Developer in connection with a termination of this Agreement arising from an Event of Default by the City. In addition to the City Advance, Developer shall deposit with the City the amount of \$50,000 for estimated reasonable costs and expenses in connection with this Agreement, ancillary documents and the City Loan Documents and the transactions described therein, and shall be nonrefundable.

3.15. Infrastructure Reimbursement

Developer acknowledges and agrees that, as of Closing, Developer will become obligated to pay the amount of \$778,490 (the "**Infrastructure Reimbursement**") to SummerHill Winchester, LLC as reimbursement for the construction of public improvements which benefit the Property, as described in the letter dated April 7, 2017 from Berliner Cohen LLP, on behalf of SummerHill Winchester, LLC, to the City.

3.16. Parks and Dwelling Unit Tax Requirements

Developer acknowledges its obligation to provide park land, pay a fee in lieu thereof, or a combination of such dedication and fee, at the discretion of the City, pursuant to Santa Clara City Code Chapter 17.35 (or any successor statute). Said fees shall be due and payable to the City prior to issuance of a building permit for any dwelling unit.

Developer acknowledges its obligation to pay a dwelling unit tax per Santa Clara City Code Chapter 3.15 (or any successor statute). Said fees shall be due and payable upon application to the City for a building permit for the construction of any such dwelling unit.

4. FINANCING OF THE AFFORDABLE PROJECT

4.1. Sources of Construction Financing

Developer anticipates that the Development Costs will be financed in accordance with the Financing Summary. Developer shall be permitted to submit a revised Project Pro Forma and financing different from that described herein prior to Closing, which shall be subject to the review and approval of the City in accordance herewith. Developer shall also use best efforts to obtain additional sources of financing in order to minimize the principal amount of the City Loan.

4.2. The City Loan

4.2.1 Closing

Upon Closing, the City hereby agrees to loan to Developer and Developer hereby agrees to borrow from the City, the City Loan in accordance with the City Loan Documents. The City shall make the City Loan to Developer from receipt of the Property Purchase Price. The City shall not be required to make any loan to Developer in excess of the Property Purchase Price. The City shall not use the Property Purchase Price received from Developer for any purpose except to make and fund the City Loan.

4.2.2 Subordination of City Loan Documents

Concurrently with Closing, the City shall enter into a Subordination Agreement with each Senior Lender.

5. EVIDENCE OF FINANCING; CONSTRUCTION CONTRACT

5.1. Evidence of Financing

Developer covenants and agrees to submit timely applications for the financing sources set forth in the Financing Summary, and to apply for the Tax Credits by the date set forth in the Schedule of Performance subject to Events of Force Majeure. Developer shall also demonstrate that the sources set forth in the Financing Summary, or such other financing as may be obtained by Developer and approved by the City, will constitute sufficient financing such that the City Representative is reasonably satisfied that the Affordable Project can be constructed and operated as proposed by the Developer and will be financially feasible.

As a condition precedent to the Closing, Developer shall provide the City with copies of written, enforceable documentation reasonably acceptable to the City that Developer has or will have the right and access to the financing indicated in the Project Pro Forma (collectively, the “**Evidence of Financing**”), which Evidence of Financing shall include, without limitation, executed loan documents for all loans, executed contracts for any rental subsidies, a reservation of Tax Credits from TCAC, and executed syndication documents evidencing the Investor Limited Partner’s capital obligations. Upon the Closing, the City shall be deemed to have approved all Evidence of Financing required hereunder.

5.2. Construction Budget; Construction Loan

Prior to the Closing, Developer shall submit to and obtain the City’s approval of the Construction Budget, showing the projected predevelopment and construction costs of the Affordable Project Improvements and a sources-and-uses statement showing that the projected funding sources will be available as needed to fund all such projected costs at the time incurred.

The Construction Loan shall be secured by Developer’s interest in the Affordable Project and the Affordable Project Improvements located thereon. In no event shall the Construction Loan be cross-defaulted with any loan secured by property other than the Affordable Project or assets attached to property other than the Affordable Project.

5.3. Construction Contract

At least 30 days prior to the Closing, Developer covenants and agrees to deliver to the City a fixed price or guaranteed maximum cost construction contract(s) (the “**Construction Contract**”) for all of the Affordable Project Improvements for approval by the City, which shall not be unreasonably withheld, delayed or conditioned, which Construction Contract shall obligate the General Contractor to commence and complete the construction of those Affordable Project Improvements in accordance with the City Loan Agreement and at the price stated in the Construction Contract.

6. **COVENANTS AND RESTRICTIONS**

6.1. Use Covenants

As set forth in the City Loan Agreement, Developer covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Affordable Project or any part thereof, that the Affordable Project shall be used, maintained and operated in compliance with the City Regulatory Agreement. Developer further covenants and agrees for itself and its successors and assigns that the Affordable Units shall be continuously occupied or held vacant and made available to Qualified Tenants at an Affordable Rent during the Affordability Period. All uses conducted on the Affordable Project, including, without limitation, all activities undertaken by Developer pursuant to this Agreement, shall conform to all applicable provisions of the Santa Clara City Code.

6.2. Nondiscrimination Covenants

As set forth in the City Loan Agreement, Developer covenants and agrees that there shall be no discrimination against or segregation of any person 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 sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of any Unit or the Affordable Project nor shall Developer establish or permit any such practice or practices of discrimination or segregation with reference to the location, subtenants, or vendees of any Unit or in connection with the employment of persons for the construction, operation and management of the Affordable Project.

Notwithstanding the foregoing paragraph, with respect to familial status, the foregoing paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the foregoing paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the foregoing paragraph.

All deeds, rental agreements, leases, or contracts made or entered into by Developer as to the Units or the Affordable Project or any portion thereof, shall contain and be subject to the following nondiscrimination and nonsegregation clauses:

a. In deeds: “The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person 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 sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

Notwithstanding the foregoing paragraph, with respect to familial status, the foregoing paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the foregoing paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the foregoing paragraph.

b. In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person 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 leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor

shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

Notwithstanding the foregoing paragraph, with respect to familial status, the foregoing paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the foregoing paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the foregoing paragraph.

c. In contracts: “There shall be no discrimination against or segregation of any person 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 connection with the performance of this contract nor shall the contracting party himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, contractors, subcontractors or vendees with respect to the premises.”

Notwithstanding the foregoing paragraph, with respect to familial status, the foregoing paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the foregoing paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the foregoing paragraph.

The covenants established herein shall, without regard to technical classification and designation, be binding on Developer and any successors in interest to the Affordable Project, or any part thereof, for the benefit and in favor of the City and its successors and assigns. The covenants against discrimination shall run with the land and remain in effect in perpetuity.

6.3. Social Services

As set forth in the City Loan Agreement, Developer covenants and agrees to provide a Social Services Plan for the Affordable Project to the City prior to Closing. Developer covenants and agrees to provide Social Services to the residents of the Affordable Project in accordance with the Social Services Plan.

6.4. Leases and Service Contracts.

From the Effective Date hereof until the Closing, City shall not enter into any lease, contract, license or other delegation of right with respect the City Property that would either survive Closing or would reasonably be expected to have an material effect on the

condition of the City Property after Closing. City shall also not cause nor voluntarily permit, any new lien, encumbrance or any matter to cause the condition of title to be changed in any way.

6.5. Interim Operation of City Property.

From the Effective Date hereof until the Closing, City shall operate and maintain the City Property, and shall continue to maintain insurance for the City Property, in a manner generally consistent with the manner in which City has operated and maintained the City Property prior to the date hereof.

6.6. Cooperation.

The City shall reasonably cooperate with Developer and support and assist Developer in the processing and permitting of all project related Entitlements from the City and any and all other regulatory agencies with jurisdiction over the Agrihood project. The City shall execute any and all applications, forms, and/or certificates as are reasonably required to process all entitlements, maps, and other approvals as reasonably requested by Developer. In the event that an appeal, requesting for rehearing, legal challenge, initiative and/or referendum is brought against any of the Entitlements, the City, at Developer's sole cost and expense, will cooperate with the Developer in prosecuting an appropriate defense. Notwithstanding anything to the contrary herein, in no event shall the City be responsible for the cost of any legal fees necessary to defend the Agrihood project. The City's compliance with this Section 6.6 shall not be deemed an approval of, or agreement with respect to, any such matters. The City's obligation to cooperate under this Section 6.6 shall be subject to the condition precedent that Developer provide all required information or documentation relating to such cooperation.

7. DEFAULTS, REMEDIES AND TERMINATION

7.1. Defaults - General

Subject to Events of Force Majeure and any other extensions of time approved in writing by the parties, failure or delay by either party to timely perform, comply with or observe any of the conditions, provisions, terms, covenants or representations of this Agreement, at the time indicated in this Agreement, shall constitute a default under this Agreement. In addition to the foregoing, the following shall constitute a default hereunder: (a) Developer fails to perform an act by the time set forth therefore in the Schedule of Performance subject to Events of Force Majeure; or (b) a petition is filed in bankruptcy, or other bankruptcy or similar proceeding is commenced by or against Developer under any applicable bankruptcy, insolvency or similar law now or hereafter in effect which is not released within ninety (90) days.

As provided hereinbelow, the party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with diligence. The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the date of default.

Except as required to protect against further damages, the injured party may not institute legal proceedings against the party in default until an "Event of Default" (as such term is hereinafter defined) has occurred. For purposes of this Agreement, an "**Event of Default**" for

purposes of instituting legal proceedings by a non-defaulting party against the defaulting party shall mean that a default as described above has occurred, and such default has continued uncured for thirty (30) calendar days after notice thereof is received (as described in Section 8.1), or, if the default cannot reasonably be cured in thirty (30) calendar days, without the defaulting party commencing to diligently cure within thirty (30) calendar days after notice thereof in writing is received (as described in Section 8.1) by the injured party to the defaulting party; provided, however, that if a different period or notice requirement is specified for any particular default under any other provision of this Agreement, the specific provision shall control; and provided further, that if such failure is not reasonably capable of being cured within such thirty (30) day or different period, despite the defaulting party's good faith and timely efforts, such time as is reasonably necessary to complete such cure, but in no event shall such time exceed ninety (90) calendar days after notice thereof is mailed to the defaulting party. Notwithstanding anything to the contrary herein, a cure period shall not extend the timing requirements set forth in the Schedule of Performance or the Outside Closing Date.

7.2. Remedies and Termination

7.2.1. City's Remedies for Developer Event of Default; Liquidated Damages

If an Event of Default by Developer occurs (including any Event of Default in connection with the failure by Developer to achieve Closing), City, as its sole and exclusive remedy hereunder, shall have the right to terminate this Agreement by delivering written notice thereof to Developer, in which case (a) the City Advance shall be retained by the City as liquidated damages, and (b) Developer shall pay all escrow termination charges, in which event this Agreement shall be terminated.

NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREUNDER, DEVELOPER AND THE CITY AGREE THAT BASED UPON THE CIRCUMSTANCES NOW EXISTING, KNOWN AND UNKNOWN, IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO ESTABLISH THE CITY'S DAMAGE BY REASON OF DEVELOPER'S DEFAULT UNDER OR ELECTION TO TERMINATE THIS AGREEMENT. ACCORDINGLY, DEVELOPER AND THE CITY AGREE THAT IN THE EVENT OF A DEFAULT OR TERMINATION BY DEVELOPER UNDER THIS AGREEMENT, IT WOULD BE REASONABLE AT SUCH TIME TO AWARD THE CITY, AS THE CITY'S SOLE AND EXCLUSIVE REMEDY, "LIQUIDATED DAMAGES" EQUAL TO THE AMOUNT REPRESENTED BY THE CITY ADVANCE. SUCH LIQUIDATED DAMAGES SHALL BE THE CITY'S SOLE AND EXCLUSIVE REMEDY FOR DEVELOPER'S EVENT OF DEFAULT OR ELECTION TO TERMINATE AND DEVELOPER SHALL HAVE NO OTHER OR FURTHER OBLIGATION OR LIABILITY TO THE CITY ON ACCOUNT OF SUCH DEFAULT OR BREACH (EXCEPT FOR INDEMNITY OBLIGATIONS WHICH SURVIVE TERMINATION OF THIS AGREEMENT AND PAYMENT OF ESCROW TERMINATION CHARGES). THE PARTIES ACKNOWLEDGE THAT THE PAYMENT OF SUCH LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO THE CITY PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677.

INITIALS: CITY _____ DEVELOPER _____

7.2.2. Developer Remedies for City Event of Default

If an Event of Default by City occurs, Developer shall have the right to (a) terminate this Agreement by delivering written notice thereof to the City, in which case the City Advance shall be returned to Developer, and City shall pay all escrow termination charges, in which event this Agreement shall be terminated, or (b) seek specific performance of this Agreement.

7.2.3. Developer's Right to Terminate Prior to the Closing.

At any time prior to the Closing, Developer shall have the right to terminate this Agreement by delivering written notice thereof to the City, in which case (a) the City Advance shall be retained by the City as liquidated damages, and (b) Developer shall pay all escrow termination charges, in which event this Agreement shall be terminated.

7.2.4. Automatic Termination upon Outside Closing Date

Subject to Events of Force Majeure, this Agreement shall automatically terminate upon the Outside Closing Date in the event the Closing has not occurred by the Outside Closing Date, in which case (a) the City Advance shall be retained by the City as liquidated damages unless Closing has not occurred due to an Event of Default by the City, and

(b) Developer shall pay all escrow termination charges, in which event this Agreement shall be terminated.

7.3. Survival of Terms After Termination; Several Obligations After Closing

Following any termination, neither the City nor Developer shall have any further rights against or liability to the other under this Agreement. Developer's indemnification obligations under this Agreement shall remain in force following such termination with respect to any events occurring or claims accruing prior to the date of such termination.

Furthermore, effective as of the Closing, the surviving indemnification obligations of Developer hereunder with respect to each of the Parcels shall be several, and not joint; e.g. the obligations of Developer or its successor as to the Affordable Project shall not be the obligations of Developer or its successors as to the Fee Parcels, any remaining indemnity obligations of Developer or its successor as to the Market Rate Parcel shall not be the obligations of Developer or its successors as to the Common Amenities Parcel, Mixed Income Parcel and the Affordable Project, etc.; provided, however, that original Developer shall not be released from any such obligations except in writing executed by the City. For the avoidance of doubt, none of the obligations of Developer or any successor with respect to any of the Parcels shall be joint with respect to any of the other Parcels on or after the Closing.

7.4. Limitation on Liability

Neither Developer nor the City shall in any event be entitled to, and each hereby waives, any right to seek loss of profits, or any special, incidental or consequential damages of any kind or nature, however caused, from the other Party arising out of or in connection with this Agreement, even if the other Party has been advised of the possibility of the damages, and in connection with such waiver each Party is familiar with and hereby waives the provision of § 1542 of the California Civil Code which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”

7.5. Legal Actions

7.5.1. Institution of Legal Actions

Any legal actions hereunder may be instituted in the Superior Court of the County of Santa Clara, State of California, or in the Federal District Court in the Northern District of California.

7.5.2. Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

7.5.3. Acceptance of Service of Process

In the event that any legal action is commenced by Developer against the City, service of process on the City shall be made by personal service upon the City Representative, or in such other manner as may be provided by law.

In the event that any legal action is commenced by the City against Developer, service of process on Developer shall be made by personal service upon Developer (or upon a general partner, managing member or officer of Developer), or in such other manner as may be provided by law.

7.6. Rights and Remedies are Cumulative

To the extent permitted by law and except with respect to rights and remedies expressly declared to be exclusive 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 time or different times, of any other rights or remedies for the same Event of Default or any other Event of Default by the other party.

7.7. Inaction Not a Waiver of Default

Any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

7.8. Post-Closing Termination as to Each of Parcels

This Agreement shall terminate as of the Closing as set forth in this Section 7.8.

7.8.1. Common Amenities Parcel

Except for indemnification obligations of Developer hereunder applicable to the Common Amenities Parcel, this Agreement shall terminate as to the Common Amenities Parcel as of the Closing.

7.8.2. Market Rate Parcel

Except for indemnification obligations of Developer hereunder applicable to the Market Rate Parcel, this Agreement shall terminate as to the Market Rate Parcel as of the Closing.

7.8.3. Mixed Income Parcel

Except for indemnification obligations of Developer hereunder applicable to the Mixed Income Parcel, this Agreement shall terminate as to the Mixed Income Parcel as of the Closing.

7.8.4. Affordable Housing Parcel.

Except for indemnification obligations of Developer hereunder applicable to the Affordable Housing Parcel, this Agreement shall terminate as to the Affordable Housing Parcel as of the Closing.

7.9. Attorneys' Fees

In any action between the Parties to interpret, enforce, reform, modify, rescind or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing Party in the action or other proceeding shall be entitled, in addition to damages, injunctive relief or any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs, expert witness fees and reasonable attorneys' fees.

As used herein, the terms "attorneys' fees" or "attorneys' fees and costs" means the fees and expenses of counsel to the parties hereto (including, without limitation, in-house or other counsel employed by the City or Developer) which may include printing, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals and others not admitted to the bar but performing services under the supervision of an attorney and fees and costs for expert witnesses. The terms "attorneys' fees" or "attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings, and whether or not any action or proceeding is brought with respect to the matter for which said fees and expenses were incurred.

8. **GENERAL PROVISIONS**

8.1. Notices, Demands and Communications Between the Parties

All notices, demands, requests, elections, approvals, disapprovals, consents or other communications given under this Agreement shall be in writing ("**Notice**") and shall be given by personal delivery, certified mail, return receipt requested, or overnight guaranteed delivery service and addressed as follows, or at any other address as that party may later designate by Notice:

To the City: City Manager's Office
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attention: City Manager

Copy to: City Attorney's Office
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attention: City Attorney

Copy to: Carle, Mackie, Power & Ross LLP
100 B Street, Suite 400
Santa Rosa, CA 95401
Attention: Henry Loh II

To Developer: Core Winchester, LLC
470 South Market Street
San Jose, CA 95113
Attention: Chris Neale

Copy to: Cox, Castle & Nicholson LLP
50 California Street, Suite 3200
San Francisco, CA 94111
Attention: Lisa D. Weil

Any Notice shall be deemed received immediately if delivered by hand, shall be deemed received on the third day from the date it is postmarked if delivered by certified mail, and shall be deemed received on the date of delivery if sent via overnight courier. Notices sent by a party's attorney on behalf of such party shall be deemed delivered by such party.

8.2. Conflicts of Interest

No member, official or employee of the City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law.

8.3. Warranty Against Payment of Consideration for Agreement

Developer warrants that it has not paid or given and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as project managers, architects, engineers, attorneys, and public relations consultants.

8.4. Nonliability of the City Officials and Employees

No member, official, employee, representative or agent of the City shall be personally liable to Developer, or any successor in interest thereof, in the event of any default or breach by the City under the terms of this Agreement.

8.5. Non-liability of Officers and Employees of Developer.

No non-managing member, limited partner, shareholder, officer, director, or employee of Developer shall be personally liable to City, or any successor in interest thereof, in the event of any default or breach by Developer under the terms of this Agreement.

8.6. Approvals by the City and Developer

Approvals required of the parties shall be given within the time set forth in this Agreement, the Schedule of Performance or, if no time is given, within a reasonable time. Wherever this Agreement requires the City or Developer to approve any contract, document, plan, proposal, specification, drawing or other matter, such approval shall not be unreasonably withheld, conditioned or delayed, unless expressly provided to the contrary.

8.7. Force Majeure

In addition to specific provisions of this Agreement, performance by any Party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended where delays or defaults due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God or any other deity; acts or threats of the public enemy or terrorists; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation, arbitration, administrative proceedings, initiatives and/or referenda, including challenges to the validity of this transaction or the Entitlements, or any element thereof, or any portion thereof; unusually severe weather; inability to secure necessary materials or tools; acts or failure to act of the City or any other public or governmental agency or entity (other than that acts or failure to act of the City shall not excuse performance by the City); an Economic Event, as defined and subject to the provisions stated below; or any other causes beyond the reasonable control or without the fault of the Party claiming an extension of time to perform or relief from default (each of the foregoing and **“Event of Force Majeure”** and collectively **“Events of Force Majeure”**).

“Economic Event” shall mean (a) a year-over-year decrease of 10% or more of average asking rent in Santa Clara County; (b) a year-over-year increase of 20% or more on construction costs in Santa Clara County; or (c) the difference of (I) the quotient of net operating income and total projects costs, minus (II) capitalization rates, is less than 0.5% with respect to the Affordable Project. Notwithstanding the first paragraph of this Section 8.7, (A) upon the occurrence of any Economic Event, the extension shall be for 12 months and (B) only one Economic Event shall cause an extension as an Event of Force Majeure, and any later Economic Events shall not cause any extension hereunder.

The lack of funding to complete the development of the Affordable Project shall not constitute grounds of Force Majeure delay pursuant to this Section 8.7. Except for one Economic Event as provided in this Section 8.7, Developer expressly assumes the risk of real estate market conditions, construction costs, interest rates, and other similar general economic circumstances that may make funding and/or construction of the Affordable Project difficult, more expensive, or infeasible, whether or not such events or causes are foreseeable as of the date of this Agreement. Developer acknowledges and agrees that the provisions of this Section 8.7 shall not operate to excuse Developer from prompt payment when due under the City Loan Documents.

An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) calendar days after it obtains actual knowledge of the event. Times of performance under this Agreement may also be extended in writing by mutual agreement between the City and Developer.

Notwithstanding anything to the contrary herein, an Event of Force Majeure shall not extend the date of performance under any obligation that is enforceable by the State of California pursuant to the State Grant Deed, unless the State agrees to extend or otherwise modify the date of performance.

8.8. Interpretation

This Agreement shall be construed as a whole and in accordance with its fair meaning and as though both of the parties participated equally in its drafting. Captions and organizations are for convenience only and shall not be used in construing meaning.

8.9. Administration

This Agreement shall be administered by the City Representative following execution of this Agreement by the City. Whenever a reference is made in this Agreement to an action, finding or approval to be undertaken by the City, the City Representative or his or her designee are authorized to act on behalf of the City unless specifically provided otherwise or the context should require otherwise. The City Representative or his or her designee shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement and to negotiate and finalize all agreements and documents referred to herein on behalf of the City, so long as such actions do not substantially change the uses or development permitted on the Affordable Project, or add to the costs of the City as specified herein or as agreed to by the City Council or other authorized body. Notwithstanding the foregoing, the City Representative or his or her designee may in their sole and absolute discretion refer any matter to the board of the City and/or other authorized body for action, direction or approval.

8.10. Mutual Cooperation

Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful or appropriate to carry out the purposes and intent of this Agreement.

8.11. Independent Contractor

The parties agree that Developer, in the performance of this Agreement, is not and shall not act in the capacity of an agent, employee or partner of the City.

8.12. Time

Time is of the essence in the performance of this Agreement.

8.13. Third-Party Beneficiaries

This Agreement is made and entered into for the sole protection and benefit of the City, its successors and assigns, and Developer, its permitted successors and assigns, and no other person or persons shall have any right of action hereunder.

9. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

This Agreement constitutes the entire understanding and agreement of the Parties. Two (2) duplicate originals of this Agreement shall be executed, each of which shall be deemed to be an original. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

Except as otherwise provided herein, this Agreement contains all of the understandings of the parties relating to the transactions contemplated by this Agreement, and supersedes all

negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City or Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of the City and Developer. Notwithstanding the previous sentence, the parties agree that the City Representative, on behalf of the City, shall be entitled to extend the dates in the Schedule of Performance without the need for amending the Agreement.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the City and Developer have signed this Agreement as of the date and year first above written.

“CITY”

CITY OF SANTA CLARA,
a California municipal corporation

By: _____
Name: _____
Its: _____

APPROVED AS TO FORM:

Brian Doyle, City Attorney

[SIGNATURE PAGE TO DISPOSITION AND DEVELOPMENT AGREEMENT]

[PAGE 1 OF 2]

“DEVELOPER”

CORE WINCHESTER, LLC,
a California limited liability company

By: _____
Chris Neale, Manager

By: _____
David Neale, Manager

[SIGNATURE PAGE TO DISPOSITION AND DEVELOPMENT AGREEMENT]

[PAGE 2 OF 2]

ATTACHMENT A

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SANTA CLARA, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Parcel 3 as shown on that certain parcel Map, which Map was filed in the Office of the Recorder of the County of Santa Clara, State of California on April 29, 2009, Book 831 of Maps, Page(s) 53 and 54.

Excepting and reserving to the State of California, in the Deed recorded January 5, 2012 as Instrument No. 21485774, all minerals and mineral deposits, including, but not limited to, oil and gas, other gases, including, but not limited to, nonhydrocarbon and geothermal gases, oil shale, coal, phosphate, alumina, silica, fossils of all geological ages, sodium, gold, silver, metals and their compounds, alkali, alkali earth, sand, clay, gravel, salts and mineral waters, uranium, trona, and geothermal resources, together with the right of the State to prospect for, drill for, extract, mine and remove such deposits or resources, except that the State or persons authorized by the State shall not have the right to prospect for, drill for, extract, mine or remove such deposits above a plane located 500 feet below the surface nor a right to occupy and use the surface of such lands for said purposes.

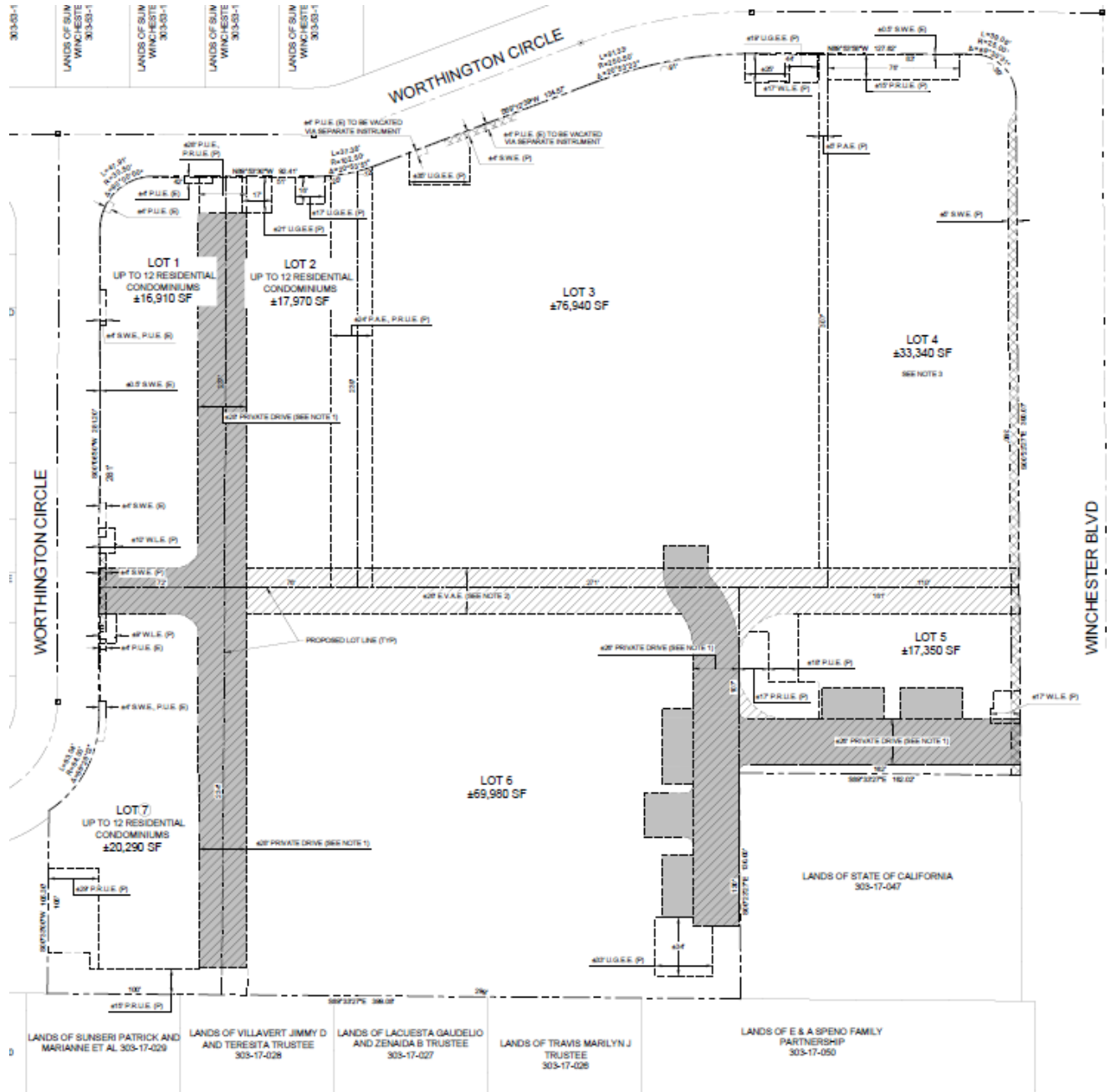
Assessor's Parcel Number: 303-17-053

[DESCRIPTIONS AND DEPICTIONS OF PARCELS FOLLOW]

ATTACHMENT A-1

DESCRIPTION OF MARKET RATE PARCEL

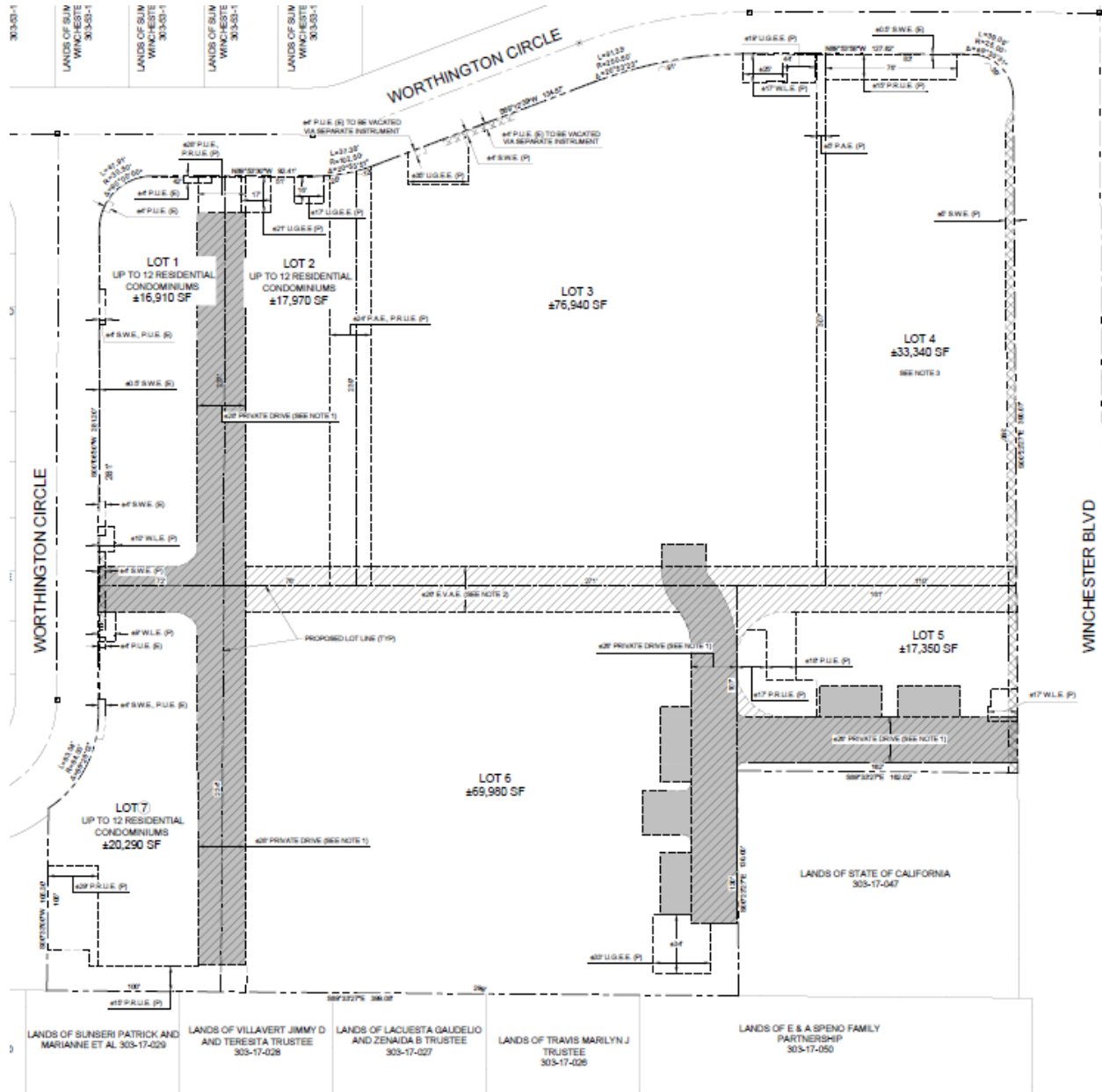
Lots 1, 2 and 7 as depicted below



ATTACHMENT A-2

DESCRIPTION OF MIXED INCOME PARCEL

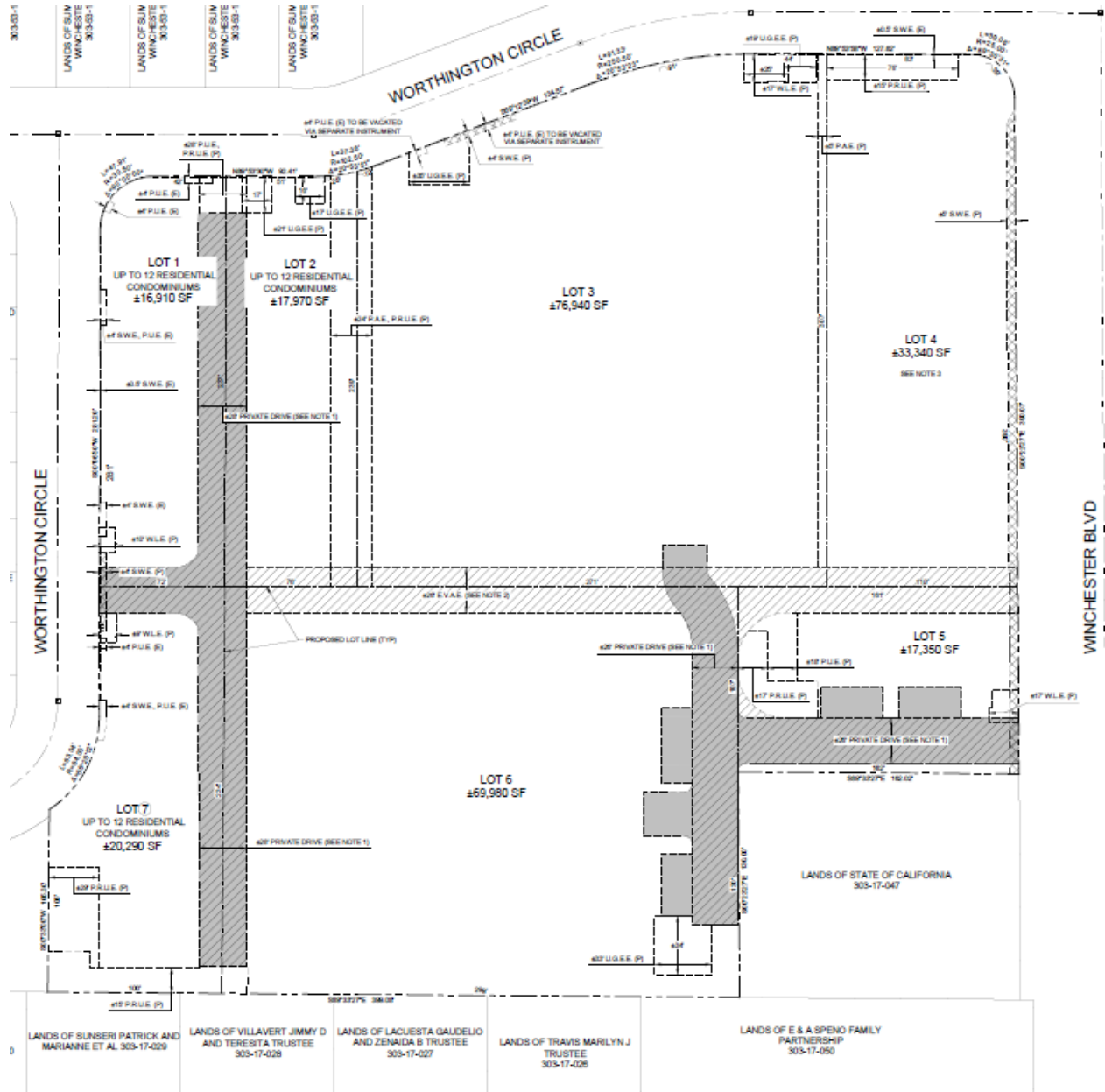
Lot 3 as depicted below



ATTACHMENT A-3

DESCRIPTION OF AFFORDABLE HOUSING PARCEL

Lot 6 as depicted below



ATTACHMENT B

SCHEDULE OF PERFORMANCE

County Funding Approval	December 18, 2018
Public Hearing – DDA, PD Zoning, Tentative Map.....	January 29, 2019
Architectural Review Committee	May 31, 2019
Final Map/Improvement Plan Approval	December 31, 2019
Building Permit Ready.....	February 29, 2020
Submit 4% CDLAC & TCAC applications	March 31, 2020
Apply for State Tax Credits	March 31, 2020
CDLAC, TCAC, State Credit Award	June 30, 2020
Closing Date.....	August 31, 2020
Construction Start	September 30, 2020
Construction Completion.....	September 30, 2022
PIS.....	September 30, 2022
100% Occupied.....	September 30, 2022
8609 Certification	December 31, 2023

ATTACHMENT C

[RESERVED]

ATTACHMENT D
INSURANCE REQUIREMENTS

[to be attached]

ATTACHMENT E

FINANCING SUMMARY



Santa Clara Sustainable - 4% Proforma (33% PBV) - C1

PROJECT DATA									
LAND				SITE, BUILDING AND UNIT DETAILS					
Acreage	1.51	acres		PARKING					
Density	103	units/acre		# of residential spaces	99				
# of Stories	5			residential parking ratio	0.6				
				total # parking spaces	99				
BUILDING				UNIT MIX		AFFORDABILITY BREAKDOWN			
Residential	91,347	sf		Unit Type	Avg. Rent	# Units	30%	40%	50%
Circulation and Common	17,751	sf		Studio/SRO	\$ 1,137	70	30	25	15
Commercial	-	sf		1-Bedroom	\$ 1,387	W/1 Mngr 84	24	27	0
Podium Garage	29,006	sf		2-Bedroom	\$ 1,985	W/1 Mngr 11	0	2	0
				3-Bedroom	-	0	0	0	0
				4-Bedroom	-	0	0	0	0
				Total Units		166	64	64	66
				Average Affordability					43.4%

SOURCES			
Source Name	CONSTRUCTION SOURCES	PERMANENT SOURCES	PERMANENT SOURCES
	Total	Total	per unit
Construction Loan	\$ 41,040,559	\$ -	\$ -
Amortizing Perm Loan, Tranche A	\$ -	\$ 8,713,900	\$ 52,812
Amortizing Perm Loan, Tranche B	\$ -	\$ 7,590,300	\$ 46,002
Santa Clara County Measure A	\$ 11,774,695	\$ 23,549,791	\$ 142,726
Market Rate Land Sales Proceeds	\$ 15,262,000	\$ 15,262,000	\$ 92,497
AHP	\$ -	\$ -	\$ -
-	\$ -	\$ -	\$ -
-	\$ -	\$ -	\$ -
-	\$ -	\$ -	\$ -
Other Source 4	\$ -	\$ -	\$ -
Other Source 5	\$ -	\$ -	\$ -
Other Source 6	\$ -	\$ -	\$ -
Other Source 7	\$ -	\$ 61,000	\$ 370
Tax Credit Investor Proceeds (Federal)	\$ 2,438,877	\$ 24,388,774	\$ 147,811
Tax Credit Investor Proceeds (State)	\$ -	\$ -	\$ -
GP Equity	\$ 2,440,000	\$ 2,440,000	\$ 14,788
Deferred Developer Fee	\$ -	\$ 1,267,585	\$ 7,682
TOTAL	\$ 72,868,542	\$ 63,275,360	\$ 604,887

USES			
ACQUISITION	total	per unit	per SF
Land	\$ -	\$ -	\$ -
Other Acquisition Costs	\$ 280,849	\$ 1,763	\$ 2
Total Acquisition Costs	\$ 280,849	\$ 1,763	\$ 2
HARD COSTS			
Site Work and Structures	\$ 48,955,126	\$ 296,698	\$ 418
Commercial Costs	\$ -	\$ -	\$ -
Overhead & Profit/GC/Ins. Bond	\$ 7,346,287	\$ 44,523	\$ 63
Owner Contingency	\$ 2,804,101	\$ 16,995	\$ 24
Total Hard Costs	\$ 59,105,514	\$ 368,216	\$ 505
SOFT COSTS			
Architecture and Engineering	\$ 5,153,043	\$ 31,231	\$ 44
Construction Loan Interest and fees	\$ 2,964,300	\$ 17,965	\$ 25
Permanent Financing	\$ 233,042	\$ 1,412	\$ 2
Legal Fees	\$ 605,000	\$ 3,667	\$ 5
Reserves	\$ 546,957	\$ 3,315	\$ 5
Permits and Fees	\$ 3,532,725	\$ 21,410	\$ 30
Other Soft Costs	\$ 3,984,305	\$ 24,147	\$ 34
Relocation	\$ -	\$ -	\$ -
Developer Fee	\$ 6,857,585	\$ 41,561	\$ 59
Total Soft Costs	\$ 23,676,957	\$ 144,709	\$ 204
TOTAL DEVELOPMENT COSTS	\$ 83,275,360	\$ 604,887	\$ 711

SCHEDULE		
MILESTONE	ESTIMATE	ACTUAL
Entitlement		
Funding Committed		
Tax Credit Award		
Construction Start		
Construction Complete		
100% Occupied		
Permanent Conversion		
PIS Package		
8609s		

FINANCING ASSUMPTIONS		
Debt Coverage Ratio		1.15
Construction Loan	Term (Months): 29	Rate 4.8%
Permanent Loan	Term/Amort (Years): 35	Rate 5.1%

TAX CREDIT ASSUMPTIONS	
Price	0.93
1.30% Basis Boost?	No
100% Tax Credit Eligible?	Yes
State Credits	No

DEVELOPER FEE	
Fee Paid	\$3,150,000
Deferred Amount	\$1,267,585
GP Equity	\$2,440,000
PAID TO PUBLIC LENDERS FROM CASH FLOW	
Santa Clara County Measure A	Pro-Rata Share 30%
Market Rate Land Sales Proceeds	20%
	\$3,682,460
	\$2,386,505
OPERATING AND SERVICE EXPENSE ASSUMPTIONS	
	Per Unit / Year
Total Residential Operating Expenses	\$ 6,300
Resident Services Fee	\$ 500
Ongoing Ag Maintenance	\$ 559
Replacement Reserves	\$ 350
Debt Admin Fees - Bond Issuer, MHA, Other	\$ 4,638

AFFORDABLE CASH FLOW - YEARS 1-5 and 15						
	2019	2020	2021	2022	2023	2033
Effective Gross Income	2,448,959	2,804,614	2,561,541	2,619,772	2,675,338	3,355,869
Operating Expenses	(1,039,457)	(1,075,838)	(1,113,482)	(1,152,464)	(1,192,800)	(1,682,563)
Services Expenses	(82,500)	(85,388)	(88,376)	(91,469)	(94,671)	(133,542)
Ag Services	(93,949)	(93,949)	(93,949)	(93,949)	(93,949)	(93,949)
Loan Admin Fees	(21,038)	(21,038)	(21,038)	(21,038)	(21,038)	(21,038)
Reserves	(57,750)	(57,750)	(57,750)	(57,750)	(57,750)	(57,750)
Net Operating Income	1,154,265	1,170,652	1,186,937	1,203,102	1,219,130	1,367,027
Debt Service (Tranche A)	(536,437)	(536,437)	(536,437)	(536,437)	(536,437)	(536,437)
Debt Service (Tranche B)	(467,267)	(467,267)	(467,267)	(467,267)	(467,267)	(467,267)
Debt Service HCD or Other	-	-	-	-	-	-
Cash Flow	150,562	166,948	183,233	199,398	215,426	363,323
DOR	1.15	1.17	1.18	1.20	1.21	1.36
Management Fees	7,000	7,245	7,499	7,761	8,033	11,331
Deferred Developer Fee	64,281	72,089	79,833	87,503	95,090	163,856
Partnership Management Fee	15,000	15,525	16,068	16,631	17,213	24,280
Services Paid from Cash Flow	-	-	-	-	-	-
Residual Receipts to Lenders	64,281	72,089	79,833	87,503	95,090	163,856
Incentive Management Fee	-	-	-	-	-	-
Other	-	-	-	-	-	-

ATTACHMENT F
PERMITTED EXCEPTIONS

From preliminary title report dated August 30, 2018, provided by Chicago Title Company:

1. Property taxes, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2018-2019.
2. Any liens or other assessments, bonds, or special district liens including without limitation, Community Facility Districts, that arise by reason of any local, City, Municipal or County Project or Special District.
3. The lien of supplemental or escaped assessments of property taxes, if any, made pursuant to the provisions of Chapter 3.5 (commencing with Section 75) or Part 2, Chapter 3, Articles 3 and 4, respectively, of the Revenue and Taxation Code of the State of California as a result of the transfer of title to the vestee named in Schedule A or as a result of changes in ownership or new construction occurring on or after to Date of Policy.
4. Matters contained in that certain document

Entitled: Development Agreement
Executed by: The City of Santa Clara, a chartered California municipal corporation; The Redevelopment Agency of the City of Santa Clara, a public body, corporate and politic; The State of California Department of General Services; and Summerhill Winchester, LLC, a California Limited Liability Company

Recording Date: July 19, 2007
Recording No.: 19519315, of Official Records

Reference is hereby made to said document for full particulars.

5. Easement(s) for the purpose(s) shown below and rights incidental thereto as delineated or as offered for dedication, on the map of said tract/plat;

Purpose: A) Public utilities; and B) Sidewalks
Affects: Parcel Map - 90 North Winchester Boulevard
Recording No.: Book 831, Pages 53-54, of Maps

6. Matters contained in that certain document

Entitled: State of California Grant Deed (Senior Housing Site)
Dated: December 21, 2011

Executed by: State of California, through its duly appointed and qualified
Director of General Services and The Housing Authority of the
City of Santa Clara, a public body, corporate and politic
Recording Date: January 5, 2012
Recording No.: 21485774, of Official Records

Reference is hereby made to said document for full particulars.

Matters contained in that certain document

Entitled: State of California Modification of Grant Deed
Executed by: State of California Department of General Services Real Estate
Services Division and Housing Authority of the City of Santa
Clara, a public body, corporate and politic
Recording Date: January 4, 2017
Recording No: 23550600, of Official Records

Reference is hereby made to said document for full particulars.

ATTACHMENT G
GROUND LEASE

[attached]

ATTACHMENT H
MEMORANDUM OF GROUND LEASE

[Attached to Ground Lease]

ATTACHMENT I
CITY LOAN AGREEMENT

[attached]

ATTACHMENT J
CITY PROMISSORY NOTE

[attached]

ATTACHMENT K
CITY DEED OF TRUST

[attached]

ATTACHMENT L
CITY ASSIGNMENT OF RENTS AND LEASES
[attached]

ATTACHMENT M
CITY ASSIGNMENT OF AGREEMENTS

[attached]

ATTACHMENT N

PROVISIONS FOR DISBURSEMENT AGREEMENT

1. Compliance With Previous Conditions. The conditions precedent set forth in Section 3.7.1 of this Agreement shall have been met on the date of the closing of the City Loan and shall continue to be met as of the disbursement date.
2. Evidence of Expenditure. Developer has submitted to the City a draw request including invoices, receipts, cancelled checks or other written documentation satisfactory to the City Representative evidencing Developer's incurrence of Eligible Project Costs, and such draw request has been approved in accordance with the Disbursement Agreement.
3. Approvals under City Loan Documents. Developer has obtained from the City all approvals for the development of the Affordable Project that are required to be obtained at the time of the disbursement request under the City Loan Documents.
4. No Default. There shall be no condition, event or act which would constitute an Event of Default by Developer under the City Loan Documents, the County Loan, the Construction Loan, or any other financing or contract applicable to the Affordable Project or which upon the giving of notice or the passage of time, or both, would constitute an Event of Default.
5. Representations and Warranties. All representations and warranties of Developer set forth in Section 2.2 of this Agreement shall be true and correct in all material respects as if made on and as of the date of the disbursement.
6. No Stop Notice. No stop notice (whether bonded or not) shall have been served upon or otherwise delivered to Developer, Construction Lender or the City in connection with the construction of the Affordable Project or otherwise in connection with the City Loan, unless Developer shall have (or shall be with the proceeds of the requested disbursement) (a) paid and discharged the same, or (b) effected the release thereof by delivering to the Construction Lender a surety bond complying with the requirements of applicable Governmental Regulations for such release.
7. No Liens. No claim of lien, notice and claim of mechanic's lien or other similar document or instrument shall have been recorded against the Affordable Project or any portion thereof, unless Developer shall have (or shall with the proceeds of the requested disbursement) (a) paid and discharged the same, (b) effected the release thereof by delivering to the Construction Lender a surety bond complying with the requirements of applicable Governmental Regulations for such release, or by insurance over the same, or (c) caused the Title Company to commit in writing to issue a policy of title insurance showing such lien not to be an exception to title.
8. Satisfactory Progress. The Construction Lender shall be reasonably satisfied, based on its own inspections and/or other reliable information, that the Affordable Project is progressing satisfactorily and in conformance with this Agreement, all applicable

Governmental Regulations and all other requirements, including, without limitation, applicable wage requirements.

9. Governmental Regulations; Wages. There shall be no condition, event or act existing in connection with the Affordable Project which constitutes, or would, with the passage of time, constitute a material violation of any applicable Governmental Regulation, including, without limitation, applicable wage requirements.

ATTACHMENT O
STATE REGULATORY AGREEMENT

[attached]

ATTACHMENT P
CITY REGULATORY AGREEMENT

[attached]

ATTACHMENT Q

GRANT DEED

(Attached)

RECORDING REQUESTED BY:

[_____
[_____
[_____]

AND WHEN RECORDED RETURN TO
AND MAIL TAX STATEMENTS TO:

[_____
[_____
[_____]

Space above this line for Recorder's use

GRANT DEED

THE UNDERSIGNED GRANTOR DECLARES:

DOCUMENTARY TRANSFER TAX \$_____; CITY TRANSFER TAX \$_____;
___ computed on full value of the property conveyed, or
___ computed on full value less value of liens or encumbrances remaining at time of sale, or
___ transfer is exempt from tax for the following reason: _____
in the City of Santa Clara, California.

For valuable consideration, the receipt and sufficiency of which are hereby
acknowledged, the City of Santa Clara, a California municipal corporation (the “**Grantor**”)
hereby grants and conveys to _____ (the “**Grantee**”), the real
property (the “**Property**”) located in the City of Santa Clara, County of Santa Clara, State of
California more particularly described in Exhibit A attached to this Grant Deed.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of

_____.

CITY OF SANTA CLARA,
a California municipal corporation

By: _____

Name: _____

Its: _____

APPROVED AS TO FORM:

Brian Doyle, City Attorney

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 _____)
) ss.
COUNTY OF _____)

On _____, 20__, before me, _____, a 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 _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

[Seal]

Exhibit A to Grant Deed

LEGAL DESCRIPTION OF PROPERTY

(To Be Attached)

ATTACHMENT R
CITY GUARANTY

[attached]

ATTACHMENT S
CITY ENVIRONMENTAL INDEMNITY

[attached]